

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

DEPARTMENT 73

HON. JOEL WOHLFEIL

CITIZENS OVERSIGHT INC., a Delaware)
non-profit corporation; RAYMOND LUTZ,)
an individual,)
))
Plaintiffs and Appellants,)
))
vs.) Case No.:)
) 37-2016-00020273-)
) CL-MC-CTL)
MICHAEL VU, San Diego Registrar of)
Voters; HELEN N. ROBBINS-MEYER,)
San Diego County Chief Administrative) COURT OF APPEAL)
Officer; COUNTY OF SAN DIEGO, a) Case No.:)
public entity; DOES 1-10,) D071907)
))
Defendants and Appellants.)
))

REPORTER'S APPEAL TRANSCRIPT

OCTOBER 5, 2016
Volume 2 of 3
Pages 159 - 367

Appearances:

For Plaintiffs: CARE LAW GROUP PC
By: ALAN L. GERACI, Esq.
817 W. San Marcos Boulevard
San Marcos, California 92078
(619)231-3131

For Defendants: OFFICE OF COUNTY COUNSEL
By: TIMOTHY M. BARRY, Esq.
By: STEPHANIE A. KARNAVAS, Esq.
1600 Pacific Highway, Room 355
San Diego, California 92101
(619)531-6259

KRISTY A. MONTALBAN, CSR NO. 13551
OFFICIAL REPORTER PRO TEMPORE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CHRONOLOGICAL INDEX OF WITNESSES
October 5, 2016

	PAGE	LINE
RAYMOND LUTZ - Plaintiffs' Witness		
CROSS (Resumed) BY MR. BARRY.....	164	21
REDIRECT BY MR. GERACI.....	186	14
RECROSS BY MR. BARRY.....	193	2
ERIN MAYER - Plaintiffs' Witness		
CROSS BY MR. GERACI (Pursuant to EC 776)...	196	2
REDIRECT BY MS. KARNAVAS.....	208	26
RECROSS BY MR. GERACI.....	211	17
DEBORAH SEILER - Defendants' Witness		
DIRECT BY MR. BARRY.....	213	21
CROSS BY MR. GERACI.....	254	16
REDIRECT BY MR. BARRY.....	278	10
RECROSS BY MR. GERACI.....	281	13
CHARLES WALLIS - Plaintiffs' Witness		
CROSS BY MR. GERACI (Pursuant to EC 776)...	283	16
REDIRECT BY MS. KARNAVAS.....	298	13
RECROSS BY MR. GERACI.....	356	10
FURTHER REDIRECT BY MS. KARNAVAS.....	361	2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS RECEIVED

IDENTIFIED	PAGE	LINE
Exhibit 9	167	8
Exhibit 10	167	8
Exhibit 11	167	8
Exhibit 56	191	10
Exhibit 138	227	13
Exhibit 100	230	24
Exhibit 101	230	24
Exhibit 102	230	24
Exhibit 103	230	24
Exhibit 104	234	25
Exhibit 180	234	25
Exhibit 105	240	14
Exhibit 106	242	27
Exhibit 109	247	6
Exhibit 110	250	11
Exhibit 62	250	15
Exhibit 155	329	12
Exhibit 154	329	21
Exhibit 152	329	21
Exhibit 158	329	21
Exhibit 190	329	21
Exhibit 150	329	21
Exhibit 175	356	2
Exhibit 149	362	13

1 SAN DIEGO, CALIFORNIA

2 WEDNESDAY, OCTOBER 5, 2016; 8:57 A.M.

3 -o0o-

4
5 THE COURT: All right. Calling Citizens
6 Oversight versus Vu, et al. Case number ending 202273.

7 Counsel, I just want to make sure I
8 understand -- please have a seat, if you'd like -- what
9 the order of witnesses is for the rest of the day.

10 Let me start with plaintiffs' counsel.

11 MR. GERACI: We did exchange communications on
12 that subject, your Honor. And as I understand the
13 schedule, Mr. Lutz is on the stand. Cross-examination
14 will conclude. And then Erin Mayer is the next witness,
15 County employee. We'll call her. And then Deborah
16 Seiler --

17 MR. BARRY: Seiler.

18 MR. GERACI: -- being called by the County out
19 of order. And then Charles Wallis, W-a-l-l-i-s, will be
20 our next witness this afternoon.

21 THE COURT: All right. Do you think that will
22 keep us busy through the end of today?

23 MR. GERACI: I believe it will. And, if
24 necessary, we have the deposition testimony to read on
25 to the record and we have some other options.

26 THE COURT: All right. And who else, if
27 anyone, will you be calling after Mr. Wallis in your
28 case in chief?

1 MR. GERACI: There may be some poll workers who
2 are very short witnesses. If necessary, we will call
3 them tomorrow. But probably other than Ms. --
4 Dr. Stark, who is scheduled for next Tuesday morning, we
5 have no other witnesses.

6 THE COURT: All right. How about from the
7 defense? Do you have people lined up, if not very late
8 in the day today, certainly tomorrow?

9 MR. BARRY: We have Ms. Seiler today which we
10 are taking out of order because she's needing to go back
11 to Sacramento this evening. And then we have Dean Logan
12 and Jill LaVine tomorrow morning.

13 And then I think the only -- depending on -- we
14 are sort of taking those out of order also. If there is
15 going to be poll workers, I would assume they would be
16 next and then Mr. Vu.

17 THE COURT: I'm sorry. You said Ms. LaVine.
18 And who is other person you said? Logan?

19 MR. BARRY: Dean Logan.

20 THE COURT: All right. Do you think that will
21 keep us busy through the end of the day tomorrow?

22 MR. BARRY: Probably.

23 THE COURT: All right.

24 MR. BARRY: I mean, that's our last witness,
25 so...

26 THE COURT: Did you also say Mr. Vu?

27 MR. BARRY: Yes, I did. I would expect to get
28 Mr. Logan done in the morning probably before break.

1 THE COURT: Okay. Before we resume with
2 Mr. Lutz's examination, anything else from plaintiffs'
3 side?

4 MR. GERACI: Not now.

5 THE COURT: Defense side?

6 MR. BARRY: No, your Honor.

7 THE COURT: Okay. Mr. Lutz, good morning to
8 you. May I ask you follow directions of my deputy and
9 retake the stand.

10 And you understand you are still under oath,
11 sir?

12 THE WITNESS: Yes, I do. Thank you.

13 THE COURT: All right. Counsel, whenever you
14 are ready.

15 MR. BARRY: Thank you, your Honor.

16 THE COURT: Oh, you know what, I do need to
17 retrieve one thing before you launch.

18 There we go. Whenever you are ready now.

19 MR. BARRY: Thank you, your Honor.

20

21 CROSS-EXAMINATION (Resumed)

22 BY MR. BARRY:

23 Q. Mr. Lutz, you understand you're still under
24 oath?

25 A. Yes, I do. Thank you.

26 Q. Did you play any role in the enactment of any
27 of the amendments to Section 15360 that have been
28 enacted since 2004?

1 A. No, I haven't.

2 Q. Did you have any interaction at the time that
3 these amendments were going through the legislature with
4 any individuals who were involved in the legislative
5 process?

6 A. I did talk to some people who were involved in
7 working on those, yes.

8 Q. Now, with respect to anybody -- and that person
9 who you spoke to was not actually involved in the
10 legislature process; is that correct?

11 A. Well, they are a citizen involved in promoting
12 their point of view, yes. That's part of the
13 legislative process.

14 Q. Now, we've marked several letters. I'd ask you
15 to refer to Exhibits 9, 10 and 11. They would be in
16 your binders, the black binders.

17 A. Oh, okay.

18 THE COURT: Counsel, I apologize. Give me one
19 more moment.

20 All right.

21 BY MR. BARRY:

22 Q. Mr. Lutz, can you identify Exhibits 9, 10 and
23 11.

24 A. Yes, the first one, Exhibit 9, is a letter from
25 Citizens Oversight Projects to Michael Vu dated
26 October 9th, 2014, and I did sign this, and I did create
27 this document.

28 Q. Okay. And same question as to Exhibit 10.

1 A. Exhibit 10 is basically essentially the same
2 document except -- and also sent to Michael Vu and dated
3 October 14th, five days later. This was the letter that
4 was also sent to all the other registrars in the state.

5 Q. And then with respect to Exhibit 11, can you
6 identify that document?

7 A. This was dated May 4, 2016, couple years later.
8 And this was for this last election, a similar letter
9 requesting information for what we call a snapshot
10 protocol.

11 Q. And does your signature appear on each of those
12 letters?

13 A. Yes, it does.

14 Q. And if I can refer you to the second paragraph
15 under headings "Snapshot CD," do you see that? The
16 first paragraph under that section.

17 A. Under exhibit what?

18 Q. On Exhibit 9.

19 A. Okay.

20 Q. And can you read that first sentence that
21 appears there to yourself?

22 A. Okay. "We understand that the 1 percent hand
23 tally is performed on a subset of the votes counted
24 prior to the finalization of the election, somewhat of a
25 preliminary snapshot of the votes in those precincts."

26 Q. Sir --

27 MR. GERACI: Your Honor, since we are going to
28 be referring to these exhibits, I would move their

1 admission so that --

2 THE COURT: Any objection?

3 MR. BARRY: No, your Honor.

4 THE COURT: One moment. Exhibits 9 --

5 MR. GERACI: 9, 10 and 11.

6 THE COURT: I got you. Just give me a moment.

7 Exhibits 9, 10 and 11 will be admitted.

8 (Exhibits 9, 10 and 11 were admitted into evidence.)

9 THE COURT: Next question.

10 BY MR. BARRY:

11 Q. So based on the information that's set forth
12 there, you understood that you were getting a subset of
13 the votes that had been counted prior to the
14 finalization of the election, correct?

15 A. That's what we understood at the time. And
16 unfortunately, we were given bad information about the
17 law and how it should be practiced and our point of
18 view.

19 MR. BARRY: Objection. Move to strike, your
20 Honor, everything after "yes." Nonresponsive to the
21 question.

22 THE COURT: Well, he didn't say yes. The Court
23 sustains the objection in part and grants the motion to
24 strike in part. Everything after that's what we
25 understood at the time will be stricken.

26 Next question.

27 MR. BARRY: Thank you, your Honor.

28 ///

1 BY MR. BARRY:

2 Q. And that subset of votes was -- and your
3 request was as soon after election night as possible,
4 correct?

5 A. Negative.

6 Q. Negative? When is it you expected to receive
7 it?

8 A. We actually wanted it delayed as long as
9 possible so that more votes could be included.

10 Q. But you always recognized that not all ballots
11 would be included in that subset?

12 A. That's what we were told.

13 Q. Now, with respect to the letter of
14 October 14th, which is Exhibit 10, you're asking -- and
15 I refer you, again, to Section 1, Roman numeral I,
16 snapshot data files.

17 A. Yes.

18 Q. It says -- can you read that first -- well,
19 that sentence in the first paragraph there.

20 A. "We request a complete snapshot of the subset
21 of votes in this election used in the 1 percent manual
22 tally, all precincts and all types of votes prior to the
23 random selection of precincts for the 1 percent manual
24 tally with the understanding that the snapshot should be
25 directly comparable to the results of the 1 percent
26 manual tally."

27 Then it goes on to "Snapshot data requests
28 are." Do you want me to continue?

1 Q. No, that's fine.

2 A. Okay.

3 Q. So, again, it was your understanding that you
4 would be receiving a subset of ballots counted in the
5 election?

6 A. We said a complete snapshot of the subset of
7 votes in the election used in the 1 percent manual
8 tally.

9 Q. And the 1 percent manual tally, the random draw
10 for the -- or the random -- for the manual tally
11 occurred within several days after the election,
12 correct?

13 A. True, but this is for all counties. Some
14 counties complete their -- some counties only have one
15 precinct. Alpine County completes all counting prior
16 to --

17 MR. BARRY: Objection, your Honor. Assumes
18 facts not in evidence.

19 THE COURT: Well --

20 MR. BARRY: Also not responsive to the
21 question.

22 THE COURT: The latter objection is sustained.

23 BY MR. BARRY:

24 Q. Now, with respect to Exhibit 11, again, here
25 you're requesting a snapshot of the subset of votes; is
26 that correct? I'd refer you to page three of that
27 document.

28 A. Yes, that's what it says. "A complete snapshot

1 of the subset of votes."

2 Q. Were you provided with a disk of election night
3 results prior to the random 1 percent draw of the
4 June 7, 2016, presidential primary?

5 A. Can you repeat that?

6 Q. Yes. Were you provided with a disk of election
7 night results prior to the random 1 percent draw of
8 precincts for the June 7, 2016, per your request in
9 Exhibit 11?

10 A. We did get a disk, but it didn't actually match
11 our request.

12 Q. Okay. And did it provide you with a subset of
13 ballots that had been included in the official canvass
14 as of the date as of election night?

15 A. Actually, it had some files on it that they
16 claimed were that, yes.

17 Q. And how many times have you asked for this
18 information in previous elections?

19 A. In this election year or in other election
20 years?

21 Q. In prior election years.

22 A. I believe we started in 20 -- first time was in
23 2012 when I started asking for the data, but I would
24 have to check on that.

25 Q. So can you tell me what are all the steps the
26 ROV must undertake to process a vote-by-mail ballot?

27 A. My understanding is the vote-by-mail ballot is
28 received -- first they sent it -- send it to the voter,

1 and then the voter votes, signs it hopefully and sends
2 it back. It's then received by the registrar.

3 I understand that they run it through a first
4 pass on the Pitney Bowes sorting machine which does
5 nothing but just photograph the signature and the front
6 of the ballot and the bar code, and that allows them to
7 incorporate that into their database and their computer
8 system such that analysts can compare the signatures and
9 verify that they match the signatures on file.

10 And when those signatures are then matched --
11 and I think the machine can also do some automatic
12 matching. I'm not sure how extensively that's used, but
13 it can do some automatic matching and actually detect if
14 there is no signature and then those can be put out and
15 potentially sent back to the user or they can be
16 notified to come in and sign it.

17 And after that point, the users on their
18 terminals go over the information and compare the
19 signatures to what's in the data file. I understand
20 that it's not legal to actually compare the address on
21 the envelope with the address on file as a screening
22 process.

23 They go through the process of checking that
24 signature; and if they don't match, then they can kick
25 them out and say signature doesn't match and we are not
26 going to count this.

27 They can update the address if the address has
28 changed and the user says I'm in a new location.

1 After they've done the screening, then at some
2 point they run the envelopes back through the
3 Pitney Bowes machine and sort them, and I understand the
4 machine could sort them down to the precinct, but they
5 choose to sort them to the City Council District in
6 San Diego city would be to the districts that we're
7 aware of and other cities maybe if they don't have
8 districts, it would be to the entire city. I understand
9 the unincorporated county is one big area.

10 They sort them into some 32 different
11 categories. Those ballots that go to those categories
12 are all -- and at that time they are still in the
13 envelopes -- are all mixed -- mixed precincts, and they
14 are put into bins arbitrarily with around 400 envelopes
15 in a bin, and those are then ready to be processed to
16 the next step. I understand it may vary somewhat 395 to
17 405, but it's close to 400 per bin unless just a few per
18 bin maybe not fill up the bin.

19 Those are then moved to the next process, which
20 is to remove the ballot from the envelope and separate
21 them and put -- unfold the ballot, take the little
22 rip-off thing off that says "I voted" and make sure they
23 are all about the same. I think there is a quality
24 control step there where they can check to see if -- how
25 the ballot looks, if it's wrinkled or the timing marks
26 are off or if there is some goofy, you know, thing put
27 on it, an X or some kind of contaminate or mutilate the
28 ballot. Then those are set aside into a quality control

1 step.

2 I understand that at this registrar they then
3 have individuals who without supervision look at the
4 ballot and see if it -- everything looks fine and maybe
5 add Wite-Out tape and mask off some marking that is
6 there, and then maybe enhance marking that is not maybe
7 perhaps done in pencil, they need to make it darker so
8 they know that the scanner will scan it properly.

9 Once that's all done, those can be
10 reincorporated into the main flow. Those ballots that
11 are then processed and are in their batches. 400 per
12 batch are then scanned. I understand they're fed
13 through the same sort of precinct type scanner that they
14 used for years, hand fed one at a time through this
15 scanner. That's what I've seen in the past.

16 And that is directly connected to the central
17 tabulator such that the votes are directly captured by
18 the machine and there is no paper audit trail which
19 would otherwise be the case in the precincts so we can't
20 see what the totals are from each batch, for example.

21 Then those ballots are then put into boxes and
22 then put into the storage location.

23 Do you want me to go on to how they are
24 incorporated into the 1 percent manual tally?

25 Q. No, that's fine.

26 A. Okay. That would be, I believe, the end of the
27 processing from my understanding.

28 Q. Okay. Now, do you know the order in which the

1 registrar processes vote-by-mail and provisional
2 ballots?

3 A. I understand that the way they are doing it
4 today is that the provisional ballots are processed last
5 because they need to find out if a voter has already
6 voted by mail. So they have to first process the
7 vote-by-mail ballots. For example, if a voter comes
8 into the precinct and says, I'm not sure if I voted by
9 mail yet, maybe I did, I can't remember, but I just want
10 to vote here just to make sure, they will say, okay,
11 I'll tell you what, since you don't have a vote-by-mail
12 ballot to surrender -- if you did have a vote-by-mail to
13 surrender at the polling place, they would just let you
14 vote there, cross out your name on the white roster that
15 says "vote-by-mail" on it, cross it out, sign it.

16 Q. Let me stop you there. My question is, do you
17 know in which order the registrar processes vote-by-mail
18 and provisional ballots?

19 A. Yes, I do know.

20 Q. Okay. And what is that order?

21 A. The order is that they first -- the way they
22 are doing it today is that they give priority to the
23 vote-by-mail ballot that's already been processed if it
24 has. So they have to process the provisionals. If that
25 the type of provisional it is, they have to wait until
26 that happens. If the provisionals has nothing to do
27 with vote-by-mail ballots --

28 Q. Objection. I think you answered the question.

1 A. Well, no. You asked me the question about
2 provisionals, what order, and I'm trying to answer that.

3 Q. Okay. Go ahead.

4 A. If the provisional has nothing to do with
5 vote-by-mail, for example, if you came into the precinct
6 and you said, I'm at the wrong precinct, you wouldn't
7 have to wait for that provisional to after the
8 vote-by-mails are over because that person is just at
9 the wrong precinct. So you could do that right after
10 the polls are done.

11 Q. Okay. Now, do you believe that the ROV is
12 required to include all provisional ballots in date?

13 A. Do I believe that?

14 Q. Yes.

15 A. From my reading and law and so forth I do.

16 MR. BARRY: Your Honor, if I could have one
17 second.

18 BY MR. BARRY:

19 Q. Okay. Let me go on. I'll come back to that.

20 A. Can I add one more reflection on that on my
21 answer I just answered?

22 Q. Depends. Go ahead.

23 A. By include, I mean not that you have to tally
24 them all but that they would be included in the set that
25 is randomly drawn from. So you have a set of ballots
26 that you randomly draw from. For example, at the end,
27 they had some 75,000 provisionals. Divide that by 400,
28 that's the number of batches you would have. And I have

1 worked it out. You would have two more batches so you
2 would choose two more batches from the provisionals; and
3 randomly from all the provisionals, you would choose two
4 batches and you would manually count those. So two more
5 batches to do.

6 Q. So your procedure would be more or less of a
7 rolling random selection of ballots?

8 A. I would follow the batch mode law as is
9 presented in 15360 and that they allow you to do it in
10 phases, and then when you're done with the batches, you
11 would hand the remaining vote-by-mails that came in
12 later, you could draw from those and you would end up
13 having two more batches from the provisionals. It could
14 be all included.

15 MR. BARRY: So, your Honor, if I could mark a
16 document next in order.

17 THE COURT: New exhibit, Counsel?

18 MR. BARRY: Yes.

19 THE COURT: All right. Just give me one
20 moment, please. Looks like we are up to 195.

21 Have you provided a copy to opposing counsel
22 and do you have one for the Court?

23 MR. BARRY: I did.

24 THE COURT: All right. Thank you. What will
25 195 be described as, Counsel?

26 MR. BARRY: It's an e-mail from Mr. Lutz dated
27 July 4, 2016.

28 THE COURT: All right. Did I hear July 4, 2016

1 or '15?

2 MR. BARRY: '16.

3 THE COURT: '16. All right.

4 MR. BARRY: And what was that exhibit?

5 THE COURT: 195.

6 (Exhibit 195 was marked for identification.)

7 BY MR. BARRY:

8 Q. Mr. Lutz, were you provided a copy of that
9 document?

10 A. I haven't seen it yet.

11 THE COURT: Do you need one more?

12 MR. BARRY: I have another copy. I just
13 thought -- here it is.

14 THE COURT: We have enough copies, one for me
15 and one for my clerk.

16 MR. BARRY: Yes. And I have another one for
17 the witness.

18 THE BAILIFF: Actually, you would give the
19 witness that one.

20 MR. BARRY: I thought I gave you those.

21 THE WITNESS: Thank you.

22 BY MR. BARRY:

23 Q. Mr. Lutz, can you identify this document?

24 A. Okay. This is an e-mail from myself to a
25 number of -- I do have my glasses here so may as well
26 put them on. Much better.

27 It was to a number of counties. I believe it
28 was the top dozen. Looks like only the top ten counties

1 in California -- no, I guess it isn't the top. There is
2 a number of counties, so two -- Santa Clara County,
3 Fresno, Kern, L.A. County, Sacramento, Orange County,
4 Sonoma County and Santa Barbara County and Imperial
5 County. And subject to this notification, you are
6 knowingly violating the Election Code.

7 Q. Okay. And in this e-mail, you indicated to
8 elections officials that you sued registrar of San Diego
9 and you were warning them to perform a 1 percent manual
10 tally in the manner in which you are asking in this
11 lawsuit, correct?

12 A. Can you define that last sentence? You said in
13 the manner -- you said in a manner and I need to make
14 sure I understand what you mean by that.

15 Q. Sure. You're advocating that the 1 percent
16 manual tally be conducted in a particular way; is that
17 correct?

18 A. Yes, I do advocate that they should include the
19 provisionals, and it says here you highlighted, "We also
20 believe the provisionals should be included."

21 Q. Right. And so in this letter, you indicated to
22 these elections officials that it's your belief that
23 provisionals should be included, correct? Is that
24 correct, Mr. Lutz?

25 A. Absolutely.

26 Q. Now, during your testimony you repeatedly
27 stated that the definition of batch is included in the
28 Elections Code, correct?

1 A. They do define it, yes.

2 Q. And where is that definition?

3 A. 15360.

4 Q. And if I show you a -- let me refer you to
5 Section 15360. And can you show me where it is that the
6 definition of batch appears there.

7 THE COURT: Let me slow everybody down for just
8 a moment. Retrieve that section.

9 MR. GERACI: Your Honor, just for the record,
10 can we just have a statement as to what he's been
11 provided and what he's reading from?

12 THE COURT: All right. Let me ask --

13 MR. BARRY: It's the 2016 version of the
14 Elections Code.

15 THE COURT: All right. Just give me a moment,
16 please.

17 All right. Now, I would like to see counsel at
18 sidebar for just a moment, please.

19 (Sidebar; unreported.)

20 THE BAILIFF: Please come to order.

21 THE COURT: Thank you, Counsel. Give me a
22 moment, if I may. I'm going to spend a moment looking
23 at Section 15360.

24 And I might add that at sidebar counsel invited
25 the Court to take judicial notice. It's not necessary.
26 That's squarely in front of the Court.

27 All right. The Court has read and considered
28 Section 15360. As mentioned at sidebar, the Court has

1 reservations about any witness being asked to tell the
2 Court what may or may not appear in the statute, much
3 less the one that seems to be the centerpiece or the
4 focus of this litigation. The Court can do that on its
5 own.

6 Now, having looked at it for this specific
7 reference at issue before the witness at this time, I do
8 see multiple references to batch or batches, including a
9 particular reference in Section A, B, sub 2 that seems
10 to be germane to the question before the witness.

11 BY MR. BARRY:

12 Q. So, Mr. Lutz, in looking at the provisions of
13 15360, can you point out to the Court where the word
14 "all" appears in that provision?

15 MR. GERACI: Objection. Argumentative.

16 THE COURT: Well, that objection is overruled.

17 THE WITNESS: Should I answer the question?

18 THE COURT: You bet.

19 THE WITNESS: The word "all" doesn't implicitly
20 appear, but it's implied by the --

21 MR. BARRY: Thank you -- thank you, Mr. Lutz.

22 Move to strike about being implicitly --

23 THE COURT: The motion to strike is granted.

24 BY MR. BARRY:

25 Q. Now, in reviewing 15360, can you point out to
26 the Court where the word "audit" appears?

27 MR. GERACI: Objection. Argumentative.

28 THE COURT: Overruled.

1 THE WITNESS: I don't believe it appears in
2 this section.

3 BY MR. BARRY:

4 Q. Okay. And again, reviewing 15360, can you
5 point out to the Court where there is a reference to
6 provisional ballots -- rather, the words "provisional
7 ballots" appear?

8 A. I don't believe it implicitly mentions them.

9 Q. Now, during your testimony, you mentioned
10 briefly your open canvass proposal. Do you recall that?

11 A. Yes.

12 Q. And during your deposition, we discussed one of
13 the security measures that you have in place in that
14 proposal as part of the open canvass proposal which you
15 refer to as hashing. Do you recall that?

16 A. I did describe that, yes.

17 Q. And can you describe for the Court what does
18 hashing involve?

19 A. Hashing is a methodology which is commonly used
20 to message digest hash, is to secure hash algorithm,
21 which is used by security systems. Pretty much all
22 security systems use some sort of secure hash algorithm.
23 The attributes are that you take a message of any length
24 pretty much, could be the image of the ballot in this
25 case, you run it through this algorithm and it provides
26 you with a short digest and you can specify how long you
27 want it to be. Typically, they are somewhere between 32
28 and 64 hex digits.

1 And the characteristics of such a hash are that
2 if you make a change to the file, even one little bit
3 somewhere or do something that seems innocuous to other
4 methods such as reversing the bites, which just adding
5 them up wouldn't detect, but if you change one little
6 thing, the digest would change.

7 Q. Now, is it your belief that hashing is an
8 effective means of detecting whether data has been
9 tampered with?

10 A. It's a short -- it's a shorthand method which
11 is used, as I said, in security systems.

12 Q. And do you think it's an effective method?

13 A. All security systems use it.

14 Q. And to your knowledge, do you know what
15 security measures the ROV has in place to protect vote
16 tabulating system?

17 A. I am not aware of all the security systems
18 involved. I'm sure that's something that is not
19 publicized too widely.

20 Q. And you realized that -- and when I say the
21 GEMS tabulating system, we are referring to the central
22 tabulator for the system used by the County of
23 San Diego, correct?

24 A. The GEMS software is used in the central
25 tabulator to maintain the overall tabulation of the
26 vote.

27 Q. And so the components of the tabulator system
28 are the scanners and then the central tabulator

1 essentially, correct?

2 A. They use these scanners from originally Diebold
3 systems that were originally intended to be used in the
4 precincts. And for the polls ballots, they use some
5 152 scanners and -- in the central office. And then a
6 media card is generated from those and brought over to
7 the central tabulator.

8 Q. Mr. Lutz, let me stop you there.

9 I move to strike his response as nonresponsive.

10 THE COURT: The objection is sustained. The
11 motion to strike is granted.

12 Give me one moment, Counsel.

13 All right. Please continue.

14 BY MR. BARRY:

15 Q. Mr. Lutz, you realize the GEMS tabulating
16 system is not connected to the Internet, correct?

17 A. I don't have any proof of that.

18 Q. Do you suspect that it is?

19 A. I have no proof that it is or isn't, never
20 inspected it, never given the opportunity, never
21 evaluated the security systems at the central office
22 here in San Diego.

23 Q. So you really have no familiarity with any of
24 the components of the GEMS tabulating system?

25 A. I have a lot of familiarity with the
26 components. I have no way to evaluate whether -- what
27 they've done there. They could very easily install
28 something to penetrate or make it vulnerable to hacking,

1 for example. Without an inspection, no one would know.

2 Q. Is it your theory that an outside hacker
3 working with -- in conjunction with a corrupt election
4 worker could hack into the system?

5 A. Absolutely.

6 Q. Have you ever personally witnessed voting
7 fraud?

8 A. No.

9 Q. Have you ever personally witnessed election
10 fraud?

11 A. No.

12 Q. Have you identified any voting fraud that has
13 occurred in San Diego County?

14 A. By voting fraud, would you like to define that,
15 please.

16 Q. I would refer to voting fraud as some conduct
17 by a voter that would constitute an illegal act.

18 A. I am not aware of any significant voting fraud.

19 Q. And are you aware of anyone -- anyone guilty of
20 or using -- I'm sorry. Let me start over.

21 What about election fraud?

22 A. Well, if election fraud includes not following
23 the laws, then I would say yes and maybe San Diego is
24 guilty of that.

25 Q. Has San Diego County ever been sued for fraud
26 with respect to election system?

27 A. I think this lawsuit is in a way about election
28 fraud. If not they're following the laws, they should

1 be held -- found guilty of violating the rules.

2 Q. Are you aware of any instance in California
3 where the manual tally process has detected fraud?

4 A. I think it's implemented so poorly, the answer
5 is no.

6 Q. Have you ever identified anyone hacking into
7 the vote tabulation system?

8 A. Not yet.

9 Q. Now, if I can refer to you to the -- I'm going
10 to refer him to a paragraph.

11 May I approach the witness, your Honor?

12 THE COURT: You bet.

13 BY MR. BARRY:

14 Q. Mr. Lutz, I'm going to hand you a document
15 which I'll represent to you is the second amended
16 complaint, which is the operative pleading in this
17 action. And I'd refer you to paragraph 36.

18 And in that paragraph in your prayer for
19 relief, you're complaining that essentially all of the
20 vote-by-mail and provisional ballots should be included
21 in the manual count or manual tally, correct?

22 A. That's what it says. But the word
23 "essentially" is not emphasized the way you did in here,
24 the way you said it.

25 Q. Okay. So we are trying to clarify what relief
26 is it that you are asking the Court to provide. That
27 some vote-by-mail ballots be included in the 1 percent
28 manual tally? That more vote-by-mail ballots be

1 included in the 1 percent manual tally? Essentially all
2 of them be included in the 1 percent manual tally? Or
3 all?

4 A. What is the difference between "essentially
5 all" and "all" in your mind?

6 Q. In my mind, it doesn't matter. It depends on
7 what it means in your mind.

8 A. No, we believe that all the vote-by-mail
9 ballots should be included in the 1 percent manual
10 tally.

11 MR. BARRY: Thank you, your Honor.

12 THE COURT: All right. Redirect.

13

14

REDIRECT EXAMINATION

15 BY MR. GERACI:

16 Q. Drawing your attention back to Exhibits 9, 10
17 and 11 that you were asked about, letters to Mr. Vu and
18 to sample letters of other registrars in the May 4th,
19 2016 letter.

20 A. Yes.

21 Q. You make reference to that term that you've
22 used, the snapshot file. Can you define that, please.

23 A. This is a term that we adopted from the
24 registrar because that's what they were calling it, and
25 we just wanted to get a complete snapshot of the votes
26 that they were tallying so we had in our hands ahead of
27 time exactly broken down by precincts so every precinct,
28 every candidate for that precinct, every type of ballot,

1 whether it be polls ballot or vote-by-mail ballot and
2 then how many votes were counted for that candidate,
3 that type of ballot and that precinct.

4 It turns out to be a fairly big file, some
5 200 megabytes, and somewhat difficult to look through,
6 but we wrote some software to be able to parse through
7 it.

8 And the goal is to be able to watch the manual
9 tally and to check at the end that they -- that nothing
10 has happened between when they started the manual tally
11 and when they got -- when they -- before they did the
12 selection.

13 MR. BARRY: Your Honor, I'll move to strike the
14 answer. It's nonresponsive to the question. He's
15 already answered the question.

16 MR. GERACI: I'll ask the next question.

17 THE COURT: The objection is sustained. Let's
18 move along.

19 BY MR. GERACI:

20 Q. You anticipated my next question. What is the
21 significance of the snapshot file relative to the
22 1 percent manual tally?

23 A. The significance is that if we get that before
24 they do the selection, then we can stop a potential
25 internal hacker from undoing any results that they had
26 before.

27 For example, if I may go on a little bit, if
28 you had a hacker that did one of these fairly

1 significant hacks of, say, 10,000 votes, you would have
2 to spread that over a number of precincts so that it
3 wouldn't be noticeable, let's say, a thousand precincts,
4 ten votes each. That would make 10,000 votes. In any
5 one precinct, it wouldn't be noticeable.

6 If we didn't get the snapshot file, the
7 internal compromised employee or hacker, once they know
8 what the manually counting precincts are going to be,
9 they can just go back and undo their fixes, their
10 hacking for those precincts to make them look good and
11 the manual tally won't detect it.

12 They can't do that if we have the file because
13 then we will notice if they have done -- done their
14 fixes. So this stops the sort of undoing that could
15 potentially happen by a compromised employee.

16 Q. It allows you to freeze in time the election
17 process so that there can be no ambiguity later as to
18 what happened on election day?

19 A. Exactly. It's a frozen results.

20 Q. Let me draw your attention to Exhibit 56. It's
21 in the second volume.

22 A. Okay.

23 THE COURT: One moment, please.

24 MR. GERACI: For the record, your Honor, that's
25 a CV that's included in the exhibit book provided by the
26 County of San Diego, June 7, 2016, presidential primary
27 precinct breakdown unofficial from election night.
28 That's been referred to as the snapshot file.

1 THE WITNESS: Yeah, this is a copy of the CD I
2 received.

3 THE COURT: All right. One moment.

4 MR. GERACI: I would move admission to
5 Exhibit 56.

6 THE COURT: Any objection?

7 MS. KARNAVAS: Was it provided to us? Because
8 we don't have a blanket exhibit.

9 MR. GERACI: Yeah, it's -- you provided it to
10 me actually.

11 MS. KARNAVAS: Okay. But it wasn't in our
12 exhibit book so I haven't had a chance to verify whether
13 this is, in fact, the file or not. So subject to that
14 objection.

15 THE COURT: All right. One moment, please.

16 MR. GERACI: I'll represent to the Court this
17 is the file that was provided to me by the County
18 counsel.

19 THE COURT: Just a second.

20 Okay. Now, it's one thing for you to get
21 materials generated or created by plaintiff late in the
22 evening like we discussed yesterday, late in the evening
23 the Monday before we started the trial.

24 But if the source of the material that you may
25 not have been provided before we started trial was
26 actually generated by the County, that's a different
27 analysis when it comes to prejudice. So unless the
28 County can or, I should say, the defendants can give me

1 a reason other than what I may have heard so far, I'll
2 overrule the objection that 56 be admitted.

3 Again, I'm not trying to be inconsistent, but
4 I'm explaining to you why I perceive the analysis to be
5 different.

6 MR. BARRY: I understand, your Honor.

7 THE COURT: And by the way -- one moment. I
8 don't care who speaks during a given witness. I really
9 don't. But once that counsel begins to speak, then --
10 well, no, Mr. Barry, you are conducting examination so I
11 would expect you to carry on for the duration of
12 Mr. Lutz so -- it just makes it less confusing.

13 MR. BARRY: I understand, your Honor.

14 THE COURT: So explain to me why 56 should not
15 be admitted.

16 MR. BARRY: Well, I don't know there has been a
17 showing of relevance at this point, but...

18 THE COURT: Well, if I understand it, it's a CD
19 of the snapshot that Mr. Lutz requested of the June --
20 now, this says June 8. I thought the election took
21 place on June 7th.

22 MR. GERACI: It was June 7th.

23 THE COURT: So the exhibit list seems to be
24 incorrect, but maybe that's when you got it.

25 MR. BARRY: It's the snapshot of election
26 results from June 8.

27 THE COURT: June 8.

28 MR. BARRY: The election was June 7. It's the

1 results as of June 8.

2 MR. GERACI: Next day.

3 THE COURT: All right. So that explains the
4 date. All right. But -- all right.

5 MR. BARRY: And assuming the representation of
6 counsel is correct, it was I think listed as an exhibit,
7 so we're okay with it.

8 THE COURT: All right. So Exhibit 56 will be
9 admitted.

10 (Exhibit 56 was received in evidence.)

11 THE COURT: Just give me one moment, please.

12 All right. Continue on.

13 BY MR. GERACI:

14 Q. When did you receive Exhibit 56?

15 A. We received this at the -- when -- at about
16 3:00 p.m. on June 8th right after the election.

17 Q. So before the random draw and your
18 participation in the random draw 1 percent manual tally?

19 A. It was provided to me at that meeting and just
20 before they did the random draw.

21 Q. Okay. Now, you made reference to the 1 percent
22 manual tally being a tool to detect fraud, election
23 fraud. And you stated that it was done so poorly that
24 no election fraud was detected or could be detected by
25 the way the registrar is presently doing the 1 percent
26 manual tally. What did you mean by that?

27 A. Well, the question was any election fraud, and
28 it extended past San Diego. And many counties, for

1 example, do their random selection two months before the
2 election. And if you did it that way, any fraudster
3 would know which precincts to avoid and could just avoid
4 those and the 1 percent manual tally would come out
5 clean every time.

6 If no one accepts the snapshot file and a third
7 party or is not put on the web site, then again, as I
8 mentioned, any changes could be undone.

9 So we are trying to deal with those two issues
10 with regard to the timing of getting this snapshot file
11 and getting it. And the other aspect, which is
12 deficient, is how many of the ballots, the percentage of
13 ballots which are included in the manual tally, and
14 that's really the subject of this lawsuit. And that if
15 you leave a significant portion of votes out, then you
16 can fix an election which is fairly close.

17 Q. Now, in Exhibits 9, 10 and 11, you were asked
18 questions about the word "subset." Is the snapshot file
19 what you're referring to as a subset of the election
20 results or the election ballots?

21 A. Yes, that is true.

22 Q. And that's because the remainder of
23 vote-by-mail and provisional ballots haven't yet been
24 processed and included in the election results, correct?

25 A. That's correct.

26 MR. GERACI: No further questions.

27 THE COURT: Okay. Recross.

28 MR. BARRY: Very briefly, your Honor.

1

2

REXCROSS-EXAMINATION

3

BY MR. BARRY:

4

Q. So it's your preference to receive the snapshot prior to the random draw, correct?

5

6

A. Yes, if it's -- if it's received after the random draw, it breaks our protocol.

7

8

MR. BARRY: Move to strike.

9

BY MR. BARRY:

10

Q. It's your preference to receive --

11

THE COURT: One moment. The objection -- well, there was no objection. Is there an objection?

12

13

MR. BARRY: Yes. Nonresponsive to the question.

14

15

THE COURT: The objection is sustained. Motion to strike is granted. Everything after "yes" is stricken.

16

17

18

BY MR. BARRY:

19

Q. And the random draw has to occur during the canvass, correct? Or is it your preference that the random draw occur during the canvass?

20

21

22

A. Yes, it's my preference.

23

Q. And that occurs after you've received the snapshot?

24

25

A. That's my preference.

26

Q. And you understand then that the manual tally process occurs after the random draw?

27

28

A. My understanding that's how they've done it?

1 Q. Yes, yes.

2 A. That's how they've done it. That's not how
3 it's absolutely required to be done.

4 MR. BARRY: Move to strike, your Honor,
5 everything after the initial "that's how they've done
6 it."

7 THE COURT: The objection is sustained. The
8 motion to strike is granted.

9 MR. BARRY: No further questions, your Honor.

10 THE COURT: All right. Just give me one
11 moment.

12 All right. Anything else, Counsel?

13 MR. GERACI: Nothing else.

14 THE COURT: May Mr. Lutz be excused?

15 MR. GERACI: Yes, your Honor.

16 THE COURT: Counsel, may Mr. Lutz be excused?

17 MR. BARRY: Yes, your Honor.

18 THE COURT: Okay. Thank you.

19 MR. GERACI: Actually, your Honor, subject to
20 recall.

21 THE COURT: Subject for recall. Thank you very
22 much. Please step down, Mr. Lutz.

23 All right. So, plaintiff, your next witness.

24 MR. BARRY: We need to check out in the hall.

25 THE COURT: Oh, now is this a witness that we
26 are going to interrupt plaintiffs' case and call?

27 MR. BARRY: No, no.

28 MR. GERACI: We are calling Erin Mayer, a

1 county employee.

2 THE COURT: Oh, thank you. I got you.

3 MR. BARRY: Your Honor, may I take back the
4 complaint?

5 THE COURT: You bet.

6 And Counsel, are you going to be examining
7 Ms. Mayer under 776?

8 MR. GERACI: Yes, your Honor.

9 MR. BARRY: And your Honor, Ms. Karnavas will
10 be handling this witness.

11 THE COURT: Okay. Here we go. Give me a
12 moment to catch up.

13 Good morning, ma'am. If you could follow the
14 directions of my deputy and my clerk, please.

15 THE CLERK: Please raise your right hand.

16 Do you solemnly state under penalty of perjury
17 that the evidence you shall give in this matter shall be
18 the truth, the whole truth, and nothing but the truth?

19 THE WITNESS: Yes.

20 THE CLERK: Please take the stand.

21 Ma'am, please state your full name and spell
22 your last name for the record.

23 THE WITNESS: Erin Mayer, M-a-y-e-r.

24 THE CLERK: Thank you.

25 THE COURT: All right. Just give me an extra
26 moment, Counsel.

27 All right. Whenever you're ready.

28 MR. GERACI: Thank you, your Honor.

1

2 CROSS-EXAMINATION (Pursuant to EC 776)

3 BY MR. GERACI:

4 Q. Good morning. Is it Mayer, correct? Yes?

5 A. Correct.

6 Q. You have to answer out loud.

7 A. Thank you.

8 Q. Just as a point of reference, before you are a
9 number of loose-leaf books, black binders which have
10 exhibits and the white binders also have some exhibits.
11 We may make reference to some. And if you need
12 assistance finding anything, we'll help you.

13 What is your occupation?

14 A. Chief -- or deputy -- we just changed the
15 title. Chief Departmental Operations, Election
16 Services.

17 Q. And as such, you are directly responsible for
18 the 1 percent manual tally that's done after an
19 election?

20 A. Correct.

21 Q. Among other responsibilities?

22 A. Correct.

23 Q. You supervise people that assist in that
24 process?

25 A. Yes.

26 Q. And Ms. Diane Elsheikh is one of those people?

27 A. She is a manager under me, yes.

28 Q. And reports to you directly?

1 A. Yes.

2 Q. And just for chain of command, you report to?

3 A. Assistant registrar of voters Cynthia Paes.

4 Q. P-a-e-s?

5 A. Yes.

6 Q. So I would assume you are familiar with the
7 1 percent manual tally process that's followed by the
8 San Diego County registrar?

9 A. Correct.

10 Q. For how long have you been in this position?

11 A. Two and a half years.

12 Q. So in two and a half years, you've gone through
13 how many election cycles?

14 A. I think five elections.

15 Q. Okay. That would include this past June 7,
16 2016, presidential primary election?

17 A. Correct.

18 Q. And before that the November election that
19 preceded?

20 A. Correct.

21 Q. And in each of those election cycles, you
22 supervised the 1 percent manual tally process?

23 A. Yes.

24 Q. Has it been -- has it been your procedure since
25 holding your position to do the 1 percent manual tally
26 process regarding vote-by-mail ballots by batching them
27 and doing the hand tally by batch?

28 A. Yes.

1 Q. And in this last election cycle, there was a
2 change from batching to sorting by precinct. Do you
3 recall that?

4 A. Yes.

5 Q. When was that done, when was that change made?

6 A. After we received request from Ray Lutz.

7 Q. And was that because your procedural manual did
8 not include the process by which you would do the
9 1 percent manual tally by batching?

10 A. No.

11 Q. Would it have been preferable to you to
12 continue the process of doing the 1 percent manual tally
13 by -- of votes by mail by batching?

14 MS. KARNAVAS: Objection. Relevance as to
15 preference.

16 THE COURT: Overruled. You can answer, ma'am,
17 unless you --

18 THE WITNESS: Not my preference. I don't have
19 a preference.

20 BY MR. GERACI:

21 Q. The change occurred after you had already drawn
22 the batch numbers that were going to be hand tallied,
23 correct?

24 A. Correct.

25 Q. And public notice for that process had already
26 been given?

27 A. Public notice for the entire process had been
28 given, yes.

1 Q. And after the change of doing the 1 percent
2 manual tally by batching and going to the process of
3 doing the 1 percent manual tally by precinct, did you
4 renotify the public in any way that there was going to
5 be a change in procedure?

6 A. Because it's not required in Elections Code,
7 no, we did not.

8 MR. GERACI: Move to strike everything before
9 "no, we did not."

10 THE COURT: The objection of which is?

11 MR. GERACI: Nonresponsive.

12 THE COURT: The objection is sustained. The
13 motion to strike is granted.

14 BY MR. GERACI:

15 Q. Can you describe how that decision to change
16 from the 1 percent manual tally vote-by-mail by batch to
17 precinct was made?

18 A. Discussions were had. We were trying to
19 accommodate the request and we decided that we would
20 continue with the precincts that were randomly pulled
21 and not only do the polls' ballots from those precinct
22 but also the mail ballots from those precincts.

23 Q. Was it your understanding that Mr. Lutz was
24 objecting to proceeding with the 1 percent manual tally
25 by batching?

26 A. There was a lot of discussion during the random
27 draw and Mr. Lutz was speaking kind of off the top of
28 his head. There was a white -- there was a light bulb

1 moment and he started to consider that he had an idea of
2 doing it a different way.

3 We had discussions during that random draw in
4 the end. It was decided with everyone in the room that
5 we would continue the random draw. And if Mr. Lutz
6 needed to have further discussion about the process at
7 large, he would need to discuss that outside of that
8 room. So there had been a lot of discussion. I'm not
9 sure which piece I pulled that I thought he was trying
10 to change.

11 Q. Were you present in the meeting room during the
12 random draw?

13 A. Yes.

14 Q. I'll draw your attention to Exhibits 50
15 through -- actually, 49 through 52, which is the
16 1 percent manual tally and the spreadsheets supporting
17 the summary. There we go.

18 A. Thank you.

19 Q. Take a look at 49, 50, 51 and 52.

20 A. (Witness complies.)

21 Q. Does that appear to be a true and correct copy
22 of the 1 percent manual tally done after the June 7,
23 2016, presidential primary by your team?

24 A. Yes.

25 Q. And they've been already admitted into
26 evidence. And if you need to refer to those exhibits in
27 answering my questions, just let us know that you're
28 looking at them.

1 Did your team start the process of the poll
2 ballots, doing the 1 percent manual tally of the poll
3 ballots, on June 13, 2016?

4 A. Yes.

5 Q. And did your team start the process of
6 processing the early voting touch screen tallying on
7 June 21st? I believe that's 52.

8 A. Thank you. Yes, it appears so.

9 Q. And just for definition, can you describe the
10 touch screen equipment that's at the registrar for
11 voters to vote at the registrar?

12 MS. KARNAVAS: Lacks foundation.

13 MR. GERACI: Strike that. Withdraw the
14 question. Withdraw the question.

15 BY MR. GERACI:

16 Q. Did you start the tallying of vote-by-mail
17 ballots on June 27?

18 A. The mail ballots from the polls that were
19 originally drawn, yes.

20 Q. So the original vote-by-mail ballots that were
21 received by the polling places were processed separately
22 and differently than the vote-by-mail ballots that were
23 received in the U.S. mail?

24 A. Not differently but separately.

25 Q. Okay. So on June 27th, you started the
26 vote-by-mail processing for tally of the vote-by-mail
27 ballots from the polls -- polling places?

28 A. From the precincts that had been chosen in the

1 random draw, yes.

2 Q. So it is true then that no vote-by-mail ballots
3 that were not received by the precincts were included in
4 the 1 percent manual tally?

5 MS. KARNAVAS: Objection. Well, it's an
6 improper characterization of the witness's testimony.

7 THE COURT: One moment, please.

8 The objection is overruled. You can answer the
9 question.

10 THE WITNESS: Can you please ask the question
11 again?

12 THE COURT: Madam reporter, may I ask you
13 reread the question.

14 (The question was read by the reporter.)

15 THE WITNESS: If I may, it's kind of a double
16 answer. They were not -- there were none included in
17 the manual tally reports that were sent with the canvass
18 to the Secretary of State's office. We did tally
19 vote-by-mail ballots that were not included in the
20 polls -- in the precincts that we also tallied poll
21 ballots for.

22 BY MR. GERACI:

23 Q. Okay. Let me ask it a different way. In your
24 1 percent manual tally report, the only vote-by-mail
25 ballots that you included were the vote-by-mail ballots
26 that were received from the polling places on election
27 day, correct?

28 A. Yes.

1 Q. Okay. And any vote-by-mail ballot that was
2 received after election day is excluded from your
3 1 percent manual tally draw and process, correct?

4 A. Any vote-by-mail ballot that was received that
5 was not from the polls, the 1 percent of the ballots
6 that we chose to be manually tallied were included.

7 THE COURT: One moment.

8 THE WITNESS: So I'm not positive I understand
9 what you're getting to or asking.

10 THE COURT: Counsel --

11 MR. GERACI: I'll ask it.

12 THE COURT: I cannot begin -- this isn't
13 directed towards plaintiffs' counsel nor defense
14 counsel. You are all using words that seem to have some
15 significance for one side or the other and then the
16 witness is trying to make some sense of what the
17 question is suggesting and then the Court is finally
18 trying to make sense of what the witness is trying to
19 make sense of.

20 All right. Just give me a moment.

21 Okay. Counsel, I'm going to ask that you step
22 back a question or two. I'm not clear on the scope of
23 the question or even the witness's answer. And I'm not
24 suggesting the witness isn't trying to give you a direct
25 answer. So -- but it's important that I understand what
26 you all are trying to ask me to do. So please.

27 MR. GERACI: Absolutely, your Honor. I
28 appreciate that direction.

1 BY MR. GERACI:

2 Q. So, Ms. Mayer, what vote-by-mail ballots are
3 included in your 1 percent manual tally?

4 A. The vote-by-mail ballots that were from the
5 same precincts that we did our polls ballot manual tally
6 for.

7 Q. So what you're describing is that after you
8 decided to do the 1 percent manual tally by precinct,
9 the vote-by-mail ballots that were included in that
10 precinct were included in your 1 percent manual tally?

11 A. Yes.

12 Q. But for clarification, only the vote-by-mail
13 ballots that were received on or before June the 8th,
14 2016?

15 A. Yes, that equaled 1 percent of the total votes
16 that came in, so that was adequate and correct.

17 MR. GERACI: Objection. Move to strike
18 everything after "yes."

19 THE COURT: Okay. Just give me a moment.

20 All right. Ms. Mayer, this is what I just
21 wrote down and I need you to tell me whether it's
22 accurate or not.

23 THE WITNESS: Okay.

24 THE COURT: All right. 1 percent manual tally
25 did not include votes by mail ballots received by the
26 County after the election on June 7th, true or not true?

27 THE WITNESS: That is correct.

28 THE COURT: All right. One moment.

1 Counsel, excuse me for interrupting. Please
2 continue.

3 BY MR. GERACI:

4 Q. Who decides the order in which you conduct the
5 hand tally of each ballot group?

6 A. I'm not sure that I understand your question.

7 Q. Let me back up. Exhibits 50, 51 and 52
8 demonstrate three ballot groups, correct?

9 A. Correct.

10 Q. Fifty is the 1 percent manual tally of the
11 ballots received from the precincts, correct?

12 A. Correct.

13 Q. Fifty-one is the tally of the vote-by-mail
14 ballots that you've just described, correct?

15 A. Correct.

16 Q. And then 52 is the tally of the votes from the
17 touch screens?

18 A. Correct.

19 Q. Are there any other ballot groups or does that
20 cover all --

21 A. No, that is everything.

22 Q. Now, the touch screens -- the votes that are
23 done on the touch screen, you actually tally 100 percent
24 of those, correct?

25 A. Correct, of those that were cast in the
26 precincts that were -- that were in the random draw.

27 Q. And that process could start right away, the
28 tally process could start right away. There is

1 nothing -- there is no random draw of the touch screens?

2 MS. KARNAVAS: Objection. Lacks foundation.

3 THE COURT: Overruled. You can answer the
4 question.

5 THE WITNESS: The random draw has to happen
6 first and the polls ballots are ready right away and the
7 touch screen ballot receipts and the audit trails are
8 not necessarily -- there is more that it takes at the
9 back end to get those ready to go, so we are ready with
10 the polls ballots immediately so we start on those
11 first -- the paper ballots, I should say.

12 BY MR. GERACI:

13 Q. And then you move to the vote-by-mail ballots
14 later?

15 A. That's correct.

16 Q. Are you familiar with the voter verified paper
17 audit trail?

18 A. I know what it is.

19 Q. And can you describe it?

20 A. I'm not real familiar with it. It comes out
21 of -- yeah, I'm not very familiar with it. It's the
22 paper that comes out of the touch screen machine that
23 indicates how the voting happened on the machine because
24 there is no paper ballot.

25 Q. In this prior election, was there any problems
26 with the paper trail, the paper audit?

27 A. There were no problems. Paper sometimes gets
28 jammed, which probably happened in this election as

1 well, but we didn't have any problems.

2 Q. Does that mean that there was certain ballots
3 that could not be printed on the paper trail?

4 A. No, they can be rerun.

5 Q. And thereby can voters verify their votes on
6 the touch screens by the paper that's printed?

7 MS. KARNAVAS: Objection. Lacks foundation.

8 BY MR. GERACI:

9 Q. If you know.

10 MS. KARNAVAS: Vague and ambiguous.

11 THE WITNESS: I don't know that that's how they
12 verified it.

13 THE COURT: One moment. The objection is
14 overruled.

15 THE WITNESS: Sorry. I don't know if they can
16 verify that at the poll on paper or whether they see
17 their verification on the screen. I'm not sure.

18 BY MR. GERACI:

19 Q. You are aware, though, that paper trail is
20 required by law?

21 A. Yeah.

22 MS. KARNAVAS: Objection. Lacks foundation.

23 THE COURT: Overruled.

24 THE WITNESS: We have paper trail so I'm not
25 positive what you're asking, but...

26 BY MR. GERACI:

27 Q. Other than the paper jamming in the machine, as
28 I understand it, you were able to recover from the

1 jamming and print out the paper audit trail that was
2 required by that -- by law?

3 MS. KARNAVAS: Objection. Lacks foundation.
4 Vague and ambiguous. Assumes facts not in evidence.

5 THE COURT: Overruled. You can answer.

6 THE WITNESS: Will you ask the question again,
7 please.

8 MR. GERACI: Madam reporter, can you read it
9 back.

10 (The question was read by the reporter.)

11 THE WITNESS: Yes, including anything that had
12 jammed.

13 BY MR. GERACI:

14 Q. Okay. People who want to vote early can
15 actually come into the registrar's office and vote early
16 on these touch screens, correct?

17 A. Correct.

18 Q. And those votes are actually tallied or --

19 A. Manual tally.

20 Q. Manual, correct?

21 A. Correct.

22 MR. GERACI: I have nothing further.

23 THE COURT: Redirect.

24 MS. KARNAVAS: Just a few questions.

25 THE COURT: You bet.

26 REDIRECT EXAMINATION

27 BY MS. KARNAVAS:

28 Q. So I think there was some points of

1 clarification on this, but I just want to make a hundred
2 percent sure with respect to your discussion of the
3 processing and the vote-by-mail ballots.

4 It was not your testimony that vote-by-mail
5 ballots that are actually received at the polling places
6 are the ones that are included in the manual in the
7 tally, correct?

8 A. That is correct. They are not.

9 Q. We are not talking about somebody going to a
10 polling place and dropping off a vote-by-mail ballot,
11 correct?

12 A. We do not tally those.

13 Q. Okay. So we are talking about -- when you were
14 talking about the inclusion of vote-by-mail ballots at
15 the precincts, you were talking about vote-by-mail
16 ballots that have been received in the mail and sorted
17 into the various precincts that were selected in the
18 random draw, correct?

19 A. Correct.

20 Q. Okay. So you had mentioned -- there were some
21 questions about when the tally had begun on these
22 various days, and you had made reference to the fact
23 that there were some things that have to go on the back
24 end before you can start the tallying process.

25 And if you can just describe generally what you
26 were referring to when you said on the back end.

27 A. On the back end, meaning the ballots are all
28 stored in ballot storage areas of the ROV. When we

1 receive the ballots where we are holding the manual
2 tally, people have provided the ballots to us so there
3 is an assembly, if you will, of the ballots that come
4 from each precinct and the mail ballots that go along
5 with those precincts have to be pulled. That's what I
6 meant by back end. Those that are not directly related
7 to the manual tally other people are doing the
8 preparations for us.

9 Q. And what about on the technical side, is there
10 any back end work that needs to be done by IT Services,
11 for example, in order to get the tally going?

12 A. Yes.

13 MR. GERACI: Objection.

14 THE WITNESS: It has to provide all of the
15 content for us to even create the tally sheets that we
16 use, the ballots need to be pulled, we get reports that
17 we know the machines have tallied those votes to equate
18 to that number. There is lots of things technically
19 that happen.

20 BY MS. KARNAVAS:

21 Q. And that's not in your ambit of responsibility
22 on the technical side, correct?

23 A. That is correct.

24 Q. And I understand from your testimony that you
25 are not necessarily -- you don't have necessarily
26 expertise in the touch screen systems. But with that
27 qualification, you were asked a number of questions
28 regarding the paper trail.

1 And I just want to make clear that if there is
2 a problem with the paper jamming in the touch screen, my
3 understanding from your testimony was that the ballots
4 can be still remade, correct?

5 A. Yes.

6 Q. So you can either -- can you reprint the paper
7 trail if it's jammed?

8 A. We can reprint the paper trail, we can remake
9 ballots.

10 Q. And that is because there is a memory card in
11 the touch screen machine that retains that information?

12 A. Yes.

13 MS. KARNAVAS: Okay. Thank you. Nothing
14 further.

15 THE COURT: One moment, please.

16

17 REXCROSS-EXAMINATION (Pursuant to EC 776)

18 BY MR. GERACI:

19 Q. In this past election --

20 THE COURT: One moment, Counsel.

21 MR. GERACI: Oh, I'm sorry, your Honor.

22 THE COURT: Okay. Please continue.

23 BY MR. GERACI:

24 Q. In this past election in the 1 percent manual
25 tally process, did you start the process of tallying the
26 vote-by-mail ballots by batch before you switched over
27 to vote-by-mail tallying by precinct?

28 A. Yes.

1 Q. How far along the process had you gotten before
2 you switched?

3 A. Not very far, but I don't recall how many days
4 in we were.

5 Q. Can you reasonably estimate by percentage of
6 the total task?

7 A. Maybe -- not really, 10 percent.

8 MR. GERACI: Okay. Nothing further.

9 THE COURT: Anything further, Counsel?

10 MS. KARNAVAS: No, your Honor.

11 THE COURT: All right. May Ms. Mayer be
12 excused?

13 MR. GERACI: Yes, your Honor.

14 MS. KARNAVAS: Yes.

15 MR. BARRY: Yes, your Honor.

16 THE COURT: Thank you very much, ma'am.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Give me one moment,
19 please.

20 All right. It is nearly 10:30. We are going
21 to take our morning break at this time. We will be in
22 recess for approximately 15 minutes.

23 (Recess taken.)

24 THE COURT: Okay. Next witness.

25 MR. BARRY: Yes, your Honor. We are calling
26 Deborah Seiler out of order.

27 THE COURT: Okay. Is Ms. -- good morning,
28 Ms. Seiler. So if you could follow the directions of my

1 bailiff and my clerk, please.

2 THE BAILIFF: Please step right here. Face the
3 clerk.

4 THE CLERK: Please raise your right hand.

5 Do you solemnly state under penalty of perjury
6 that the evidence you shall give in this matter shall be
7 the truth, the whole truth, and nothing but the truth?

8 THE WITNESS: I do.

9 THE CLERK: Please take the stand.

10 THE COURT: Have a seat up here.

11 Just give me one moment, too, Counsel.

12 THE BAILIFF: Please make sure you speak into
13 the mic. Lift it up.

14 THE CLERK: Ma'am, please state your full name
15 and spell your last name for the record.

16 THE WITNESS: Deborah M. Seiler, S-e-i-l-e-r.

17 THE COURT: Just a moment, please. All right.
18 Whenever you are ready, Counsel.

19 MR. BARRY: Thank you, your Honor.

20

21 DIRECT EXAMINATION

22 BY MR. BARRY:

23 Q. Ms. Seiler, are you employed?

24 A. No, I'm retired.

25 Q. And before you retired, what was your last
26 position?

27 A. My last position was as registrar of voters for
28 the County of San Diego.

1 Q. Okay. I would ask you to look at Exhibit 138
2 which you would find in one of the white volumes, I
3 think Volume II.

4 A. Yes.

5 Q. And can you identify that document?

6 A. That is my bio.

7 Q. Okay. I would like to go through your
8 background as it relates to elections. So from 1979
9 through 1989 you worked for the Secretary of State's
10 office?

11 A. Yes, I did. I actually joined the Secretary of
12 State in the late '80s as an analyst. I did not reflect
13 that in the bio.

14 Q. And so during the time that you were with the
15 Secretary of State's office, what positions did you hold
16 and what were your responsibilities?

17 A. My initial position was as an analyst, and I
18 came in to analyze election legislation.

19 My next position, I was promoted to assistant
20 chief of the division where I continued to analyze
21 election legislation with staff and also to supervise
22 staff in the day-to-day operations and the functions of
23 the Secretary of State's office as it pertained to
24 elections.

25 I then became the assistant to the Secretary of
26 State in elections political form where I continued in
27 that function but with top authority.

28 Q. And in your capacity in working with the

1 Secretary of State, did you have an opportunity to
2 review and make proposals with respect to legislation
3 related to the Elections Code?

4 A. Yes, I did. Every year we developed a
5 legislative package, and it was my job to take that
6 package to the legislature, find authors for that
7 package, work with legislative counsel, work with
8 Assembly, assembly consultants to explain our proposals
9 and testify before the committee.

10 Q. And after your years with the Secretary of
11 State, did you work with the state Assembly?

12 A. Yes, I did. I joined the state Assembly as
13 chief consultant to the Assembly elections and
14 reapportionment committee.

15 Q. And what did your duties include in that
16 position?

17 A. My duties in that position included analyzing
18 all election bills that passed through. I was also
19 required to analyze the constitutional amendments
20 because our committee heard those as well. But my
21 primary focus was on the election legislation.

22 I prepared analyses, I answered questions to
23 the members and I reported directly to the chairman of
24 the committee who at that time was Peter Chacon.

25 Q. And you also worked in the private sector
26 related to elections, correct?

27 A. Yes. I worked for three different companies
28 all related to elections and elections administration.

1 Q. And you actually have acted as an election
2 observer in elections in other countries, correct?

3 A. That's correct. In the early '90s after the
4 fall of the old Soviet regimes, I spent considerable
5 time, numerous trips to eastern Europe. I also did
6 technical assistance in some of those countries. I did
7 technical assistance for USAID in the Philippines and
8 also in -- for the United Nations in Brazil.

9 So I traveled around a good deal from the early
10 '90s to about 2003 I think was my last mission.

11 Q. And then on page two of your bio, you
12 referenced that you were an election observer in Nigeria
13 in 2003?

14 A. That is correct.

15 Q. And as -- perhaps you can say that.

16 A. Asbahr John.

17 Q. In 1998?

18 A. Right. That's correct.

19 Q. I wasn't going to embarrass myself to try to
20 say that. And again, in Macedonia in 1996?

21 A. That's correct.

22 Q. Okay. Now, have you -- you worked in chair as
23 code division subcommittee for the California
24 Association of Clerks and Election Officials?

25 A. Yes, that's correct. I did this. Most of this
26 was done -- most, if not all, of it was done during my
27 time working in the private sector. I was a nonvoting
28 member of the California Association of Clerks and

1 Election Officials legislative committee and, as such, I
2 chaired -- we called it alternate -- we called it
3 fishing committee or code revision committee.

4 Q. That would have been during the 1990s?

5 A. Yes.

6 THE COURT: Can I suggest that the two of you
7 slow down just a little bit. The court reporter is
8 doing an immaculate job of keeping up with you, but it
9 does take a toll once the day goes on, and I'm listening
10 to every word. You can go on.

11 MR. BARRY: Thank you.

12 BY MR. BARRY:

13 Q. Now, you worked as an assistant registrar of
14 voters in Solano County from 2004 to 2007?

15 A. Yes, I did.

16 Q. And what did your duties include there?

17 A. My duties in that position were the day-to-day
18 operation of the Solano County elections department.
19 The department had recently been put under the chief
20 information officer, but he was on a different floor and
21 he was my boss, but I had the day-to-day supervision of
22 the staff.

23 Q. And beginning in 2007 you came the registrar of
24 voters in San Diego County?

25 A. Yes, that's correct.

26 Q. And what did your duties entail there?

27 A. My duties entailed -- I was the head of the
28 department when I came to San Diego, but my duties were

1 similar in content to those in Solano but vastly
2 expanded in scope because of the vast difference in size
3 between Solano County and San Diego County.

4 But my duties involved working with the staff,
5 working with the CAO's office, working with the media,
6 the public, legal consultants, political consultants,
7 the full range of public members.

8 Q. And while you were either an assistant
9 registrar at Solano or the registrar in San Diego, were
10 you a member of the California Association of Clerks and
11 Election Officials?

12 A. Yes.

13 Q. And did you hold any type of executive position
14 either with the association or subcommittee of the
15 association?

16 A. I was the co-chair. So the executive position
17 was as co-chair of the elections legislative committee.

18 Q. And how long did you hold that position?

19 A. I held that position from 2000 -- I believe it
20 was 2005 until actually well after I retired, I retired
21 at the end of 2012, but I continued on in that position
22 until about June of the next year so that the
23 association could find someone willing to take on that
24 position.

25 Q. And as the co-chair of the legislative
26 subcommittee, what did your duties entail?

27 A. My duties involved working with the -- well, I
28 actually was the co-chair who conducted the meetings.

1 We had monthly meetings and I conducted those meetings.

2 But in addition to that, my duties involved
3 being familiar with the legislation as it was going
4 through, determining which bills we would put on the
5 agenda, those that had been amended that needed further
6 discussion. It involved working with the lobbyists that
7 the association hired, briefing the lobbyists on our
8 positions and going over to testify occasionally on the
9 bills. It also involved working closely with the
10 committee consultants particularly when we were looking
11 for authors for our proposals, our association
12 proposals.

13 Q. Now, if I refer to the post election 1 percent
14 manual tally, do you understand what I'm referring to?

15 A. Yes.

16 Q. And what is your understanding?

17 A. My understanding is that when the Secretary of
18 State, Secretary of State Bowen, took office in 2007 I
19 believe it was and --

20 Q. So now I'm referring to the 1 percent manual
21 tally.

22 A. Oh, the 1 percent. Not the -- I'm sorry. Did
23 I mishear that it was PEMT --

24 Q. Yes.

25 A. I'm sorry. The 1 percent manual tally is the
26 process that has been in effect since 1965 and it was
27 brought into being by the state legislature at a time
28 when in the early '60s electronic voting systems were

1 first brought into use in the state of California. We
2 had the large optical scan ballots, and then shortly
3 thereafter we had the punch card ballots, including the
4 Votomatic punch card. And what is unique about the
5 Votomatic punch card the name of the candidate is not on
6 the ballot.

7 Regardless, these systems were coming into
8 existence in the state of California and there needed to
9 be some sort of check on the coding. Remember computers
10 were sort of in its infancy then, coding was new, it was
11 news to voters.

12 So the 1 percent manual tally was really there
13 as a check on the coding of the election to make sure
14 that a vote for Candidate A is cast for Candidate A and
15 not for Candidate B. It was really to verify the
16 accuracy of that coding process.

17 Q. Now, over the years the provision that was
18 originally enacted has been amended on numerous
19 occasions, correct?

20 A. That's correct.

21 Q. And there were amendments to the 1 percent
22 manual tally provision in 19 -- 1986, correct?

23 A. That is correct. And I was the assistant to
24 Secretary of State of -- for elections and political
25 reform at that point in time, and there were some
26 concerns about the programming of various voting
27 systems, whether were they accurate. And I woke up one
28 morning and thought, oh, my goodness, we are selecting

1 1 percent of the precincts at random to tally those
2 votes, but we may be missing several contests. I mean,
3 there may be a school district, a fire district, some
4 local jurisdiction that would not be in that initial
5 drawing of the 1 percent.

6 And so I with the approval of my boss, then
7 Secretary of State March Fong Eu, went to the then
8 Secretary of State, let's expand this, make sure at
9 least one precinct is counted for every contest that's
10 on the ballot.

11 In addition, I expanded it basically to
12 require -- this is a little bit separate but related. I
13 expanded it to require that the source code for these
14 programs that were used to count the votes were put into
15 an escrow facility so that if there was some major
16 question about it, if there was an accusation of
17 tampering or if the company went out of business that
18 there would be access to this original pristine
19 condition of the source code.

20 Q. And the legislation that was enacted in 1986
21 was initially drafted by you?

22 A. Yes, that's correct.

23 Q. And you would have provided that draft to the
24 legislative analyst for inclusion?

25 A. I can't recall how much of the actual wording I
26 drafted. The process is very typically that you present
27 a proposal and legislative counsel will do the more
28 legal drafting, but I did provide the proposal.

1 Q. Now, are you familiar with the amendments that
2 occurred to the provision relating to the 1 percent
3 manual tally that occurred in 1994?

4 A. Yes, that --

5 Q. And what was going on in that process for not
6 only the amendment of the 1 percent manual tally but
7 other provisions in the code?

8 A. I had been for several years the chair of the
9 code revision subcommittee as we've discussed, and what
10 I had done as part of that committee, I got a group of
11 election officials together and I proposed a
12 restructuring of the whole Elections Code, which is
13 basically what we have in effect today. The code
14 sections at that time, it was a mishmash. Things were
15 not in chronological order. We would have a write-in
16 provision in one division and a separate write-in
17 provision in another division that said something
18 completely different.

19 And so I worked for several years with my
20 committee to recodify the Elections Code, and what we
21 did in that process is we told the legislature we won't
22 make any substantive or word change to this. All we are
23 going to do is move sections around to make it a more
24 logical order.

25 In doing so, we moved -- our committee moved
26 the 1 percent manual tally into the canvass procedures
27 because we all understood that it was located in the
28 section that dealt with recounts, but we understood that

1 the nature of this tally was not a recount.

2 Q. And so up until that time, the provision
3 relating to the manual tally was included in the
4 division that covered recounts, correct?

5 A. That is correct. It was one of the first
6 mentions of a recount. To the best of my knowledge, it
7 was one of the earliest references to a recount, but
8 then they were added to the code clerk ordered recounts,
9 court ordered recounts, voter requested recounts, and
10 they all got lumped together and then what we now call
11 the manual tally was referred to as an automated
12 recount.

13 What we understood was we had a group of
14 oranges with one apple in them and we moved that apple
15 over to the canvass process because that was something
16 that occurred during the canvass.

17 Q. And again, then in 1998 there were additional
18 amendments to the Election Code in which you were
19 involved?

20 A. Yes, that's correct. This was what I would
21 call phase two of our recodification effort. Remember I
22 said that we told the legislature in the first effort
23 when we were restructuring the code that we would not
24 make any changes. We moved things around, but we didn't
25 make any word changes because it was such a massive
26 effort.

27 So then we came back, and our committee worked
28 on a couple of different divisions within and we -- we

1 did make substantive changes, word changes, clarifying
2 changes, mostly clarifying changes to those divisions.
3 That's when we -- we already had the 1 percent manual
4 tally recount in the canvass process, but we changed the
5 wording to call it a 1 percent manual tally.

6 There was a very specific reason for that. And
7 we added a definition in the Elections Code, in the 300
8 section of the Elections Code where all the definitions
9 are, and we added a definition of the 1 percent manual
10 tally.

11 Q. So if I would refer you to Section 336.5 of the
12 Elections Code -- do you have the Elections Code there?

13 A. I do. Yes, I'm sorry.

14 Q. Okay. I'll refer you to Section 336.5, is that
15 the provision that you drafted that defined the
16 1 percent manual tally?

17 A. Yes, that is the basic provision.

18 Q. And did you personally draft that language?

19 A. I drafted that language with help from
20 legislative counsel. We didn't -- again, we put
21 proposals in, but the -- just the legislative process
22 required that they be blessed in and, if necessary,
23 amended by legislative counsel.

24 Q. And I reference you to the last sentence of
25 Section 336.5, so the -- which says, "The procedure is
26 conducted during the initial canvass to verify the
27 accuracy of the automated count." Correct?

28 A. Yes.

1 Q. So what did you mean when you said "during the
2 initial canvass"?

3 MR. GERACI: Objection, your Honor. Irrelevant
4 in what she thinks.

5 MR. BARRY: She is the one who drafted it.

6 THE COURT: Overruled.

7 THE WITNESS: "During the canvass" really meant
8 during the canvass as opposed to after the canvass
9 because that's a fundamental aspect of the tally. The
10 tally is done during the canvass as opposed to a recount
11 which is done after results are certified, canvassed and
12 certified.

13 So it's very important to indicate that -- and
14 we wanted to indicate that it is an interval and
15 necessary, mandatory part of the canvass process.

16 BY MR. BARRY:

17 Q. And where you refer to the word "verify," what
18 was your intention there?

19 A. That goes back to the original purpose of the
20 manual tally which was to verify the coding of an
21 automated count. I don't know if I mentioned, but when
22 the -- when the manual tally was first enacted in 1965,
23 it applied only to elections in which the computers were
24 used. It didn't apply if the County was still hand
25 counting paper ballots.

26 So verifying the accuracy of the computer count
27 meant really verifying the coding to make sure, as I
28 said, a vote for Candidate A went to Candidate A and not

1 Candidate B.

2 Q. Now, elections officials are required to
3 perform manual tally during the official canvass,
4 correct?

5 A. Correct.

6 Q. And as an election official, are you familiar
7 with that process?

8 A. Yes.

9 Q. And are you familiar with the amendments that
10 were made to what is now Section 15360 effective
11 January 2007?

12 A. Yes.

13 Q. And were you a member of -- and if I say CACEO,
14 C-A-C-E-O --

15 A. I understand what you mean.

16 Q. Okay. Were you a member of CACEO's legislative
17 subcommittee at that time?

18 A. Yes, I was.

19 Q. Were you the co-chair of that committee?

20 A. I was co-chair at the time.

21 Q. And we might have touched on this earlier, but
22 as a co-chair, besides conducting the meetings, what
23 were your other duties?

24 A. Well, I participated in the discussions.
25 Certainly I participated in the review of the
26 legislation. I did not draft the letters. The letters
27 were drafted by the committee secretary and others. But
28 I did actively participate in the review and discussion.

1 Q. Would you have had the opportunity to testify
2 before either the Assembly or Assembly committees?

3 A. I would have had the opportunity. I do not
4 believe I did.

5 Q. Let me reference you to Exhibits 100 through
6 103.

7 THE COURT: Counsel, are you moving into
8 evidence Exhibit 138?

9 MR. BARRY: Yes, your Honor.

10 THE COURT: Any objection?

11 MR. GERACI: No objection.

12 THE COURT: Exhibit 138 will be admitted.
13 (Exhibit 138 was received in evidence.)

14 THE COURT: Now we are on to 103 -- 100 through
15 103.

16 THE WITNESS: 100 through 103. Thank you.

17 MR. BARRY: 101 through 103.

18 THE COURT: All right.

19 MR. BARRY: Excuse me, your Honor. That would
20 be 100.

21 THE COURT: Okay. So --

22 MR. BARRY: Just one second, your Honor.

23 THE COURT: All right.

24 MR. BARRY: Let me clarify that. Your Honor,
25 do you have a 100 in your binder?

26 THE COURT: Let me check. I do.

27 MR. BARRY: Okay. So everyone has --

28 THE COURT: So what exhibits are you asking?

1 MR. BARRY: 100 through 103.

2 THE COURT: All right. Just give me a moment,
3 please.

4 All right. Please continue.

5 BY MR. BARRY:

6 Q. Now, Ms. Seiler, I would ask you to look at
7 each of those documents; and if you can, and referring
8 to the document, describe to the Court what those
9 documents are.

10 A. These documents are the -- one of the two bills
11 that was going through at the time to address the
12 1 percent manual tally and this is the version as
13 introduced as amended.

14 Q. Now, when you say as introduced, that would be
15 Exhibit 100?

16 A. That is Exhibit 100 is the bill as introduced.

17 Q. And Exhibit 101?

18 A. 101 is the bill as amended on August 7th of
19 2006.

20 Q. And 102?

21 A. And 102 is the bill as amended August 21st of
22 2006.

23 Q. And Exhibit 103?

24 A. 103 is the final version of the bill which is
25 also known as the chaptered version. That's the
26 official final version of the bill.

27 Q. Now, as introduced that, in looking at
28 Exhibit 100, the text of the proposed legislation

1 included a reference to vote -- I'm sorry, to
2 provisional ballots, correct?

3 A. That is correct. Provisional ballots and
4 satellite ballots cast at satellite occasions.

5 Q. Then I would refer you to the next exhibit,
6 Exhibit 102 -- I'm sorry, Exhibit 101. And was the
7 reference to provisional ballots and ballots cast at
8 satellite locations deleted from the bill?

9 A. Yes, it was.

10 Q. And as enacted or as chaptered, did the -- did
11 Section 15360 as amended include any reference to
12 provisional ballots or satellite ballots?

13 A. No, it did not. No, it did not.

14 Q. Now, based on your experience in drafting and
15 sheep herding legislation through the legislature, when
16 a provision was originally in the law as introduced and
17 then was subsequently amended and not part of the
18 enacted or chaptered version of the bill, does that have
19 any significance to you?

20 MR. GERACI: Objection. That calls for a
21 conclusion.

22 THE COURT: It does. Any other objection?

23 MR. GERACI: It lacks foundation and it's
24 irrelevant.

25 THE COURT: Those objections are overruled.

26 Do you have the question in mind, ma'am, or
27 would you like the court reporter to read it back?

28 THE WITNESS: I understand the question. Thank

1 you.

2 THE COURT: All right. Whenever you're ready.

3 THE WITNESS: Yes, I do believe that's
4 significant because it's -- in my experience both with
5 the legislature and testifying and participating in
6 legislative process for most of my career, that's a
7 reflection of the fact that there was probably some
8 objection to that, and indeed the elections officials
9 did feel that there were issues with casting ballots or,
10 excuse me, including provisional ballots and ballots
11 cast at satellite locations and count and that was
12 amended out rather quickly.

13 MR. GERACI: Objection, your Honor. Move to
14 strike. Speculation.

15 THE COURT: All right. One moment, please.
16 The objection is overruled.

17 Next, are you offering Exhibits 100 through
18 103?

19 MR. BARRY: Yes, your Honor.

20 THE COURT: Any objection?

21 MR. GERACI: No objection.

22 THE COURT: Now, before -- so Exhibits 100,
23 101, 102 and 103 will be admitted.
24 (Exhibits 100, 101, 102 and 103 were received in
25 evidence.)

26 THE COURT: One moment, Counsel.

27 Now, yesterday before we adjourned we had a
28 discussion about the Court granting plaintiffs' request

1 to take judicial notice of the legislative history of
2 15360.

3 Are these materials part of the package that
4 plaintiff had asked that the Court take judicial notice
5 of?

6 MR. GERACI: In part, yes, your Honor.

7 MR. BARRY: Your Honor -- well, we are going to
8 get an opportunity to revisit that particular exhibit;
9 is that correct?

10 THE COURT: You are. But, Counsel, just let
11 me -- as I've mentioned, if I'm going to err, I'm going
12 to err on the side of giving both sides wide latitude to
13 present evidence, whether it be by asking the Court to
14 take judicial notice or otherwise, and I am recalling
15 some of the arguments as to why the defense thinks that
16 the Court should not take judicial notice of what was
17 marked -- is it Exhibit 38?

18 MS. KARNAVAS: Fifty-two.

19 MR. BARRY: I think it's 54 actually.

20 MR. GERACI: Fifty-four is correct.

21 THE COURT: All right. Now, please bear in
22 mind as you reflect upon the hearing as you will find
23 the Court's ruling, the Court is always -- well, at
24 times the Court is perplexed by what can become a part
25 of the legislative history of any statute. Sometimes
26 it's like watching sausage being made.

27 But before the defense gets too worked up about
28 the Court granting the request as proposed by the

1 plaintiff, the Court is also giving Ms. Seiler --

2 THE WITNESS: Yes, thank you.

3 THE COURT: -- Ms. Seiler wide latitude to
4 express her views on the legislative history of 15360.
5 So this all works both ways, people.

6 All right. Counsel, continue on.

7 BY MR. BARRY:

8 Q. Now, Ms. Seiler, in reviewing the Exhibits 100
9 through 103 which are the various versions of SB 1235 as
10 it moved through the legislative process, did the word
11 "all" appear in any version of those bills?

12 A. Not of these bills, no, not of SB 1235.

13 Q. Now, I would ask you to look at Exhibit 104 and
14 Exhibit 180.

15 A. 180.

16 Q. 180. So there is two different volumes there.

17 THE COURT: Okay. Counsel, do you want to
18 approach?

19 MR. BARRY: If I may.

20 THE COURT: And this is Exhibits 104 and 180?

21 MR. BARRY: Yes.

22 THE COURT: All right.

23 THE WITNESS: I've got it. I can just keep
24 this open.

25 THE COURT: All right. Counsel, thank you.

26 BY MR. BARRY:

27 Q. And can you identify for the Court what
28 Exhibits 104 and 180 are?

1 A. 104 is the final chaptered version of AB 2769.
2 The author was -- or but it was sponsored by then
3 Secretary of State Bruce McPherson.

4 Exhibit 180 is the AB 2769 as introduced.

5 Q. Now, just let me reference you to the top of
6 Exhibit 180.

7 A. Oh, excuse me. I'm sorry. This is amended. I
8 thought we were -- apologies.

9 Q. So Exhibit 180 is the bill?

10 A. As amended.

11 Q. As first amended?

12 A. Yes. Apologies.

13 Q. And in referring to Exhibit 180, does it appear
14 that the bill as introduced included a reference to the
15 manual tally?

16 A. I don't have a copy of the bill as introduced.
17 My understanding of this bill as introduced, it did
18 refer to the manual tally.

19 Q. So I would refer you to the bottom of page two
20 on Exhibit 180. And do you see there is language there?

21 A. Yes.

22 Q. That's stricken out?

23 A. That's the language that I recall, yes.

24 Q. And that --

25 A. That was written in the bill as introduced.

26 Q. Thank you.

27 And again, that language talked about all
28 ballots cast by voters in each of the precincts selected

1 including absentee provisional and special absentee
2 ballots, correct?

3 A. Yes, that's correct.

4 Q. And as amended in the legislature, that
5 language was stricken, correct?

6 A. That's correct.

7 Q. And in the final version of AB 2769, was there
8 any reference to "all"?

9 A. No, there was not.

10 Q. Was there any reference to provisional ballots?

11 A. No, there was not.

12 THE COURT: Are you offering those two
13 exhibits, Counsel?

14 MR. BARRY: Yes, I am, your Honor.

15 THE COURT: Counsel, any objection?

16 MR. GERACI: Without objection.

17 THE COURT: All right. Just give me one
18 moment, please.

19 BY MR. BARRY:

20 Q. Now, is it your understanding --

21 THE COURT: One moment, Counsel, please.

22 MR. BARRY: I'm sorry.

23 THE COURT: All right. Exhibits 104 and 180
24 are admitted.

25 (Exhibits 104 and 180 were received in evidence.)

26 THE COURT: Next.

27 MR. BARRY: Thank you, your Honor.

28 ///

1 BY MR. BARRY:

2 Q. Now, it's your understanding or your testimony
3 that both SB 1235 and AB 2769 were chaptered and became
4 law, correct?

5 A. That is correct, although AB 2769 was chaptered
6 later. And so while the 1235 was chaptered and enacted,
7 I believe that there was double joining language in 2769
8 that said it could only go into effect if 1235 was
9 chaptered and enacted, which it was.

10 But then because 2769 was chaptered later, the
11 rules of the legislature are that it chapters out the
12 earlier, typically chapters out the earlier version.
13 But by this time, the bills were virtually identical.

14 Q. When was the first election in which you were
15 involved as an election official after the enactment of
16 AB 2769?

17 A. It was February of 2008.

18 Q. And that would have been a presidential
19 primary?

20 A. That's correct.

21 Q. And in 2008 we had three major elections?

22 A. That is correct, yes.

23 Q. And what were those three contests?

24 A. The three elections were the presidential
25 primary in February, what they call the direct primary,
26 which is everything except the presidential in June and
27 then the November general election.

28 Q. And prior to the February 2008 presidential

1 primary, did you have an understanding as to whether
2 San Diego County included all vote-by-mail ballots -- or
3 vote-by-mail ballots in the manual tally?

4 A. It was my understanding that the County
5 included the vote-by-mail ballots in the tallies that
6 were available as of, you know, during the official
7 canvass, but not all.

8 Q. And in conducting the manual -- the random
9 selection for the manual tally, did the County base its
10 selection on the semi final official canvass results?

11 A. Yes, it did.

12 Q. Now, was the 2008 presidential primary the
13 first major election that you had an involvement with
14 with respect to -- after the amendments of 2007?

15 A. Yes, it is.

16 Q. And were the -- did San Diego County conduct
17 the manual tally in the same manner that it had prior to
18 the 2007 amendments?

19 A. Yes, in all respects -- in all respects really
20 except for maybe two. One was that we were now required
21 to provide a five-day public notice of the time and
22 place of the canvass and the selection of the precincts,
23 and we used a little different method for selecting the
24 precinct. We used ping-pong balls to make sure it was
25 as random as we could make it.

26 Q. Now, besides those two minor changes that you
27 adopted in your procedures, were there any other changes
28 in your procedures?

1 A. No. To the best of my understanding, no, there
2 were not.

3 Q. And why not?

4 A. Well, because we were -- we had been selecting
5 the precinct ballot -- 1 percent of the precinct ballots
6 had been required basically forever. And in the wake of
7 the legislation we already spoke about in 2007, now we
8 were required to include the mail ballots, and we
9 selected mail ballots, which we had been doing before
10 really anyway, so there was really no change.

11 Q. In your capacity as the registrar of voter for
12 San Diego or as a member of CACEO, were you familiar
13 with or are you familiar with legislation that added
14 15360.5 which became effective as emergency legislation
15 in 2011?

16 A. In 2001 or 2010?

17 Q. 2011.

18 A. Emergency legislation?

19 Q. 2010.

20 A. 2010, yes. In 2010 there was AB 46 by a member
21 named Monning. And yes, I'm familiar with that
22 legislation.

23 Q. And are you familiar why that legislation was
24 necessary?

25 A. Yes, it came about as a result of the fact that
26 in four counties there was a special vacancy election
27 that the governor called within two weeks of a major
28 statewide primary election. The counties needed some

1 relief, and the purpose of the Monning bill, AB 46, was
2 to give some relief to those counties so they could
3 possibly conduct those two major elections within two
4 weeks of one another.

5 Q. And is it your understanding that that
6 Section 15360.5 only applied to those four counties?

7 A. Yes, it is.

8 Q. And is it your understanding that the purpose
9 of that was to make it more efficient and less costly
10 for those counties to perform the manual tally process?

11 MR. GERACI: Objection. Leading.

12 THE COURT: Sustained.

13 BY MR. BARRY:

14 Q. Do you have an understanding as to what the
15 purpose of that legislation was?

16 A. To enable the counties to conduct the tally
17 more quickly and at lower cost.

18 Q. Did your county support that legislation?

19 A. Yes, we did.

20 Q. And how did AB 46 change the way that the
21 County of San Diego conducted manual tally? Again, I'm
22 referring to -- did it have an effect the way San Diego
23 could conduct the manual tally?

24 A. No, it only applied to those four counties.

25 Q. And did it have an effect on how those four
26 counties could conduct the manual tally?

27 A. Yes, it did.

28 Q. And what was -- what was the effect of that

1 legislation?

2 A. Basically, it gave them the option of either
3 selecting 1 percent of the precincts and 1 percent of
4 the mail ballots by precinct; or, in the alternative, it
5 gave them the option of selecting precinct ballots --
6 1 percent of the precinct ballots but then 1 percent of
7 the batches of the mail ballots. So they didn't have to
8 sort them back to precinct, which is a very time
9 consuming process. They were able to just count
10 1 percent of the batches.

11 Q. And after -- effective January 1, 2012, are you
12 familiar with legislation that I'll refer to as AB 985
13 that had further -- made further evidence of Section
14 15360?

15 A. Yes, I am.

16 MR. BARRY: Your Honor, I would move admission
17 to Exhibit 105.

18 THE COURT: Any objection?

19 MR. GERACI: My only objection, your Honor, is
20 the relevance because it only affected the four listed
21 counties, San Luis Obispo, Santa Barbara, Santa Clara,
22 Santa Cruz and, therefore, had no relevance to
23 San Diego.

24 THE COURT: Why is it relevant?

25 MR. BARRY: Your Honor, the deposition
26 testimony we have from Ms. Rodewald, who was the
27 registrar at San Luis Obispo, who was one of the
28 counties that was affected by the legislation, so it

1 will be relevant to show how it affected their county.

2 THE COURT: All right. One moment.

3 MR. GERACI: I would just add how it affected
4 their county is irrelevant.

5 THE COURT: I'm not so sure I've heard that
6 plaintiffs there is quite that limited. So just give me
7 one moment.

8 So Exhibit 105 is the emergency -- I'm sorry,
9 the urgency legislation that Ms. Seiler just talked
10 about?

11 MR. BARRY: Yes.

12 THE COURT: All right. If I didn't say so, 105
13 is admitted.

14 (Exhibit 105 was received in evidence.)

15 THE COURT: Continue on.

16 MR. BARRY: Thank you, your Honor.

17 BY MR. BARRY:

18 Q. Now, I was next referencing legislation I'll
19 refer to as AB 985 that amended Section 15360 effective
20 January 1, 2012, and that would be set forth, I believe,
21 in Exhibit 106.

22 Do you see that document?

23 A. Yes, I have that document.

24 Q. And can you describe what amendments were made
25 to Section 15360 by that legislation?

26 A. Yes, the amendments to AB 985 tracked AB 46 in
27 that it, again, gave counties the option of either
28 selecting 1 percent of the precincts and 1 percent of

1 the mail ballots by precinct or 1 percent of the
2 precincts and 1 percent of the mail ballots by batch.

3 Q. And when I refer to AB 46 that enacted
4 Section 15360.5, that legislation lapsed by some terms,
5 correct?

6 A. That is correct.

7 Q. And so now 985 extended the amendments that
8 originally were set forth in AB 46 to all counties?

9 A. That is correct.

10 Q. And in your capacity as the registrar of voters
11 for San Diego and as a member of CACEO, were you
12 familiar with that legislation as it moved through the
13 legislative process?

14 A. Yes, I was.

15 Q. And is that legislation something that you in
16 the County of San Diego or you in your capacity as a
17 registrar of voters for the County of San Diego
18 supported?

19 A. Yes. Very, very much so.

20 Q. Why was that?

21 A. Well, if you recall, counties were still
22 suffering at the height of the great recession.
23 Counties in some cases were cutting polling places.
24 Very difficult time for county election officials. The
25 SB 90s from the state had been largely cut.
26 Financially, we were really suffering, and this method
27 enabled counties to streamline the 1 percent manual
28 tally by not having to sort all of those mail ballots by

1 precinct, which was quite -- in our county in San Diego,
2 which is so large and arduous endeavor.

3 Q. Now, immediately prior to the effective date of
4 AB 985 in the elections that occurred up to that point,
5 did San Diego County face its 1 percent manual tally on
6 the semi final official canvass results?

7 A. I'm sorry. Prior to?

8 Q. January 1, 2012.

9 A. Yes. Yes, we did.

10 Q. Effective date of nine --

11 A. Based on our tallying have results.

12 Q. And after the enactment of Section 985, which
13 was effective January 1, 2012, did San Diego change its
14 practice?

15 A. No.

16 Q. And why not?

17 A. Well, because it was not our understanding that
18 there was any requirement to do so. I mean, it was our
19 understanding that we were complying with the law and
20 that we were doing what was proper.

21 Q. Now --

22 THE COURT: Counsel, are you moving Exhibit 106
23 into evidence?

24 MR. BARRY: Yes, your Honor.

25 MR. GERACI: Without objection.

26 THE COURT: Exhibit 106 will be admitted.

27 (Exhibit 106 was received in evidence.)

28 ///

1 BY MR. BARRY:

2 Q. Now, you're familiar with the time it takes to
3 process absentee and vote-by-mail ballots, are you?

4 A. Yes, I am.

5 Q. And that would be in your experience as a
6 registrar of voters?

7 A. Yes, it is.

8 Q. Are you familiar with the time it takes to
9 process provisional ballots?

10 A. Yes, I am.

11 Q. Are you familiar with the time it takes to
12 process the count of ballots in the 1 percent manual
13 tally?

14 A. Yes, I am.

15 Q. And if you as an election official in San Diego
16 County understood that the -- all ballots, including all
17 vote-by-mail ballots and provisional ballots, were to be
18 included in the 1 percent manual tally, would that have
19 impacted your ability to complete the canvass in the
20 required statutory period?

21 A. Oh, absolutely, yes.

22 Q. And is it a function of how much labor you can
23 throw at the problem?

24 A. Yes, in part. I mean, we do have what we often
25 term in election administration we call it the Mongolian
26 horde theory of elections where you just throw people at
27 a process. However, throwing people at a process like
28 processing absentee ballots, processing provisional

1 ballots is ripe for major problems, including problems
2 of basic integrity because the mongolian horde theory
3 takes a lot of people and they are not necessarily well
4 trained and the supervision may be very strained and may
5 be a bit, to be honest, a bit weak.

6 So there are certain functions where we can
7 just throw bodies at them, but I would never have a
8 group of not very well-trained people working at
9 3:00 o'clock in the morning processing provisional
10 ballots.

11 Q. Would it -- assuming my fact situation I gave
12 you, would that require your staff at the time while you
13 were at San Diego as a registrar of voters to work
14 multiple shifts?

15 A. Yes, I believe it would. I believe it would
16 require not only multiple shifts but probably around the
17 clock.

18 Q. I'd like you to look at Exhibit 109. And can
19 you identify what that document is?

20 A. Yes, this is a document regarding the post
21 election manual tally the PEMT.

22 Q. And for the Court, can you explain what the
23 post election manual tally is and how it was different
24 from the 1 percent manual tally?

25 MR. GERACI: Objection. Relevance.

26 THE COURT: Okay. Just give me one moment,
27 Counsel. Overruled.

28 ///

1 BY MR. BARRY:

2 Q. You may answer.

3 A. The post -- well, when Secretary of State
4 Debra Bowen took office, she conducted what was called
5 the top to bottom review in which it cost about
6 \$2 million. A lot of voting systems -- many voting
7 systems were decertified, then they were recertified
8 with various provisions including a provision for this
9 post election manual tally which required the -- in any
10 election contest where the vote margin based on the semi
11 official canvass, this is election night, if it was less
12 than one half of 1 percent, then the County had to add
13 on ten extra precincts in the manual tally and then
14 there was kind of an escalation factor. I don't totally
15 recall beyond that.

16 There was no provision for payment for the
17 counties in this. The secretary claimed that the
18 vendors would pay for it, which was not true, there was
19 nothing in our contract. The PEMT was a mix of apples
20 and oranges and the elections officials told the
21 Secretary of State that this was not -- was ill advised
22 because it combined the tally, which is a comparison of
23 your election night report, with a manual tally of
24 precincts done during the canvass with a recount and it
25 was seeking to basically accomplish a recount within the
26 tally period and it didn't make sense, it wasn't
27 effective and it was very expensive.

28 And we challenged San Diego County and three

1 other counties, challenged this process in court as an
2 underground regulation and we prevailed.

3 So then the Secretary of State, having lost in
4 court, went to the Office of Administrative Law and
5 proposed emergency regulations to perpetuate this PEMT
6 for about 18 months, and I believe she did that twice
7 before, then it expired because she could not identify a
8 funding source for it. But I believe too that the
9 Secretary ultimately conceded that this was an
10 ill-advised endeavor.

11 Q. And I'd refer you to page three of
12 Exhibit 10- -- I'm sorry, page four of Exhibit 109. It
13 starts, "Text to proposed emergency regulations."

14 A. Yes.

15 Q. And this is a red line version of the emergency
16 regs as opposed to -- as compared to the original
17 regulations?

18 A. Yes, that's correct.

19 Q. And this clarifies that the PEMT, the post
20 election manual tally, was to be based on the semi final
21 official canvass, correct?

22 A. That is correct, and that was largely our
23 objection.

24 Q. And that this was to occur during the canvass
25 period, correct?

26 A. Yes, that's correct.

27 THE COURT: Are you moving Exhibit 109 into
28 evidence?

1 MR. BARRY: Yes, your Honor.

2 MR. GERACI: Your Honor, same objection. It's
3 irrelevant. PEMT is not at issue in this case.

4 THE COURT: That objection is overruled.

5 Exhibit 109 will be admitted.

6 (Exhibit 109 was received in evidence.)

7 MR. BARRY: Let me just have one moment, your
8 Honor.

9 BY MR. BARRY:

10 Q. Ms. Seiler, I refer you to Exhibit 110.

11 A. I have it. Thank you.

12 Q. Can you identify that document?

13 A. Yes, this is a document -- this is a letter
14 that I wrote to Mr. Lutz in February of 2010 in response
15 to a report that he issued regarding our operations.

16 Q. And again, so this was a response to his
17 letter?

18 A. This was a response to a 79-page report that he
19 made public.

20 Q. And in this letter -- what was the purpose of
21 this letter?

22 A. Well, the purpose of this letter was to
23 effectively point out that myself, the staff had spent
24 about a hundred hours with Mr. Lutz at the peak of the
25 2010 election activity time period and we had answered
26 his questions. He had raised many accusations about our
27 operation generally in the form of an accusation, but
28 also in the form of a question, and we painstakingly, I

1 would say, really tried to answer his questions as best
2 we could and explain our processes to him.

3 When the 79-page report emerged, it contained
4 factual errors, omissions, unfounded speculation and
5 misinterpretation of the laws and regulations that we
6 had provided. For example, I mean, he erroneously
7 claimed that there were 9,000 what he called missing
8 ballots. He erroneously claimed that poll workers were
9 not provided with certain training materials. He seemed
10 to be unfamiliar with the statutes regarding the semi
11 official final canvass and the whole canvass period.

12 He seemed unfamiliar with Court decisions,
13 recent Court decisions, regarding the fact that when
14 poll workers are properly instructed but they make minor
15 errors that the Court is not going to validate the
16 election. He seemed very unfamiliar with that, despite
17 all the publicity.

18 He erroneously claimed that we had refused to
19 conduct the post manual tally while it was still in
20 effect. He seemed unaware of the provisions of the
21 manual tally, even though we had to explain those to
22 him, unaware seemingly of the process of rescanning
23 ballots when that came necessary. That already been
24 explained to him.

25 He erroneously claimed that we had crashes in
26 our system. Our IT specialist had gone through the IT
27 aspects with him in quite a bit of detail.

28 He claimed that we could enhance the audit

1 logs, which was really erroneous. And he seemed unaware
2 that the Secretary of State had not only approved but
3 commended our office for the way we were handling the
4 ballots that were cast on the touch screens, what they
5 call the DREs.

6 He said that we were conducting elections by
7 the seat of our pants despite having presented him with
8 procedures and explanations and actually not only the
9 hundred hours of consultation in this particular
10 instance, but on previous occasions when he had come to
11 our office. So -- and he claimed that there was no
12 methodology for tracking the quality in our elections
13 even though we explained to him that after every
14 election we went through an extensive debrief and review
15 of the election and our processes and procedures.

16 MR. GERACI: Objection, your Honor. Move to
17 strike as irrelevant. Recall during Mr. Lutz's
18 testimony I attempted to ask him questions about this
19 report and there were objections of relevance by the
20 County that were sustained. So Ms. Seiler's criticism
21 of the reports and Mr. Lutz is obviously irrelevant.

22 MR. BARRY: Your Honor, it goes to the
23 credibility of the witness.

24 THE COURT: One moment. Let me -- what was the
25 report that --

26 MR. GERACI: Let me find the exhibit number.
27 Exhibit 62.

28 THE COURT: Counsel, do you agree that

1 Exhibit 62 is the subject of Exhibit 110 -- I'm sorry,
2 110?

3 MR. BARRY: Yes, it is, your Honor.

4 THE COURT: All right. Let me see counsel at
5 sidebar for just a moment.

6 (Sidebar; unreported.)

7 THE COURT: Okay. So, Counsel, thank you for
8 your sidebar discussion.

9 The objections to Exhibit 110 will be overruled
10 and Exhibit 110 will be admitted. One moment.

11 (Exhibit 110 was received in evidence.)

12 THE COURT: Upon reconsideration, the Court
13 will overrule the objections to Exhibit 62 and
14 Exhibit 62 will be admitted. One moment.

15 (Exhibit 62 was received in evidence.)

16 THE COURT: The motion to strike Ms. Seiler's
17 testimony regarding her perception of Mr. Lutz's
18 acquisitions as she characterized it reflecting
19 Exhibit 62 will be denied. And as mentioned at sidebar,
20 the Court will evaluate the weight given to any witness,
21 much less particular testimony at issue right now, at
22 the conclusion of the trial.

23 So, with that said, let's continue.

24 MR. BARRY: Thank you, your Honor.

25 BY MR. BARRY:

26 Q. Ms. Seiler, if a voter or a candidate suspects
27 that the votes tabulating system -- the vote tabulating
28 system is not functioning properly or is not properly

1 tabulating votes, what other remedies will be available
2 to that voter or candidate?

3 A. Well, if I understand you -- your question
4 properly, this would go to the accuracy of the vote.
5 And if there is an accuracy question regarding the vote,
6 first of all, that's dealt with through the logic and
7 accuracy testing and the 1 percent tallying and the
8 calibration of equipment, so forth.

9 After the election, if there is still a concern
10 about the accuracy of that election, the remedy is a
11 manual recount which is open to any voter. And there
12 are other programs on file, but I would say that for
13 accuracy issue, really the manual recount is the most
14 viable and readily available remedy.

15 Q. And with respect to a voter who suspects there
16 may be either malfeasance or misfeasance by election
17 officials or precinct boards or so forth, what remedies
18 are available in that instance?

19 A. In that instance, we are really talking about
20 the integrity of the election. And the measures that we
21 have in place to ensure the integrity of election are,
22 first of all, depositing the vote count program with the
23 Secretary of State, which is done seven days before the
24 election. That vote count program can be compared at
25 the end of the election, if necessary, to see if there
26 was any discrepancy between the pristine copy deposited
27 with the Secretary of State and what was ultimately
28 used.

1 The source code. As I mentioned earlier, the
2 source code is deposited in an escrow facility. And
3 ultimately, if there is still allegation of malfeasance,
4 for example, that illegal votes were cast, there was
5 forgery, there was some sort of fraud, any type of
6 malfeasance, the remedy in Division 16 of the Elections
7 Code is to ask for an elections contest.

8 It might also be accompanied by a recount, but
9 the recount more than likely would have, I guess,
10 already been conducted and then the contest could
11 commence.

12 Q. And to the best of your knowledge, while you
13 were the registrar of voters in San Diego County, did
14 anyone ever hack into the voting system?

15 A. No.

16 Q. And to the best of your knowledge, while you
17 were a registrar of voters for County of San Diego, did
18 anyone ever attempt to hack -- I'm sorry, did anyone
19 ever attempt to hack into the voting system?

20 A. No, not to my knowledge.

21 MR. BARRY: I have no further questions, your
22 Honor.

23 THE COURT: One moment, please.

24 Cross-examination.

25 MR. GERACI: Your Honor, may we take our lunch
26 recess ten minutes early so that I can confer my notes?
27 This witness was not deposed, so...

28 THE COURT: How much time do you think you

1 estimate?

2 MR. GERACI: I think having the recess will
3 allow me to synthesize.

4 THE COURT: Just give me an estimate.

5 MR. GERACI: Probably 15 minutes when I can go
6 over my notes and exhibits.

7 THE COURT: Counsel, what do you think?

8 MR. BARRY: Well, we can go five minutes late
9 and be done.

10 THE COURT: Do you expect that the roles might
11 be -- roles might be reversed at some point in time?

12 MR. BARRY: I understand, your Honor. That's
13 fine.

14 THE COURT: Now, Ms. Seiler, I understand you
15 are retired and I hope you are enjoying yourself.

16 THE WITNESS: I am.

17 THE COURT: What the lawyers are discussing is
18 whether we should resume and complete your examination
19 after the lunch hour. Will that put you in a hardship
20 position?

21 THE WITNESS: No, it will not, sir.

22 THE COURT: So it's about ten minutes to 12:00.
23 We will take our recess a little earlier. Let's,
24 everyone, try to be back by, say, 1:20 so we can resume
25 and get Ms. Seiler out of here as soon as possible this
26 afternoon, try to do so, all right?

27 So we'll be in recess now until 1:20.

28 MR. GERACI: Thank you, your Honor.

1 (Lunch recess taken.)

2 THE COURT: All right. Before we resume with
3 the testimony, any issues that counsel would like to
4 bring to the Court's attention?

5 MR. BARRY: I don't believe so, your Honor.

6 MR. GERACI: No, you Honor.

7 THE COURT: All right. Ms. Seiler, may I ask
8 you to follow the directions of my deputy and retake the
9 stand.

10 All right. Welcome back, you understand you're
11 still under oath?

12 THE WITNESS: Yes, I do.

13 THE COURT: Thank you very much.

14 Counsel, whenever you are ready.

15

16 CROSS-EXAMINATION

17 BY MR. GERACI:

18 Q. Good afternoon, Ms. Seiler.

19 A. Good afternoon.

20 Q. How are you?

21 A. I'm well, thank you.

22 Q. Just a brief few questions.

23 You said you were a member of CACEO during the
24 time of your career. What was the time frame within
25 which you were a member and/or executive officer?

26 A. I began as a member of -- we call it the
27 C-A-C-E-O, but it's commonly referred to as CACEO. I
28 was a member of that committee from the time I joined

1 the Secretary of State's office in the late '70s
2 through -- I believe it was through 2003.

3 And then I was not a member for about a year or
4 a year and a half, I believe. And then when I joined
5 Solano County, I became a member again. That was in
6 2004.

7 And shortly thereafter, it was probably 2005,
8 that I was asked to become the co-chair of the
9 committee. I was the chair of the code revision
10 committee from -- I don't know the precise dates, I'm
11 sorry, but probably about 1990 until the early 2000s.
12 And I was chair of the petition subcommittee a little
13 later on from about 2010 until about a year after I
14 retired. I continued on that until after I retired.

15 Q. So during the time within which SB 1235 and
16 AB 2769 were in the sausage maker, as the Court has
17 expounded, you were a member of the CACEO?

18 A. That is correct.

19 Q. And another question of clarification. You had
20 made reference to the source codes being put in an
21 escrow. Can you describe what that is and what you
22 meant by that -- using that phrase?

23 A. Yes, that came about in the mid '80s, and that
24 was part of 1986 legislation that I referenced earlier
25 in my testimony. And the reason for that was that, you
26 know, there was concern that if there was some change,
27 whether it was intentional, unintentional, manipulative,
28 that there somehow be a pristine copy of the source code

1 in an escrow facility. And the purpose of that would
2 be, again, if there was some controversy, some major
3 question, there was some court case and also if the
4 vendor went out of business.

5 Q. Okay. So it basically creates a base line?

6 A. Yes.

7 Q. If you will.

8 And where is this escrow? What -- is it a
9 physical place or is it in a safe or is it someone's
10 server? Where is it?

11 A. Yes, there are certified escrow facilities, and
12 I'm trying to recall now, I used to know the names of
13 those facilities. I don't know that I do anymore. But
14 they are commercial enterprises that do this kind of
15 thing.

16 Q. So they are contracted out by the County?

17 A. Yes.

18 Q. In this case and --

19 A. Well, by the vendor. The vendor is required to
20 put the source code in escrow.

21 Q. Okay. The vendor of the scanning machines?

22 A. The vendor of the actual source code.

23 Q. The tabulator?

24 A. The tabulating system, yes.

25 Q. Are they put into escrow after the logic and
26 accuracy testing of it? When in the process does this
27 happen?

28 A. The process, the logic and accuracy testing is

1 part of the coding of the action and a setup of a
2 specific election. The source code is put into escrow
3 when it's developed.

4 Now, what you might be referring to, if I may,
5 is the computer vote count program is put into escrow --
6 is deposited with the Secretary of State's office after
7 the logic and accuracy because that computer vote count
8 total is specific to the election, whereas the source
9 code is not specific to any election, it's just the
10 basic brains of the tabulation.

11 Q. Again, creates that base line for that
12 particular model and machine and is -- and can be
13 referred to later if there is question about its
14 calculation or tabulation?

15 A. Yes, that is my understanding.

16 Q. You had mentioned on direct examination that
17 one of the remedies for a voter to challenge a process,
18 an election process, is to demand a recount, a manual
19 recount?

20 A. Yes.

21 Q. Any voter can do that?

22 A. Yes, any voter within is it five days after the
23 election is certified may do that.

24 Q. What is your understanding of the process of
25 doing that?

26 A. Well, my understanding of the process is that
27 the voter has to be a voter of the jurisdiction, and
28 they must in writing request the recount. They need to

1 request whether or not they want a manual recount or
2 machine recount. They may at that point specify the
3 number of precincts or whether they want to start with
4 precinct ballots, provisional ballots, absentee ballots,
5 mail ballots.

6 Then they have to deposit money up front. The
7 election official calculates the estimated cost for the
8 beginning myriad and then they pay each day before the
9 recount commences for the cost. If the outcome is
10 overturned, they receive that money back, the money is
11 returned to them.

12 Q. And the -- so the demand is made to the
13 election official?

14 A. Yes.

15 Q. Not to the Secretary of State?

16 A. Well, if the recount involved a statewide
17 office, then the demand would go to the Secretary of
18 State.

19 Q. And it's not a court proceeding?

20 A. No.

21 Q. In any realm?

22 A. No.

23 Q. It happens administratively through either the
24 Secretary of State or the registrar of voters?

25 A. Yes.

26 Q. And as you just pointed out, that's a cost that
27 has to be borne up front by the voter?

28 A. Yes.

1 Q. And what's a reasonable range of that cost?

2 A. I'm really sorry, but I couldn't.

3 Q. Withdraw that question. Let me ask it again.

4 Have you ever been -- when you were a registrar
5 of voters, did anyone ever demand a recount for which
6 you had to make an estimate?

7 A. Yes, they did.

8 Q. Give me an example of what kind of estimate
9 that would be.

10 A. The Vargas -- Juan Vargas was running
11 against -- was it Mary Salas? I forget these things.
12 And it was a very close contest and she -- he won and
13 she requested the recount and the recount lasted for
14 about three days and then they terminated it because
15 they weren't finding enough to pursue it.

16 Q. So, in that case, the contestant made the
17 demand for a recount?

18 A. It's almost always the person who is losing.

19 Q. Have you ever seen an example where a voter
20 makes a demand for recount who isn't involved in the
21 actual contest?

22 A. You don't necessarily know -- they have to say
23 on whose behalf they are asking the recount. They are
24 asking -- you know, if I, Deborah Seiler, asked for a
25 recount, it has to be on behalf of Mary Salas and Juan
26 Vargas. I'm asking that contest be recounted.

27 Q. What was the estimate of cost for that recount?

28 A. I don't truly remember. I believe the first

1 day might have been around 4,000, but I honestly don't
2 know if that's accurate.

3 Q. Okay. You also had suggested that a voter
4 could make a demand for an election contest?

5 A. Yes, a voter could file in court for an
6 election contest that would be filed with the Superior
7 Court clerk.

8 Q. Okay. And that's my next question. That's a
9 process that happens in court, correct?

10 A. Yes, that's correct.

11 Q. It's basically litigation?

12 A. Yes.

13 Q. Now, in 2006 there was basically ongoing
14 discussion about the process of amending what would
15 become a 15360. And the two bills that were -- that you
16 discussed in direct were SB 1235 and AB 2769, correct?

17 A. Yes, that's correct.

18 Q. And let me draw your attention to Plaintiffs'
19 Exhibit 54, which is in the black binder, not the white
20 binder.

21 A. This one?

22 Q. I believe it's number three of --

23 THE COURT: Counsel, why don't you approach.

24 MR. GERACI: Thank you, your Honor.

25 BY MR. GERACI:

26 Q. Specifically, page 25 of that exhibit, 26.

27 A. I'm sorry. I'm at 54.

28 Q. Fifty-four is the exhibit number. Now look for

1 page 25. They are paginated on the lower right-hand
2 corner.

3 A. Mine is a -- excuse me, mine is a three-page
4 letter.

5 Q. All right. Let me -- it's actually 59, your
6 Honor. I'm sorry. Directed her to the wrong exhibit.

7 A. Fifty-nine, and page?

8 Q. Twenty-five. This is a letter that's dated
9 June 13, 2006, and it's under the letterhead of the
10 California Association of Clerks and Election Officials,
11 which is the association in which you were involved on a
12 committee, correct?

13 A. Yes, that's correct.

14 Q. In fact, this letter is addressed to Senator
15 Debra Bowen. Debra Bowen at that time was a state
16 senator?

17 A. Yes, and she was also the chairman of the
18 central elections committee.

19 Q. And the sponsor of SB 1235, correct?

20 A. Yes, that's correct.

21 Q. All right. And who was Jill LaVine?

22 A. Jill LaVine was my co-chair on the committee
23 and also the registrar of voters in San Diego County.

24 Q. And I see this letter was copied to, among
25 others, yourself, Deborah Seiler, the bottom of the
26 second page of the letter?

27 A. Yes.

28 Q. All right. And this letter says that, "The

1 CACEO supports the concept of your bill to include the
2 absentee and provisional ballots into 1 percent manual
3 recount. However, it needs to be amended to provide
4 that the Secretary of State amend the voting system use
5 procedures to address the inclusion of absentee ballots
6 and provisional ballots in the manual tally of votes
7 cast for each election in order to verify the accuracy
8 of the votes tabulated by electronic or mechanical
9 voting systems."

10 Do you see that?

11 A. Yes, I do.

12 Q. So it was CACEO's position to adopt the bill
13 that Senator Bowen was sponsoring at that time, which
14 was an inclusive bill to address the 1 percent manual
15 tally, correct?

16 A. Yes, that's correct.

17 Q. CACEO never wrote a letter to Senator Bowen or
18 any elected official to strike or amend or change that
19 version of the bill, correct?

20 MR. BARRY: Objection, your Honor.

21 THE WITNESS: I don't know the answer to that.

22 MR. BARRY: Lacks foundation. Assumes facts
23 not in evidence.

24 THE COURT: Sustained as framed.

25 BY MR. GERACI:

26 Q. Well, you were a co-chair of that committee
27 that was reviewing that bill?

28 A. Yes, I was the co-chair of the committee. I

1 don't recall every letter that was written.

2 Q. Let me draw your attention to page 37 of the
3 same exhibit, 59, and this particular portion of the
4 exhibit says, "Enrolled bill memorandum to the
5 governor." The governor was Arnold Schwarzenegger
6 during that time, correct?

7 A. Yes, I believe so.

8 Q. And this particular memorandum was basically --
9 the Secretary of State at that time was Bruce McPherson?

10 A. Yes, that's correct.

11 Q. Who supported the -- who supported this
12 particular amendment version that was authored by
13 Senator Debra Bowen?

14 A. Yes, their bills at this point were very much
15 identical.

16 Q. Right. As you said, they were basically
17 converging and reconciling?

18 A. Yes.

19 Q. So this summary says this bill establishes a
20 procedure --

21 MR. BARRY: Your Honor, I want to make an
22 objection. This is the document that's been
23 requested -- the Court's been requested to take judicial
24 notice of.

25 THE COURT: So what's the objection?

26 MR. BARRY: The objection is, subject to the
27 Court's decision, these are hearsay statements that are
28 taken out by individuals outside the Court. We are not

1 sure who made these comments. They lack foundation and
2 they are hearsay.

3 MR. GERACI: Your Honor, this is
4 cross-examination. I'm asking her questions about her
5 stated opinion about how the bill was amended and
6 adopted in 2006.

7 THE COURT: Have you established a foundation
8 yet?

9 MR. GERACI: She was the co-chair of the
10 committee. She was --

11 THE COURT: Well, I mean, just because she was
12 co-chair doesn't mean she has knowledge of everything
13 that may have been generated by that organization.

14 One moment, please.

15 Counsel, remind me what's the source of
16 Exhibit 59.

17 MR. GERACI: Exhibit 59 is the legislative
18 history of Senate Bill 1235 that was provided by
19 Secretary of State's archive division.

20 MR. BARRY: Your Honor, if I may, the selected
21 portions of what Mr. Geraci represented to be is archive
22 records to the Secretary of State, and you go through
23 here and you see that not only does it reference
24 SB 1235, it references AB 707 and other bills that --
25 other than SB 1235.

26 MR. GERACI: I'm only asking her about Senate
27 Bill --

28 THE COURT: One moment, Counsel, please.

1 MR. GERACI: Thank you, your Honor.

2 THE COURT: All right. Well, I understand the
3 defense's argument that these represent -- these being
4 what's been marked cumulatively as Exhibit 59 may not be
5 complete, may include selective excerpts, but the
6 evidence before me is what Mr. Lutz testified to, and he
7 identified Exhibit 59 as being the legislative history
8 he requested from the Secretary of State's office.
9 That's the evidence.

10 MR. BARRY: Your Honor --

11 THE COURT: Have I missed something that is
12 contrary to that?

13 MR. BARRY: I think his testimony is that
14 actually portions of -- he said it was a 204-page packet
15 that he received from the Secretary of State from which
16 he has cherry-picked 56 to 58 pages.

17 THE COURT: Let me go back to --

18 MR. GERACI: I don't believe cherry-picked was
19 his word, your Honor.

20 THE COURT: Nonetheless, how complete, if at
21 all, is Exhibit 59 from what Mr. Lutz got from the
22 Secretary of State's office?

23 MR. GERACI: County counsel requested a full
24 copy of the 204 pages. I provided that to him this
25 morning. I'm happy to include all of the 204 pages.
26 Mr. Lutz testified that many pages were taken out
27 because they were duplicative in the request, so he
28 didn't cherry-pick, he basically consolidated the packet

1 so that it wasn't redundant.

2 THE COURT: The Court will grant plaintiffs'
3 request to take judicial notice of the legislative
4 history of 15360, but will direct that the entire 200
5 and I think I saw four pages be inserted into
6 Exhibit 59, whether it contains duplicates or not, but
7 all of it will be admitted into evidence pursuant to the
8 request for judicial notice.

9 MR. BARRY: Your Honor, if we could, we need to
10 be heard on this issue, because this document is rife
11 with documents that are not subject to initial notice.
12 The fact that this came from the Secretary of State's
13 archives doesn't make this the judicial legislative
14 history for this bill.

15 THE COURT: Counsel, I'm dealing with the
16 evidence. I don't know -- that's an argument you're
17 making, but I'm being presented with evidence that would
18 serve as a foundation to support a request that these
19 materials constitute the legislative history of the
20 section at issue and the request in and of itself is
21 entirely reasonable.

22 The only question is whether the exhibit is
23 complete. I have now addressed that by agreeing with
24 you that all 204 pages be included in Exhibit 59.

25 Now, whether the Secretary of State included
26 other materials that are not germane to Section 13- --
27 starting to lose track of that -- 15360, that's the
28 Secretary of State. I'll sort that out when I go

1 through it.

2 But are you quarreling that the Court can or
3 cannot take judicial notice of the legislative history
4 of this section?

5 MR. BARRY: I'm quarreling with the decision of
6 the Court that this is the legislative history, number
7 one.

8 And number two, there are numerous documents
9 within this packet that are not subject to or proper
10 subject to judicial notice, and we can provide you with
11 authority for that and we would be happy to brief that
12 issue and go through each one of the documents in this
13 packet.

14 THE COURT: I'm familiar with the rules and
15 limitations of the Court taking judicial notice.

16 But let me turn it around. If you put a
17 witness on the stand and asked him or her to say this
18 is -- does this document consist of the legislative
19 history that you received from the Secretary of State's
20 office for this section in issue, and he or she said
21 yes, do you think I would be treating that any
22 differently?

23 And let's assume that the plaintiff is raising
24 the same objection that you're raising. I would be
25 responding in the exact same way.

26 MR. BARRY: Well, again, there is no
27 authentication or certification as to what this document
28 really is. All we have is Mr. Lutz's representation as

1 to what he asked for and what he got.

2 And so the proper way to do this would be to go
3 to a legislative service, request for the legislative
4 history of a particular bill, and get the declaration
5 certification by that legislative service saying this is
6 the complete legislative history for a particular bill.

7 THE COURT: Well, that's one way.

8 But Counsel, I'm -- there are multiple ways in
9 which parties and oftentimes counsel ask the Court to
10 take judicial notice of materials which are not issued
11 with a certification by a particular governmental body.
12 So I'm not hearing anything that causes the Court to be
13 suspicious of the genuineness of the materials included
14 within Exhibit 59.

15 Now, as it currently is constituted, if this
16 does not include the entire 204 pages, that's
17 inadequate. So plaintiffs' counsel is directed to make
18 sure Exhibit 59 consists of all 204 pages.

19 Counsel, are you representing to the Court that
20 one of the pages of those 204 pages you are going to
21 replace Exhibit 59 with the documents you agreed on to
22 examine Ms. Seiler about?

23 MR. GERACI: Yes, your Honor.

24 THE COURT: Anything else?

25 MR. BARRY: Yes, your Honor. I cite the Court
26 to Kaufman Broad Communication -- Communities, Inc. at
27 133 Cal.App.4th 26. And in this, there is a lengthy
28 discussion about what type of legislative history and

1 documents may be taken judicial notice of.

2 And specifically, the Court, with reference to
3 documents not constituting legislative history in the
4 Court of Appeal for the Third Appellate District, and
5 this says, "Authoring legislators' files, letters, press
6 releases and statements not communicated to the
7 legislature as a whole. Letters from the bill's author
8 to governor without any indication of the author's views
9 were made known to the legislature as a whole.
10 Documents with unknown author and purpose," which is
11 what we have here, "handwritten documents, copies
12 without author contained or simply members files, letter
13 from consultant, letter from the family law section of
14 the state bar, letters to the governor urging to sign
15 the bill," these documents all contain in the packet of
16 documents that you've received which you are
17 representing to be the legislative history which are not
18 subject to judicial notice.

19 THE COURT: Well, one moment now. You just
20 said that I'm representing these materials to be the
21 legislative history. I'm not representing them to be
22 anything. What I am doing is listening to the evidence
23 being elicited from a witness who happens to be a party
24 in this case. So let's be careful now how much weight,
25 if any, I go to -- I assign to some, if not a lot, of
26 those pieces of paper you are describing remains to be
27 seen.

28 But, nonetheless, I'm going to grant the

1 application and take judicial notice of the entirety of
2 Exhibit 59.

3 MR. GERACI: Your Honor, shall I repaginate the
4 204 pages --

5 THE COURT: The answer is yes.

6 MR. GERACI: -- and substitute Exhibit 59?

7 THE COURT: The answer is yes. Do that between
8 now or between when we adjourn for the week and when we
9 resume on Tuesday morning.

10 MR. GERACI: Yes, sir.

11 THE COURT: Just give me one moment.

12 MS. KARNAVAS: Just for the record, your Honor,
13 we haven't had an opportunity review those documents,
14 your Honor, we would like to observe any objection.

15 THE COURT: I just heard a representation from
16 plaintiffs' counsel, he gave you 204 pages.

17 MR. BARRY: This morning on a disk.

18 MS. KARNAVAS: CD, yeah.

19 THE COURT: Let me just have you back up.
20 Exhibit -- I'm sorry. The exhibit list I was handed
21 contains a number of objections. Is that to the 54
22 pages that you were provided sometime before then?

23 MR. BARRY: Yes.

24 MS. KARNAVAS: That's correct.

25 THE COURT: Now, the legislative history I
26 thought was presented to the Court -- one moment --
27 prior to the Court's ruling on July 25. Who provided
28 the legislative history at that time?

1 MR. BARRY: Your Honor, there was --

2 MR. GERACI: We did, your Honor.

3 THE COURT: You did. How complete, if at all,
4 was it?

5 MR. GERACI: It was excerpts of things that we
6 had at that time. As part of our preparation for trial,
7 we made our request to the Secretary of State archive
8 division to send us the complete archived package which
9 they did and we received on September 29th.

10 THE COURT: I guess part of the reason that the
11 Court is wondering or questioning the objections from,
12 in this case, the defense is the legislative history has
13 been at issue from the beginning of this case. There is
14 no surprises about that.

15 Either or both of you were entitled to obtain
16 the entire history from the Secretary of State's office.
17 Plaintiff appears to have taken advantage of that.

18 Are you saying, Counsel, you have not gotten
19 it?

20 MS. KARNAVAS: Your Honor, I think that the
21 issue that we are having -- and I'm just speaking
22 because I was the one dealing with the objections to the
23 exhibits, I just want to be clear.

24 So he provided us the selected -- so what was
25 attached to the motion we understand was whatever they
26 had at the time. That's fine.

27 Our objection is, number one, so I hear the
28 representation that they request some archive from the

1 Secretary of State. I have seen no communication from
2 the Secretary of State saying here is what it is or even
3 explaining what's in here. What I do know is what's in
4 this 54 pages includes more than the legislative history
5 of Elections Code Section 15330, so I have no idea what
6 they told Mr. Lutz they were giving him or not. That's
7 number one.

8 He can testify to what they gave him, but I
9 haven't seen anything to suggest that that
10 representation is correct and I don't think it's even
11 adequate as to what they indicated told me.

12 In any event, we are not disputing the
13 legislative history that is at issue. What we are
14 talking about in this file are things that, as my
15 co-counsel has indicated here, as set forth in that case
16 do not constitute legislative history.

17 So I understand that the representation that is
18 being made by Mr. Lutz is that this is legislative
19 history, but that's really not up to him to decide.
20 That's up to the Courts to determine what is considered
21 proper legislative history and what is not.

22 And the case that we've cited basically goes
23 painstakingly through a variety of items, whether it
24 comes from the Secretary of State or if it comes from an
25 independent legislative service, goes out, gets these
26 things, what is appropriate when the Courts take
27 judicial notice of. And that is really our argument.

28 When we raised this yesterday, I thought we

1 were going to have the opportunity to go through because
2 this is not one document. As you can see, this is a
3 variety of documents.

4 THE COURT: All right. Now, Counsel, has your
5 side obtained the legislative history to this section?

6 MS. KARNAVAS: Yes, we've been providing it, I
7 think, through the testimony today.

8 THE COURT: Okay. Well, and so -- but now be
9 careful what you say. Now it sounds like your side is
10 cherry-picking bits and pieces from what you want to put
11 before the Court and the legislative history.

12 MS. KARNAVAS: Your Honor --

13 THE COURT: So you can do that, I'm not telling
14 you how to try your case, I'm not telling the plaintiff
15 how to try their case, but if somebody is telling the
16 Court under oath that they are putting the totality of
17 the history before the Court, I'm going to take it. I'm
18 going to grant it. And then you all can fight over what
19 this means more than the other.

20 MS. KARNAVAS: I think that it's not within
21 Mr. Lutz's purview to tell the Court what is the
22 legislative history.

23 THE COURT: He isn't telling me what it is.
24 He's saying he made a request and the Secretary of State
25 presented it to him and that's what counsel has provided
26 to you and which will become Exhibit 59. That's how I'm
27 interpreting the evidence.

28 MS. KARNAVAS: I understand, your Honor. But

1 based on that representation, you're taking judicial
2 notice of the documents so you are accepting his
3 representation.

4 THE COURT: It's a testimony that started with
5 Mr. Lutz and now Mr. -- are you questioning the
6 representation of counsel?

7 MS. KARNAVAS: I'm questioning the
8 representation that this, in fact, constitutes
9 legislative history that should be considered by the
10 Court. A letter to the governor is not legislative
11 history.

12 THE COURT: All right. Now, Counsel, you are
13 rearguing again. Your objection is overruled.

14 Now, Counsel, what has not been presented to
15 the Court is the written request by Mr. Lutz to the
16 Secretary of State's office and the Secretary of State's
17 response. Do you happen to have that?

18 MR. GERACI: I'll look into it. I think I have
19 it.

20 THE COURT: All right. So I'm going to direct
21 that in addition to making sure 59 is complete that
22 those two pieces of paper be included as part of the --
23 as part of Exhibit 59.

24 Do you understand?

25 MR. GERACI: Yes, sir.

26 THE COURT: Okay. Let's move forward.

27 BY MR. GERACI:

28 Q. Hello again, Ms. Seiler.

1 A. Hello.

2 Q. Drawing your attention to page 47 of
3 Exhibit 59, this is an enrolled bill memorandum to the
4 governor dated September 7, 2006, presented by
5 Cynthia Brian. Do you know who Cynthia Brian is?

6 A. Yes, I do.

7 Q. Who is she?

8 A. She was an aide to the governor at the time who
9 dealt with -- I don't know the full range of her duties,
10 but I know she was the person who generally dealt with
11 most of the election bills.

12 Q. And what is an enrolled bill, if you know?

13 A. Well, an enrolled bill is a bill that has gone
14 to the governor, has not been yet signed by him, but
15 basically before the governor.

16 Q. And this would pertain to SB 1235?

17 A. Yes.

18 Q. Which was the bill we were referring to?

19 A. Yes.

20 Q. And when it says "Senate 38 to zero, Assembly
21 79 to zero, concurrence 40 to zero," what does that
22 mean?

23 A. That means there was no opposition to the bill
24 as it went through.

25 Q. So pretty much a unanimous bill that's going to
26 the governor?

27 A. That's correct.

28 Q. All right. And the summary of this enrolled

1 bill memorandum says, "This bill establishes a uniform
2 procedure for election officials to conduct a 1 percent
3 manual tally of the ballots including, one, the
4 requirement that absentee ballots, provisional ballots
5 and ballots cast at satellite locations be included in
6 the tally of ballots." Correct?

7 A. That's what it says.

8 Q. And support of this particular memorandum came
9 from the governor's office of planning and research,
10 correct?

11 A. Yes.

12 MR. BARRY: Objection, your Honor. We don't
13 really know what the source of this document is other
14 than it was from the Secretary of State.

15 I'd also like to interject an objection as to
16 hearsay. And while the Court can take judicial notice
17 of a document, which you've indicated you're willing to
18 do, doesn't mean you are taking judicial notice of the
19 truthfulness of the comments contained therein. So it's
20 a hearsay objection.

21 THE COURT: All right. Thank you, Counsel.

22 The objection is overruled.

23 BY MR. GERACI:

24 Q. And was supported by the Department of Finance?

25 A. Yes, it would appear from this that it was.

26 Q. And by Secretary of State Bruce McPherson?

27 A. Yes.

28 Q. All right. And on the second page of the

1 memorandum, in the last paragraph, it says, among other
2 things, "This bill stems from anecdotal reports that
3 some counties routinely exclude absent voter and
4 provisional ballots from the 1 percent manual tally
5 process."

6 I think I heard your direct testimony, just so
7 we are clear, absentee ballots and mail ballots are
8 synonymous, correct?

9 A. Yes.

10 Q. We used to call mail ballots absentee ballots?

11 A. We used to call absentee and now we call them
12 vote-by-mail, yes.

13 Q. And now, reading on to the middle of the
14 paragraph, it says, "The use of provisional ballots has
15 also increased in recent years. Excluding these ballots
16 from the manual tally severely lessens the value and
17 accuracy of this post election audit." Yes?

18 A. Yes, that's what it says.

19 Q. Would you look at page 45 of Exhibit 59.

20 A. (Witness complies.)

21 Q. Is this a letter dated August 30, 2016, from
22 the office of Bruce McPherson, the Secretary of State?

23 A. Yes, it is.

24 Q. To the governor Arnold Schwarzenegger?

25 A. Yes.

26 Q. Concerning SB 1235?

27 A. Yes, it is.

28 Q. And in the first sentence, he says, "I

1 respectfully request your signature to this Senate Bill
2 1235 which amends the current procedure for the
3 1 percent manual tally to specifically include absentee,
4 provisional and early vote ballots." Correct?

5 A. That's what it says.

6 MR. GERACI: No further questions.

7 THE COURT: Redirect.

8 MR. BARRY: Briefly, your Honor.

9

10 REDIRECT EXAMINATION

11 BY MR. BARRY:

12 Q. Ms. Seiler, earlier there was a discussion
13 regarding placing source codes in escrow?

14 A. Yes, that's correct.

15 Q. Are the escrow companies with which the source
16 codes are deposited approved by the Secretary of State's
17 office?

18 A. Yes, I believe they are.

19 Q. With respect to the document that is pages
20 59 -- or, I'm sorry, Exhibit 59, pages 37, 38, and it's
21 dated September 7th, 2006; is that correct?

22 A. Yes.

23 Q. And at that point in time, had the language
24 with respect to provisional ballots been edited out of
25 the legislation?

26 A. Yes, it had.

27 Q. And you indicate -- go ahead.

28 A. This is a staff error.

1 Q. And why is it you believe that?

2 MR. GERACI: Objection, your Honor. Move to
3 strike. Nonresponsive.

4 THE COURT: The objection is sustained. Motion
5 to strike is granted.

6 MR. BARRY: I'm trying to -- I had a question
7 pending. There was no answer. It was to -- it was to
8 the prior question.

9 THE COURT: Why don't you ask -- Madam
10 Reporter -- I was directing it to the prior answer. So
11 Madam Reporter, can you repeat the current question?
12 (The question was read by the reporter.)

13 THE COURT: Do you have the full question in
14 mind?

15 THE WITNESS: No, sorry. I don't.

16 THE COURT: Why don't you ask a full question,
17 Counsel.

18 BY MR. BARRY:

19 Q. Sure.

20 Why is it you believe that was in error?

21 MR. GERACI: Objection. Irrelevant.

22 THE COURT: Overruled.

23 THE WITNESS: Because it was very clear at that
24 point in time that this language had been amended out.
25 I believe the amendments to SB 1235 that removed the
26 reference to provisionals and set ballots by location
27 was amended out in August 27 version, if my recollection
28 serves me.

1 I will also add that I did happen to see other
2 committee analyses that continued that language even
3 after that amendment have been made.

4 MR. GERACI: Objection. No question pending.
5 Move to strike.

6 THE COURT: Objection is sustained. Move to
7 strike.

8 BY MR. BARRY:

9 Q. Ms. Seiler, I refer you to page 48 in
10 Exhibit 59.

11 A. Yes.

12 Q. And this is a letter of September 11th, again,
13 from the sponsor of 1235, Debra Bowen, correct?

14 A. Yes, it is.

15 Q. And in the third paragraph -- it's a letter to
16 Governor Schwarzenegger?

17 A. Yes, it is.

18 Q. And in her letter, third paragraph, she
19 indicates that 1235 clarifies that the 1 percent manual
20 count of automated election results does not only
21 include votes cast at the polls but also absentee
22 ballots and ballots cast in early votings. Is that
23 correct?

24 A. That's a true and correct statement.

25 Q. Okay. So the letter from the sponsor of the
26 bill to the governor doesn't make any reference to
27 provisional?

28 A. That's correct.

1 Q. It's your belief that that language has been
2 edited out of that statute?

3 A. That's correct.

4 Q. And also, there is no reference in Senator
5 Bowen's letter to Governor Schwarzenegger that all
6 absentee ballots are to be included in that 1 percent
7 manual tally?

8 A. That's correct. There is no such reference.

9 MR. BARRY: No questions. Thank you.

10 THE COURT: Anything further?

11 MR. GERACI: Very briefly.

12

13 RE-CROSS-EXAMINATION

14 BY MR. GERACI:

15 Q. So looking at page 48 of Exhibit 59, isn't it
16 true that provisional ballots are cast at the polls?

17 A. Yes, it's true.

18 Q. Okay. So they're included in the universe of
19 votes that were cast at the poll, true?

20 A. Yes, true.

21 MR. BARRY: Objection. Vague as to the term
22 "universe."

23 MR. GERACI: No further questions.

24 THE COURT: The objection is overruled.
25 Anything else?

26 MR. BARRY: No, your Honor.

27 THE COURT: Mr. Geraci?

28 MR. GERACI: Nothing else.

1 THE COURT: May Ms. Seiler be excused?
2 MR. GERACI: Yes.
3 MR. BARRY: Yes, your Honor.
4 THE COURT: Thank you very much.
5 THE WITNESS: Thank you, your Honor.
6 THE COURT: All right. Next witness.
7 MR. GERACI: Mr. Charles Wallis.
8 THE COURT: All right. Madam deputy -- sorry.
9 Mr. Deputy, can you retrieve Mr. Wallis? I'm so used to
10 madam deputy.
11 And were you examining Mr. Wallis under 776?
12 MR. GERACI: Yes, your Honor.
13 MR. BARRY: And your Honor, Ms. Karnavas will
14 be handling the direct. So she'll be handling the
15 witness.
16 MS. KARNAVAS: I'll just need a brief break in
17 between to set up the --
18 THE COURT: All right. Let's see here. Are we
19 still waiting?
20 THE BAILIFF: I want to know if I got the name
21 correct because no one --
22 MR. BARRY: W-a-l-l-i-s, Wallis.
23 THE BAILIFF: Wallis. Nobody is responding to
24 that name. Just be a minute, your Honor. I believe he
25 ran to the restroom.
26 THE COURT: You bet.
27 All right. Mr. Wallis, good afternoon, sir.
28 If you could follow the directions of my deputy and my

1 clerk, please.

2 THE BAILIFF: Face the clerk. Raise your right
3 hand.

4 THE CLERK: Do you solemnly state under penalty
5 of perjury that the evidence you shall give in this
6 matter shall be the truth, the whole truth, and nothing
7 but the truth?

8 THE WITNESS: I do.

9 THE CLERK: Please take the stand.

10 Sir, please state your full name. Spell your
11 last name for the record.

12 THE WITNESS: My full name is Charles Wallis.
13 Last name is W-a-l-l-i-s.

14 THE CLERK: Thank you.

15

16 CROSS-EXAMINATION (Pursuant to EC 776)

17 BY MR. GERACI:

18 Q. Good afternoon, Mr. Wallis.

19 A. Good afternoon.

20 MR. GERACI: May I proceed, your Honor?

21 THE COURT: You bet.

22 BY MR. GERACI:

23 Q. What is your occupation?

24 A. I'm a principal IT analyst for the County of
25 San Diego.

26 Q. And for how long have you been employed as the
27 principal IT analyst?

28 A. I've been in my current position 26 years.

1 Q. And what does the principal IT analyst do?

2 A. They manage the information technology and
3 the -- in the department. This department would be the
4 registrar of voters.

5 Q. And that would include the central tabulator?

6 A. There are several systems that we are
7 responsible for. One of those is the central tabulator.

8 Q. And the optical scanners?

9 A. Yes.

10 Q. And the sorting machine, Pitney Bowes sorting
11 machine?

12 A. Yes.

13 Q. And you've been -- you're also responsible for
14 assisting the team that does the 1 percent manual tally?

15 A. I am not responsible for assisting the team.
16 I'm responsible for supplying them with the information
17 they need to conduct the 1 percent manual tally.

18 Q. Okay. Let's discuss that process. What's the
19 first thing that happens in your department relative to
20 the 1 percent manual tally?

21 A. I receive an e-mail from our elections services
22 area that does the 1 percent manual tally with a list of
23 the precincts they have selected.

24 Q. And for the purposes of all my questions, let's
25 focus on what's just happened after the June 7, 2016,
26 presidential primary, okay?

27 A. Okay.

28 Q. And you were the person in charge of

1 IT Services during that cycle, correct?

2 A. That is correct.

3 Q. So did you receive an e-mail requesting that
4 certain ballots be pulled after the June election?

5 A. Yes, I did.

6 Q. All right. And once you received that e-mail,
7 what do you do?

8 A. I proceed to pull the ballots that were
9 requested. They're either in a batch or they are in a
10 precinct box, and I also produce the reports for each of
11 those.

12 Q. The reports containing what information?

13 A. The election results.

14 Q. So when you are retrieving the ballots from
15 boxes that contain batches of ballots, are those the
16 vote-by-mail ballots?

17 A. That's correct.

18 Q. And the ballots that are in the precinct box
19 are the ballots that were cast at the polling place?

20 A. That is correct.

21 Q. Do you have any involvement in retrieving
22 information concerning the touch screen ballots or
23 votes?

24 A. For the touch screens, I do supply the
25 1 percent manual tally with a report for each touch
26 screen -- sorry, a results report for each touch screen
27 and also supply them with a voter verified paper trail
28 canister that came from each device.

1 Q. And did you do that in this past election?

2 A. Yes. But I want to clarify. I did that for
3 the -- for the touch screens that were used for early
4 voting in our office.

5 Q. Were there any issues with the audit -- with
6 the paper trail for the touch screens?

7 MS. KARNAVAS: Objection. Vague. Lacks
8 foundation.

9 THE WITNESS: Not that -- not that I --

10 THE COURT: One moment. Do you understand the
11 question, sir?

12 THE WITNESS: I think so.

13 THE COURT: All right. The objection is
14 overruled. Please do your best to respond.

15 THE WITNESS: I was not made aware of any issue
16 with the voter verified paper trail or the results for
17 the touch screens that were voted in our office.

18 BY MR. GERACI:

19 Q. In this case, did you retrieve the ballots from
20 the batch boxes or the precinct boxes first or second?
21 In which order did you do them?

22 A. I pulled the boxes for the precinct or polling
23 place ballots first because they are easiest to get to.
24 The second, we pulled the decks from the shelves for the
25 mail ballots.

26 Q. Do you recall when you started this process?

27 A. I started it the day I received the e-mail with
28 the list containing the 1 percent manual ballot

1 precincts.

2 Q. And what's your recollection of what day that
3 was, within a week of the election?

4 A. It was within a week of the election. To my
5 best recollection, it was either Thursday or Friday of
6 that week.

7 Q. So when you're retrieving the precinct boxes,
8 explain to the Court exactly what process happens in
9 doing that, how many boxes there are.

10 A. They supply me with a list of precinct numbers,
11 and it's -- and I just go retrieve that box of ballots
12 off the shelf.

13 Q. In this case, how many were there?

14 A. I do not recall a number.

15 Q. More than ten?

16 A. I don't recall the exact number.

17 Q. All right. How long did it take you to
18 retrieve the ballots from the precinct boxes?

19 A. To retrieve the boxes took me a matter of ten
20 minutes.

21 Q. And to retrieve the ballots from the precinct
22 boxes, how long did that take?

23 A. I didn't retrieve the ballots from the precinct
24 box, I only retrieved the box.

25 Q. And delivered it to whom?

26 A. To the 1 percent manual tally.

27 Q. Okay. And in this case, you were also asked to
28 retrieve the back -- files from the batch boxes as you

1 call them, correct?

2 A. Yes, I was -- I was asked to pull the ballots
3 for a -- that are in a deck, which are ballots that are
4 in a ballot carton.

5 Q. And a deck and a batch are synonymous?

6 A. They are synonymous.

7 Q. And how long did that process take you in this
8 cycle?

9 A. I believe that took me another ten minutes.

10 Q. And to whom do you deliver the boxes that
11 contain the batch balance?

12 A. I also deliver those to the 1 percent manual
13 tally group.

14 Q. Did you do these tasks at the same time?

15 A. No. I did them one by one, one box at a time.

16 Q. I mean on the same day?

17 A. Yes, I did those on the same day.

18 Q. Where are the boxes stored?

19 A. They are stored in a secured area of the
20 registrar's office.

21 Q. Is it adjacent to the registrar's office or
22 part of the registrar's office?

23 A. It is part of the registrar's office.

24 Q. And what's the nature of the security for that
25 area?

26 A. That area contains voted ballots for current
27 and past elections so it is secured.

28 Q. Well, what about it is secure? What security

1 measures are taken for that area?

2 A. It has limited access for key cards; in other
3 words, only certain employees have access to that area.

4 Q. Now, at some point during the canvass process,
5 were you asked to actually retrieve ballots for the
6 precincts that were vote-by-mail ballots?

7 A. Yes.

8 Q. And was it your understanding that that was
9 because there was a change from the original method of
10 batching to being -- doing the 1 percent manual tally by
11 precinct?

12 A. I wasn't aware of why we did it, I was just
13 told to do it.

14 Q. And what was the process you had to take in
15 order to retrieve the new ballots?

16 A. We had to identify by precinct where the
17 ballots were in the decks or batches and we had to
18 manually look at every ballot trying to find each
19 precinct in every box of ballots or deck.

20 Q. And how long did that take you?

21 A. That took a week to do.

22 Q. Did you do that yourself or you had assistance?

23 A. We had a staff of people doing that.

24 Q. Staff of how many?

25 A. Approximately 40 people.

26 Q. So it took a staff of 40 people a week working
27 full-time hours to basically sort the vote-by-mail
28 requested ballots by precinct?

1 A. Yes, to select the precincts from the 1 percent
2 from the decks of ballots.

3 Q. Do you have any sorting machinery that assists
4 you with sorting vote-by-mail ballots?

5 A. We have machines that will sort the envelopes
6 but not the ballots.

7 Q. So because these ballots had already been
8 removed from the envelopes, they couldn't be re-sorted
9 by precinct?

10 A. That is correct.

11 Q. As you were doing this process of retrieving
12 the ballots from the boxes of batched vote-by-mail
13 ballots, did you compare that to the report that you
14 were provided that requested that information?

15 A. Yes.

16 Q. And when you reported back to the 1 percent
17 manual tally team, did you complete the task of
18 retrieving and delivering to them all of the ballots
19 requested?

20 A. Yes.

21 Q. How far along the process were you -- well,
22 strike that.

23 When was it that you were asked to retrieve the
24 ballots from the batch boxes?

25 A. I don't remember the specific date, I don't
26 recall that.

27 Q. The records reflect that it was June 27th.
28 Does that refresh your recollection?

1 MS. KARNAVAS: Objection. Lacks foundation.
2 Assumes facts not in evidence.

3 THE COURT: Sustained.

4 THE WITNESS: I still don't remember the exact
5 date.

6 MS. KARNAVAS: Excuse me.

7 THE COURT: One moment, sir.

8 THE WITNESS: Oh, I'm sorry.

9 THE COURT: There is no question pending. I
10 sustained the objection.

11 THE WITNESS: Sorry.

12 THE COURT: Next question.

13 BY MR. GERACI:

14 Q. Let me draw your attention to Exhibit 56. If
15 you could look at -- may I approach the witness, your
16 Honor?

17 THE COURT: You bet.

18 BY MR. GERACI:

19 Q. Are you familiar with the unofficial canvass
20 results on the June 8th -- on June 8th prior to the
21 election of the manual tally precincts?

22 A. Yes.

23 Q. And explain what your role is in providing that
24 report or information.

25 A. I run that -- I run the report and I also run a
26 file out of the system as of election night, end of
27 election night.

28 Q. And what do you do with that report?

1 A. I place the report on the Internet and I also
2 back up that data to a drive that I can distribute to
3 whoever asks for it.

4 Q. Do you agree that the counts of ballots and
5 votes of that unofficial result should match the
6 computer reports used to check the manual tally process?

7 MS. KARNAVAS: Objection. Lacks foundation.
8 Vague.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 BY MR. GERACI:

12 Q. Would you take a look at Exhibit 66.

13 MS. KARNAVAS: I believe this is one of the
14 exhibits that your Honor has excluded.

15 THE COURT: I'm sorry?

16 MS. KARNAVAS: I believe this is an exhibit
17 that has been excluded, your Honor.

18 THE COURT: Been excluded?

19 MR. BARRY: We had the discussion.

20 THE COURT: Fifty-six?

21 MS. KARNAVAS: I thought --

22 THE COURT: My notes indicated it was admitted.

23 MS. KARNAVAS: Sixty-six.

24 THE COURT: Oh, 66. I'm sorry. Oh, my exhibit
25 list doesn't show any descriptions. Let's take it one
26 step at a time. What is 66 described as, Counsel?

27 MR. GERACI: Sixty-six, your Honor, is the
28 comparison of snapshot ballot count with manual tally

1 system ballot count.

2 MS. KARNAVAS: This is one of the late produced
3 documents --

4 THE COURT: Just -- Counsel, please, we'll get
5 there.

6 Okay. Counsel, is this one of those documents
7 that you provided to opposing counsel late in the
8 evening on Monday, the 3rd?

9 MR. GERACI: I believe it is, your Honor.

10 THE COURT: All right. And I think I indicated
11 yesterday I was inclined to exclude all of those
12 materials. Now, I did indicate it could be some other
13 opportunity that had not yet presented itself that could
14 become a basis to present the document, but I'm not -- I
15 mean, so --

16 MR. GERACI: I appreciate that, your Honor.

17 THE COURT: Be consistent with the Court's
18 ruling, I'm not aware of any purpose right now that
19 would allow you to use a document that I deemed to be
20 excluded.

21 MR. GERACI: The Court has since admitted
22 Exhibit 56 into evidence, which is the snapshot file,
23 which is the results in the report that Mr. Wallis just
24 testified about. And Exhibit 66 is essentially a
25 comparison of that information with his report.

26 THE COURT: Well, I don't need to hear from the
27 defense yet. You've not persuaded me that that is a
28 reason to allow you to use Exhibit 66.

1 MR. GERACI: Okay.

2 THE COURT: I want to emphasize there may
3 emerge reasons. But what you just described to me is
4 not a reason. So the Court will sustain the objection
5 as of right now.

6 MR. GERACI: Understood, your Honor. Thank
7 you.

8 MS. KARNAVAS: Your Honor, may I approach the
9 witness to see what they have as the snapshot file?
10 Because my exhibit book that was given to me was empty
11 and there's a CD reference, so --

12 THE COURT: Are you talking about 56?

13 MS. KARNAVAS: Yes.

14 THE COURT: Sure, absolutely.

15 All right. Let's move forward.

16 MR. GERACI: Thank you for your patience, your
17 Honor.

18 BY MR. GERACI:

19 Q. Exhibit 44, Mr. Wallis.

20 A. Mine starts at 54.

21 Q. Forty-four.

22 THE COURT: Why don't you approach, Counsel.

23 THE WITNESS: Sorry. Here is another one.

24 Sorry.

25 MR. GERACI: No, no. I'll help you.

26 THE WITNESS: There was too many, so it's this
27 one.

28 ///

1 BY MR. GERACI:

2 Q. Do you recognize Exhibit 44, Mr. Wallis?

3 A. Yes, I do.

4 Q. This is just one page of many pages for this
5 report, correct?

6 A. That is correct.

7 Q. What is this report?

8 A. This is a report that identifies how many cards
9 for a particular precinct are in a deck.

10 Q. Okay. And if you could just help us understand
11 how to read this report. The top of the report that
12 says "deck" and then it shows a column of information.
13 What is that?

14 A. That is the deck number. So, for this one,
15 it's under polls ballots, meaning these are poll ballots
16 that were read through the central count. And in deck
17 one, there were six ballot cards for precinct sequence
18 one.

19 Q. And what does the 10 reference to the left of
20 that column?

21 A. The 10 is a numeric value for the precinct.
22 It's a sequence number. The precincts are sequenced
23 from number one through the maximum number of precincts
24 in the election. The zero on the end is just an extra
25 zero.

26 Q. Okay. So it's actually one?

27 A. It's actually one.

28 Q. All right. And if I'm reading across the top

1 where it says zero to one and zero to 19, et cetera, how
2 do I -- how do I interpret that information?

3 A. It's the same as the first column in deck 19,
4 polls ballot deck 19 there are four ballots for sequence
5 one, same one for the next one and deck 45 of the polls
6 ballots there are four ballots for sequence one.

7 Q. And so that same -- that same description would
8 carry down to precinct two for the particular decks
9 across the column?

10 A. Correct. A deck may contain up to 350 cards,
11 so in the second one, that deck one contained three
12 cards for sequence two.

13 Q. And do you have this same report for not only
14 the precincts but for the mail ballots?

15 A. That is correct. Can I explain, though?

16 Q. Yes.

17 A. When you say precincts, it's not the polling
18 place ballots. They are -- these are -- these are
19 batches or decks that contain polls ballots, but they
20 are provisional or they are damaged ballots that were
21 pulled on election night.

22 Q. Did you have any particular challenges this
23 election cycle in basically handling the canvass, the
24 final results?

25 MS. KARNAVAS: Objection. Vague. Lacks
26 foundation.

27 THE COURT: Do you understand that question,
28 sir?

1 THE WITNESS: I think I understand the
2 question.

3 THE COURT: All right. The objection is
4 overruled. Please do your best to respond.

5 THE WITNESS: There were -- the only particular
6 challenges were that it was -- we have a short period of
7 time to complete the election process or certify the
8 election, and some of the processes in the beginning
9 part were taking longer than they normally take.

10 BY MR. GERACI:

11 Q. For example, what?

12 A. Provisional verification, mail ballot
13 adjudication.

14 Q. Were there an inordinate number of provisional
15 ballots this election?

16 A. Based on the prior election for me, there were
17 more ballots than I expected.

18 Q. How many?

19 A. I expected to see about 45,000 provisional
20 ballots.

21 Q. And how many were there?

22 A. There were seventy -- a little over 70,000
23 provisional ballots.

24 Q. In your experience as the IT manager, have you
25 also noticed an increase in the vote-by-mail ballots?

26 A. Is that the total vote-by-mail ballots?

27 Q. Yes.

28 A. There has been an increase in the vote-by-mail

1 ballots.

2 MR. GERACI: No further questions.

3 THE COURT: One moment. One moment, Counsel.

4 Okay. Are you ready, Counsel?

5 MS. KARNAVAS: Yes, your Honor. So I think at
6 this point -- I'm not sure exactly how many witnesses
7 that they have left, but I'll be addressing the
8 questioning on -- for direct right now.

9 THE COURT: All right. Just give me a second
10 here.

11 All right. Redirect, please. Begin.

12

13 REDIRECT EXAMINATION

14 BY MS. KARNAVAS:

15 Q. Good afternoon, Mr. Wallis.

16 A. Good afternoon.

17 Q. You're currently employed at the registrar of
18 voters for the County of San Diego, correct?

19 A. That is correct.

20 Q. And you said you've held that position for 26
21 years?

22 A. Yes.

23 Q. And so what year did you start with the County?

24 A. 1991.

25 Q. What are your job duties as a principal IT
26 analyst?

27 A. Besides implementing IT solutions in the
28 office, I'm the major resource for the voter

1 registration election management system, that is, DIMS,
2 D-I-M-S, and also the vote tabulation system, GEMS.

3 Q. And how far in advance of an election do you
4 start preparing?

5 A. Depends on the election. But typically 60 to
6 90 days before the election I start preparing.

7 Q. What sorts of things have you been doing in the
8 last month or so to prepare for the election in
9 November?

10 A. At the beginning of the process, we start what
11 we call an election structure. That is basically
12 creating the precincts and the polling locations where
13 voters will vote, and that is done by the districts that
14 are running in the election.

15 After that structure is completed, I do a
16 verification of it. I also verify the candidate filing
17 module to review the candidates and contests that are
18 going to the ballot, making whatever changes are
19 necessary with the campaign services division.

20 I then take that data and I bring it into the
21 GEMS tabulation system, constructs the precincts and
22 districts and parties where voters are assigned to vote.
23 It also takes that data and presents it in a both an
24 optical scan and an electronic voting version of the
25 ballot, so I lay those ballots out and also prepare
26 those for tabulation.

27 I perform the testing on the system and also
28 the proofing of the data in the system.

1 Q. And by the way, you mentioned creation of
2 precincts. Is that a number that changes with every
3 election?

4 A. Yes.

5 Q. So in the last election, for example, we heard
6 testimony here from Mr. Lutz that there were 1522
7 precincts, but that number doesn't stay static through
8 every election, correct?

9 A. That's correct.

10 Q. Do you know how many precincts are going to be
11 in the election in November?

12 A. In the polling place precincts, there will be
13 1552. And there will be another 623 precincts that are
14 vote-by-mail.

15 Q. Mr. Wallis, how would you describe the workload
16 associated with preparation for an election from your
17 perspective?

18 A. From my perspective, it's grueling, it's long
19 hours and no sleep.

20 Q. What sort of hours have you been working in the
21 last month or so?

22 A. Typically six to seven days a week, 12 hours a
23 day.

24 Q. And taking time to -- out today to testify here
25 is certainly not lessening your stress load, correct?

26 MR. GERACI: Objection. Irrelevant.

27 THE COURT: Overruled.

28 THE WITNESS: That would be correct.

1 BY MS. KARNAVAS:

2 Q. So going back to the areas you said you were
3 responsible for and you mentioned a number of things. I
4 wrote down election management as one of them, correct?

5 A. Yes.

6 Q. And you also mentioned the voter registration
7 and vote tabulation; is that correct?

8 A. That's correct.

9 Q. Taking those one at a time, what is the voter
10 registration system?

11 A. The voter registration system is an application
12 that allows us to capture voter registration, including
13 images of affidavits and signatures and placing them
14 into a system that also communicates with the statewide
15 local system. Parts of the system, it's a multifaceted
16 system. It allows us to place voters in status to be a
17 permanent absentee voter. It allows us to do petition
18 checking when petition signers deliver volumes of paper
19 for us to verify signatures against. So the system
20 performs many functions.

21 Q. And you also mentioned the election management
22 system. Can you describe that system for the Court,
23 please.

24 A. The election management system starts with the
25 creation of consolidated precincts and assigning home
26 precincts to consolidated precincts by geographical area
27 by district so that we have voting groups of people, and
28 it also manages our absentee voting or vote-by-mail that

1 go to any voter who requests the mail ballot. And it
2 produces numerous reports and statistics.

3 Q. And what is the vote tabulation system for the
4 County of San Diego?

5 A. The vote tabulation system is a protocol GEMS,
6 the global election management systems that is, again, a
7 multifaceted system. It allows the layout of the
8 structure of the election so that ballots can be sent to
9 the proper voters.

10 It also has the ability to take the contest and
11 candidates and propositions and measures and lay them
12 out on to both paper ballot and an electronic ballot.
13 It allows you to take those paper ballots and tabulate
14 those ballots by party, by precinct and by -- by party
15 and precinct.

16 Q. And what are your GEMS -- that's G-E-M-S for
17 short; is that correct?

18 A. That's the global election management system is
19 the name of the product.

20 Q. Okay. Is it okay if I just refer to it as
21 GEMS?

22 A. Yes.

23 Q. And what are your responsibilities specifically
24 with respect to GEMS?

25 A. I'm responsible for the end-to-end creation of
26 ballots all the way through the tabulation and
27 certification of the results.

28 Q. And how long has the County of San Diego been

1 using GEMS?

2 A. Since 2004.

3 Q. So roughly 12 years?

4 A. Yes.

5 Q. So you've also --

6 THE COURT: Counsel --

7 MS. KARNAVAS: Yes.

8 THE COURT: Global election management system?

9 MS. KARNAVAS: Yes, your Honor.

10 THE COURT: Thank you. Excuse me for
11 interrupting.

12 BY MS. KARNAVAS:

13 Q. So you've also been working then within the
14 GEMS system for 12 years?

15 A. That is correct.

16 Q. And did you undergo any training in order to
17 become familiar with the GEMS system?

18 A. In 2004 when they implemented the system in
19 San Diego County, a team of staff came from global
20 election systems to train us in classroom training. We
21 had two days of classroom training. And they also
22 assisted us in setting up the election for 2004 and they
23 were there when we conducted the election.

24 Q. And did they provide you with any written
25 materials to assist you in learning the program?

26 A. Yes, there is two comprehensive GEMS user
27 manuals.

28 Q. And has the system changed much over the last

1 12 years?

2 A. The system is virtually the same. The only
3 thing that's changed in it was a certificate that is
4 used on the touch screen machines when you are
5 transferring votes between the touch screens and the
6 GEMS servers.

7 Q. Can the County of San Diego use any election
8 system it wants?

9 A. No.

10 Q. And why not?

11 A. Systems have to be certified by the Secretary
12 of State.

13 Q. And is the GEMS system certified by the
14 Secretary of State?

15 A. Yes, it is.

16 Q. And does the County of San Diego have any
17 additional requirements other than it being certified by
18 the Secretary of State?

19 A. When the contract was created for the
20 acquisition of the GEMS system, there was a requirement
21 that the system also be qualified by the Federal
22 Election Commission.

23 Q. And is the GEMS system qualified by the federal
24 government?

25 A. Yes, it is.

26 Q. After the system was certified, it's my
27 understanding the Elections Code also required that the
28 source code for each component of the voting system be

1 deposited in an approved escrow facility; is that
2 correct?

3 A. That's correct. The Secretary of State does
4 that.

5 Q. As part of the certification, does the State of
6 California provide any instructions as to how the voting
7 system should be used?

8 A. The -- as it pertains to the GEMS system, the
9 Secretary of State provides a document of procedures on
10 how to use the system from end to end basically.

11 Q. What do you mean by that?

12 A. It's an all-encompassing document that covers
13 testing, it covers the use of the system at a polling
14 place, it covers the counting procedures, the canvass
15 procedures for the election, that are required to
16 certify the results.

17 Q. And are those procedures made publicly
18 available, to your knowledge?

19 A. I believe they are on the Secretary of State's
20 web site.

21 Q. And do those procedures contain -- are they
22 called the use procedures generally?

23 A. Use procedures, yes.

24 Q. Use procedures?

25 A. Yes.

26 Q. And do those procedures also --

27 THE COURT: I'm sorry. U-s-e?

28 THE WITNESS: Yes. Use procedure.

1 THE COURT: Okay. All right.

2 BY MS. KARNAVAS:

3 Q. Do the use procedures also include procedures
4 regarding the security of the system?

5 A. Yes, they do.

6 Q. Okay. And does San Diego County follow those
7 security procedures?

8 A. Yes, they do.

9 Q. And these procedures aren't a secret, correct?

10 A. No.

11 Q. So if Mr. Lutz testified here in this trial
12 that information pertaining to the security of the GEMS
13 system is not publicly available, that would not be
14 correct?

15 A. To my understanding, that would not be correct.

16 Q. Is qualification of the GEMS system a
17 requirement of the Elections Code as far as you know?

18 A. No, I do not believe it is.

19 Q. That's something specific to the County of
20 San Diego?

21 A. It's specific to the County of San Diego, yes.

22 Q. Are there other jurisdictions that use other
23 systems that are not federally qualified?

24 A. Yes.

25 Q. So I recognize, Mr. Wallis, that it has a lot
26 of functionality, but since we are talking about the
27 tabulation of votes in this case, I want to focus on the
28 components of the system that pertain to vote

1 tabulation, okay?

2 A. Okay.

3 Q. Can you generally describe the hardware
4 component of the GEMS system that are involved in the
5 tabulation of votes?

6 A. The GEMS system uses a central server where
7 preferential devices are connected to it, one of those
8 being an optical scan reader. This optical scan reader
9 can be connected in two different ways: On a closed
10 local area network and it can also be used as standalone
11 count device. It also uses a touch screen voting
12 device, that's a TSX unit. That unit is connected via a
13 closed local area network when memory cards are being
14 created and is standalone when it's in use.

15 Q. Okay. So I want to go through the hardware
16 component one at a time so the Court can get a good idea
17 of what we're talking about here.

18 If you could flip to -- your Honor, may I
19 approach?

20 THE COURT: You bet.

21 MS. KARNAVAS: I'm going to be introducing
22 these photographs into evidence. They are just
23 demonstrative, so I'm looking to mark for identification
24 as Exhibit 155.

25 THE COURT: Okay. Just give me a second.

26 BY MS. KARNAVAS:

27 Q. Do you have Exhibit 155 in front of you,
28 Mr. Wallis?

1 A. Yes, I do.

2 Q. What is this a photo of?

3 A. It's a photograph of the GEMS central server
4 cabinet with the primary and backup servers.

5 THE COURT: Are you going to display it on the
6 overhead?

7 MS. KARNAVAS: I was planning on it, but we
8 can't get it to work. So do you have the --

9 THE COURT: Give me a moment. Let me -- by the
10 way, let me just make clear. As I'm feverishly trying
11 to make notes of all the testimony, I don't have nearly
12 enough time to actually look at many of -- any of the
13 exhibits that are being offered as evidence.

14 At the conclusion of the -- near the end, the
15 Court will take them under submission, I will assure
16 everybody I will scour everything that's been admitted
17 up to that point. And as previously mentioned on
18 multiple occasions, the Court will assign as much or as
19 little weight to the various exhibits as I think
20 appropriate.

21 So no one should be alarmed if you don't see me
22 spending a lot of time staring at the exhibits.
23 However, if you are using an exhibit for demonstrative
24 purposes only, I better take a look at it. So let me
25 catch up with you.

26 MS. KARNAVAS: Oh, your Honor. Do you want to
27 take a break? I didn't realize what the time was.

28 THE COURT: What's that?

1 MS. KARNAVAS: Did you want to take an
2 afternoon break? I didn't realize the time.

3 THE COURT: We'll do that in a few more
4 minutes.

5 MS. KARNAVAS: Okay.

6 THE COURT: So I'm -- just a second.

7 All right. Just a second here. Okay. I'm at
8 155.

9 BY MS. KARNAVAS:

10 Q. Okay. Mr. Wallis, what is this a photograph
11 of?

12 A. That is a photograph of the GEMS central
13 tabulator server cabinet.

14 Q. And where is this located?

15 A. Located in the registrar of voter's office.

16 Q. And is this server connected to the Internet?

17 A. No, it is not.

18 Q. And do the use procedures issued by the
19 Secretary of State allow the GEMS procedure to be
20 connected to the Internet?

21 A. The GEMS -- it is not allowed for the GEMS
22 server or any of its components to be attached to the
23 Internet.

24 Q. And the registrar of voters is located where
25 exactly?

26 A. It's located at 5600 Overland Avenue,
27 Suite 100.

28 Q. And within that building where the server is

1 located, does the room have any security features?

2 A. It's in a centrally located room that is
3 controlled by key card access. It also has 24-hour
4 surveillance video surveillance and it also has an alarm
5 system.

6 Q. Who has access to the room, the key cards?

7 A. Only the technical services employees, two of
8 us, have access to that room.

9 Q. So when you say technical services employees,
10 you are talking about yourself and one other person?

11 A. That is correct.

12 Q. Are there also security features that are built
13 into the server itself?

14 A. Yes. GEMS was hardened in 2008, I believe, to
15 strengthen the security within the system. The
16 passwords were strengthened. The ability to log on as
17 administrator was removed from the day-to-day
18 processing. So there are passwords and logs that are in
19 the system itself. GEMS also has password protection on
20 every database so the database changes, the passwords
21 change.

22 Q. And when you said "hardened," is that an IT
23 term?

24 A. It's a term that was -- it's an IT term that
25 places additional restrictions like a more complex
26 password structure. Instead of using six characters,
27 you must use eight characters with a number of special
28 characters.

1 Also that the -- there are -- there were --
2 there were services that were disabled inside the
3 computer that may have been exploited for -- that
4 someone may exploit. I don't have the exact details.

5 Q. Okay. Of all the changes --

6 A. Of what was hardened.

7 Q. Okay. What if the servers were stolen?

8 A. If the servers were stolen, the hard drives are
9 formatted with what they call NTFS, they are in a NTFS
10 format which requires you to have log-in to be able to
11 access the data, so if they were stolen, they would --
12 they couldn't be utilized.

13 Q. Who has access to GEMS other than you?

14 A. Only the other IT person in our department.

15 Q. So just going back to the additional
16 components, hardware component, you mentioned touch
17 screens; is that --

18 A. Yes, that's correct.

19 Q. -- a component of the voting system?

20 I would like to direct your attention to
21 Exhibit 154, and there's actually three photographs in
22 the pocket. We just didn't hole punch them because we
23 didn't want to ruin the photos. So you can take all
24 three of them out.

25 THE COURT: These are photos of touch screens?

26 MS. KARNAVAS: Yes, your Honor.

27 THE COURT: Again, for demonstrative purposes
28 only?

1 MS. KARNAVAS: Yes.

2 THE COURT: All right. Give me a moment.

3 BY MS. KARNAVAS:

4 Q. In looking at the first photograph, Mr. Wallis,
5 which is -- if you want to look here, I think they
6 should all be in the same order. But what do you see in
7 the first photograph?

8 A. I see a series of TSX electronic voting
9 devices.

10 Q. And where are these located currently?

11 A. Well, these --

12 Q. Well, based on what you see on this picture,
13 where are they located in this photo?

14 A. Besides being located in the warehouse there,
15 one of them is placed in every polling location on
16 election day and they are also -- they're also placed in
17 our early voting section.

18 Q. So on -- okay. So what are these touch screens
19 used for at the polling places?

20 A. They are placed in the polling places to
21 service voters with specific needs such as sight issues
22 where they can't see a paper ballot. Also for voters
23 that may be illiterate, these machines also have audio
24 on them, so it allows voters to vote a ballot if they
25 cannot vote the paper ballot.

26 Q. And it also has multiple languages available;
27 is that correct?

28 A. That's correct.

1 Q. So if on election day someone goes to their
2 polling place and indicates they want to use the touch
3 screen machine, what happens?

4 A. The machine is delivered to the polls by a
5 touch screen inspector. The unit on election day is
6 brought up through a series of events that -- where
7 certain things need to pass, like security seals and
8 locks. The unit needs to be in a condition where it may
9 not have been tampered with.

10 Once they bring that up and they put it into
11 election mode, the poll workers have a supervisor card
12 that they would go over and place into the unit which
13 would take it into an administrative mode where they
14 would -- they can create a voter access card.

15 Q. And just to stop you for one second there,
16 Mr. Wallis, you said the poll workers are given the
17 supervisor card. How many people at each polling place
18 have that card?

19 A. The touch screen inspector has that card at the
20 polling place.

21 Q. Okay. The one. Okay. Go ahead. So just one?

22 A. Just one that I know -- that I know uses that
23 card.

24 Q. Okay. So I'm just trying to clarify. It's not
25 every poll worker who is working at a polling place has
26 one of these cards?

27 A. No. There is a touch screen inspector that is
28 assigned to work that particular device.

1 Q. Okay. And so, as you were saying, once they --
2 once the -- it's made ready to vote on, what occurs?

3 A. So once the poll worker creates a voter access
4 card for the voter, they place the voting machine back
5 into regular voting mode and the -- and the voter will
6 go over and insert the voter access card into the unit
7 and vote the ballot and cast the ballot.

8 Q. Okay. And does the touch screen machine itself
9 also have some sort of memory device in it?

10 A. Yes, it contains a memory card.

11 Q. And does that memory card -- is that already in
12 the machines when they are delivered to the polling
13 places?

14 A. Yes. They are already inserted into the
15 machine at our office.

16 Q. And is there something on the machine to
17 prevent that from being tampered with?

18 A. Yes. The machines have two -- two mechanisms.
19 They have physical locks on each of the doors, the one
20 that accesses the memory card and the one that accesses
21 the power. They also have security seals that are
22 placed on the unit and those security seals are
23 recorded.

24 Q. About how many voters cast ballots on touch
25 screens in the past election?

26 A. Between 700 and a thousand, I recollect.

27 Q. So it's a pretty small number?

28 A. Yes.

1 Q. So do you recall how many votes were cast in
2 this election or that were counted?

3 A. The total?

4 Q. Yes.

5 A. Somewhere around 700,000.

6 THE COURT: One moment, Counsel. One moment.

7 MS. KARNAVAS: Sure.

8 THE COURT: It is now 3:00 o'clock. Let's take
9 our afternoon break. It is -- well, right at 3:00. We
10 will be in recess 15 minutes.

11 Feel free to step down, Mr. Wallis.

12 (Recess taken.)

13 THE COURT: Now, Mr. Wallis, you can either
14 look at the overhead or you can stare at the color
15 photograph in your volume.

16 All right. So, Counsel, let me just get -- one
17 second here.

18 All right. Please continue with your redirect.

19 BY MS. KARNAVAS:

20 Q. Okay. Mr. Wallis, what's there up on the
21 screen which I've marked for identification as part of
22 Exhibit 154?

23 A. That's a TSX voting unit with the voter
24 verified paper trail attached to it.

25 Q. Okay. And when you say the TSX voting unit,
26 for short, that's the touch screen, right?

27 A. That's correct. Sorry.

28 Q. Okay. I'm going to put another photograph up

1 here.

2 A. That is a photograph of a VVPAT unit. It
3 presents the voter with their choices that they make
4 after they have voted their ballot.

5 Q. Okay. So when an individual finishes voting
6 their ballot, what happens?

7 A. The machine prints the voted selections out in
8 this small window in groups, allows the voter to verify
9 that the ballot -- that the candidate or contest that
10 they voted on is voted accurately, and it allows them to
11 advance it to the next set of contests until they have
12 completed the ballot in which they can cast the ballot.

13 Q. And then looking back at again at the picture
14 we just had up, the picture of the overall machine, are
15 there selections indicated there also on the screen?

16 A. The selections -- the selections on the screen
17 in the photograph is the machine is undergoing what they
18 call phase one testing. So this is where the touch
19 screen is encoded with a key that is specific for the
20 election.

21 Q. Okay. So we'll get to that in just a moment,
22 Mr. Wallis. But just imagine here that I'm a voter.

23 A. Okay. Sorry.

24 Q. And I'm voting my votes on this touch screen
25 machine, even though that's not what it's going to look
26 like. Would I be able to see my selections in going and
27 touching?

28 A. Yes, you would be able to see each contest as

1 you voted it; and at the end, you would be presented
2 with a summary on the screen and also on the paper tape.

3 Q. Okay. Thank you.

4 At that point, once a voter verifies their
5 selections, what do they do?

6 A. After they verify their selection, they press a
7 button down in the lower right hand that says "cast
8 ballot."

9 Q. And then what happens?

10 A. The voter access card is deactivated and
11 ejected from the machine and the voter verified paper
12 trail advances into a canister where it's -- where it's
13 ready for the next voter.

14 Q. Okay. And the voter access card is deactivated
15 just as a matter of course?

16 A. Yes.

17 Q. You don't have to do anything other than take
18 it out to deactivate it; is that correct?

19 A. It deactivates it and dejects the card.

20 Q. Once the ballot is cast?

21 A. Correct.

22 Q. So somebody couldn't just take that card and
23 pop it in and change the codes?

24 A. No, the card doesn't work that way.

25 Q. What ultimately happens to the paper trail?

26 A. The paper trail -- the canister has a seal on
27 it. At the end of the election, the poll workers close
28 it, close this device down, prints a summary tape at the

1 end of all of the votes and on the -- that were cast on
2 the touch screen, and it rolls up inside the canister
3 which they return to the registrar of voters office.

4 Q. And how do the votes that were voted on these
5 machines actually get counted -- added to the count?

6 A. For votes that are cast on the touch screens at
7 the polling place, the voter verified paper trail is
8 used to transfer the votes from the voter verified paper
9 trail on to optical scan ballots and they are scanned
10 through the central count.

11 Q. Okay. And again, in this last election, you
12 said there were only maybe -- there were under a
13 thousand voters who use these machines?

14 A. That's correct.

15 Q. Okay. I'm going to show you what I've marked
16 for identification as Exhibit 152. And can you tell the
17 Court what this is a photograph of.

18 A. That is a photograph of an optical scan device
19 that reads ballots.

20 Q. And where will these be located on election
21 day?

22 A. On election day they serve two functions. The
23 primary function they will be in our warehouse where
24 they will be used to scan ballots that come from the
25 polling place, and there will also be in the central
26 tabulator room where they are used to upload results
27 from those devices in the warehouse to the central
28 tabulator.

1 Q. Okay. And I see to the right there appears to
2 be something sticking out of the scanner. What is that?

3 A. That's a memory card.

4 Q. Okay. And I've got a close-up photo. And what
5 is that there on the screen?

6 A. That's a memory card that is coded for sequence
7 two for that election.

8 Q. And the next photograph is what?

9 A. It's the reverse side of the card.

10 Q. Okay. Can you explain to the Court how ballots
11 are scanned into these machines out on the counting
12 floor on election night?

13 A. On election night we set up approximately 160
14 of these devices. The ballots are delivered from the
15 collection centers to our warehouse area where the
16 ballots run through a series of processes. When they
17 are delivered to an operator who operates one of these
18 machines, the operator opens up the carton, they --
19 inside the carton is a memory card, they place that
20 memory card in the unit, they turn the unit on, it will
21 start printing a zero tape that is specific to the
22 precinct that they are going to scan and the ballots
23 that are in the ballot carton.

24 After the tape prints, they will scan all of
25 the ballots in the ballot carton and they will then run
26 an ender card to close that memory card out, and that
27 will print a tape that has the results of all the
28 ballots that were run through.

1 And they will then close out that particular
2 session, and they will deliver the memory card and
3 ballots to another person who will take them to storage,
4 the ballots to storage or the memory card to be
5 uploaded.

6 Q. Okay. So what does the -- what does the
7 memory -- what's the purpose of the memory card in this
8 scanning operation?

9 A. The purpose of the memory card is to -- is to
10 allow only ballots for that precinct to be scanned
11 through the particular scanner.

12 Q. Okay. And when you said they first turn on the
13 machine, it runs a zero tape, what did you mean by that?

14 A. When they turn it on, it physically produces a
15 tape of -- it indicates the total ballots that are on
16 the memory card at the time it's turned on plus any
17 votes that are accumulated for any contest on that
18 particular memory card.

19 Q. Okay. And then the ballots are scanned in; and
20 at the end, you indicated there is another tape that
21 gets printed, correct?

22 A. Correct. When they are done scanning every
23 ballot in the ballot carton, they run what they call an
24 ender card that closes out that particular memory card
25 which causes it not to accept any more ballots and it
26 prints another tape with the total ballots cast that the
27 scanner ran plus a breakdown of all the votes on those
28 ballots.

1 Q. Okay. So I'm going to show you a couple of
2 things, Mr. Wallis. I'm holding up here a pink card
3 that says AccuVote ender card. This has been marked for
4 identification as Exhibit 158. And is this the ender
5 card that gets run through the scanner?

6 A. That is correct.

7 Q. Or an example of one?

8 A. Yes.

9 THE COURT: One moment, Counsel. Just give me
10 a moment. It's 158, the ender card?

11 MS. KARNAVAS: Yes. I'm just marking it for
12 identification.

13 THE COURT: I got you. All right.

14 BY MS. KARNAVAS:

15 Q. Mr. Wallis, if you can direct your attention to
16 me, I'm holding up a long tape that you provided me.

17 And I'll mark this for identification as
18 Exhibit 190.

19 And can I approach, your Honor?

20 THE COURT: You bet.

21 My exhibit list does not say that anything has
22 yet been marked on the list. Is this a new document?

23 MS. KARNAVAS: Yes. It's just demonstrative.

24 THE COURT: And this is described as?

25 MS. KARNAVAS: This is a paper tape.

26 THE WITNESS: This is an AccuVote OS paper
27 tape.

28 THE COURT: All right. Just give me a moment.

1 All right. Continue on.

2 BY MS. KARNAVAS:

3 Q. Mr. Wallis, can you describe for the Court
4 what -- if that were -- is that similar to a tape that
5 would be printed out from one of these optical scanners
6 here on the screen?

7 A. Yes, it is.

8 Q. And what type of information is located on
9 there?

10 A. It has the information about the AccuVote OS
11 unit and the software that's running on it. It also has
12 the precinct that it's assigned to, and it also
13 indicates the ballots cast and also each contest with
14 each candidate and the number of votes that would be
15 cast for each of them.

16 Q. So once the scanner operator prints that tape
17 out, what happens to it?

18 A. For this one at the end, they -- after it gets
19 done printing, they sign the bottom portion of the tape
20 where there are lines where it says "signatures," and
21 they place this tape inside the ballot carton with the
22 voted ballots from the polling place.

23 Q. What happens if a scanner operator is going
24 along scanning ballots and one wasn't scanned?

25 A. When the box is prepared for the scanner
26 operator to scan ballots, there are two things that are
27 placed in the ballot carton. One is the memory card and
28 one is a sheet of paper, colored sheet of paper, that

1 has the precinct number on it that is an unscanned
2 damage cover sheet. If a ballot won't run through the
3 scanner, that ballot is placed under that cover sheet
4 and it's placed in a bin for later processing.

5 Q. And is there some way to keep track of those
6 ballots?

7 A. We keep track of those ballots -- those ballots
8 are counted specifically and stored in specific batches.

9 Q. What are some reasons why a ballot won't scan?

10 A. There is a number of reasons. Sometimes they
11 can be torn. The other reason may be that the timing
12 mark has been damaged by the voter with a pen.

13 They can be under voted. Ballots may be marked
14 poorly so that they appear to be under voted but they
15 really are not. So they're pulled.

16 Q. And eventually subject -- are they subject to
17 some sort of inspection process?

18 A. Yes. After election day, they are reviewed and
19 corrected to the voter intent.

20 Q. Okay. Mr. Wallis, I'm going to show you what's
21 been previously marked for identification as
22 Exhibit 150.

23 And, your Honor, I actually have a blowup of
24 this one over here in the corner. Can I just retrieve
25 that? Still kind of small. But, yeah, your Honor, you
26 also have a smaller version of this document in your
27 binder.

28 MR. GERACI: It may be helpful if your Honor to

1 move it to the center.

2 THE COURT: Mr. Deputy, can I ask you to assist
3 counsel and Mr. Wallis to readjust the location of the
4 blowup.

5 And Mr. Wallis, if you want to step down and
6 position yourself -- oh, boy. That's awfully small.
7 Position yourself closer to the blowup.

8 And Counsel, if you want to readjust your
9 positions, feel free to do so.

10 This is 150?

11 MS. KARNAVAS: Yes, your Honor.

12 THE COURT: All right. Okay. I got you.

13 MS. KARNAVAS: Okay.

14 THE COURT: Counsel, next question.

15 MS. KARNAVAS: Sorry. Okay.

16 BY MS. KARNAVAS:

17 Q. Mr. Wallis, can you explain what Exhibit 150 is
18 there?

19 A. 150 is a diagram of our election night central
20 count operation.

21 Q. And how many scanners does it indicate will be
22 utilized on election night?

23 A. For the November election, there are 160
24 scanner operators assigned for that election.

25 Q. And does that number stay static or does it
26 change from time to time during the different elections?

27 A. Changes depending on the size and complexity of
28 the election.

1 Q. So using this document, can you describe to the
2 Court how precinct ballots will be processed on election
3 night?

4 A. Yes. So precinct ballots are collected from
5 the polling places at what we call collection centers.
6 Those collection centers have a number of pickups
7 throughout the night that deliver ballots. This is our
8 east side of the building. There is a driveway here.
9 And this is a conveyer belt.

10 So ballots are brought in through this access.
11 They are dropped at the conveyer belt and rolled in to
12 these staging tables. At the staging tables, they are
13 then passed off to these valid inspection people who
14 actually go into the box, they record things like was
15 the seal -- was the box sealed? Was it signed? So they
16 are taking information down.

17 They are also looking inside the ballot cartons
18 to ensure that there are only voted ballots, that there
19 are no envelopes or other strenuous items. All the
20 extraneous items and ballots remain when it leaves this
21 section.

22 It comes into the green section here where it
23 is placed at one of these ten stations. We have 1552
24 precincts coming in on election night, so the first one
25 handles the first hundred precincts, the second one
26 handles another and so on and so forth.

27 So ballot carton one may drop into the first
28 people. They have memory cards and the cover sheets.

1 They're placed inside the ballot carton and then the
2 ballot cartons go to one of the 160 scanner operators
3 where the ballots are scanned.

4 After they are scanned, the ballots and the
5 memory card are delivered to a runner. The ballots are
6 delivered to a secure ballot storage and another runner
7 delivers the memory card to the tabulation room where
8 it's uploaded.

9 And that happens over and over again until all
10 1552 are done.

11 Q. And Mr. Wallis --

12 THE COURT: Counsel, I just want to make sure.
13 This is a diagram of the county's election night central
14 count what?

15 MS. KARNAVAS: Counting floor.

16 THE COURT: Counting what?

17 MS. KARNAVAS: Counting floor.

18 THE COURT: Counting floor, okay. Got you.

19 Thank you very much. Continue on.

20 MS. KARNAVAS: Your Honor, actually, I would
21 move to have this admitted into evidence, the --

22 THE COURT: Do you have any other questions
23 from Mr. Wallis on the subject of this exhibit?

24 MS. KARNAVAS: No -- well, actually a couple of
25 questions.

26 THE COURT: All right. Why don't you do that
27 and then we are going to move it back to where it was
28 subject to any additional examination by opposing

1 counsel, but let's complete your examination first.

2 MS. KARNAVAS: Okay.

3 BY MS. KARNAVAS:

4 Q. I don't know if I need you to point anything
5 out necessarily here, Mr. Wallis.

6 But have you ever worked on an election where
7 there was a two-card ballot as there will be in this
8 November election?

9 A. No.

10 Q. Okay. And in your mind, is that going to have
11 any impact on this process that you've just described
12 here in Exhibit 150?

13 A. Yes.

14 Q. And can you describe that?

15 A. Basically, the amount of time to scan ballots
16 will double. There is also -- the size of this election
17 causes the OS paper tape to be longer. It takes longer
18 to print those. It takes longer to scan the ballots.
19 So the process through the election night will run
20 longer.

21 The other part is that, in past elections, the
22 ballots have always come in in a single ballot carton.
23 Only one carton was needed. In this election, there may
24 be as many as 50 percent that will now have two ballot
25 cartons that will need to be married up, brought
26 together. Because when they come in, they are not
27 coming in as a group. They are coming in as individual
28 boxes.

1 So a box that -- a precinct where there are two
2 boxes at some time we are going to have to bring those
3 two boxes together and send them to a scanner operator
4 because all the ballots, regardless of how many boxes
5 they are in, will have to be scanned in one room.

6 Q. And Mr. Wallis, what's depicted here in the
7 counting floor, where is this located exactly?

8 A. This is in the warehouse area of the registrar
9 of voters office at 5600 Overland Avenue.

10 Q. So the County of San Diego doesn't count any
11 ballots out of the polling places; is that correct?

12 A. That's correct.

13 Q. They all get counted here on the floor?

14 A. That's correct.

15 Q. Okay. I think you can go ahead and get back on
16 the stand.

17 THE COURT: Could you relocate the --

18 THE BAILIFF: Yes, your Honor.

19 THE COURT: Thank you, Mr. deputy.

20 So, Counsel, you're moving Exhibit 150 into
21 evidence?

22 MS. KARNAVAS: Yes, your Honor.

23 THE COURT: All right. Any objection?

24 MR. GERACI: No objection.

25 THE COURT: All right. Let's back up to -- my
26 notes indicate that first of the series of exhibits that
27 the defense used for demonstrative purposes only started
28 at Exhibit 155.

1 What I'd like to suggest is that all of these
2 exhibits be moved into evidence.

3 MR. GERACI: Without objection.

4 THE COURT: All right. That's easy.

5 Any objection, Counsel?

6 MS. KARNAVAS: No.

7 THE COURT: So let's catch up with one another.

8 MS. KARNAVAS: So I think we had one --

9 THE COURT: Let me go through my notes and --

10 MS. KARNAVAS: Sure, okay.

11 THE COURT: Exhibit 155 will be admitted.

12 (Exhibit 155 was received in evidence.)

13 MS. KARNAVAS: Kind of jumped around. So 154.

14 THE COURT: That's what I was going to go to.

15 So 154 will be admitted. 152 will be admitted.

16 158 will be admitted.

17 And one moment here.

18 190 will be admitted.

19 MR. GERACI: And then 150.

20 THE COURT: 150 will be admitted.

21 (Exhibits 154, 152, 158, 190 and 150 were received in
22 evidence.)

23 THE COURT: Just give me a moment. I need to
24 make some adjustments to my notes.

25 All right, Counsel. Please continue.

26 MS. KARNAVAS: Your Honor, at this time we
27 would like to play a video as a demonstrative.

28 THE COURT: What exhibit is it marked as?

1 MS. KARNAVAS: Exhibit 151.

2 THE COURT: Okay. And will there any words
3 spoken on the --

4 MS. KARNAVAS: No, your Honor. We've muted the
5 sound.

6 THE COURT: All right. Any objection from
7 plaintiff?

8 MR. GERACI: No, no objection.

9 THE COURT: All right. Are you going to have
10 Mr. Wallis explain what we are looking at?

11 MS. KARNAVAS: Yes, your Honor.

12 THE COURT: All right.

13 (Video played.)

14 BY MS. KARNAVAS:

15 Q. Mr. Wallis, can you describe what's going on
16 here in the video?

17 A. It appears that that is the receipt of supplies
18 that would normally go to a polling location.

19 Q. And just to clarify, is this the current
20 warehouse for the registrar of voters as far as you can
21 tell?

22 A. No, that is our old office.

23 Q. Okay.

24 (Video played.)

25 BY MS. KARNAVAS:

26 Q. And it looks like this is still just receiving
27 back from the polls; is that correct?

28 A. Correct. These are poll supplies and the touch

1 screen device coming back from the polling place.

2 Q. I paused the video here for a moment. What do
3 you see on the screen? It's kind of blurry, but --

4 A. That's a ballot carton from the polling place.

5 Q. Okay.

6 (Video played.)

7 BY MS. KARNAVAS:

8 Q. And what's that blue thing there on the bottom?

9 A. It's a security seal.

10 Q. And can you describe what's happening here in
11 this photo or this video, this part of the video?

12 A. On this one they are doing what they call
13 ballot inspection. They are flipping through the
14 ballots looking to see if there are any mail ballots is
15 what one of them was doing. They're trying to find out
16 if there are ballots that shouldn't be in there. Mail
17 ballots shouldn't be coming back in this ballot carton.

18 They are also looking for blank ballots, torn
19 ballots, any type of ballot that would not scan.

20 Q. And when you were going over the prior exhibit,
21 the configuration of the counting floor, does that
22 happen -- that process that we were just looking at,
23 does that happen in a certain area?

24 A. Yes, it happens right off the ballot staging
25 area.

26 Q. And does that area have a name that's on
27 that --

28 A. It's called ballot inspection.

1 Q. Is it also sometimes referred to as the tally
2 center or is that different?

3 A. The entire operation was referred to as the
4 tally center in -- prior -- in our prior building, but
5 in this -- in this we call it -- we broke them up into
6 separate groups.

7 Q. Okay.
8 (Video played.)

9 BY MS. KARNAVAS:

10 Q. Can you tell what's going on here in the video
11 now?

12 A. Again, that is ballot inspection. And that is
13 what they call the memory card marrying. That's where
14 they are placing a memory card and the yellow sheet is
15 the unscanned damage ballot sheet into the ballot carton
16 in preparation for it to be scanned.

17 Q. And behind -- I think that's Deborah Seiler
18 there. Do you recognize her in the video?

19 A. Yes, I do.

20 Q. Behind her what's happening?

21 A. Those are scanner operators that have received
22 a ballot carton and they are processing the ballots.

23 Q. And can you explain now what's happening in the
24 video?

25 A. After the ballots are scanned, the memory card
26 is closed, the memory card is delivered to an operator
27 in the tally room where it's uploaded to the central
28 tabulator.

1 Q. Okay. Thank you.

2 (Video stopped.)

3 BY MS. KARNAVAS:

4 Q. So you're talking about scanners located in the
5 tabulation room. That's where the server is located; is
6 that correct?

7 A. That's correct.

8 Q. And those scanners, I believe you said, are
9 identical to the ones that we looked at there on the
10 screen earlier; is that true?

11 A. That is correct.

12 Q. Okay. Is there any difference?

13 A. There is no difference between them.

14 Q. Is there a difference in how the information is
15 delivered to the GEMS system between the scanners that
16 are out there with the scanner operators and those in
17 the tabulation room?

18 A. The units that are out in the tabulation area
19 on election night or the scanning area, the ballots are
20 written to a memory card, so there is no interaction
21 between those devices and the central tabulator. Only
22 those devices in the memory card.

23 The memory card is then sent to the tabulation
24 room where it is placed into an OS unit, which is
25 identical to the unit that is used to scan them on the
26 floor except that it is connected to the server through
27 what they call a serial communications port where the
28 results from the memory card are uploaded to the central

1 tabulator by precinct.

2 Q. Okay. And I previously marked for
3 identification some photographs under Exhibit 153. I'm
4 just trying to get our thing up and running again.

5 So I'm going to the show you a group of photos
6 that I marked as Exhibit 153. And what do you see there
7 in this photograph?

8 A. That's what they call a serial digibox.

9 Q. Okay. And there is another photo in this
10 grouping. Can you tell the Court what that depicts?

11 A. It's the same device except you see the wires
12 that are connecting the OS devices to it.

13 Q. So those wires connect the optical scanners to
14 the central tabulator, correct?

15 A. They -- those wires connect to the -- to the --
16 both the scanners and to the central tabulator.

17 Q. Okay. And for these, I've got another picture
18 of a scanner that's in that same grouping, 153.

19 Can you just identify what's in this
20 photograph?

21 A. That is an OS device that's configured for
22 central count operation.

23 Q. And again, as you said, it looks identical,
24 correct?

25 A. It looks identical, but it runs different
26 software.

27 Q. Okay. And with these, is the process of
28 scanning the ballots -- so which type of ballots gets

1 scanned on these machines? Which scanners?

2 A. All types of ballots get scanned on these.

3 Q. Okay. What about do vote-by-mail ballots ever
4 get scanned out on counting floor, or how are those
5 processed?

6 A. No. Vote-by-mail are never scanned on the --
7 through a device that utilizes a memory card. They are
8 only scanned through these devices that are directly
9 connected to the GEMS server.

10 Q. And to use this scanner that's configured
11 specifically to connect to -- directly to the GEMS
12 server, is the process of scanning the same or is it
13 different?

14 A. It is similar. The operator retrieves a carton
15 of ballots. In this instance, though, they run what
16 they call a start card. A start card identifies what
17 deck they need to run. It's assigned to the carton of
18 ballots. They run that start card. They then run all
19 the ballots that are in the carton and they run an ender
20 card just like the operators in the warehouse do to
21 close the particular batch.

22 Q. And I'm holding up what I previously marked as
23 Exhibit 157. Is this the start card that you -- an
24 example of a start card that you're referring to?

25 A. It's an example, a generic start card.

26 Q. And there are some black marks that go up and
27 down the side. And can you just describe what those
28 are?

1 A. The ones going down the side are a timing mark.
2 The ones on the top and the bottom are reference marks
3 and also identify what type of card it is.

4 Q. Okay.

5 THE COURT: Are you moving that into evidence,
6 Counsel?

7 MS. KARNAVAS: I think I'm just going to leave
8 it for demonstrative purposes, your Honor.

9 THE COURT: All right.

10 BY MS. KARNAVAS:

11 Q. Since you don't have the memory card in these
12 particular scanners to tell the scanner which precincts
13 the votes are assigned to, how did the votes that are
14 tabulated get entered -- properly assigned and entered
15 into the count?

16 A. Each ballot is coded to a precinct. It has a
17 ballot style. When the ballot is inserted into this
18 device, it calls upon the server to deliver the
19 structure of the ballot. It then verifies the ballot
20 that was read through. It accumulates the voting
21 positions on the ballot. And if everything passes, it
22 delivers the ballot to the central count system and
23 reads the next ballot. It will read any ballot for any
24 precinct in any orientation.

25 Q. And do you expect that the scanning of
26 vote-by-mail ballots will take longer with this upcoming
27 presidential election as a result of the fact that there
28 is a two-card ballot?

1 A. Yes, because there will be twice as many of
2 them.

3 Q. Okay. So now that we have an idea of the
4 components that are used to tabulate the votes, I would
5 like to go back and talk about what you do prior to the
6 election to make sure the equipment is working properly.

7 A. So prior to the election and prior to using the
8 system, it goes through some rigorous testing. We do
9 hardware testing on all of the units. We do phase one
10 testing on both the OS and the TSX units where we run
11 ballots through both of them. We also perform logic and
12 accuracy testing on the systems using premarked ballots
13 and also hand marked ballots. We do hardware tests on
14 the units also.

15 Q. So just taking those sort of one at a time here
16 just to make sure we capture everything. First, as to
17 the hardware, can you explain what's done physically to
18 test the functionality of the optical scanners like the
19 one that we are looking at, whether it's this one or the
20 ones that are on the counting floor since they are on
21 the same?

22 A. The OS units go through a series of tests where
23 there are built-in internal tests that test the
24 printers, they test the LEDs, they test all components
25 of the OS device.

26 We also have premarked ballots that we run into
27 these units to ensure that they're reading ballots
28 correctly, that the read heads are operating and

1 functioning properly.

2 Q. And I believe I have a copy. Let's see.

3 May I approach the witness, your Honor?

4 THE COURT: You bet.

5 BY MS. KARNAVAS:

6 Q. This has been previously marked for
7 identification as Exhibit 159. Is that what you were
8 referring to, Mr. Wallis?

9 A. Yes.

10 Q. As the card that you run through the scanners?

11 A. Yes, this card is -- this is a test card that
12 is used to ensure that the read heads are functioning
13 properly on the unit.

14 Q. And do you run these in each of the scanners?

15 A. We run them any time that we are going to
16 process ballots through a scanner.

17 Q. And when do you run them on there?

18 A. Immediately prior to running any ballots.

19 Q. Okay. Does the -- just talking about the
20 actual testing of the hardware before we get to the
21 logic and accuracy test, are the TSX machines also put
22 through some sort of -- I think you referred to it as
23 phase one testing.

24 A. They go through a phase one test where they are
25 loaded with specific keys. But in that process, they
26 are checking for collaboration of the units to make sure
27 that the printers are working properly. So there is a
28 checklist of whether we have the date and time set

1 properly and various other items.

2 Q. And do the hardware systems actually have,
3 like, a diagnostic mode similar to a computer you can
4 run it through?

5 A. Yes. Internal diagnostic on the start up test.

6 Q. Do you also test the memory cards that get
7 loaded into the scanners?

8 A. Prior to any election, we place those into an
9 OS device and we run them through a process that tells
10 us whether the memory card is defective. In other
11 words, the battery has gotten below its charge or that
12 the memory card can't read the entire memory of the
13 card.

14 Q. After you ensure that all the actual hardware
15 components seem to be functioning properly, do you run
16 any other tests to ensure that those will be properly
17 counted by the GEMS system?

18 A. Well, after the hardware tests are run, we
19 actually run a full logic and accuracy test on the
20 system. We acquire premarked ballots from a vendor. We
21 run those ballots through each of the three scenarios.
22 One would be that they would be run through the central
23 count system, they would also be run through an OS unit
24 with a memory card, and they would be manually voted on
25 the touch screen device.

26 Q. And what is your role exactly in performing
27 these different logic and accuracy tests?

28 A. So I order the logic and accuracy ballots for

1 precincts that we have defined that contain every
2 contest and measure and also every rotation. So we have
3 a set of those precincts that we order those decks for.
4 And I'm responsible for instructing the group on how to
5 perform the test and also verifying the test at the end.

6 Q. So I just want to give the Court a little more
7 flavor as to what these tests actually are.

8 Can you describe in some detail what the
9 different tests are?

10 A. There are a series of tests that -- test
11 ballots that are run. One test is what they call a
12 fully voted ballot. In other words, for a particular
13 ballot, not all ballots contain the same voting
14 positions.

15 Q. Meaning what?

16 A. Meaning that -- meaning that a contest with
17 candidates on one ballot may not occupy the same
18 physical space on another ballot. So, in other words,
19 Assembly District 71 and a candidate may be in a
20 different position on one ballot than another ballot.

21 Q. So on the November election, do you know off
22 the top of your head how many different ballot types
23 there will be?

24 A. There will be 623 different ballot types.

25 Q. Okay. So you were saying there was a fully
26 voted test?

27 A. So there is a fully voted deck where every
28 possible position on that particular ballot is marked

1 and a special test is run to ensure that the GEMS system
2 can read all of the possible marks on the ballot.

3 We also run a blank card through for each
4 precinct to ensure that blank cards can't be counted.

5 There is another standard deck that's always
6 been produced, and it's called an LA-5 deck. And what
7 that does is it produces incrementing votes per
8 candidate, per contest. In other words, the first
9 candidate would receive one vote, the second one would
10 receive two, the third would receive three, and four and
11 so forth.

12 So we order those for all of the precincts that
13 are in the logic and accuracy test group.

14 Q. So, to be clear, when you are saying you were
15 running these tests, are you running them on actual
16 ballots, sample ballots that will be used in the
17 election?

18 A. We are not running them on ballots that will be
19 used in the election. But we are running on ballots
20 that were created off of the same PDF files that will be
21 used where all the rest of the ballots in the election.

22 Q. And about how many -- about how many of those
23 tests, for lack of a better word, test ballots were used
24 to test the systems in the June election, for example?

25 A. I believe that we ordered approximately 20,000
26 ballots.

27 Q. So 20,000 different ballots were run on these
28 various machines to conduct a series of tests before any

1 votes were tabulated on them?

2 A. That's correct.

3 Q. So I think you've talked about the fully loaded
4 test, the LA-5 deck. And are there any other tests,
5 logic and accuracy test?

6 A. On the logic and accuracy test, we don't depend
7 on the results coming from the vendor off these
8 premarked cards. We manually tally these cards prior to
9 running them and produce a spreadsheet that tells us how
10 many votes were manually tallied.

11 Once we run these through the tabulation
12 system, produce results -- we check back to those manual
13 tallies so we are assured that somebody has actually
14 done similar to a 1 percent on those ballots and
15 verified that those same results can be replicated in
16 every possible voting scenario through the election.

17 Q. And does part of this testing also include
18 transmission of the data into the actual GEMS system?

19 A. Yes, we simulate the election night process by
20 running the LA-5 decks through scanners on to memory
21 cards and uploading those memory cards to the central
22 tabulator.

23 Q. And what were the results, for example, a
24 successful logic and accuracy test like that look like?

25 A. They would be -- they would be a report that
26 matches the manual tally of the ballots that were
27 included in that particular test.

28 Q. And did you successfully complete logic and

1 accuracy testing for the June 2016 election that
2 confirmed that the votes were being properly tabulated
3 by the machine?

4 A. Yes, we did.

5 Q. And does the County maintain the records
6 relating to logic and accuracy testing?

7 A. Yes, we do.

8 Q. And do you run these tests -- do you also
9 perform logic and accuracy testing that you described
10 similar to what you described on the touch screen
11 machines?

12 A. On the touch screen machines, we take the
13 ballots that are used, the LA-5 test decks, and we
14 manually vote on those on the touch screen. We compare
15 the voting there by paper trail against other results
16 that were run on the manual tally and the OS -- on the
17 OS central count.

18 Q. And do you run these logic and accuracy tests
19 before every single election?

20 A. Yes, we do.

21 Q. How long does the testing generally take?

22 A. Depends on the size of the election. It could
23 take anywhere from one day to ten days.

24 Q. Do you recall how long testing for the June
25 election took?

26 A. I believe that test took almost the full ten
27 days.

28 Q. And does the registrar of voters also as a part

1 of its overall testing even conduct a public logic and
2 accuracy test?

3 A. Yes, we do.

4 Q. And that's done in every single election?

5 A. Yes, it is.

6 Q. And who performs that test?

7 A. I perform that test.

8 Q. And in the past, have members of the public
9 come to view that logic and accuracy testing?

10 A. Yes.

11 Q. And what happens when a member of the public
12 comes to do that?

13 A. They are given an overview of the system and we
14 basically vote use -- we randomly select one of the
15 precincts that was used in the logic and accuracy test.
16 We run that through all portions of the system, in other
17 words, OS central count, also the election night scanner
18 to memory card, and we have them vote on the touch
19 screens and we compare the votes against the cards and
20 how they voted on the touch screens.

21 Q. And do you recognize Mr. Lutz here sitting to
22 my left?

23 A. I recognize Mr. Lutz.

24 Q. You've seen him before?

25 A. I've seen him before.

26 Q. Have you ever seen him participate in any
27 public logic and accuracy test?

28 A. Not to my knowledge.

1 Q. And how long have you been the person in charge
2 of running those logic and accuracy tests?

3 A. Twenty-six years.

4 Q. I'm sorry. 26 years?

5 A. Yeah, sorry. I had to think about that.

6 Q. Mr. Wallis, you were asked some questions
7 earlier about your role in the 1 percent manual tally.

8 Do you recall that?

9 A. Yes.

10 MS. KARNAVAS: I'd like to go ahead and show
11 the witness what's been previously marked for
12 identification as Exhibit 175.

13 THE COURT: All right. Just give me one second
14 here. All right.

15 BY MS. KARNAVAS:

16 Q. Do you have that in front of you, Mr. Wallis?

17 A. Yes, I do.

18 Q. Can you identify what this is?

19 A. It appears to be an election summary report
20 that was used in the 1 percent manual tally.

21 Q. Okay. And so is this essentially a results
22 bulletin?

23 A. Yes, it is.

24 Q. Okay. And the one I'm showing you here,
25 Exhibit 175, is this one that you would have pulled for
26 purposes of the 1 percent manual tally?

27 A. This is one that, yes, I would have pulled for
28 the 1 percent manual tally.

1 Q. This -- sorry. This exhibit has some pencil
2 markings on it. Are those yours?

3 A. No.

4 Q. Okay. So when you pull this type of report, is
5 it free of any of those sort of pencil markings?

6 A. Correct. When I deliver this report, there are
7 no marks on it.

8 Q. So other than the markings, the additional
9 pencil markings on here, does this appear to be a report
10 that you pulled for the 1 percent manual tally in the
11 June election?

12 A. Yes, it does.

13 Q. Okay. And was this for polls ballots or
14 vote-by-mail ballots?

15 A. This was for polls ballots.

16 Q. And how can you tell that?

17 A. On the last line in the header it says,
18 "1 percent manual tally polls."

19 Q. And how do you generate this report?

20 A. This is generated through the GEMS system
21 through a standard report module.

22 Q. And are you also as part of your job duties
23 required to pull the reports for the 1 percent manual
24 tally of the vote-by-mail batches?

25 A. That's correct.

26 Q. And would those reports be pretty similar to
27 this?

28 A. They would be identical.

1 Q. They would be identical. At the top would it
2 indicate there was a batch instead of a poll?

3 A. It would indicate there was a deck.

4 Q. A deck.

5 And is the process for generating a report for
6 the vote-by-mail batches the same as it is for the
7 report for precinct ballots?

8 A. No.

9 Q. Okay. Can you explain why that's the case?

10 A. The polls ballots -- because only -- because at
11 the time the reports are created, the only polls ballots
12 that are in the system are those from election night.
13 So by running the report against the polls portion of
14 the system, you only get results for the polling ballots
15 that were cast on election night.

16 Q. So if you want to generate a report for
17 vote-by-mail ballots, what do you have to do?

18 A. If I want to generate one by deck, I have to
19 make a copy of the database and I have to delete every
20 deck out of the system, every early voting unit out of
21 the system and run the report for mail.

22 Q. And so it sounds like the system itself does
23 not have any automated mechanism for pulling the sort of
24 results report by deck; is that true?

25 A. That's correct. You cannot run a report by
26 deck.

27 Q. Automatically?

28 A. The feature isn't in the system.

1 Q. Okay. So in the last election, about how many
2 vote-by-mail ballots -- batches, excuse me, did you have
3 as of election day, if you recall?

4 A. I don't recall, but I think it was somewhere
5 around seven or eight.

6 Q. Seven or eight?

7 A. The number.

8 Q. Batches or --

9 A. Batches.

10 Q. Okay.

11 A. Decks.

12 Q. Decks. Okay.

13 How many -- do you recall how many you had at
14 the end of the election?

15 A. How many decks I had at the end of the
16 election?

17 Q. Yes.

18 A. There were about 1300 at the end of the
19 election.

20 Q. Okay. So if I told you as of election day
21 there were approximately 670 decks, does that sound
22 familiar?

23 A. That sounds familiar.

24 Q. Okay. So just backing up for a second, when
25 you are talking about manually creating the report out
26 of the system, can you describe exactly what that would
27 require -- so as of election day, if you had between six
28 and 700 decks, how you would -- how long it would take

1 to pull reports for each of those decks?

2 A. You would have to copy the database and you
3 would have to go into the GEMS program and delete
4 everything out of the system except for the one deck
5 that you were looking for and then you would produce the
6 report. And you would have to do that over and over
7 again 670 times.

8 Q. And so if you had over a thousand decks that
9 you needed to create those reports for, how long -- can
10 you estimate how long that would take?

11 A. Looking at what it takes me to do the seven or
12 eight decks, it would probably take two or more weeks to
13 get those out.

14 Q. Mr. Wallis, plaintiffs' counsel in this case
15 has argued that the 1 percent manual tally is the only
16 tool available that can test the integrity of the
17 election.

18 Do you agree with that statement?

19 MR. GERACI: Objection. Misstates anything
20 I've ever said. Argumentative.

21 THE COURT: The objection is overruled.

22 THE WITNESS: Could you repeat the question?

23 BY MS. KARNAVAS:

24 Q. Sure. Plaintiffs' counsel in this case has
25 argued that the 1 percent tally is the only tool
26 available to test the integrity of the election. I
27 think that came directly from his opening statement.

28 Is that a statement that you agree with?

1 A. I don't agree with that statement.

2 Q. And why not?

3 A. I believe that the initial testing on the logic
4 and accuracy testing provides a mechanism for ensuring
5 that all the ballots no matter what ballot style are
6 counted and accumulated correctly in the system.

7 Q. And in your opinion, are there other things
8 that happen during the canvass that are designed to
9 ensure the integrity of the election?

10 A. The canvass process is very involved in that we
11 are verifying the ballots cast and in both the
12 vote-by-mail and the -- and the polling place, back to
13 polling place rosters and also those that apply by
14 vote-by-mail. So we are doing a full reconciliation of
15 the ballots cast by precinct for both of those two
16 items.

17 Q. In the last 12 years since the County has been
18 using the GEMS system that it uses today, have you been
19 involved in a situation where the results of an election
20 were challenged?

21 A. Yes.

22 Q. And when was that?

23 A. The -- I forget the year.

24 Q. What were the general facts, if you recall?

25 A. It was in Chula Vista and there was an election
26 contest or election -- a recount that was requested.

27 Q. And do you recall what the results of that
28 recount were?

1 A. They were upheld. In other words, the vote
2 counts were accurate.

3 Q. So the results as tabulated by the GEMS system
4 during that recount the same system that's being used
5 today were upheld; is that correct?

6 A. Yes.

7 Q. Mr. Wallis, are you required to provide
8 anything to the Secretary of State relating to the GEMS
9 system prior to an election?

10 A. Within seven days prior to the election, we are
11 to deposit the complete GEMS environment to the
12 Secretary of State.

13 Q. And when you say the complete GEMS environment,
14 what factually do you mean?

15 A. The applications through the support files,
16 the -- and also the database that's going to be used in
17 the election.

18 Q. And will all of the testing of the system, the
19 testing that you described, will it have been completed
20 by that time?

21 A. Yes.

22 Q. Now, after all of this testing has been done
23 and the canvass proceeds, how is the County able to
24 ensure that the integrity of the vote count system is
25 being maintained throughout the process of processing
26 the ballots throughout the canvass?

27 A. So once the election is set to a point where
28 ballots can start to be tabulated or where memory cards

1 can be created, the database is loaded to a server and
2 the passwords are changed and a program called Shay
3 verified [phonetic] is run that creates two hashing
4 totals on both the application, the GEMS application and
5 also the database.

6 After any functions are performed on the
7 system, the Shay verify utility is run and those results
8 are logged. Any time ballots are tabulated and it is
9 run prior to and after that. So from day-to-day, we
10 verify these -- these -- we verify these hashing totals
11 to ensure that nothing has happened to the database from
12 the time it finished counting the last ballots and
13 started counting the next set of ballots.

14 Q. So at the end of the day, you're going home,
15 you run the hash -- the system that produces the hash
16 value; is that correct?

17 A. Correct.

18 Q. And then the next day before you start doing
19 anything with the GEMS server, you check that -- do you
20 run another one or --

21 A. We run another one to ensure that the database
22 and the programs are instilled at the same state they
23 were at the prior close of day.

24 Q. So the numbers should match?

25 A. The numbers always match.

26 Q. So if someone were to break into the registrar
27 of voters office and into the server room somehow
28 bypassing all of the alarms and the passwords and avoid

1 detection by security, somehow get into the GEMS system,
2 would the hash value change even if they didn't change a
3 single thing?

4 A. If they attempted to bring up the GEMS
5 tabulation program, the hash value would change.

6 Q. So even if all that happened, the system was
7 accessed, the hash value would change?

8 A. Correct.

9 Q. Does the GEMS system have auto mechanisms built
10 into it that tracks all the activity on the system?

11 A. It's a standard Windows server so it has logs
12 for users logging into the system. It also has logs in
13 GEMS that identify, you know, when the system was
14 started and what functions were performed on the system.
15 And there are -- there are a number of standard logs
16 that are recorded by the operating system.

17 Q. You're not manually recording these logs. They
18 are automatic?

19 A. No, they are automatic.

20 Q. So sitting here today, do you know of any way,
21 based on your -- the 12 years of experience and your
22 approximately, what, 30 plus years of experience working
23 in the IT field, do you know of any way that those audit
24 bars could be manipulated to high action that's taken on
25 the voting system?

26 A. I do not.

27 Q. And this is a system that's been certified by
28 the State of California and qualified by the federal

1 government, correct?

2 A. That's correct.

3 Q. In the 12 years that you've been working in
4 overseeing the County's use of the GEMS system, have you
5 ever seen an instance of true defective tabulation,
6 meaning where the voter filled in the bubbles on the
7 ballot properly and the system just did not read the
8 votes properly?

9 A. I have not.

10 Q. Is that something you would have been made
11 aware of?

12 A. Yes.

13 Q. Have you ever seen in the 12 years that the
14 County has been using the GEMS system and that you've
15 been overseeing its use, have you ever seen any
16 indication that the data in the County of San Diego's
17 GEMS system has been fraudulently manipulated?

18 A. I have not.

19 Q. Is that something you would have been made
20 aware of, sir?

21 A. I believe so.

22 Q. And do you believe that you would have been
23 able to determine that by looking at, for example, the
24 hash values?

25 A. That, and additionally the election results.

26 Q. In your opinion, based on your experience using
27 GEMS for the past 12 years, how difficult would it be
28 for someone to hack into the system?

1 A. Not being a hacker, I would think in the GEMS
2 environment it would be very difficult.

3 Q. And in your opinion, based on your experience
4 using GEMS for the past 12 years, how difficult would it
5 be for someone to actually hack into the system and then
6 change votes?

7 A. Again, I think that would be very difficult
8 because I think that any attempt to alter the database
9 would corrupt it in a way that the backups would fail to
10 function when you went to back up the database at the
11 end of a count.

12 Q. And why is that?

13 A. Because it expects the data to be in a
14 particular order. And when something gets out of -- or
15 gets out of whack in the database, the backups can't run
16 through and save off the data for restoration.

17 Q. In your opinion, sir, how difficult would it be
18 for someone to hack into the system, change votes, and
19 completely flip the results of an election or actually
20 have any significant impact on an election undetected?

21 A. I believe it would be impossible.

22 MS. KARNAVAS: Nothing further.

23 THE COURT: One moment.

24 MS. KARNAVAS: And your Honor, I would like to
25 move into evidence Exhibit 175.

26 THE COURT: Any objection to the admission of
27 175?

28 MR. GERACI: No objection.

1 THE COURT: Exhibit 175 will be admitted.

2 (Exhibit 175 was received in evidence.)

3 THE COURT: Are there any other exhibits that
4 you would like to have admitted at this time?

5 MS. KARNAVAS: No, your Honor. I think we
6 handled all the ones I was planning on.

7 THE COURT: All right. Okay. Let's see.

8 Recross.

9

10 RE-CROSS-EXAMINATION (Pursuant to EC 776)

11 BY MR. GERACI:

12 Q. Mr. Wallis, among your duties, do you also --
13 are you also involved in the quality control process?

14 A. In what area?

15 Q. Of remaking ballots?

16 A. Yes.

17 Q. And would you explain to the Court the
18 difference -- well, what is remaking?

19 A. Remaking a ballot is duplication of a ballot
20 from a damage ballot card to a card that will run
21 through the system.

22 Q. And what is the registrar's process for
23 remaking?

24 A. There is a duplication process. There is two
25 people, that when a ballot is damaged, they will take
26 the damaged ballot, one person reads the votes, the
27 other person records the vote, the ballots are
28 serialized, they are stamped with a duplicate stamp and

1 the damaged duplicate is placed in a ballot carton and
2 the other ballot is released into the count.

3 Q. And in the quality control environment, what --
4 well, when, if at all, is Wite-Out tape used?

5 MS. KARNAVAS: I'm just going to object. It's
6 outside the scope.

7 THE COURT: Why is this not outside the scope?

8 MR. GERACI: He spoke, your Honor, about, you
9 know, being involved in the quality control process. I
10 would request to reopen.

11 THE COURT: All right. That's a different
12 issue. Why should the Court not give leave to counsel
13 to reopen for a limited purpose while Mr. Wallis is on
14 the stand and avoid Mr. Wallis from coming back?

15 MS. KARNAVAS: That's fine, your Honor.

16 THE COURT: All right. Permission granted.

17 Madam Reporter, may I ask you reread the last
18 question for Mr. Wallis.

19 (The question was read by the reporter.)

20 THE WITNESS: Wite-Out tape is -- in our
21 section is used for a variety of things. In other
22 words, there was a -- there was an exhibit that
23 mentioned a ballot with timing marks. Once a timing
24 mark gets damaged or gets marked in, Wite-Out is used to
25 clear that timing mark so the ballot can run through the
26 system. Otherwise, it can't be run through the system.

27 It is also used in several other processes. In
28 other words, where a voter votes a contest, they over

1 vote the ballot, but according to the uniform counting
2 standards, the voter marked their ballot in a way that
3 their vote should count at one of those positions. The
4 other position that shouldn't count is whited out so
5 that the -- so the voter intent is recorded when the
6 ballot is run through.

7 BY MR. GERACI:

8 Q. Who makes the determination of voter intent?

9 A. Actually, we look at the uniform counting
10 standards and we apply those standards to ballots.

11 Q. What are the uniform counting standards?

12 A. They are a set of procedures and standards that
13 are issued by the Secretary of State that tell us how to
14 determine voter intent. In other words, where the voter
15 clearly marks one oval and marks another oval and
16 crosses -- puts a big X through one oval, those
17 standards say that the vote with the X through it is one
18 they did not want to count.

19 Q. And the Wite-Out tape redaction method is used
20 so you can eventually scan the ballot, correct?

21 A. Yes. Otherwise, that ballot would be an over
22 voted ballot and neither vote would count.

23 Q. Are there circumstances where the wrong ballot
24 was used by the voter and certain contests need to be
25 removed?

26 A. That would only be done in the provisional
27 voting.

28 Q. On provisional ballots?

1 A. Provisional ballots. The voter may vote a
2 ballot that they are not eligible to vote.

3 Q. Once the provisional ballots go through the
4 process of verification and are ready to process, are
5 they run through the scanner as well, the optical
6 scanner, and counted on the central tabulator?

7 A. Yes, they are.

8 Q. Your optical scanner of which we saw
9 photographs, when you run the ballot through that, does
10 it read both sides of the ballot?

11 A. Yes, it does.

12 Q. So you run it through one time, it reads top
13 and bottom of the ballot?

14 A. Correct.

15 Q. Also, we're talking about the touch screen
16 devices for voting can be VVPAT. What's that stand for?

17 A. It stands for voter verified paper trail.

18 Q. And that's the paper tape that you -- that
19 comes out of the machine after a voter votes, correct?

20 A. It's the paper tape that is displayed to the
21 voter as the voter casts their ballot.

22 Q. Is that paper retained by the voter or by the
23 registrar?

24 A. It's retained by the registrar.

25 Q. And so it's available and useful for auditing
26 purposes?

27 A. It is -- yes.

28 Q. Is it required by law?

1 A. It's required by Elections Code.

2 Q. Last time I checked, that was law.

3 MS. KARNAVAS: Move to strike the comment by
4 counsel.

5 THE COURT: Permission to strike is granted.

6 BY MR. GERACI:

7 Q. You mentioned how many decks there were in this
8 last election. I'm sorry. I heard 1300 and then I
9 heard 600 and something. What was the right answer?

10 A. Both are the right answer. It's a point in
11 time. On election day, there were approximately 670.
12 At the end of the election, because we received almost
13 225,000 mail ballots dropped at the polls and late, once
14 you add those in, it creates more decks. So the number
15 of decks went up to, I believe, 1300.

16 Q. So about half were received by election day and
17 then the other half were processed after election day?

18 MS. KARNAVAS: Objection. Lacks foundation.
19 Also assumes facts not in evidence. Talking about
20 decks.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: I'm not sure if it's a 50/50, but
23 I know that there were a significant number voted after
24 the election and prior to election day or returned.

25 MR. GERACI: Nothing further.

26 THE COURT: Anything else?

27 MS. KARNAVAS: Just really briefly, your Honor.

28 THE COURT: All right.

1

2

FURTHER REDIRECT EXAMINATION

3

BY MS. KARNAVAS:

4

5

6

Q. Mr. Wallis, the process of remaking ballots that you were just asked about, is that something that the County of San Diego just made up?

7

A. No.

8

9

Q. Okay. And where is that -- where does that come from?

10

11

A. It comes from the uniform county standards that are issued by the state guidelines.

12

13

14

15

Q. Well, even before we get to that, though, doesn't the Elections Code have a section that indicates that torn, bent or otherwise defective ballots should be corrected? Are you familiar with that?

16

MR. GERACI: Objection. Leading.

17

THE COURT: Sustained.

18

BY MS. KARNAVAS:

19

20

21

Q. Are you familiar that -- do you know if the Elections Code contains anything jurisdictions are supposed to deal with torn, bent or defective ballots?

22

A. Yes.

23

24

25

Q. Okay. And I'd like to go ahead and introduce what's been previously marked as Exhibit 149 for purposes of identification.

26

27

Could you look at this document, Mr. Wallis, in your binder up there.

28

A. 149?

1 THE COURT: Let me ask plaintiffs' counsel.

2 Any objection to the admission of Exhibit 149?

3 MR. GERACI: No objection.

4 THE COURT: Did I hear no objection?

5 MR. GERACI: No objection.

6 BY MS. KARNAVAS:

7 Q. Mr. Wallis, are these the uniform counting
8 standards that you were referencing?

9 THE COURT: Just a moment, Counsel? I think I
10 heard counsel say "no objection."

11 MS. KARNAVAS: Okay.

12 THE COURT: So Exhibit 149 will be admitted.
13 (Exhibit 149 was received in evidence.)

14 THE COURT: Just give me one moment, please.
15 Okay. Give me a second. Well -- oh, there it is.
16 Okay.

17 All right. Anything else, Counsel?

18 MS. KARNAVAS: No, that's it. Thank you.

19 THE COURT: Anything further, Mr. Geraci?

20 MR. GERACI: Nothing further.

21 THE COURT: All right. May Mr. Wallis be
22 excused?

23 MS. KARNAVAS: Yes, your Honor.

24 THE COURT: Counsel?

25 MR. GERACI: Yes, your Honor.

26 THE COURT: Thank you very much, Mr. Wallis.

27 THE WITNESS: Thank you very much.

28 THE COURT: All right. So we want to get you

1 out of here in just a few moments.

2 By the way, we have a ton of people coming
3 through here on our ex parte calendar in the morning.
4 You can leave your things at or near the table. But
5 please take some precautions to protect them. There is
6 going to be a lot of people approaching counsel table
7 before we resume tomorrow morning at 9:00 o'clock.

8 Anything else from plaintiffs' counsel before
9 we adjourn for the day?

10 MR. GERACI: Your Honor, I do have something I
11 would like to address. I'm not sure if we'll have time
12 to address it.

13 THE COURT: Can you frame the issue tonight and
14 then we'll discuss it more thoroughly tomorrow morning?

15 MR. GERACI: That would be fair enough.

16 THE COURT: All right. So what's the issue?

17 MR. GERACI: Well, the defense is going to be
18 calling numerous registrars of voters from other
19 counties, and I'm assuming that their testimony will be
20 consistent with the declarations they submitted earlier
21 in this case when we were hearing motions for injunctive
22 relief.

23 And my motion would be -- and the reason why I
24 bring it up now is because these people are traveling
25 from various places. At best, I would submit that the
26 evidence would be cumulative. I believe it to be
27 irrelevant to the issues for the Court to hear.

28 But I just wanted to address the cumulative

1 nature of having repeated witnesses saying the same
2 thing. I realize that these registrars will testify
3 that they proceed the same way that Mr. Vu does in
4 handling their 1 percent manual tallies, but that
5 certainly -- you know, the repeated pattern of doing
6 something incorrectly, from our perspective, doesn't
7 make it so and would be, therefore, irrelevant.

8 And, like I said, at the very least it's
9 cumulative.

10 THE COURT: Counsel?

11 MR. BARRY: Your Honor, I believe there is
12 value to the testimony in addition to beyond the fact
13 that they perform the manual tally in similar or
14 substantially similar ways as does the County. I think
15 it's important to hear the magnitude of what it takes to
16 put on an election, specifically, in Los Angeles and
17 what the consequences would be with respect to court
18 order changing those processes.

19 THE COURT: All right. Earlier in the day,
20 over the defense's vigorous objection, the Court granted
21 plaintiffs' request for judicial notice, to take
22 judicial notice of the complete legislative history as
23 testified to by Mr. Lutz.

24 The Court will overrule plaintiffs' objection
25 and allow the defense to call the witnesses that you
26 think are necessary to complete your record.

27 Counsel, the Court is not foolish enough to
28 think I'm going to be the last Court to weigh on this

1 decision, but I want each of you to have as a full
2 record as possible to point to when you are preparing
3 and filing your appellate briefs with the Court.

4 So the objection to cumulative is overruled.

5 So let's make sure -- well, is there anything
6 else from the defense side?

7 MR. BARRY: Well, your Honor, I understand that
8 from speaking with counsel on the break that he had
9 initially indicated he was going to be calling two or
10 more poll workers which I now understand he is not. So
11 as I understand it --

12 THE COURT: So subject to the expert on
13 Tuesday, are you going to rest?

14 MR. GERACI: I'd like to review the exhibit
15 list and make sure I've moved in --

16 THE COURT: Sure. Subject to the admission.

17 MR. GERACI: Subject to the admission of
18 exhibits and Dr. Stark, yes, prepared to rest.

19 THE COURT: Do you have somebody lined up first
20 thing tomorrow morning?

21 MR. BARRY: Yes, we do. We have the registrar
22 from Sacramento who is arriving on a plane at 8:25, who
23 we intend to pick up at the airport and bring.

24 And then the registrar from Los Angeles who is
25 driving down. Depending on traffic, may or may not be
26 here also at 9:00 a.m.

27 And then -- and then we have the deposition of
28 Ms. Rodewald, which should take probably 15 or 20

1 minutes for us to read. Counsel indicated he had not
2 received the transcript that he had ordered from that,
3 so I loaned him my certified copy to take home tonight
4 and read.

5 THE COURT: So --

6 MR. BARRY: And then Mr. Vu.

7 THE COURT: So do you expect it to be a full
8 day tomorrow?

9 MR. BARRY: I think we might finish a little
10 early, but most of the day.

11 THE COURT: Okay. So, Counsel, we'll see you
12 tomorrow morning at 9:00 o'clock. Thank you very much.

13 MR. GERACI: Thank you, your Honor.

14 (Proceedings adjourned at 4:36 p.m.)

15 -o0o-

16

17

18

19

20

21

22

23

24

25

26

27

28

REPORTER'S CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNTY OF SAN DIEGO,)
STATE OF CALIFORNIA,)

I, Kristy A. Montalban, Certified Shorthand Reporter licensed in the State of California, License No. 13551, hereby certify that the foregoing proceeding was reported by me and was thereafter transcribed with Computer-Aided Transcription; that the foregoing is a full, complete, and true record of said proceeding.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named or in any way interested in the outcome of the cause in said caption.

In witness whereof, I have hereunto set my hand this day: *August 11, 2017*



Kristy A. Montalban
CSR No. 13551