

262	<p>1 <b>A. Correct.</b></p> <p>2 Q. And these are two fiscal notes submitted</p> <p>3 by the State Board of Elections with respect to</p> <p>4 House Bill 8 and House Bill 49; isn't that right?</p> <p>5 <b>A. That's what it says.</b></p> <p>6 Q. Okay. I'm just asking you if that's</p> <p>7 correct?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Okay. And these are fiscal notes that</p> <p>10 are prepared by the State Board of Elections?</p> <p>11 <b>A. Correct. At the request of the General</b></p> <p>12 <b>Assembly.</b></p> <p>13 Q. Yes. Is -- do you have any reason to</p> <p>14 believe that Plaintiff's Exhibit 33 is not what it</p> <p>15 purports to be?</p> <p>16 <b>A. None.</b></p> <p>17 Q. Okay. If you could look at the second</p> <p>18 page of Plaintiff's Exhibit 33, Bates Number</p> <p>19 SBEEESI-014925, do you see that's a fiscal note for</p> <p>20 House Bill 8?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Now, like other things, does this have to</p>	264	<p>1 Q. If you look at the third paragraph, it's</p> <p>2 written, starting at the end of the first line. It</p> <p>3 will cost the State over \$16 million to purchase an</p> <p>4 optical scan system. Do you see that?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. That's what you said before, you thought</p> <p>7 it was higher than the 13 million that you saw in</p> <p>8 2005?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So is this \$16 million figure correct?</p> <p>11 <b>A. It was at the time.</b></p> <p>12 Q. You can put that document aside.</p> <p>13 Now I would like you to take a look at --</p> <p>14 <b>A. It also goes on to note the cost and</b></p> <p>15 <b>reoccurring cost of printing all those ballots at \$1</b></p> <p>16 <b>million for each election. 1.4 million.</b></p> <p>17 Q. Okay. A document that's been marked as</p> <p>18 Plaintiff's Exhibit 96.</p> <p>19 (Plaintiff's Exhibit No.</p> <p>20 96 was marked for</p> <p>21 identification.)</p> <p>22 <b>MR. FLORENZO: Let's take a break now.</b></p>
263	<p>1 meet with your approval before it can be submitted?</p> <p>2 <b>A. I look at most of them, yeah. Not all of</b></p> <p>3 <b>them, though. It depends on if I'm there. These</b></p> <p>4 <b>often, these requests come in very close to the bill</b></p> <p>5 <b>hearing and there is a lot of pressure to get them</b></p> <p>6 <b>done quickly.</b></p> <p>7 Q. Do you have any reason to believe that</p> <p>8 these fiscal notes are inaccurate?</p> <p>9 <b>A. No.</b></p> <p>10 Q. If you take a look at, on that page,</p> <p>11 014925, item number one there, and at the end of the</p> <p>12 first full paragraph it says: Just for the</p> <p>13 replacement of our existing TS machines with the TSX</p> <p>14 machines is estimated at \$40 million. Do you see</p> <p>15 that?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Is that accurate?</p> <p>18 <b>A. I would assume it was at the time.</b></p> <p>19 Q. And if you could look at -- if you go</p> <p>20 further back for the fiscal note on House Bill 49,</p> <p>21 on page 014928 --</p> <p>22 <b>A. Okay.</b></p>	265	<p>1 <b>THE VIDEOGRAPHER: Off the record:</b></p> <p>2 3:37:39.</p> <p>3 - - -</p> <p>4 (Recessed at 3:37 p.m.)</p> <p>5 (Reconvened at 3:49 p.m.)</p> <p>6 - - -</p> <p>7 <b>THE VIDEOGRAPHER: On the record:</b></p> <p>8 3:49:13.</p> <p>9 <b>BY MR. FLORENZO:</b></p> <p>10 Q. Ms. Lamone, I would like to show you a</p> <p>11 document that's been marked as Plaintiff's Exhibit</p> <p>12 96. Have you seen Plaintiff's Exhibit 96 before?</p> <p>13 <b>A. I must have. It was addressed to me,</b></p> <p>14 <b>among others.</b></p> <p>15 Q. This was a February 1st, 2006 e-mail from</p> <p>16 Donna Duncan to you and other members of your staff</p> <p>17 with fiscal notes from the Department of Legislative</p> <p>18 Services on several bills pending in the Maryland</p> <p>19 House; is that correct?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. Do you have any reason to believe that</p> <p>22 this document, Plaintiff's Exhibit 96, is not what</p>

266	<p>1 it purports to be?</p> <p>2 <b>A. None.</b></p> <p>3 <b>Q.</b> You can put that document aside then.</p> <p>4 I would like to show you a document</p> <p>5 that's been previously marked as Plaintiff's Exhibit</p> <p>6 35. You can see it's a March 1st, 2006 e-mail from</p> <p>7 Ross Goldstein to Daneen Banks, copying you and a</p> <p>8 couple of other people on your staff. Do you see</p> <p>9 that?</p> <p>10 <b>A. I do.</b></p> <p>11 <b>Q.</b> Do you recall seeing Plaintiff's Exhibit</p> <p>12 35?</p> <p>13 <b>A. I must have.</b></p> <p>14 <b>Q.</b> Mr. Goldstein writes: Daneen, according</p> <p>15 to Diebold, if the Maryland General Assembly decides</p> <p>16 to use optical scan voting machines for the 2006</p> <p>17 Election cycle, the rental lease for 2000 optical</p> <p>18 scan precinct tabulator units would be between 12</p> <p>19 and a half million and \$13 million. Do you see</p> <p>20 that?</p> <p>21 <b>A. Yes.</b></p> <p>22 <b>Q.</b> Do you have any reason to dispute that</p>	268	<p>1 things: Senator Hollinger would like information on</p> <p>2 the administrative feasibility of implementing TSX</p> <p>3 with VVPAT for 2006. Diebold has already told her</p> <p>4 that they can make the equipment available by June.</p> <p>5 Do you see that?</p> <p>6 <b>A. Uh-huh. I do.</b></p> <p>7 <b>Q.</b> This is dated March, 2006; right?</p> <p>8 <b>A. Correct.</b></p> <p>9 <b>Q.</b> Did you have any reason to dispute that</p> <p>10 at the time?</p> <p>11 <b>A. No.</b></p> <p>12 <b>Q.</b> Do you have any reason to dispute that</p> <p>13 today? Other than the fact that June 2006 is past?</p> <p>14 <b>MR. DAVIS:</b> That Diebold told her or that</p> <p>15 Diebold can, in fact, make the equipment available?</p> <p>16 <b>MR. FLORENZO:</b> That's a fair</p> <p>17 clarification.</p> <p>18 <b>Q.</b> Do you have any reason to dispute that</p> <p>19 Diebold could have made the equipment available by</p> <p>20 June, as of March 2006?</p> <p>21 <b>A. No. If they said they could.</b></p> <p>22 <b>Q.</b> I would like to show you a document</p>
267	<p>1 figure?</p> <p>2 <b>A. No. But again, make sure you notice that</b></p> <p>3 <b>it's for the rental-lease rather than purchase.</b></p> <p>4 <b>Q.</b> I understand.</p> <p>5 <b>A. Okay.</b></p> <p>6 <b>Q.</b> You can put that document aside.</p> <p>7 I would like to show you a document</p> <p>8 that's been previously marked as Plaintiff's Exhibit</p> <p>9 36. This is a March 17, 2006 e-mail from Joe Torre</p> <p>10 to you and other members of your staff, regarding</p> <p>11 the TSX and the VVPAT; is that correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> Do you recall seeing Plaintiff's Exhibit</p> <p>14 36?</p> <p>15 <b>A. I'm sure I did.</b></p> <p>16 <b>Q.</b> If you look on the second page, at the</p> <p>17 Bates Number SBEESI-014761, do you see there is an</p> <p>18 e-mail there from Ross Goldstein to several people</p> <p>19 on your staff and then copying you? Do you see</p> <p>20 that?</p> <p>21 <b>A. I do.</b></p> <p>22 <b>Q.</b> And Ross Goldstein writes, among other</p>	269	<p>1 that's been marked as Plaintiff's Exhibit 30 -- no.</p> <p>2 I would like to give you a document</p> <p>3 that's marked as Plaintiff's Exhibit 97.</p> <p>4 (Plaintiff's Exhibit No.</p> <p>5 97 was marked for</p> <p>6 identification.)</p> <p>7 <b>BY MR. FLORENZO:</b></p> <p>8 <b>Q.</b> For the record, it's been marked as</p> <p>9 Plaintiff's Exhibit 97. Have you seen Plaintiff's</p> <p>10 Exhibit 97 before?</p> <p>11 <b>A. I'm sure I have. It was addressed to me.</b></p> <p>12 <b>Q.</b> Plaintiff's Exhibit 97 is a memo from the</p> <p>13 voting system project management team to you dated</p> <p>14 March 7, 2005, regarding the Montgomery County post</p> <p>15 election maintenance. Do you see that?</p> <p>16 <b>A. Correct.</b></p> <p>17 <b>Q.</b> Do you recall receiving Plaintiff's</p> <p>18 Exhibit 97?</p> <p>19 <b>A. Yes.</b></p> <p>20 <b>Q.</b> Do you know what issues are being</p> <p>21 addressed in Plaintiff's Exhibit 97?</p> <p>22 <b>A. Yes. The analysis of the voting units in</b></p>

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1 Prince George's County once the maintenance plan,  
 2 the system was released and the maintenance plan was  
 3 implemented.  
 4 Q. If you look on page 2, there is a section  
 5 there titled, Montgomery County Voting Unit  
 6 Problems.  
 7 A. Yes.  
 8 Q. Do you see that?  
 9 A. I do.  
 10 Q. There is a little table and under that  
 11 table there's a row that's titled, Actual Problems.  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. And under actual problems it says there  
 15 were 26 units; is that correct?  
 16 A. Correct. Representing .9 percent of the  
 17 total units.  
 18 Q. And of the 26 units, there were 12 that  
 19 were said to have failed during the Election;  
 20 correct?  
 21 A. Correct. .4 percent of the total units.  
 22 Q. And if you look over to the last of that

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1 table, there is a sentence that indicates that the  
 2 12 problem voting units failed during the hours that  
 3 the polls were open; is that correct?  
 4 A. Correct.  
 5 Q. Okay. And now if you look at the next  
 6 page, it has the next step, it says, number one, two  
 7 of the 12 units that failed on Election Day,  
 8 together with two others that failed prior to the  
 9 polls opening, have been returned to the  
 10 manufacturer, Diebold Election Systems,  
 11 Incorporated, for a failure root cause analysis. Do  
 12 you see that?  
 13 A. Yes.  
 14 Q. Is that true?  
 15 A. Yes.  
 16 Q. Why was that done?  
 17 A. Because we wanted to find out what the  
 18 issues were.  
 19 Q. And what were the results of that failure  
 20 root cause analysis?  
 21 A. For the 14 units that failed prior to  
 22 poll opening, it was discovered that when I believe

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1 they were doing the L & A testing they shut the unit  
 2 down without letting the audit logs catch up to be  
 3 where it should be. So when they powered them up on  
 4 Election Day, because the audit logs hadn't finished  
 5 going through their cycle, it showed an error  
 6 message. That's my recollection.  
 7 So these units weren't used. Those 14  
 8 out of the 20, almost 2,700 units.  
 9 Q. Who made that determination?  
 10 A. My staff and Diebold. I mean that was  
 11 part of the root cause analysis, that that's what  
 12 they determined happened. So that was a human error  
 13 issue.  
 14 So we had to revise the L&A procedures to  
 15 allow enough time between the completion of the test  
 16 to the actual powering down the unit to allow the  
 17 audit logs to fulfill their mission.  
 18 The 12 of them that failed on Election  
 19 Day, the -- it was determined there was a mother  
 20 board, and I'm not quite sure what a mother board  
 21 is, but there was a mother board issue.  
 22 Q. Something important?

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1 A. Yes. And it was a -- again, this is a  
 2 Joe Torre question because he knows the technical  
 3 terms -- there was a chip in some of the mother  
 4 boards that had been produced by I believe two  
 5 different manufacturers that had -- there is a, a  
 6 limit or a -- I'm really the wrong person to be  
 7 talking about the exact thing, but there was some  
 8 sort of -- this is not the right description, but  
 9 there was a stop and a go, and the way the chip had  
 10 been incorporated into the mother board, somehow  
 11 that stop and go didn't jive with whatever else this  
 12 thing was doing.  
 13 And so that caused the, I believe it was  
 14 a screen freeze.  
 15 Q. And who was it that made that  
 16 determination?  
 17 A. That was done at the Diebold facilities.  
 18 Q. You actually had to send some of the  
 19 units out to Diebold?  
 20 A. I think they eventually sent all 12.  
 21 Q. And what was done in response to the  
 22 results that were concluded by Diebold?

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275	<p>1 A. Uh-huh.</p> <p>2 Q. When did you tell the State Board of</p> <p>3 Elections about the issue regarding the mother</p> <p>4 boards?</p> <p>5 A. We all, when I say we, the staff,</p> <p>6 remembers telling the Chairman of the Board fairly</p> <p>7 early on when we discovered it.</p> <p>8 Q. Was this in a Board meeting?</p> <p>9 A. I don't believe so.</p> <p>10 Q. No? Okay.</p> <p>11 A. It was just a briefing.</p> <p>12 Q. Do you recall the circumstances under</p> <p>13 which you told Mr. Burger about the mother board</p> <p>14 issue?</p> <p>15 A. I talked to a couple members of the staff</p> <p>16 about this yesterday, and the recollection was that</p> <p>17 we were simply in my office and just briefed him on</p> <p>18 the root cause analysis.</p> <p>19 Q. Who did you talk to yesterday about --</p> <p>20 A. Joe Torre.</p> <p>21 Q. You talked to Joe Torre yesterday about</p> <p>22 when you --</p>	277	<p>1 A. No.</p> <p>2 Q. Do you recall where?</p> <p>3 A. It was in my office.</p> <p>4 Q. Do you recall who was there?</p> <p>5 A. I'm sure -- no, I don't specifically, but</p> <p>6 I know Joe Torre was there. I don't know whether</p> <p>7 anybody from Diebold was there. I think they might</p> <p>8 have been, but I'm not positive.</p> <p>9 Q. Do you recall what you told Mr. Burger?</p> <p>10 A. Pretty much just what I told you.</p> <p>11 Q. He did say anything?</p> <p>12 A. No.</p> <p>13 Q. Did he react at all?</p> <p>14 A. No.</p> <p>15 Q. Did you tell any other members of the</p> <p>16 State Board of Elections?</p> <p>17 A. No. I don't recall that we did. That</p> <p>18 was his call.</p> <p>19 Q. Ultimately you told him at a State Board</p> <p>20 of Elections meeting; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. That was your call, wasn't it?</p>

278	<p>1 A. Yes. Yes. Well, in conjunction with</p> <p>2 him.</p> <p>3 Q. What do you mean in conjunction with him?</p> <p>4 A. That we put it, bring it up and inform</p> <p>5 the Board of what was going on.</p> <p>6 Q. You mean he could tell you that there</p> <p>7 were certain things that you were not supposed to</p> <p>8 bring up at a State Board meeting?</p> <p>9 A. If he didn't want something discussed, he</p> <p>10 would say so.</p> <p>11 Q. Okay. Did he tell you that at this</p> <p>12 instance?</p> <p>13 A. No. We were still in the process of</p> <p>14 doing, going through the motions and --</p> <p>15 Q. Right. So he never said anything to you</p> <p>16 that you shouldn't tell the other Board members</p> <p>17 about --</p> <p>18 A. No.</p> <p>19 Q. -- about the mother board issue?</p> <p>20 A. And he may have in fact told them.</p> <p>21 Q. But you don't know if he told them?</p> <p>22 A. I don't know.</p>	280	<p>1 Q. The section here at, on page</p> <p>2 SBEEESI-0019395 -- actually, let me withdraw that</p> <p>3 question.</p> <p>4 This administrator's report was prepared</p> <p>5 in anticipation of the State Board of Elections</p> <p>6 meeting on July 12, 2005; isn't that right?</p> <p>7 A. As a routine matter, yes.</p> <p>8 Q. Again, if you turn now to page</p> <p>9 SBEEESI-0019395, there is a topic there called number</p> <p>10 four, voting systems?</p> <p>11 A. Correct.</p> <p>12 Q. And there is -- most of the way down</p> <p>13 there is a subtopic titled, phase 1 equipment</p> <p>14 refresh. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. That's a description of the mother board</p> <p>17 problem and the steps being taken by the SBE to deal</p> <p>18 with that issue; isn't that right?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall informing the State Board</p> <p>21 members prior to July 2, 2005, about the mother</p> <p>22 board issue?</p>
279	<p>1 Q. But you eventually told the Board members</p> <p>2 at a Board meeting; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. I would like you to take a look at a</p> <p>5 document that's been previously marked as</p> <p>6 Plaintiff's Exhibit 46. Take a look at Plaintiff's</p> <p>7 Exhibit 46. Can you tell me what Plaintiff's</p> <p>8 Exhibit 46 is?</p> <p>9 A. Yes. It is the Administrator's report to</p> <p>10 the State Board of Elections for the July 12th, 2005</p> <p>11 meeting.</p> <p>12 Q. Is the Administrator's report something</p> <p>13 that you would normally prepare before a State Board</p> <p>14 meeting?</p> <p>15 A. It is a document that is prepared before</p> <p>16 every State Board meeting, yes.</p> <p>17 Q. Does it reflect a report that you give at</p> <p>18 a State Board meeting?</p> <p>19 A. That I give.</p> <p>20 Q. Again, just like the other things, you</p> <p>21 sign off on everything that is prepared?</p> <p>22 A. Yes. I did not prepare this document.</p>	281	<p>1 MR. DAVIS: Other than what she has</p> <p>2 already testified to?</p> <p>3 MR. FLORENZO: I'm not going to put that</p> <p>4 qualification on it.</p> <p>5 BY MR. FLORENZO:</p> <p>6 Q. Do you recall --</p> <p>7 A. I don't know whether there was any prior</p> <p>8 report to the State Board. You have all the</p> <p>9 minutes. I don't remember.</p> <p>10 Q. I do. I can put them all in front of you</p> <p>11 and they're not in there.</p> <p>12 A. Okay.</p> <p>13 Q. I was just trying to short circuit</p> <p>14 things. Do you have any reason to believe that</p> <p>15 prior to July 12, 2005, you told the State Board</p> <p>16 members at a Board meeting or through one of these</p> <p>17 Administrator's reports about the mother board</p> <p>18 issue?</p> <p>19 A. Not if -- if they are not in the</p> <p>20 Administrator's report, no, they would not have</p> <p>21 been.</p> <p>22 Q. Okay. I know you've seen this document</p>

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<p>1 before. This document has been marked as  2 Plaintiff's Exhibit 12. Do you see that? Do you  3 see there is -- Plaintiff's Exhibit 12 has a  4 quotation from you describing working with Diebold  5 as a nightmare?  6 <b>A. Yes.</b>  7 Q. I just want to ask you, you know, is that  8 a fair and accurate quote from you?  9 <b>A. At the time it was.</b>  10 Q. So you did describe Diebold at one time  11 as working with Diebold as being a nightmare?  12 <b>A. I did.</b>  13 Q. Okay. You can put that the document  14 aside.  15 MR. DAVIS: I'm sorry. What was the date  16 of that? October 9th?  17 THE WITNESS: October 9, 2002.  18 MR. DAVIS: Thank you.  19 BY MR. FLORENZO:  20 Q. Okay. Are you familiar with some of the  21 e-mails sent around by some Diebold employees about  22 potentially charging Maryland out the ying yang?</p>	<p>1 Q. Did you ever have any conversations with  2 Diebold about the e-mails regarding the  3 possibilities of charging Maryland out the ying yang  4 for any changes to the voting system?  5 <b>A. I don't think I did. The staff may have.</b>  6 <b>We were monitoring the contract pretty closely. So.</b>  7 Q. Do you know who in your staff would have?  8 <b>A. It would have been Joe Torre or David</b>  9 <b>Heller.</b>  10 Q. Who is David Heller?  11 <b>A. David Heller is the former project</b>  12 <b>manager. Patrick Strauch is now the project</b>  13 <b>manager.</b>  14 Q. Right. We talked about this before. Are  15 you aware of reports that Global Election Systems  16 had employed five convicted felons in secured  17 management positions prior to the time that it was  18 acquired by Diebold?  19 <b>A. I think I read about it in the paper.</b>  20 Q. Did you ever make any inquiries with  21 Diebold as to whether these allegations were true?  22 <b>A. I'm sure we did.</b></p>
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<p>1 <b>A. I'm sorry. Say that again.</b>  2 Q. Are you aware of some of the e-mails  3 involving Diebold employees in which Diebold  4 employees throws out the prospect of charging  5 Maryland out the ying yang?  6 <b>A. I remember that phrase being used I'm not</b>  7 <b>sure of the context in which or when it was. But,</b>  8 <b>yes, I remember.</b>  9 Q. Do you recall it being used, excuse me,  10 in the late 2002, early 2003 timeframe shortly after  11 the 2002 Elections?  12 <b>A. I don't remember when it was used. It</b>  13 <b>was an interesting term, so.</b>  14 Q. Sure. It is an interesting term, isn't  15 it?  16 <b>A. Yes.</b>  17 Q. What do you understand about the ying  18 yang term to be?  19 <b>A. Not a pretty thing.</b>  20 Q. Do you understand it to mean a lot of  21 money?  22 <b>A. Yes.</b></p>	<p>1 Q. Can you tell me about those inquiries?  2 <b>A. No.</b>  3 Q. Did you ever make any inquiries with  4 Diebold about whether these employees were still  5 working at Diebold after the acquisition?  6 <b>A. I vaguely recall the staff telling me</b>  7 <b>that they were satisfied with the answers they got.</b>  8 <b>So.</b>  9 Q. Who was it that spoke with Diebold?  10 <b>A. It probably -- when was the -- what year?</b>  11 Q. I don't know. These articles that I'm  12 reading come from 2003.  13 <b>A. Three? Probably David Heller then.</b>  14 Q. Okay. Is it possible that somebody who  15 worked at Global Election Systems but was let go  16 when Global Election Systems was acquired by Diebold  17 worked on the creation of the source code that's  18 used in the AccuVote-TS units?  19 MR. DAVIS: Objection.  20 <b>A. I have no idea.</b>  21 Q. I mean is it possible?  22 MR. DAVIS: Objection.</p>

<p style="text-align: right;">286</p> <p>1     <b>A. I have no idea.</b>  2     Q. Can you the ask the question again,  3 Robert?  4     - - -  5         (Whereupon the following portion of the  6 testimony was repeated by the Court Reporter:  7         QUESTION: I mean is it possible?  8     - - -  9         MR. FLORENZO: Let me just withdraw the  10 question and ask it again.  11         I'm not asking if you know. What I'm  12 asking is: Do you have any information that would  13 indicate that the convicted felons who worked at  14 Global Election Systems prior to the acquisition by  15 Diebold did not work on the creation of the source  16 code --  17     <b>A. I have no --</b>  18     Q. -- that was used in the AccuVote?  19     <b>A. I have no idea.</b>  20     Q. Did you ever receive any presentations  21 from a company called Vote Here?  22     <b>A. Yes.</b></p>	<p style="text-align: right;">288</p> <p>1     <b>qualifications unless they saw a market for it.</b>  2     Q. Is that an assumption you made?  3     <b>A. Uh-huh.</b>  4     Q. And what's that based upon?  5     <b>A. That they didn't go forward and it must</b>  6 <b>have been a money issue.</b>  7     Q. Did you encourage Diebold to work with  8 Vote Here?  9     <b>A. Indeed I did.</b>  10     Q. Was there a problem between Diebold and  11 Vote Here in working together? Let me withdraw that  12 question.  13         Did, did, was the level of enthusiasm  14 between Vote Here and Diebold and working together  15 different?  16     <b>A. Vote Here very much wanted to work with</b>  17 <b>Diebold. Diebold did not necessarily want to work</b>  18 <b>with Vote Here.</b>  19     Q. And in the end there really wasn't much  20 cooperation between Diebold and Vote Here?  21     <b>A. No.</b>  22     Q. Were you disappointed in that?</p>
<p style="text-align: right;">287</p> <p>1     Q. And do you recall when those  2 presentations were?  3     <b>A. Probably around the same time that,</b>  4 <b>something we discussed earlier, dealing with the</b>  5 <b>verification study, and I think that was, my</b>  6 <b>recollection of the document was 2004.</b>  7     Q. What did you think of Vote Here?  8     <b>A. A very interesting concept. The computer</b>  9 <b>scientists loved it. I think it would have been a</b>  10 <b>very difficult one for voters to grasp.</b>  11     Q. Did you think it was worthwhile to have  12 Diebold work with Vote Here to try to come up with a  13 solution that integrated the Vote Here technology?  14     <b>A. Obviously I did.</b>  15     Q. Did that succeed?  16     <b>A. No.</b>  17     Q. Do you know why it didn't succeed?  18     <b>A. I can only assume that it didn't because</b>  19 <b>Diebold didn't see a market for the product and</b>  20 <b>didn't want to invest the money to integrate --</b>  21 <b>that's not the right word -- mesh the two systems</b>  22 <b>together and go through all the testing and</b></p>	<p style="text-align: right;">289</p> <p>1     <b>A. I was.</b>  2     Q. Did you let Diebold know?  3     <b>A. I did.</b>  4     Q. What did they say?  5     <b>A. Not much.</b>  6     Q. Do you recall what they said?  7     <b>A. No.</b>  8     Q. Do you recall who you talked to?  9     <b>A. Probably Mark Radke. I don't remember.</b>  10 <b>It was only a couple people in that firm that I ever</b>  11 <b>talked to.</b>  12     Q. You are aware that in the fall of 2006  13 there were allegations that some disks containing  14 the source code used by Diebold was allegedly stolen  15 from somewhere; is that right?  16     <b>A. Yes.</b>  17     Q. Why don't you tell me what you know about  18 that?  19     <b>A. Basically what I read in the paper, that</b>  20 <b>I think it was three disks were provided to a former</b>  21 <b>member of the House of Delegates and that the disk</b>  22 <b>contained software that was, I think, three years</b></p>

290	<p>1 <b>old, and I immediately reported the matter to the</b></p> <p>2 <b>FBI.</b></p> <p>3 Q. Sure. And did they conduct an</p> <p>4 investigation?</p> <p>5 <b>A. They did indeed.</b></p> <p>6 Q. Have you received anything back from the</p> <p>7 FBI based upon your inquiry?</p> <p>8 <b>A. I can't reveal that.</b></p> <p>9 Q. I don't want you to reveal anything that</p> <p>10 you are not obligated to reveal. I don't want you</p> <p>11 to reveal anything that you are under an obligation</p> <p>12 not to reveal.</p> <p>13 Have the disks been recovered?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Were any copies of the disks made?</p> <p>16 <b>A. I don't know that.</b></p> <p>17 Q. Is it possible that the, that there are</p> <p>18 copies of the disks still out there?</p> <p>19 <b>A. I assume it's possible. The FBI was on</b></p> <p>20 <b>the matter fairly quickly. So I doubt there was</b></p> <p>21 <b>time to do much of anything with them.</b></p> <p>22 Q. Are you aware if there are going to be</p>	292	<p>1 from public access.</p> <p>2 <b>A. I don't know how we would do that.</b></p> <p>3 Q. Have -- has anybody confronted you with a</p> <p>4 public version of the SAIC report?</p> <p>5 <b>A. A reporter did.</b></p> <p>6 Q. Did you discuss the unredacted SAIC</p> <p>7 report with that reporter?</p> <p>8 <b>A. No. I kicked her out of my office.</b></p> <p>9 Q. Did you ask for the report back?</p> <p>10 <b>A. I did.</b></p> <p>11 Q. Did she give it to you?</p> <p>12 <b>A. No. And I also gave her name to the FBI.</b></p> <p>13 Q. Did you look at the SAIC report that this</p> <p>14 reporter brought to you?</p> <p>15 <b>A. No. I wouldn't. I refused to discuss it</b></p> <p>16 <b>with her.</b></p> <p>17 Q. Have you looked at the SAIC report that's</p> <p>18 publicly available?</p> <p>19 <b>A. I haven't.</b></p> <p>20 Q. Do you even know whether the report</p> <p>21 that's on some Website is an unredacted copy of the</p> <p>22 SAIC report?</p>
291	<p>1 any charges filed?</p> <p>2 <b>A. I can't discuss the case with you. I'm</b></p> <p>3 <b>sorry.</b></p> <p>4 Q. That's fine. I don't know what</p> <p>5 instructions you are under, so if you think the</p> <p>6 question is inappropriate, feel free to tell me.</p> <p>7 Now I'm going to talk to you about the</p> <p>8 SAIC report. There are also allegations in the fall</p> <p>9 of 2006 that an unredacted copy of the SAIC report</p> <p>10 was made publicly available?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Can you tell me what you know about that?</p> <p>13 <b>A. Again, I read about it in the press</b></p> <p>14 <b>report, got a press call, immediately referred that</b></p> <p>15 <b>matter to the FBI. I don't know whether that</b></p> <p>16 <b>investigation is complete or not.</b></p> <p>17 Q. Is the unredacted SAIC report still</p> <p>18 publicly available?</p> <p>19 <b>A. I don't know that. It was posted on some</b></p> <p>20 <b>Website, so I assume it is.</b></p> <p>21 Q. Has the State Board of Elections taken</p> <p>22 any steps to try and pull the unredacted SAIC report</p>	293	<p>1 <b>A. I do not.</b></p> <p>2 Q. Okay. You said you told the FBI the name</p> <p>3 of the reporter --</p> <p>4 <b>A. I believe so.</b></p> <p>5 Q. -- who approached you with an unredacted</p> <p>6 copy of the SAIC report?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. You talked to Joe Torre about this case</p> <p>9 yesterday?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Did you talk to anybody else?</p> <p>12 <b>A. We had -- Mark was in the room. Patrick</b></p> <p>13 <b>was in the room, and Paul Aumayr was in the room.</b></p> <p>14 Q. And how long did you all talk?</p> <p>15 <b>A. We talked with them perhaps 45 minutes.</b></p> <p>16 Q. And what did you talk about other than</p> <p>17 the mother board issue?</p> <p>18 <b>A. It basically was preparing them for their</b></p> <p>19 <b>deposition rather than me for mine.</b></p> <p>20 Q. Uh-huh. Okay. So they needed</p> <p>21 information and they got that information from you?</p> <p>22 <b>A. Yeah. I was sitting at my desk and they</b></p>



294	<p>1 were at the conference table chatting.</p> <p>2 Q. Sure. What topics were they asking you</p> <p>3 about?</p> <p>4 A. They weren't particularly asking me. It</p> <p>5 was their lawyer preparing them.</p> <p>6 Q. But you needed to be there because you</p> <p>7 had knowledge that they needed?</p> <p>8 A. No. I think they just parked themselves</p> <p>9 in my office.</p> <p>10 Q. Were you just a fly on the wall and not</p> <p>11 listening?</p> <p>12 A. I listened to them. I participated in</p> <p>13 the conversation, but I was also doing other things.</p> <p>14 Q. Sure. I just want to know what the</p> <p>15 topics were that you talked about?</p> <p>16 A. Well, the mother board was one, because I</p> <p>17 knew you would be interested in it.</p> <p>18 Q. Right.</p> <p>19 A. You showed me one of the other documents</p> <p>20 that we looked at, which I think I acknowledged. We</p> <p>21 talked a little bit about deposition etiquette, you</p> <p>22 know, don't interrupt if you can, that kind of</p>	296	<p>1 A. Probably not, because we are going to</p> <p>2 be -- right now the only, other than warranty and</p> <p>3 stuff is the maintenance effort with Diebold, and we</p> <p>4 are going to be doing a procurement for that</p> <p>5 beginning in -- actually, they are working on the</p> <p>6 RFP now.</p> <p>7 Q. Could you give me an order of magnitude</p> <p>8 possibly? Would it be hundreds of thousands of</p> <p>9 dollars or millions of dollars.</p> <p>10 A. I would say probably around a million</p> <p>11 dollars a year for maintenance.</p> <p>12 Q. And will there be other costs in addition</p> <p>13 to maintenance if Maryland continues to use the</p> <p>14 AccuVote-TS units through the 2010 election?</p> <p>15 A. Only the normal cost of running an</p> <p>16 election. Paying the poll workers, paying the</p> <p>17 workers, printing the paper ballots, among about 50</p> <p>18 things.</p> <p>19 Q. Have you ever received any money or gifts</p> <p>20 or anything like that from Diebold?</p> <p>21 A. No. I think they gave me a ballpoint</p> <p>22 pen, which I gave away.</p>
295	<p>1 stuff.</p> <p>2 And, I'm sorry, I have to defer to them</p> <p>3 and even Mark, even though it was just yesterday.</p> <p>4 Q. That's fine. I'm almost finished.</p> <p>5 Have you or anybody on your staff, State</p> <p>6 Board of Elections, taken any vacation trips paid</p> <p>7 for by Diebold?</p> <p>8 A. No.</p> <p>9 Q. Okay. Have you ever stayed at a hotel or</p> <p>10 used any leisure facilities that were paid for by</p> <p>11 Diebold?</p> <p>12 A. No.</p> <p>13 Q. If Maryland maintains the use of the</p> <p>14 AccuVote-TS voting units between now and through the</p> <p>15 2010 election, do you have an estimate as to how</p> <p>16 much money in addition to what Maryland is already</p> <p>17 obligated to pay that will cost Maryland?</p> <p>18 A. Oh, in addition to what we are already</p> <p>19 obligated to pay?</p> <p>20 Q. Yes.</p> <p>21 A. I don't have those figures.</p> <p>22 Q. Can you make an estimate?</p>	297	<p>1 Q. You were at one time the President of the</p> <p>2 National Association of State Election Directors;</p> <p>3 isn't that right?</p> <p>4 A. I was.</p> <p>5 Q. And as part of that you had to travel</p> <p>6 around the country and speak at presentations and</p> <p>7 give speeches --</p> <p>8 A. I still do.</p> <p>9 Q. -- participate in forums. Who pays for</p> <p>10 that?</p> <p>11 A. Generally the State of Maryland pays for</p> <p>12 it.</p> <p>13 Q. Generally seems to leave the door open</p> <p>14 that somebody else may pay for some of it and I just</p> <p>15 want to know who that is?</p> <p>16 A. Whenever I go to any official function of</p> <p>17 the Election Assistance Commission, and I'm on their</p> <p>18 Advisory Board and I was on their Standards Board,</p> <p>19 designated a member of the staff to do that for me.</p> <p>20 The Federal Government pays for it.</p> <p>21 Q. Other than -- sorry.</p> <p>22 A. There are some conferences that I go to,</p>

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<p>1 I went to one for the Pugh Charitable Trust, and  2 they paid for the hotel room.  3 Q. Other than the State of Maryland, the  4 Federal Government, the Pugh Charitable Trust, has  5 anybody else financed any of these trips that you've  6 taken.  7 A. Diebold certainly has not. But I would  8 have to -- I make a lot of trips. So.  9 Q. Sure. I bet you do.  10 A. Unfortunately.  11 Q. I'm just trying to gather who else in  12 addition to the Federal Government and the State of  13 Maryland and the Pugh Charitable Trust would finance  14 some of these trips?  15 A. I'm sure that the National Science  16 Foundation has paid for some of my expenses to  17 attend some of their conferences, American  18 Association for the Advancement of Science I think  19 probably bought me lunch when I was down there for  20 the day.  21 Q. I hope it was a good lunch.  22 A. I don't remember. But those are the</p>	<p>1 proposed?  2 A. Well, the staff wrote it and proposed it  3 to the State Board.  4 Q. Do you recall when?  5 A. I don't. But it probably was sometime in  6 2002-ish.  7 Q. Do you recall when the -- strike that.  8 Do you recall when you sent a memo to the  9 State Board in anticipation of the Board meeting  10 where they certified the AccuVote-TS that you said  11 that the certification was contingent on the  12 adoption of certain regulations?  13 A. Let me correct my statement. This says  14 that comments must be received no later than 5:00  15 p.m., April 18, 2005. So it was in 2005. And I'm  16 sorry, what was your question?  17 Q. I'm going to withdraw that question based  18 on what you just testified to.  19 So what was -- what was the need to amend  20 the regulations in 2005 for?  21 A. It looks to me to be more stylistic and  22 in definition of a vote they struck the word by and</p>
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<p>1 kinds of functions that I attend.  2 Q. Anybody else?  3 A. No.  4 Q. One more topic. And I'm going to mark  5 this as -- I'm going to mark this as Plaintiff's  6 Exhibit 98.  7 (Plaintiff's Exhibit No.  8 98 was marked for  9 identification.)  10 BY MR. FLORENZO:  11 Q. Ms. Lamone, can you tell me what  12 Plaintiff's Exhibit 98 is?  13 A. It is the regulation or a part of a  14 regulation for the State Board of Elections. It is  15 Title 33, Subtitle 8, Canvassing, and it's  16 Regulation 02, Uniform Definition of a Vote.  17 Q. But it's not a regulation. That one is a  18 proposed regulation; isn't that right?  19 A. Yes.  20 Q. Okay. So is it a regulation now?  21 A. Yes.  22 Q. Okay. So is that something that you</p>	<p>1 inserted the word when, and in the first instance  2 and second instance they struck the word by and  3 inserted the word selects.  4 Q. Do you recall any conversations as to the  5 need to amend the regulations?  6 A. I do not.  7 Q. Do you recall any other instances in  8 which the State Board of Elections amended the  9 regulations while you've been the administrator?  10 MR. DAVIS: Any regulation? Any SBE  11 regulations?  12 MR. FLORENZO: Yeah. I'll start there.  13 A. We probably do several amendments every  14 year.  15 Q. Every year. Okay.  16 And how is it that the State Board of  17 Elections goes about amending the regulations?  18 A. Well, the staff generally, in  19 consultation with the Attorney General's Office,  20 identifies an issue, and they come up, because they,  21 because they have to be regs and something happens  22 that you need to amend them. A proposal is drafted</p>

<p style="text-align: right;">302</p> <p>1 with a covering memo explaining the change,  2 presented to the Board at a meeting, and a motion is  3 requested to approve the change.  4 Then the Administrative Procedure Act  5 kicks in and it has to go through the processes  6 mandated by the APA. If it is a normal regulation,  7 it simply goes to, first to the AELR Committee of  8 the General Assembly as a notification, and it is  9 simultaneously submitted to the Division of State  10 Documents, the Secretary of State, who then  11 publishes the notice of proposed action in the --  12 yeah -- the Register.  13 And the period of, as you can see here,  14 public comment period is 30 or 60 days, and then the  15 Board must adopt, if it did any comments, they have  16 to analyze them, see if the reg needs to be changed  17 or amended, and if not, then it's submitted to the  18 Board for final approval.  19 If it's an emergency reg, it goes to the  20 ALR committee for approval before we can implement  21 it. Once they approve it, it is in effect until a  22 time certain and we usually submit them both on both</p>	<p style="text-align: right;">304</p> <p>1 (Whereupon, at 5:08 p.m. the taking of  2 the instant deposition ceased.)  3  4  5 _____  6 LINDA H. LAMONE  7  8 SUBSCRIBED and SWORN TO before me this ____ day of  9 _____, 2007.  10  11  12  13  14  15  16  17  18  19  20 _____  21 NOTARY PUBLIC  22 My Commission expires: _____</p>
<p style="text-align: right;">303</p> <p>1 tracks if we are doing an emergency order.  2 Q. That's what you have to do if you are  3 amending or adopting or deleting the regulation;  4 isn't that right?  5 A. Correct. It's Maryland law.  6 Q. And it's Maryland law. And was that --  7 that's not a procedure that was followed when the  8 State Board of Elections certified the AccuVote-TS  9 voting unit system; isn't that right?  10 A. That wasn't a regulation.  11 Q. So they did follow that procedure?  12 A. That was not, my recollection, that was  13 not a regulation.  14 Q. Okay. So the procedure that you just  15 outlined was not followed in that instance?  16 A. That's my recollection.  17 MR. FLORENZO: I have no further  18 questions.  19 MR. DAVIS: We have no questions.  20 THE VIDEOGRAPHER: This concludes the  21 deposition. The time is 5:08:22.  22 - - -</p>	<p style="text-align: right;">305</p> <p>1 STATE OF MARYLAND )  2 ss:  3 ANNE ARUNDEL COUNTY )  4 I, ROBERT M. JAKUPCIAK, an RPR and Notary  5 Public within and for the State of Maryland do  6 hereby certify:  7 That the witness whose deposition is  8 hereinbefore set forth, was duly sworn and that the  9 within transcript is a true record of the testimony  10 given by such witness.  11 I further certify that I am not related to  12 any of these parties to this action by blood or  13 marriage and that I am in no way interested in the  14 outcome of this matter.  15 IN WITNESS WHEREOF, I have hereunto set my  16 hand this ____ day of _____, 2007.  17  18 _____  19  20 My Commission Expires:  21 December 14, 2008  22</p>