

218	<p>1 vendor go back and redo part or all of it.</p> <p>2 Q. The guidelines were first implemented in</p> <p>3 1990; is that correct?</p> <p>4 A. I think it was '92. I'm not positive. I</p> <p>5 wasn't around then.</p> <p>6 Q. And then the guidelines were then updated</p> <p>7 by the Election Assistance Commission in 2002?</p> <p>8 A. Actually it was still under the guise of</p> <p>9 the Federal Elections Commission but it was NASED</p> <p>10 that took the lead along with the computer science</p> <p>11 and other communities to upgrade them.</p> <p>12 Q. So we need a term for these guidelines</p> <p>13 because it seems to be shifting. Could you choose a</p> <p>14 term for these guidelines?</p> <p>15 A. Voting system guidelines.</p> <p>16 Q. Okay. There is the 1990 Federal Voting</p> <p>17 System guidelines and there is the 2002 Federal</p> <p>18 Voting System guidelines.</p> <p>19 A. Right.</p> <p>20 Q. Prior to the 2002 Federal Voting System</p> <p>21 guidelines an ITA would qualify a voting software as</p> <p>22 having met the qualifications of the 1990 Voting</p>	220	<p>1 ITA qualifies the voting software; isn't that right?</p> <p>2 A. That's the first step in the, towards the</p> <p>3 end of the process, yes.</p> <p>4 Q. Towards the end of which process?</p> <p>5 A. Once the ITA submits their report, then</p> <p>6 it has to be reviewed by, up until recently, a NASED</p> <p>7 hired reviewer, and the report was reviewed and</p> <p>8 either approved, approved in-part or rejected, and</p> <p>9 maybe there's another alternative as well. And it</p> <p>10 would then go to the NASED Voting Systems Board,</p> <p>11 which consisted of members of NASED as well some</p> <p>12 outside experts, computer science people.</p> <p>13 Q. But your understanding is that no matter</p> <p>14 who was looking at it, the analysis was does this</p> <p>15 voting software meet the requirements of the Federal</p> <p>16 Voting System guidelines then in effect?</p> <p>17 A. Yes.</p> <p>18 Q. So as long as everybody along the chain</p> <p>19 of the process determined that the voting software</p> <p>20 met the standards of the Federal Voting System</p> <p>21 guidelines, it would be ITA qualified?</p> <p>22 A. Yes.</p>
219	<p>1 System guidelines; isn't that right?</p> <p>2 A. Correct.</p> <p>3 Q. And then after 2002 the ITA would qualify</p> <p>4 the voting software as having met the guidelines of</p> <p>5 the 2002 Federal Voting System guidelines; isn't</p> <p>6 that correct?</p> <p>7 A. Not entirely. And again this is all very</p> <p>8 high level. It's my understanding from listening to</p> <p>9 Britt and some of the others talk about this at</p> <p>10 meetings, is that the systems that were qualified to</p> <p>11 the 1990 or 1992, I don't remember which is the</p> <p>12 correct date, were grandfathered in under the --</p> <p>13 Q. Right. They don't have to be requalified</p> <p>14 after 2002?</p> <p>15 A. Correct.</p> <p>16 Q. But any software that had not yet been</p> <p>17 qualified after 2002, in order to be used, had to be</p> <p>18 qualified by an ITA as having met the guidelines of</p> <p>19 the 2002 Federal Voting System --</p> <p>20 A. That's my understanding.</p> <p>21 Q. As long as the Federal Voting System</p> <p>22 guidelines are met, it's your understanding that the</p>	221	<p>1 Q. Okay. If there were security or accuracy</p> <p>2 or other reliability problems associated with the</p> <p>3 software, but the software technically met the</p> <p>4 Federal Voting System guidelines, that software</p> <p>5 could be ITA qualified?</p> <p>6 A. That's my understanding.</p> <p>7 Q. The report that the ITA prepares in</p> <p>8 conjunction with the process by which it qualifies</p> <p>9 voting software for the Federal Voting System</p> <p>10 guidelines, is that made public?</p> <p>11 A. I don't think so. I have never seen one.</p> <p>12 I think my staff probably has, because they have</p> <p>13 insisted upon it. It will be or at least a lot of</p> <p>14 them will be, a lot of portions of them will be</p> <p>15 public under the new EAC guidelines. And that's</p> <p>16 been one of the major criticisms in the past, that</p> <p>17 these reports weren't. Of course, the vendor</p> <p>18 industry is arguing proprietary information.</p> <p>19 Q. So you think that your staff has received</p> <p>20 the report prepared by Cyber Technologies that</p> <p>21 qualified the voting software on the AccuVote-TS</p> <p>22 units in the fall of 2003 and early 2004?</p>

222	<p>1 A. I'm not positive of that, but I think I</p> <p>2 remember somebody saying that they had looked at one</p> <p>3 early on.</p> <p>4 Q. Now, these ITAs at one time themselves</p> <p>5 had to be qualified?</p> <p>6 A. Yes.</p> <p>7 Q. And who qualified them?</p> <p>8 A. NASED did.</p> <p>9 Q. Now, recently it's true, isn't it, that</p> <p>10 Cyber Technologies was no longer qualified by NASED</p> <p>11 to conduct this type of review?</p> <p>12 A. That's not true.</p> <p>13 Q. Okay. Are you aware of reports that</p> <p>14 NASED or the EAC ruled that Cyber Technologies could</p> <p>15 no longer qualify voting software under the Federal</p> <p>16 Voting System guidelines?</p> <p>17 A. That's not quite accurate.</p> <p>18 Q. What's your understanding?</p> <p>19 A. What happened was, when it was</p> <p>20 transferred -- when the qualification process, the</p> <p>21 ITA qualification process was finally given to a</p> <p>22 Federal agency, the EAC, the EAC and NIST, the</p>	224	<p>1 Q. What did you do?</p> <p>2 A. I talked to my guys and they were not</p> <p>3 concerned. I talked to Tom Wilke at the EAC. He</p> <p>4 told me not to be concerned. And I think I talked</p> <p>5 to Britt Williams.</p> <p>6 Q. Do you know if today Cyber Technologies</p> <p>7 is qualified to conduct this qualification under</p> <p>8 NIST's new guidelines?</p> <p>9 A. I do not know. I have not had time to</p> <p>10 follow up on it. The decision was supposed to have</p> <p>11 been made sometime this month. And that only was</p> <p>12 for the certification for the interim program, not</p> <p>13 the final one.</p> <p>14 But Ciber met the qualifications for</p> <p>15 certification under the NASED program and everyone</p> <p>16 assured me that was sufficient.</p> <p>17 Q. I would like to show you a document</p> <p>18 that's been marked as Plaintiff's 85.</p> <p>19 (Plaintiff's Exhibit No.</p> <p>20 85 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. FLORENZO:</p>
223	<p>1 National Institute of Standard and Technologies, was</p> <p>2 tasked under the Help America Vote Act with coming</p> <p>3 up with this process of selecting these labs to do</p> <p>4 the testing. And NIST was charged with coming up</p> <p>5 with a process, in conjunction with the EAC, of</p> <p>6 setting a program for determining whether the labs</p> <p>7 would be acceptable or not.</p> <p>8 And their list of criteria was different</p> <p>9 from what NASED had used. Whether it was better or</p> <p>10 worse, I don't know. But under the NIST system,</p> <p>11 that the EAC approved, Ciber was not deemed to have</p> <p>12 qualified. And it's my understanding, and this is</p> <p>13 all secondhand knowledge, is that the reason was is</p> <p>14 that they had not complied with some of the</p> <p>15 administrative requirements that NIST had imposed on</p> <p>16 the laboratories.</p> <p>17 Q. How did you learn that?</p> <p>18 A. I read a report in the paper and I talked</p> <p>19 to someone at the EAC about it.</p> <p>20 Q. Were you concerned when you read the</p> <p>21 reports about Cyber Technologies?</p> <p>22 A. Of course.</p>	225	<p>1 Q. Ms. Lamone, have you seen Plaintiff's</p> <p>2 Exhibit 85 before?</p> <p>3 A. I'm sure. My name is on it.</p> <p>4 Q. What is Plaintiff's Exhibit 85?</p> <p>5 A. December 23rd, 2005 letter from me to</p> <p>6 Thomas Swidarski.</p> <p>7 Q. Is Plaintiff's Exhibit 85 a fair and</p> <p>8 accurate representation of your thoughts and</p> <p>9 impressions at the time the letter was sent?</p> <p>10 A. I'm sure it is.</p> <p>11 Q. What is it that you're trying to</p> <p>12 accomplish by sending this letter to Mr. Swidarski?</p> <p>13 A. To tell you the truth, I don't know what</p> <p>14 precipitated this letter other than the State of</p> <p>15 California's request that Diebold resubmit their</p> <p>16 software for testing for both the touch screen and</p> <p>17 the optical scan systems.</p> <p>18 Q. Do you recall sending this letter?</p> <p>19 A. I do, but I'm trying to remember -- I</p> <p>20 don't remember what prompted it. It must have been</p> <p>21 a newspaper report or something that, that I believe</p> <p>22 we followed up on.</p>

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<p>1 Q. If you look at number two, you write:</p> <p>2 Starting today, provide daily telephone briefings by</p> <p>3 individuals of Diebold who have full knowledge and</p> <p>4 authority of the status of the review and</p> <p>5 independent reviews being conducted by other states.</p> <p>6 Do you recall asking for such a daily telephone</p> <p>7 briefings?</p> <p>8 A. I did.</p> <p>9 Q. Was that a briefing that was made to you?</p> <p>10 A. Just on occasion. It was made to the</p> <p>11 voting system team.</p> <p>12 Q. Do you recall if those daily telephone</p> <p>13 briefings occurred?</p> <p>14 A. I think they did for a while.</p> <p>15 Q. For how long?</p> <p>16 A. I don't know. I honestly don't.</p> <p>17 Q. Did you have a point person for this</p> <p>18 project?</p> <p>19 A. Well, Joe Torre and Patrick Strauch are</p> <p>20 the two point people in my office for the voting</p> <p>21 system. Joe is head of the division and Patrick is</p> <p>22 the project manager.</p>	<p>1 Did you, did you get the report from the Independent</p> <p>2 Testing Authority?</p> <p>3 A. I think they did. I don't remember</p> <p>4 reading it, but it would be something that would</p> <p>5 probably be way too technical for me to read anyway.</p> <p>6 Q. Right.</p> <p>7 THE VIDEOGRAPHER: Excuse me. I have to</p> <p>8 pause to change tapes.</p> <p>9 MR. FLORENZO: Sure.</p> <p>10 MR. THOMPSON: This is the end of tape 2.</p> <p>11 The time is 2:53:23.</p> <p>12 - - -</p> <p>13 (There was a pause in the proceedings.)</p> <p>14 - - -</p> <p>15 THE VIDEOGRAPHER: This is the start of</p> <p>16 tape three. The time is 2:54:02.</p> <p>17 MR. FLORENZO: Shelly, you are off the</p> <p>18 hook.</p> <p>19 THE WITNESS: Shelly?</p> <p>20 MS. MARTIN: Yes.</p> <p>21 THE WITNESS: Stu just got back here. Do</p> <p>22 you want to stay on the phone?</p>
227	229
<p>1 Q. On number three you asked for all current</p> <p>2 and future documents including all reports generated</p> <p>3 by the Independent Testing Authorities, and any</p> <p>4 reports submitted to the State of California related</p> <p>5 to this issue.</p> <p>6 This is on the second page of Plaintiff's</p> <p>7 Exhibit 85. Did you get such reports?</p> <p>8 A. I think we did, but it was -- they did</p> <p>9 not come in on the 27th, because I don't think the</p> <p>10 ITA had finished with them. My recollection is that</p> <p>11 this was something to do with a security issue that</p> <p>12 California found, and we were responding to it to</p> <p>13 make sure that Diebold kept us informed.</p> <p>14 Q. You thought it was important to know what</p> <p>15 was going on in California?</p> <p>16 A. Absolutely.</p> <p>17 Q. To figure out whether these things were</p> <p>18 impacting Maryland, weren't you?</p> <p>19 A. Well, anywhere else in the country where</p> <p>20 Diebold is being used. If there was an issue, I</p> <p>21 certainly would have hoped to be informed about it.</p> <p>22 Q. Right. I think I may have misheard you.</p>	<p>1 MS. MARTIN: No. Actually, I'm going to</p> <p>2 go downstairs.</p> <p>3 MR. SIMMS: Thanks, Shelly.</p> <p>4 (Ms. Martin no longer present).</p> <p>5 BY MR. FLORENZO:</p> <p>6 Q. Ms. Lamone, I would like to show you a</p> <p>7 document that's been marked as Plaintiff's Exhibit</p> <p>8 86.</p> <p>9 (Plaintiff's Exhibit No.</p> <p>10 86 was marked for</p> <p>11 identification.)</p> <p>12 BY MR. FLORENZO:</p> <p>13 Q. Have you seen Plaintiff's Exhibit 86</p> <p>14 before?</p> <p>15 A. I'm sure I have, because it was sent to</p> <p>16 me.</p> <p>17 Q. What is Plaintiff's Exhibit 86?</p> <p>18 A. The meat of the exhibit is an e-mail from</p> <p>19 Mark Radke to me, Joe Torre, and Bob Urosevich dated</p> <p>20 February the 28th, 2006. Subject: Security feature</p> <p>21 response to activist claims.</p> <p>22 Q. Is this another unsolicited list of</p>

230	<p>1 responses to activist claims?</p> <p>2 A. I don't know whether it was unsolicited</p> <p>3 or not.</p> <p>4 Q. Do you recall asking for this?</p> <p>5 A. No.</p> <p>6 Q. Mark Radke is from Diebold, isn't he?</p> <p>7 A. Yes.</p> <p>8 Q. And Bob Urosevich is the President of</p> <p>9 Diebold?</p> <p>10 A. I think he was.</p> <p>11 Q. At the time of this e-mail?</p> <p>12 A. This is dealing with the optical scan</p> <p>13 memory cards, apparently.</p> <p>14 Q. Okay. You can put that aside. Okay.</p> <p>15 I would like to show you a document</p> <p>16 that's been marked as Plaintiff's Exhibit 87.</p> <p>17 (Plaintiff's Exhibit No.</p> <p>18 87 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. FLORENZO:</p> <p>21 Q. Have you seen Plaintiff's Exhibit 87</p> <p>22 before, Ms. Lamone?</p>	232	<p>1 A. I mean I can -- no, I don't.</p> <p>2 Q. You can set that document aside.</p> <p>3 Now I would like you to take a look at a</p> <p>4 document that's been marked as Plaintiff's Exhibit</p> <p>5 88.</p> <p>6 (Plaintiff's Exhibit No.</p> <p>7 88 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. FLORENZO:</p> <p>10 Q. I ask you if you have seen that document,</p> <p>11 Plaintiff's Exhibit 88 before?</p> <p>12 A. I must have. It was sent to me.</p> <p>13 Q. Plaintiff's Exhibit 88 is an e-mail from</p> <p>14 Michael Shamos to Ross Goldstein dated April 20,</p> <p>15 2006. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And that's in response to a prior</p> <p>18 e-mail that Mr. Goldstein had written to Mr. Shamos;</p> <p>19 isn't that right? If you look at the bottom of the</p> <p>20 narrative of the e-mail?</p> <p>21 A. Oh. Yes.</p> <p>22 Q. Okay. And then Mr. Goldstein then</p>
231	<p>1 A. I'm sure I did. It was addressed to me.</p> <p>2 Q. Do you recall Plaintiff's Exhibit 87?</p> <p>3 A. Vaguely.</p> <p>4 Q. Okay. If you look it first sentence --</p> <p>5 strike that.</p> <p>6 Isn't this a letter from the President of</p> <p>7 Diebold Systems to you dated March 27, 2006?</p> <p>8 A. Yes.</p> <p>9 Q. And the first sentence of the letter, the</p> <p>10 President of Diebold writes: This letter is in</p> <p>11 response to your request to have Diebold submit the</p> <p>12 AccuVote-TS system with Ballot Station Version 4.6.4</p> <p>13 to the ITA for additional review.</p> <p>14 Do you recall making such a request?</p> <p>15 A. I must have.</p> <p>16 Q. Do you recall why you would have made</p> <p>17 such a request?</p> <p>18 A. I should, it's just a year ago. But I</p> <p>19 don't really remember. There must have been</p> <p>20 something going on in California or somewhere that</p> <p>21 we were pushing Diebold on.</p> <p>22 Q. You don't remember what that was?</p>	233	<p>1 forwarded on Mr. Shamos's e-mail to you and Joe</p> <p>2 Torre and Patrick Strauch and Paul Aumayr; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And do you recall -- you recall</p> <p>5 receiving Plaintiff's Exhibit 88; is that right?</p> <p>6 A. I can say I received it but I'm not sure.</p> <p>7 I haven't finished reading it, so.</p> <p>8 Q. Are you familiar at all with the issues</p> <p>9 that are set forth in Plaintiff's Exhibit 88?</p> <p>10 A. I think that this is in response to</p> <p>11 the -- and I'm not sure who did it, maybe the</p> <p>12 Princeton group, that showed that the system was</p> <p>13 programmed to automatically receive an update if a</p> <p>14 card was inserted into the touch screen. And I</p> <p>15 believe that this -- and this may have been the same</p> <p>16 thing, this, Plaintiff's Exhibit 87 may have been a</p> <p>17 reaction to the same thing.</p> <p>18 Q. Who is Michael Shamos?</p> <p>19 A. Michael Shamos is a distinguished</p> <p>20 professor at Carnegie Mellon Institute for Software</p> <p>21 Research International, in computer science.</p> <p>22 Q. Do you know him?</p>

<p style="text-align: right;">234</p> <p>1 A. Oh, yes.</p> <p>2 Q. Have you spoken to him before?</p> <p>3 A. I have spoken to Professor Shamos many</p> <p>4 times. I've been on programs with him. But I</p> <p>5 believe that's what this is talking about.</p> <p>6 Q. Is this somebody you rely on in carrying</p> <p>7 out your job responsibilities?</p> <p>8 A. He is probably one of the most</p> <p>9 knowledgeable people that I know of about this</p> <p>10 voting system in the country, and I would say, yes,</p> <p>11 I do respect his judgment very much.</p> <p>12 Q. Do you rely on his judgment?</p> <p>13 A. Yeah.</p> <p>14 Q. I'm just asking.</p> <p>15 A. Yeah. He is a brilliant person. He has</p> <p>16 been a voting system evaluator for, I don't know, 20</p> <p>17 years or so.</p> <p>18 Q. I would like to show you another document</p> <p>19 that's been marked as Plaintiff's Exhibit 89.</p> <p>20 (Plaintiff's Exhibit No.</p> <p>21 89 was marked for</p> <p>22 identification.)</p>	<p style="text-align: right;">236</p> <p>1 A. I know.</p> <p>2 Q. -- having a concern about whether Mr.</p> <p>3 Shamos was on board yet?</p> <p>4 A. Well, that could mean several things.</p> <p>5 Q. I realize it could and you're in a better</p> <p>6 position than I am to figure it out.</p> <p>7 A. This is the -- I'm sure, talking about</p> <p>8 the, the system not asking for verification before</p> <p>9 it updates. I don't know. I would have to pull the</p> <p>10 story and see how he was quoted and in what context.</p> <p>11 Q. Is that what you think has happened, that</p> <p>12 there has been a story sent to you by Google --</p> <p>13 A. Right.</p> <p>14 Q. -- because you've got your program set</p> <p>15 for that, and in that article it's quoting Mr.</p> <p>16 Shamos; is that --</p> <p>17 A. Yes.</p> <p>18 Q. Is that what you --</p> <p>19 A. I'm sure it did. But I don't recall for</p> <p>20 sure.</p> <p>21 Q. Okay. And then in all probability in</p> <p>22 response to looking at what Mr. Shamos said in the</p>
<p style="text-align: right;">235</p> <p>1</p> <p>2 BY MR. FLORENZO:</p> <p>3 Q. Have you seen Plaintiff's Exhibit 89</p> <p>4 before?</p> <p>5 A. I must have. It was sent from me to</p> <p>6 several members of my staff.</p> <p>7 Q. Is this an e-mail dated May 11, 2006,</p> <p>8 from you to several members of your staff?</p> <p>9 A. Yes.</p> <p>10 Q. Is it a fair and accurate representation</p> <p>11 of your thoughts and impressions on the date that</p> <p>12 you sent the e-mail?</p> <p>13 A. I guess it does. I'm not sure I recall</p> <p>14 what the story said.</p> <p>15 Q. Sure. Well, you see where you wrote, I</p> <p>16 guess Shamos is not on board yet?</p> <p>17 A. Correct.</p> <p>18 Q. What did you mean by that?</p> <p>19 A. Without seeing the story, I don't think I</p> <p>20 can answer the question.</p> <p>21 Q. Do you recall -- this is less than a year</p> <p>22 ago --</p>	<p style="text-align: right;">237</p> <p>1 article, you sent out an e-mail that said, I guess</p> <p>2 Shamos is not on board yet?</p> <p>3 A. That's what it says.</p> <p>4 Q. You can put that document aside.</p> <p>5 I would like to show you a document</p> <p>6 that's been marked as Plaintiff's Exhibit 30, and I</p> <p>7 would just like to ask you, can you tell me what</p> <p>8 Plaintiff's Exhibit 30 is?</p> <p>9 A. It looks to be a draft of Election</p> <p>10 Recount Procedures for the AccuVote-TS voting</p> <p>11 systems.</p> <p>12 Q. Now, I would also like to show you a</p> <p>13 document that's been marked as Plaintiff's Exhibit</p> <p>14 90.</p> <p>15 (Plaintiff's Exhibit No.</p> <p>16 90 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. FLORENZO:</p> <p>19 Q. If you could just look at these two</p> <p>20 documents side by side? Plaintiff's Exhibit 30 is</p> <p>21 standard Election Recount Procedures of the</p> <p>22 AccuVote-TS voting system; correct?</p>

<p style="text-align: right;">238</p> <p>1 A. Yes.</p> <p>2 Q. And Plaintiff's Exhibit 90 is standard</p> <p>3 Election Recount Procedures for the Optical Scan</p> <p>4 Automatic Tabulated Systems; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Plaintiff's Exhibit 90, it looks like it</p> <p>7 was reissued in October 2006?</p> <p>8 A. Yes.</p> <p>9 Q. Plaintiff's Exhibit 30 looks like it was</p> <p>10 revised in October 2006?</p> <p>11 A. That's what it says.</p> <p>12 Q. Was Plaintiff's Exhibit 30 ever reissued</p> <p>13 in 2006?</p> <p>14 A. I don't know the answer to that.</p> <p>15 Q. Who would be the one responsible for</p> <p>16 preparing Plaintiff's Exhibit 30 or Plaintiff's</p> <p>17 Exhibit 90?</p> <p>18 A. Nicky Trella and her staff are the owners</p> <p>19 of the recount procedures. Before them, my former</p> <p>20 deputy, Tim Augustine, who originally developed the</p> <p>21 process.</p> <p>22 Q. Okay. All right. Is Plaintiff's Exhibit</p>	<p style="text-align: right;">240</p> <p>1 A. Yes. Which, in fact, has been done.</p> <p>2 Q. It happened in 2002 in the Casper Taylor</p> <p>3 Election; correct?</p> <p>4 A. Correct.</p> <p>5 Q. In 2004 were there any recounts involving</p> <p>6 the AccuVote-TS where the option was to count the</p> <p>7 ballot images?</p> <p>8 A. I don't think there was a recount in</p> <p>9 2004.</p> <p>10 Q. How about 2006, was there any recount in</p> <p>11 2006 where the option was selected to recount the</p> <p>12 ballot images?</p> <p>13 A. No. I don't believe so. It was at --</p> <p>14 the recount was --</p> <p>15 Q. So in 2006 there were no printed ballot</p> <p>16 images?</p> <p>17 A. Not requested in a recount, no.</p> <p>18 Q. Well, I mean, you wouldn't print them --</p> <p>19 A. No.</p> <p>20 Q. -- unless somebody asked for them; right?</p> <p>21 A. No.</p> <p>22 Q. Was that correct?</p>
<p style="text-align: right;">239</p> <p>1 90 -- strike that.</p> <p>2 Do you have any reason to believe</p> <p>3 Plaintiff's Exhibit 90 is not what it purports to</p> <p>4 be?</p> <p>5 A. I have no reason.</p> <p>6 Q. Okay. And the same with Plaintiff's</p> <p>7 Exhibit 30? Do you have any reason to believe it is</p> <p>8 not what it purports to be?</p> <p>9 A. No. Apparently it's still a draft. It</p> <p>10 has changes.</p> <p>11 Q. It's still a draft version?</p> <p>12 A. Yeah.</p> <p>13 Q. Now, just looking at the recount</p> <p>14 procedures for the optical scan, one of the options</p> <p>15 for a recounting on the optical scan is to recount</p> <p>16 the ballots; isn't that right?</p> <p>17 A. Yes.</p> <p>18 Q. By hand? Is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And for the AccuVote-TS voting system,</p> <p>21 you would recount by hand under one of the options</p> <p>22 all the ballot images; is that right?</p>	<p style="text-align: right;">241</p> <p>1 A. You are correct.</p> <p>2 Q. Let's do it again then. You wouldn't</p> <p>3 print ballot images unless somebody asked for them</p> <p>4 in a recount; correct.</p> <p>5 A. Correct.</p> <p>6 Q. So since nobody asked for them in a</p> <p>7 recount in 2006, there were no ballot images printed</p> <p>8 in 2006?</p> <p>9 A. As far as I know.</p> <p>10 Q. Okay. You can put those two documents</p> <p>11 aside.</p> <p>12 MR. FLORENZO: Now I would like to show</p> <p>13 you a document that's been marked as Plaintiff's</p> <p>14 Exhibit 91.</p> <p>15 (Plaintiff's Exhibit No.</p> <p>16 91 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. FLORENZO:</p> <p>19 Q. Do you know what Plaintiff's Exhibit 91</p> <p>20 is?</p> <p>21 A. I assume it's a printout from a voting</p> <p>22 unit of a voter's choices for an election.</p>

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<p>1 Q. Is this a ballot image?</p> <p>2 A. No.</p> <p>3 Q. It's not a ballot image?</p> <p>4 A. It is not.</p> <p>5 Q. Where would it be printed from?</p> <p>6 A. The units are capable of printing this</p> <p>7 for every voter.</p> <p>8 Q. Does each AccuVote-TS unit have a</p> <p>9 printer?</p> <p>10 A. Yes.</p> <p>11 Q. One of the things that you need to do</p> <p>12 before the polls open on Election Day is you need to</p> <p>13 print out a report of the votes that were cast from</p> <p>14 each unit; isn't that correct?</p> <p>15 A. I'm sorry. I apologize. I was looking</p> <p>16 at this.</p> <p>17 Q. That's all right. You should probably</p> <p>18 put that down. I'm not going to ask you anymore</p> <p>19 questions on that.</p> <p>20 One of the things that happens before the</p> <p>21 polls open on Election Day is each unit has to print</p> <p>22 out the number of votes that had been cast on that</p>	<p>1 Q. And they do it the same way. You simply</p> <p>2 print out the number of votes that were cast on that</p> <p>3 unit?</p> <p>4 A. It shows the number for each candidate</p> <p>5 and then, again, they post one from each unit on the</p> <p>6 wall and print out the second one and sign it, I</p> <p>7 think.</p> <p>8 Q. The votes that -- strike that.</p> <p>9 The printouts that are done in the</p> <p>10 morning, these are called zero reports; correct?</p> <p>11 A. Yes.</p> <p>12 Q. What's the term of art that you use for</p> <p>13 the printouts at the end of the day?</p> <p>14 A. The totals reports.</p> <p>15 Q. So you print out the total reports. How</p> <p>16 are those total reports utilized in the voting</p> <p>17 system?</p> <p>18 A. I'm not sure I understand.</p> <p>19 Q. How do they fit into the process of</p> <p>20 determining who wins and loses elections?</p> <p>21 A. Well, they have several purposes, as I</p> <p>22 understand it. The poll watchers, the people that</p>
243	245
<p>1 unit that day; isn't that correct?</p> <p>2 A. Not entirely.</p> <p>3 Q. Okay. Why don't you tell me.</p> <p>4 A. Our instructions are that when they open</p> <p>5 the polls in the morning they are to print a zero,</p> <p>6 two copies of a zero report. The first one is torn</p> <p>7 off and pasted on the wall. The second one remains</p> <p>8 in the unit, the judges have to sign it, and that's</p> <p>9 done to show there are no votes on the unit.</p> <p>10 Q. It's called a zero report because it</p> <p>11 shows that no votes have been cast?</p> <p>12 A. Right.</p> <p>13 Q. But it's the same technique by which you</p> <p>14 simply print out the number of votes cast?</p> <p>15 A. Correct.</p> <p>16 Q. It's just that there have been no votes</p> <p>17 cast so the number that comes up is zero?</p> <p>18 A. Right. And it would print out and show a</p> <p>19 number of votes on the voting unit, that unit would</p> <p>20 not be used. For example, if they had run L&A and</p> <p>21 hadn't cleared, then at the end of the day they</p> <p>22 print out a total of all the votes.</p>	<p>1 the candidates have and the press have, they use</p> <p>2 those reports to get their results information</p> <p>3 quickly. And it's a procedure that's been used for</p> <p>4 years and years in Maryland. Try to get an</p> <p>5 unofficial one and post it on the wall.</p> <p>6 We use it as an audit tool, part of the</p> <p>7 audit tool. Because it's a contemporaneously</p> <p>8 printed out results from each voting unit.</p> <p>9 Q. Can you use the totals reports in</p> <p>10 recounts?</p> <p>11 A. That is a, as I understand it, one of the</p> <p>12 options that's available to the party seeking a</p> <p>13 recount, is to have those, have some comparison made</p> <p>14 with those totals report with other.</p> <p>15 Q. Tell me how that process works.</p> <p>16 A. This is getting a little bit nitty-gritty</p> <p>17 for me.</p> <p>18 Q. Sure.</p> <p>19 A. But as I understand it you could say,</p> <p>20 take the totals report from each machine and compare</p> <p>21 it to the, either one of the memories that are</p> <p>22 available from that machine or unit, or compare it</p>

<p style="text-align: right;">246</p> <p>1 to the results that have been downloaded into the 2 GEMS server. 3 So you would be making a comparison. 4 Q. Okay. What results from the comparison? 5 A. Confirmation that everything matches. 6 Q. Okay. And is it appropriate to use those 7 totals reports in a recount? 8 A. Sure. 9 Q. And that's -- I mean is it your opinion 10 that using them is compliant with Maryland law? 11 A. Sure. 12 Q. And Federal law? 13 A. Sure. 14 Q. Okay. All right. Now I want to show you 15 a document -- 16 A. In the old days when they had lever 17 machines, they used to do the same thing. They open 18 it up and read the numbers off the back of the 19 machine and write it on a piece of paper and post it 20 on the wall. 21 Q. Right. But I mean these, but these -- so 22 it's perfectly appropriate to use these printouts</p>	<p style="text-align: right;">248</p> <p>1 Plaintiff's Exhibit 29 is not authentic and isn't 2 otherwise what it purports to be? 3 A. None. 4 Q. Okay. If you could look down under the 5 section on the first page, it's House of Delegates, 6 Contest Recount, Subdistrict 1C, Allegany County. 7 Do you see that? 8 A. I do. 9 Q. If you look -- well, you can see that Mr. 10 Augustine writes: The petitioner for the recount of 11 the House of Delegates contest in Allegany and 12 Washington Counties requested a manual recount of 13 the ballots. Do you see that? 14 A. Yes. 15 Q. Now, there was a little hiccup in that 16 recount because Allegany County used the 17 AccuVote-TS, Washington County used some other 18 system? 19 A. Correct. 20 Q. So they had to have two different kinds 21 of recount in that particular election; isn't that 22 right?</p>
<p style="text-align: right;">247</p> <p>1 that are printed off these printers on these 2 machines; right? 3 A. I think so. I have had no one suggest to 4 the contrary. 5 Q. All right. I would like to show I a 6 document that's been marked as, previously marked as 7 Plaintiff's Exhibit 29. 8 A. I'm going to stop signing everything. 9 Q. You didn't sign this one. 10 A. Oh, to me. 11 Q. Okay. Have you seen Plaintiff's Exhibit 12 29? 13 A. I'm sure I have. It was sent to me. 14 Q. Do you recall seeing Plaintiff's Exhibit 15 29? 16 A. Vaguely. 17 Q. Is Plaintiff's Exhibit 29 a memorandum 18 dated December 13, 2002 from Timothy T. Augustine to 19 you regarding the 2002 Gubernatorial General 20 Election? 21 A. Yes. 22 Q. Do you have any reason to believe that</p>	<p style="text-align: right;">249</p> <p>1 A. Correct. 2 Q. So then Mr. Augustine continues to write: 3 Allegany County uses the Diebold AccuVote-TS voting 4 system (direct recording electronic) and the Diebold 5 Optical Scan Voting System for absentee voting. Do 6 you see that? 7 A. Yes. 8 Q. Then he writes: Considering that the 9 AccuVote-TS voting units in Allegany County do not 10 use ballots, the Allegany County SBE staff worked 11 very hard for nearly a week to generate the ballot 12 images from the precincts in Subdistrict 1C. Do you 13 see that? 14 A. Yes. 15 Q. Do you take any disagreement with any of 16 that? 17 A. No. 18 Q. They print out the ballot images because 19 the AccuVote-TS voting units in Allegany County 20 don't use ballots; isn't that right? 21 A. That's what it says. 22 Q. And you would agree with that?</p>

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<p>1 A. Of course.</p> <p>2 Q. Okay. You can put that document aside.</p> <p>3 I would like to show you a document that's been</p> <p>4 marked as Plaintiff's Exhibit 91.</p> <p>5 (Plaintiff's Exhibit No.</p> <p>6 92 was marked for</p> <p>7 identification.)</p> <p>8 MR. FLORENZO: I'm sorry. Plaintiff's</p> <p>9 Exhibit 92.</p> <p>10 BY MR. FLORENZO:</p> <p>11 Q. Have you seen Plaintiff's Exhibit 92</p> <p>12 before?</p> <p>13 A. I don't know. Probably, but I'm not</p> <p>14 certain. I don't know in what context it was</p> <p>15 created or when.</p> <p>16 Q. Okay. We can move on then.</p> <p>17 I would like to show you a document</p> <p>18 marked as -- I'm just going to skip that.</p> <p>19 I'm going to give you a document that's</p> <p>20 been previously marked as Plaintiff's Exhibit 31,</p> <p>21 and ask you if you have seen Plaintiff's Exhibit 31</p> <p>22 before?</p>	<p>1 Q. I'm sorry. Does it look like he has a</p> <p>2 total cost -- let me take a step back.</p> <p>3 Right, he's got 5.4 million for the</p> <p>4 cartridges. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And then he has another \$720,000 for</p> <p>7 scanner capability. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. So is the total cost from Mike Curtis's</p> <p>10 analysis for the paper trail roughly \$6.12 million?</p> <p>11 A. Yeah, but he caveats it by saying that</p> <p>12 there may be more items. And then he also lists the</p> <p>13 risks that he identified.</p> <p>14 Q. But he doesn't provide any other figure</p> <p>15 other than the \$6.12 million; isn't that right?</p> <p>16 A. No.</p> <p>17 Q. Now, did you ever have any conversations</p> <p>18 with Diebold about adding sort of a printer or some</p> <p>19 sort of attachment module to the AccuVote-TS for</p> <p>20 purposes of establishing a paper trail?</p> <p>21 A. There have been discussions, yes.</p> <p>22 Q. And who have you discussed this with?</p>
251	253
<p>1 A. I must have, it was sent to me.</p> <p>2 Q. What is Plaintiff's Exhibit 31?</p> <p>3 A. It's an e-mail from Mike Curtis dated</p> <p>4 January 7th, 2005.</p> <p>5 Q. January 7, 2005?</p> <p>6 A. Yes. The subject: Paper trail cost</p> <p>7 analysis.</p> <p>8 Q. And what does Mr. Curtis say?</p> <p>9 A. Here is the cost analysis I did for Linda</p> <p>10 on the paper trail. There may be a few more items</p> <p>11 to consider than what I captured.</p> <p>12 Q. And does Mr. Curtis have an attachment to</p> <p>13 his e-mail?</p> <p>14 A. He does.</p> <p>15 Q. And does that attachment provide a cost</p> <p>16 estimate for the paper trail.</p> <p>17 A. It does. He has cartridges, one per DRE,</p> <p>18 18,000, a unit cost, total cost.</p> <p>19 Q. Does it look like he has a total cost of</p> <p>20 about \$4.32 million for the paper trail?</p> <p>21 A. It looks to me 4.5. Or is that a three?</p> <p>22 5.4 million, 3 times 18.</p>	<p>1 A. Certainly Tom Feehan would be one of</p> <p>2 them. Probably the president of the company, David</p> <p>3 Byrd, Robert Pickett, the salesperson.</p> <p>4 Q. Anybody else?</p> <p>5 A. I don't remember.</p> <p>6 Q. Can you tell me what was said in those</p> <p>7 conversations?</p> <p>8 A. Not precisely. I mean I was interested</p> <p>9 in whether or not the TS could be retrofitted with a</p> <p>10 paper trail, and if so, how much would it cost.</p> <p>11 And --</p> <p>12 Q. Did Diebold tell you whether it could be</p> <p>13 done?</p> <p>14 A. Originally they indicated they thought it</p> <p>15 could be, and then they indicated later that it</p> <p>16 could not be.</p> <p>17 Q. When did they tell it you could not be?</p> <p>18 A. A couple years ago.</p> <p>19 Q. When did they tell you it could be?</p> <p>20 A. A year or so before that.</p> <p>21 Q. Have you had any conversations with</p> <p>22 Diebold about swapping out the AccuVote-TS with the</p>

254	<p>1 AccuVote-TSX?</p> <p>2 A. I don't think I have specifically. I</p> <p>3 know the staff has tried to get an estimate of the</p> <p>4 cost, because we were having to respond to</p> <p>5 legislative inquiries.</p> <p>6 Q. But you have never spoken to anybody at</p> <p>7 Diebold about swapping out the AccuVote-TSX for the</p> <p>8 AccuVote-TS?</p> <p>9 A. I don't think any particular conversation</p> <p>10 that's of any real importance. I may have kidded</p> <p>11 them about trade-in values or something.</p> <p>12 Q. Do you have an AccuVote-TSX in the SBE</p> <p>13 offices?</p> <p>14 A. I believe there is one there.</p> <p>15 Q. How did you come upon that?</p> <p>16 A. They gave it to us.</p> <p>17 Q. It wasn't just a random giving to you,</p> <p>18 was it?</p> <p>19 A. I suspect the staff wanted to see how it</p> <p>20 worked.</p> <p>21 Q. Have you, have you looked at it?</p> <p>22 A. I have glanced at it.</p>	256	<p>1 A. Various members of the General Assembly,</p> <p>2 some press.</p> <p>3 Q. What have they said?</p> <p>4 A. Odd looking, not easy to use.</p> <p>5 Q. Nobody likes it?</p> <p>6 A. Not that I've heard. But I have not</p> <p>7 participated in a lot of those conversations.</p> <p>8 Q. Okay. I would like to give you a</p> <p>9 document that's been marked as Plaintiff's Exhibit,</p> <p>10 what are we up to -- 93.</p> <p>11 (Plaintiff's Exhibit No.</p> <p>12 93 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. FLORENZO:</p> <p>15 Q. Let me just ask have you seen Plaintiff's</p> <p>16 Exhibit 93 before, Ms. Lamone?</p> <p>17 A. I'm sure I have.</p> <p>18 Q. Could you look it over and tell me what</p> <p>19 it is?</p> <p>20 A. Well, it's marked draft. Study of</p> <p>21 Independent Verification Systems, dated March 10,</p> <p>22 2005.</p>
255	<p>1 Q. Have you tried to work on it?</p> <p>2 A. No.</p> <p>3 Q. Not at all?</p> <p>4 A. No.</p> <p>5 Q. How far away is it from you?</p> <p>6 A. On the other side of the building.</p> <p>7 Q. How big is the building?</p> <p>8 A. I don't have any idea.</p> <p>9 Q. How long would it take you to walk from</p> <p>10 your office to where the AccuVote-TSX is?</p> <p>11 A. Two minutes.</p> <p>12 Q. Two minutes? How long has it been there?</p> <p>13 A. I don't know, a year.</p> <p>14 Q. And did you just go and look at it when</p> <p>15 it first came in?</p> <p>16 A. I glanced at it a couple times and we</p> <p>17 have had some visitors to the office that I have</p> <p>18 escorted back over there that have touched it and</p> <p>19 looked at it.</p> <p>20 Q. What have they said?</p> <p>21 A. Not very favorable things about it.</p> <p>22 Q. Who are the visitors that have come?</p>	257	<p>1 Q. Did you create Plaintiff's Exhibit 93?</p> <p>2 A. No.</p> <p>3 Q. Do you know who did?</p> <p>4 A. I think Ross Goldstein did.</p> <p>5 Q. Do you know what the impetus was behind</p> <p>6 Ross Goldstein's preparation of Plaintiff's Exhibit</p> <p>7 93?</p> <p>8 A. I do.</p> <p>9 Q. What of that impetus?</p> <p>10 A. We wanted to have the independent</p> <p>11 verification systems tested from a usability point</p> <p>12 of view and a technological point of view, and the</p> <p>13 General Assembly expressed a desire for this to</p> <p>14 happen in a bill that they passed. And the Governor</p> <p>15 vetoed it, but we went ahead with it anyway,</p> <p>16 subsequently with the Governor's approval.</p> <p>17 Q. Do you have any reason to believe that</p> <p>18 Plaintiff's Exhibit 93 is not what it purports to</p> <p>19 be?</p> <p>20 A. Well, it's marked a draft. I don't know</p> <p>21 whether it's the final copy. But I'm sure it's</p> <p>22 fairly accurate.</p>

258	<p>1 Q. You can put that document aside, Ms. 2 Lamone. Okay. 3 I show you a document that's been marked 4 as Plaintiff's Exhibit 94. 5 (Plaintiff's Exhibit No. 6 94 was marked for 7 identification.) 8 BY MR. FLORENZO: 9 Q. I ask you if you have seen Plaintiff's 10 Exhibit 94 before? 11 A. I'm sure I have. 12 Q. What is Plaintiff's Exhibit 94? 13 A. It's a draft document that was created on 14 March 23rd, 2005, and is titled, Comparison of 15 Verification Methodologies. 16 Q. Did you prepare Plaintiff's Exhibit 94? 17 A. No. 18 Q. Do you know who did? 19 A. No. I would suspect Ross did, but I'm 20 not positive. 21 Q. Do you know -- strike that. 22 A. But no. I'm not even sure Ross did it.</p>	260	<p>1 A. Yes. Which was, had not yet been 2 introduced. 3 Q. Is Plaintiff's Exhibit 95 a fair and 4 accurate representation of your thoughts and 5 impressions on the day that you sent the letter? 6 A. I'm sure it is. 7 Q. Okay. If you could turn to page 3? If 8 you look, there is a series of items at the bottom, 9 one of which is marked D? 10 A. Marked what? 11 Q. D. D as in David. This would be page 3. 12 If you look at that first line there, you wrote: It 13 will cost the State almost \$13 million to purchase 14 an optical scan voting system. Do you see that? 15 A. I do. 16 Q. Do you stand by that? 17 A. I think it's more. 18 Q. How much more? 19 A. I think the latest staff estimate was 20 around 17 or 18 million. 21 Q. Okay. Did Maryland use -- you can set 22 that document aside. Did Maryland use optical scan</p>
259	<p>1 It may have -- it's titled under Maryland State 2 Board of Elections, but it may have been one of the 3 academic institutions. 4 Q. Do you have any reason to believe that 5 Plaintiff's Exhibit 94 is not what it purports to 6 be? 7 A. No. It's a draft though. So I don't 8 know whether it was changed. 9 Q. You can put that aside. 10 I would like to mark this document as 11 Plaintiff's Exhibit 95. 12 (Plaintiff's Exhibit No. 13 95 was marked for 14 identification.) 15 BY MR. FLORENZO: 16 Q. I ask if you have seen it before? 17 A. I'm sure I have. It was signed by me. 18 Q. What is Plaintiff's Exhibit 95? 19 A. It's a letter from me to the Sheila Hixon 20 dated December 23rd, 2005. 21 Q. And is this a letter with respect to 22 Maryland Voter Bill of Rights Legislation, LR781?</p>	261	<p>1 units prior to the AccuVote-TS? 2 A. Some did. Baltimore City used an early 3 voting or touch screen system, I believe they 4 purchased it in '96. 5 Q. Do you know what happened to all the 6 AccuVote -- excuse me. Do you know what happened to 7 all the optical scan machines? 8 A. They were leased. They were returned to 9 the vendor. Two jurisdictions had purchased them. 10 But the rest of them leased them. 11 Q. Who purchased them? 12 A. Oh, Lord. Cecil, I think was one of 13 them. Maybe Carroll. 14 Q. Do you know what they did with them? 15 A. Sold them I think. And then we had 16 several jurisdictions using lever machines and one 17 using a punch card. 18 Q. I'm going show you a document that's been 19 previously marked as Plaintiff's Exhibit 33. And 20 Plaintiff's Exhibit 33 is an e-mail from Donna 21 Duncan to you and others on your staff dated January 22 16, 2006; is that right?</p>