THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al., Petitioners, v. King County et al., Respondents, and Washington State Democratic Central Committee, Intervenor-Respondent.	NO. 05-2-00027-3 INTERVENOR-RESPONDENT WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE'S OBJECTIONS TO PETITIONERS' DEPOSITION DESIGNATIONS AND PROPOSED ORDER

Intervenor-Respondent Washington State Democratic Central Committee ("WSDCC") hereby objects to Petitioners' Designations of Deposition Excerpts, filed on Friday, May 13, 2005, for three related reasons.

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First, the Court should not consider petitioners' designations until after WSDCC has been permitted to cross-designate the depositions. Civil Rule 32(a)(4) provides in full:

> If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Furthermore, ER 106 provides that, when a party seeks to introduce only portions of a written record, "an adverse party may requires the party at that time to introduce any other part . . . which ought in fairness to be considered contemporaneously with it." Petitioners have sought to introduce only selected parts of the depositions but have not provided WSDCC or any other party an opportunity to cross-designate the deposition so that all pertinent portions of the written records are considered contemporaneously. In addition, WSDCC and other parties may have objections to certain excerpts petitioners seek to introduce.

Indeed, WSDCC was surprised by petitioners' pre-emptive filing. On the Tuesday before the filing, WSDCC's counsel preliminarily discussed with petitioners' counsel how and when the parties would submit deposition designations. Counsel spoke again on Thursday and exchanged emails on Friday afternoon, before petitioners filed their designations. Although at that time, petitioners' counsel did not substantively respond to WSDCC's suggested practices (similar to those included in the proposed order), WSDCC was under the impression that the parties had agreed that they would exchange designations, and would allow each other to cross-designate, prior to submitting anything to the Court. The parties are currently again attempting to reach an agreement on the form and timing of deposition designations. Therefore, the Court should not consider petitioners' designated

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portions until after WSDCC and other parties have had an opportunity to object to petitioners' excerpts and cross-designate the depositions.

Second, petitioners' "topic" descriptors are prejudicial. The Court has not yet considered any objections WSDCC might have to particular testimony, much less admitted that testimony into evidence. But petitioners are already characterizing and arguing from that testimony. Petitioners' form of designation is clearly inappropriate.

Third, petitioners' wrongly attempt to use unredacted "mini" versions of the deposition transcripts. These transcripts muddy the trial record (and the record on appeal) by putting before the Court portions of the depositions that petitioners do not intend to introduce. (Petitioners have also "bracketed" portions of testimony in the transcripts that they have not "designated" in the pleading. See, for example, pages 34-36 of the Reed deposition.) For these reasons, the Court should disregard petitioners' deposition designation filings.

For the convenience of the Court, and so that the parties have clear instructions on the timing and form of deposition designations, WSDCC proposes that the Court enter an order setting out specific rules of deposition designations. A proposed order is enclosed with these objections. Requiring the parties to work together to submit cross-designated deposition transcripts with objections and trial exhibit numbers (rather than deposition exhibit numbers) will streamline both the pretrial and trial proceedings. (Again, the parties are working on an agreement that might obviate the need for such an order.)

Lastly, in the interest of caution, WSDCC is also submitting herewith as Exhibits 1, 2, 3 and 4 its cross-designations and objections to petitioners' designations.

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DATED: May 17, 2005.

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Exhibit 1

WSDCC Objections and Cross-designations of
Secretary of State Sam Reed deposition

WSDCC Objections and Cross-Designations of Secretary of State Sam Reed Deposition

OBJECTIONS

PETITIONERS' DESIGNATIONS	WSDCC'S OBJECTIONS
34:1-15	Relevancy; lay opinion; and lack of foundation/personal knowledge
35:13-37:3	Relevancy; lay opinion; lack of foundation/personal knowledge; and hearsay
71:15-72:23	Relevancy; lay opinion; and other (legal conclusion)
75:10-76:1	Lay Opinion; relevancy; and other (legal conclusion)
76:19-82:19	Leading; hearsay; relevancy; lack of foundation/personal knowledge; and lay opinion
89:25-92:13	Asked and answered/cumulative; relevancy; hearsay; lay opinion; and lack of foundation/personal knowledge
96:13-97:9	Relevancy; lack of foundation/personal knowledge; lay opinion; and hearsay
99:13-102:17	Leading; lay opinion; other (legal conclusion); and answered/cumulative
103:5-104:10	Relevancy; lay opinion; leading; hearsay; and asked and answered/cumulative
105:6-106:9	Relevancy; hearsay; leading; lack of foundation/personal knowledge; and asked and answered/cumulative
108:24-110:18	Leading; relevancy; lack of foundation/personal knowledge; asked and answered/cumulative; and lay opinion
115:5-117:3	Hearsay; lack of foundation/personal knowledge; relevancy; lay opinion; and asked and answered/cumulative

PETITIONERS' DESIGNATIONS	WSDCC'S OBJECTIONS
118:4-119:3	Hearsay; lack of foundation/personal knowledge; relevancy; lay opinion; leading; and asked and answered/cumulative
122:7-124:5	Foundation; lay opinion; other (legal conclusion); hearsay; and relevancy
124:8-125:7	Relevancy; and lack of foundation/personal knowledge
125:21-126:16	Relevancy; lay opinion; and other (legal conclusion)
127:4-128:17	Lay opinion; and other (legal conclusion)
131:2-20	Lay opinion; and other (legal conclusion)
134:13-135:10	Lay opinion; other (legal conclusion); leading; and lack of foundation/personal knowledge
135:11-136:1	Lay opinion; and other (legal conclusion)
136:21-138:12	Lay opinion; other (legal conclusion); and lack of foundation/personal knowledge
139:23-140:22	Relevancy; lay opinion; and lack of foundation/personal knowledge
140:23-141:13	Lay opinion; and other (legal conclusion)
141:15-22	Other (legal conclusion); and lay opinion
141:23-25	Relevancy; lack of foundation/personal knowledge; and lay opinion
142:1-25	Relevancy; lay opinion; lack of foundation/personal knowledge; and other (legal conclusion)
144:22-145:13	Relevancy; lay opinion; and hearsay
146:1-8	Relevancy; lay opinion; and other (legal conclusion)
185:14-188:10	Relevancy; lay opinion; and other (legal conclusion)
193:8-194:2	Lay opinion; other (legal conclusion) and relevancy

CROSS-DESIGNATIONS

7:14-8:9
8:17-11:22
12:3-15
13:6-14
14:11-15:10
15:19-22
16:21-25
17:22-18:3
19:4-22
20:3-6
21:7-22:2
33:19-34:2
34:16-35:12
37:15-38:2
43:16-44:21
47:3-17
49:2-16
49:24-50:1
51:12-17
55:4-57:10
63:6-24
67:20-68:2
75:2-9
83:22-84:2
85:15-25
92:14-19
97:4-9
113:11-22
129:1-11
141:5-7; 9-13
143:2-144:5
145:18-19; 21-24
149:7-150:3
150:8-20
151:7-15
152:1-21
153:11-154:20
155:5-22
159:1-4
159:17-160:20
162:13-16
163:5-164:8
165:19-167:24

168:4-9
168:17-169:14
170:22-171:8
172:4-173:16
173:24-174:3
174:14-175:12
176:19-177:10
177:24-178:2
178:8-11
179:5-9
180:14-182:17
185:7-13
188:14-189:9
195:21-23
196:4-6
197:1-22

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF CHELAN
3
4 TIMOTHY BORDERS, et al.,
5 Petitioners,
6 vs. Case No.
7 05-2-00027-3
8 KING COUNTY, et al.,
9 Respondents,
10 and
11 WASHINGTON STATE DEMOCRATIC
12 CENTRAL COMMITTEE,
13 Intervenor-Respondent.
14
15 DEPOSITION OF SAM S. REED
16 Taken on behalf of the Intervenor-Respondent
17 April 25, 2005
18
19 BE IT REMEMBERED THAT, pursuant to the Washington Rules of
20 Civil Procedure, the deposition of SAM S. REED, was taken
21 before Tia B. Reidt, #2798, a Certified Shorthand
22 Reporter, and a Notary Public for the State of Washington,
23 on April 25, 2005, commencing at the hour of 9:21 a.m.,
24 the proceedings being reported at Perkins Coie, 111 Market
25 Street, Olympia, Washington.

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14 Q. Okay. And who's Dick Smolka that it refers
15 to?
16 A. Dick Smolka is the editor and publisher of
17 Election Administration News that operates out of
18 Washington, D.C. and is one of the deans of election
19 administration and...
20 Q. And why did you want to send this e-mail to
21 the county auditors and Dean Logan?
22 A. Well, it was the second week of December, and
23 one thing that I try to do is not to tell the county
24 auditors what to do but to keep everybody up to speed in
25 the 39 counties around the state. And so with Dave

1 Ammons' program coming up, I thought that would be a good
2 opportunity for them to hear some of the details of what
3 was going on. And then I -- it was nice of Dick Smolka to
4 say that, and I passed that on as well.
5 Q. Did you agree with Dick Smolka's description
6 of the auditors?
7 A. That's correct, I did.
8 Q. And that would include Dean Logan?
9 A. Yes.
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17 Q. Is this a copy of an e-mail you sent to
18 Ms. Becky Marshal, who is a columnist for The Sun?
19 A. That is correct.
20 Q. And why did you feel it was necessary to send
21 the e-mail?
22 A. She wrote a column that was just a wholesale
23 indictment of the elections process, and kind of throwing
24 in Ohio, what happened in Florida, Washington, as I
25 recall. I don't remember everything. I didn't read -- I

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2 And she's in Kitsap County, and I -- they
3 run a very good elections operation there. And while I
4 always feel there's room to be critical of specifics, such
5 a wholesale indictment, I thought, was not just
6 inappropriate but wrong.
7 Q. Fair to say that as Secretary of State, you
8 felt that part of your job is to assure voter confidence
9 in the voting system?
10 A. That is correct, right.
11 Q. And you felt that perhaps this article was
12 unfair in its indictment of the voting system in the
13 governors election?
14 A. Well, I felt -- her column went way beyond
15 that, but I -- yeah, I do think it's fundamental to our
16 democracy, people having faith and confidence in the
17 system. And as I say, I think there's plenty of room to
18 criticize some specifics about it, but such wholesale
19 indictment, I felt, was inappropriate.
20 Q. What are the specifics that you would
21 criticize?
22 A. Some of the mistakes that were made in the 20
23 counties where we had reported problems and -- I don't
24 know if you want me to get more specific than that, but we
25 worked with the counties. We addressed them.

1 Q. Why don't you give me as specifically as
2 possible what the areas that you said that there's plenty
3 of room to criticize specifics. What are the specifics
4 that you would criticize?
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6 Q. And it's not a memory test. The best you can
7 recall sitting here today.
8 A. I was going to say -- okay.
9 Let's see. In Franklin County, when they
10 reported the number of people that voted in the election,
11 rather than taking the total people who had voted, they
12 simply took the total who voted in the governors race and
13 gave that as a total of who participated in the 2004
14 general election.
15 And since there are people who choose not
16 to vote in one specific race, that is an inaccurate number
17 to use, and so we worked with them on getting a more
18 accurate number.
19 Adams County, we found out, didn't check
20 the signatures in the provisional ballots that got back to
21 them. They need to do that. That's something we require.
22 Anyway, there are a number of examples
23 around the state that I would say.
24 Q. Are there any others that you can recall?
25 A. In King County, for example, the electronic

1 signatures missing on those ballots where they discovered
2 it in August and yet -- you know, hadn't corrected it by
3 the time of the November election or made, you know, the
4 upper levels aware of this and set the ballots aside
5 rather than -- and didn't get back to them, rather than
6 checking. This was, again, a procedural error that was
7 something that I would criticize.
8 Q. Any others you can think of?
9 A. In both Snohomish County and Whatcom County,
10 they had ballots that were ready to be put through the
11 machine that they stacked up and were set aside from the
12 rest of the stack, and they didn't see them the first time
13 around. The next time around when they did the recount,
14 they realized that those hadn't been counted. And again,
15 they should have known that through double-checks and all
16 that.
17 And it was the same with King County's
18 recent revelation of the 94 ballots, where they are
19 required to count and to balance, and those precincts were
20 out of balance, but they didn't search for the ballots and
21 make the correction.
22 Anyway, those are a few examples.
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3 Q. Were you familiar with an incident in Whatcom
4 County where during the machine recount, they received so
5 many calls about people wanting to know how their
6 provisional ballots had been counted, whether they had
7 been counted or not, that they went to alphabetize the
8 envelopes and discovered that there were seven provisional
9 ballots in the envelopes that should have been counted but
10 were not?
11 A. Now that you remind me, yes, I do remember
12 that.
13 Q. That would be another type of error you're
14 describing?
15 A. Correct, yes.
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Q. And the King County situation you describe, the missing signatures, what's the source of your information that that had been discovered in August?

A. I was at the King County canvassing board meeting when Bill Huennekens made his presentation, and he was asked that question by the deputy prosecutor.

Q. Any other source of information other than your presence at the canvassing board?

A. No.

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11 Q. And what's your source of information
12 regarding the circumstances around those ballots?
13 A. I read the report that King County sent out
14 explaining it.
15 Q. Any other sources besides that and, I assume,
16 the media?
17 A. No.
18 Q. Have you had any conversations with anyone in
19 King County regarding that?
20 A. Not that I can recall.
21 Q. In the examples that you've been able to cite
22 in Franklin County, Adams County, the two incidents in
23 King County, Snohomish, and Whatcom, do you have any
24 information that any of those specific errors that you've
25 cited today, or the other errors in the 20 counties that

1 you alluded to, were the result of intentional misconduct
2 in any way?
3 A. No, I do not.
4 Q. Any evidence that they were the result of
5 someone's desire to manipulate the results of the
6 election?
7 A. No, I do not.
8 Q. Any evidence that anybody associated with any
9 of the candidates in the governors election had anything
10 to do with those errors?
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19 Q. Yeah. Is there any evidence you have that
20 anybody associated with any of the candidates had any hand
21 in bringing about any of those errors?
22 A. No.
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Q. Based on anything that you have read relating to the governors election, do you have any reason to believe that Dean Logan made any decisions in order to skew the election one way or the other?

A. No, I'm not aware of him having done that.

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22 Q. Are Exhibits 46 and 47 copies of e-mails that
23 you sent enclosing a copy of an article that appeared in
24 the Everett Herald called "Learn to Live with an Imperfect
25 Election System"?

A. Mm-hm.
Q. Sir, you have to say "yes" or "no."
A. Oh, yes. Sorry.

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4 Q. Okay. And why did you want to send this
5 particular article?
6 A. I did think that it showed that he had some
7 kind of common sense and awareness of the way our election
8 system works in America, that we can't be perfect. We
9 want to be fair and we want to do things right, but it is
10 such a decentralized process, so many opportunities for
11 things to happen, that it just can't be perfect.
12 Q. Okay.
13 A. I appreciate some of the points that he made
14 in that respect.
15 Q. Fair to say that probably every election,
16 there's errors?
17 A. Yes, it's fair to say that.
18 Q. And fair to say that perhaps if the margin
19 wasn't so close, that some of the errors we're discovering
20 may not have been given the same attention they've been
21 given today?
22 A. That's absolutely true.
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3 Q. It's probably not the first election when
4 felons voted when they should not.
5 A. Oh, that is correct. Okay. I'm sorry. I
6 thought you were stating it the other way.
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7 Q. Mr. Secretary, handing you what's been marked
8 as Exhibits No. 48 and 49.
9 A. Okay.
10 Q. In Exhibit 48, there's an e-mail from Nick
11 Handy to Trova Hutchins. Do you see that?
12 A. Yes, I do, uh-huh.
13 Q. Do you know who Peter Schalestock is?
14 A. Attorney for -- I believe he was for Dino
15 Rossi's campaign.
16 Q. And I realize you were not copied on this
17 particular e-mail, but it appears that Mr. Schalestock has
18 raised some concerns about there being double voters and
19 the need to have some information released to the public
20 on that.
21 Do you see that?
22 A. Yes, I do.
23 Q. And if you look at Exhibit No. 49, it appears
24 your office did indeed release a media advisory on that
25 topic.

1 Do you see that?
2 A. Yes, I do.
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Q. Going now to the first page of Exhibit 51, in looking at your response to Mr. Williams on Monday, December 20th at 7:02 p.m., there's a discussion there, No. 5, about King County.

Do you see that?

A. Yes, I do.

Q. And it starts with "no."

1 And is that responding to the "Are you
2 publicly willing to say Dean Logan should be fired"?
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16 Q. And based on your experience as election
17 official, what process should undergo before making a
18 decision on who's fired and who's held accountable?
19 A. A thorough analysis of what happened, who did
20 it, under what circumstances, and -- yeah. I guess that's
21 basically...
22 Q. And fair to say that that should be done for
23 the purpose of having the best election administration
24 possible, not for political reasons or to lessen political
25 heat?

1 A. That is correct. And partly on the basis
2 that I had something like this happen to me as Thurston
3 County auditor in the 1978 election, and I did fire the
4 elections supervisor and removed another person.
5 Q. And what was the -- could you explain what
6 would happen then when you were -- what's the situation
7 you're alluding to?
8 A. Some similar circumstances of some missing
9 ballots were found later, some of the precincts not coded
10 properly, and there were a number of little mistakes like
11 that. But they all added up to, you know, incompetency,
12 basically, is what it was.
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15 Q. Looking again at Exhibit 51, Mr. Secretary,
16 the last sentence says, "As I mentioned before, we've been
17 in regular contact with J. Vander Stoep and Afton White."
18 Do you see that sentence?
19 A. Yes, I do.
20 Q. And Afton White, he was the campaign manager
21 for the Rossi campaign; is that correct?
22 A. Yes, he was.
23 Q. And I assume that your statement of that is
24 to assure Mr. Williams that you have not been -- have any
25 lack of communication with people in the Rossi camp; is

1 that correct?
2 A. That's correct.
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Q. And what are the types of challenges -- based on your experience in looking at King County, what are the things that King County needs to do to improve its system?

A. They need to dramatically change their organizational culture. They need to have more space.

I mentioned having been to California and seeing a couple of sized counties where they'll have, you know, very large space, like a warehouse-type setup, where they have the entire elections section and they organize workflows. And Pierce, Snohomish, Spokane, other counties

1 of any size have setups like that.
2 They need to go through and reevaluate the
3 kind of personnel they have and remove people who are not
4 competent or willing to be responsible. They need to look
5 how they are organized in terms of, again, who reports to
6 whom, and accountability, that type of thing.
7 Q. And as you sit here today, do you think you
8 have enough information about each of those items to make
9 a judgment as to, for example, who should be fired, who
10 should be kept on, and specific changes in the
11 organization, that type of thing?
12 A. No, I do not. So I recommended to them and,
13 as you can see, to Julia Patterson that they need to
14 have a -- well, I guess it isn't in this e-mail. But in
15 talking to her and others, that they need to have a
16 comprehensive study made, and I understand the
17 county council now has funded that.
18 Q. And fair to say that that comprehensive study
19 needs to be done outside of the framework of this election
20 contest?
21 A. That is correct, yes.
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3 Q. Were you intending to suggest that democrats
4 had manipulated votes in King County?
5 A. No, I was not.
6 Q. What was your -- what were you responding to,
7 so it's clear? What were you intending to articulate by
8 saying "You're right about problems with King County"?
9 A. Just that there were discrepancies, that were
10 problems, and that I agreed there were serious problems in
11 King County.
12 Q. Okay. And I think you testified before, you
13 don't have any information as you sit here today that
14 democrats were manipulating votes in King County?
15 A. No. No, I do not.
16 Q. Or in any other county?
17 A. No. That's correct.
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5 Q. -- that also says, "I think Dean and Bill are
6 very good."
7 Do you see that?
8 A. Yes.
9 Q. And is it that Dean Logan and Bill Huennekens
10 again?
11 A. That is correct.
12 Q. Mr. Secretary, do you have any doubt that
13 both Dean Logan and Bill Huennekens were trying their
14 hardest through this election?
15 A. No, I have no doubt that they were trying
16 their hardest.
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24 Q. And working hard to do the right thing,
25 correct?

1 A. I believe so, right.
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12 Q. Based on your experience as a -- both in the
13 Secretary of State's office and in Thurston County, does
14 the mere fact that "security could be compromised" the
15 equivalent of "security was compromised"?
16 A. No. But we require the counties to have
17 proper security for the ballots.
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4 Q. And certainly that would be possible, that
5 someone would vote governor for -- democrat for governor
6 and then cross the ticket and vote for someone else, a
7 republican, in another race; is that correct?
8 A. Yes. Washington voters take pride in being
9 ticket splitters.
10 Q. And based on your many years in politics, are
11 there a number of factors that might lead someone to
12 decide what candidate to vote for?
13 A. Yes.
14 Q. And it could range from -- the person's age
15 may influence who they vote for?
16 A. Yes.
17 Q. Their level of education may influence who
18 they vote for?
19 A. Yes.
20 Q. Their income bracket might influence who they
21 vote for; is that correct?
22 A. That is correct.
23 Q. Their gender may influence who they vote for?
24 A. Yes.
25 Q. And their race may influence who they vote

1 for?
2 A. Yes.
3 Q. Their general life experience, for lack of a
4 better description, might influence who they vote for; is
5 that correct?
6 A. Yes, it is.
7 Q. And even in such circumstances, it may be
8 difficult to predict whether that one person will vote for
9 a democrat in one race and a republican in another race;
10 is that fair to say?
11 A. Sometimes a combination of these factors give
12 more predictability in terms of a voting decision. You
13 know, the political scientists study this, but you
14 certainly couldn't take one factor like this and say
15 therefore this person will always vote for a democrat or
16 republican. But there certainly are characteristics that
17 identify people who tend to vote more democratic and those
18 who tend to vote more republican.
19 Q. All right. And you wouldn't take any one of
20 those characteristics and use that as a benchmark as to
21 whether they're going to vote republican or democrat; is
22 that correct?
23 A. Well, among those, there has been a trend,
24 like women have tended to vote a little more democratic,
25 and people of upper middle class income tend to vote more

1 republican. But again, you couldn't predict every race
2 based upon that.
3 Q. And again, looking at Exhibit 58, even if you
4 knew every demographic about Erik Hulsey, he's telling you
5 he split the ticket, voting for republican in one regard
6 and democrat in another regard; is that correct?
7 A. That is correct.
8 Q. And that doesn't surprise you, being in
9 Washington State?
10 A. That is correct.
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6 Q. Mr. Secretary, I've handed you what's been
7 marked as Exhibit 61. Is this a copy of an e-mail from
8 Shane Hamlin to you, Steve Excell, and then copied to
9 others?
10 A. Yes, it is.
11 Q. And is it a copy of a PowerPoint presentation
12 on the restoration of rights?
13 A. That is correct, right.
14 Q. I'll represent to you that in taking Mr. Paul
15 Miller's deposition, when asked to describe the process
16 for restoration of rights, he described it as a
17 bewildering thicket.
18 Would you agree with that description?
19 A. It is enormously complicated, and it was a
20 source of great frustration for me as a county auditor
21 over the years, trying to keep that list accurate when
22 there were so many different ways that people would either
23 have their rights restored or not have their rights
24 restored. So it was a very difficult situation.
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20 Q. And in sending those out, you would have
21 expected your office to do the best job possible to make
22 sure that they were accurate; is that correct?
23 A. That is correct.
24 Q. And they would not have been distributed to
25 those people if you didn't have a degree of confidence

1 that they were accurate?
2 A. That's right.
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2 Q. If you'd take a moment to read this. I'd
3 like to direct your attention, in particular, to the
4 middle of the first page where it is written, in quotes,
5 "'I saw serious mistakes being made. I saw them being
6 corrected,' Reed said. That's part of the process. The
7 system itself has worked well."
8 Do you see that portion on Exhibit 63?
9 A. Yes, I do, uh-huh.
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22 Q. Prior to the November 2004 election, did
23 Washington elections officials anticipate that there would
24 be more provisional ballots in the November 2004 election
25 than in previous elections?

1 A. I don't think we did. That was a mistake,
2 no, probably on our part as well as the County's.
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15 Q. I think you were just talking about the
16 consequences of not having adequate space as including
17 ballot security issues, ballots moving around; is that
18 right?
19 A. Right. And I don't have any reason to
20 question the ballot security in King County, but it just
21 makes it a lot more complicated when you have to, you
22 know, keep moving the ballots around. But I understood
23 that they did it properly in terms of when they moved, but
24 it just requires more personnel and more arrangements and
25 all.

Q. Back on Exhibit 56, you continued by writing "Dean and Bill have made some corrections and improvements."

A. Yes.

Q. That's Dean Logan and Bill Huennekens?

A. That is correct.

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4 Q. Okay. So in your view, ballots that were
5 left unsecured after election day should not be counted?
6 A. That is correct. If they are in a position
7 that they were not secured and there isn't this trail of
8 being able to track them, then they should not be counted,
9 right.
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Q. Do you have an opinion as to what should happen to these uncounted absentee ballots?

MR. AHEARNE: I'd object to the extent you're asking for a legal conclusion.

THE WITNESS: I was simply expressing my expectations and not, you know, again, as a legal authority or anything like that. But since it is so long after the election, I don't expect that there are -- there have been other ballots like this found in other counties or, you know, some come in way after. And to go back and reopen the election is something that I've never seen or heard happening.

1 Q. Is it unfortunate because felons were able to
2 vote in the November 2004 election?
3 A. It's unfortunate because, with the
4 legislature adopting it in the winter of 2002, if we would
5 have had funding we would have been able to have it
6 operational, and I think we would have been able to
7 eliminate a number of people who were deceased, who are
8 felons, who have duplicate registrations; not all of them
9 because, you know, we're operating off of databases
10 supported by human beings, but we certainly would have had
11 an improved situation.
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5 Q. Is it an error or mistake for a County to
6 certify results that do not accurately reflect the number
7 of lawful votes cast?
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9 THE WITNESS: I would assume that the county
10 canvassing board, when they certify, believes this is a
11 kind of true and accurate report on numbers. And if it
12 isn't, yeah, then it's because of, like, errors or
13 mistakes that they weren't aware of.
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2 Q. Okay. In your view, which is more accurate,
3 a machine count of ballots or a hand count?
4 A. In my view, there are advantages to both. By
5 the way, this is what I've said very consistently through
6 this whole process. As Thurston County auditor, I did
7 both a number of times.
8 The machine recount is good because
9 machines are objective. They don't want to give the
10 benefit of the doubt to the voter, which is what people
11 often do. They -- "Gosh, this person bothered to vote,
12 let's try and figure out how we can make it count." And
13 they don't invert numbers and all of that, you know,
14 assuming they're set up properly, so you get an accurate
15 count.
16 On the other hand, in a hand recount,
17 people see things machines don't see. The machines only
18 can read the field that they are set up to read. And if
19 somebody moves from Pierce County to King County, in
20 Pierce County you're drawing arrows to who you want to
21 vote for, and in King County you're filling ovals. People
22 move, they just get the ballot and they vote the way
23 they've always voted before, and the machine doesn't read
24 that. So a hand recount helps to give a more accurate
25 account in terms of, I think, representing the will of the

1 electorate in that respect.
2 The combination of the two is good because
3 the hand recount they compare back to the machine recount,
4 and obviously if they're off, then they'll count them
5 again and everything. So there are advantages to both.
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Q. In light of those problems, do you think a new election is appropriate?

THE WITNESS: I really believe that it's in the hands of the Court now, and so I -- it depends upon what they find. I haven't seen all the evidence myself, and so I'm not in a position to say at this point.

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7 Q. When you use the term "fraud" in terms of an
8 election, or in this sentence in particular, what are you
9 meaning when you use the word "fraud"?
10 A. And I don't know if this is a legal
11 definition, but generally when it's something that is
12 organized and there is an attempt to change the outcome of
13 the election by planning to perpetrate fraud, basically,
14 or to, you know, get rid of ballots or add ballots or
15 whatever.
16 Q. Okay. So it's fair to say that then when you
17 use the word "fraud," you're thinking more of a systematic
18 or concerted effort to influence an election improperly?
19 A. That is correct, right.
20 Q. And when you said this sentence in
21 Paragraph 63 that nothing you've been informed about rises
22 to the level of fraud, is that something you said at that
23 time?
24 A. Yes, it is.
25 Q. And was that your understanding at that time?

1 A. Yes.
2 Q. And is that still your understanding today?
3 A. Yes.
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8 Q. Okay. In the following -- the next sentence
9 reads, "There have been human errors. There have been
10 mistakes. At this time there's nothing that appears
11 fraudulent."
12 Is that something you said at the time this
13 article was written?
14 A. Yes, it is.
15 Q. And is that something you believed at the
16 time the article was written?
17 A. Yes.
18 Q. And is that something, based on what you know
19 today, you still believe?
20 A. Yes, it is.
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7 Q. And are you aware of anything in the law,
8 either statute or regulation, that allows a County to
9 validate signatures on provisional ballots after they've
10 been counted?
11 A. No.
12 Q. Okay. So it would be an error or mistake for
13 any County to count a provisional ballot before matching
14 the signature to a voter registration record; is that
15 correct?
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1 Q. Sure. It would be an error or mistake, then,
2 for any County to count a provisional ballot before
3 matching the signature on that ballot to a voter
4 registration record, correct?
5 A. Yes.
6 Q. And so if Adams County, for example, counted
7 provisional ballots before matching signatures, that would
8 be an error or mistake; is that correct?
9 A. Yes.
10 Q. And if Stevens County counted provisional
11 ballots before matching signatures to voter registration
12 records, that would be an error or mistake, correct?
13 A. Yes.
14 Q. And if Whitman County counted provisional
15 ballots before matching signatures to a voter registration
16 record, that would be an error or mistake, correct?
17 A. Yes.
18 Q. And if Walla Walla County counted provisional
19 ballots before matching signatures to a voter registration
20 record, that would be an error or mistake, correct?
21 A. Yes.
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11 Q. So, for example, if Benton County counted --
12 allowed provisional ballots to be fed directly into a
13 machine without verifying information, that would be an
14 error or mistake; is that correct?
15 A. It would be, but I believe they're a punch
16 card county, so they -- that wouldn't be the case.
17 Probably what they would do is drop them in the ballot bag
18 rather than giving them back to the election board worker.
19 So that would be a mistake or an error.
20 Q. All right. So if they were voted directly in
21 some fashion --
22 A. Right.
23 Q. -- before being verified, that would be an
24 error or mistake?
25 A. That is correct.

1 Q. And if Island County allowed provisional
2 ballots to be voted before they were verified, that would
3 be a mistake?
4 A. Yes.
5 Q. And if Jefferson County allowed provisional
6 ballots to be voted before they were verified, that would
7 be a mistake, correct?
8 A. Yes.
9 Q. And if Whatcom County allowed provisional
10 ballots to be voted before they were verified, that would
11 be an error or mistake, correct?
12 A. Yes.
13 Q. And if Cowlitz County allowed provisional
14 ballots to be voted before they were verified, that would
15 be an error or mistake, correct?
16 A. Yes.
17 Q. And if Clark County allowed provisional
18 ballots to be voted before being verified, that would be
19 an error or mistake, correct?
20 A. Correct, yes.
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5 Q. Now, you're aware that King County is
6 currently represented by lawyers, correct?
7 A. Yes.
8 Q. And in fact, their chief lawyer is Norm
9 Maleng, correct?
10 A. Yes, mm-hm.
11 Q. He's a republican?
12 A. Yes.
13 Q. Ran for governor and attorney general as a
14 republican?
15 A. That is absolutely right.
16 Q. And it's safe to say that the lawyers of King
17 County might be advising King County what steps to be
18 taking right now in view of the litigation. Is that fair
19 to say?
20 A. That's fair. I don't know if that's the
21 case, but -- in respect to this particular issue, I don't
22 know if that's the case.
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1 Q. And I believe that you believe that perhaps
2 they were not as forthcoming as they should be; is that
3 correct?
4 A. Yes.
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17 Q. Okay. So the most recent example --
18 A. Right.
19 Q. -- would be the example regarding the
20 discovered absentee ballots; is that correct?
21 A. That's right.
22 Q. And again, you're aware that Mr. Maeling's
23 office is advising King County in connection with this
24 litigation; is that correct?
25 A. Yes, uh-huh.

1 Q. And were you aware that the council member of
2 Mr. Maeling's staff was actually present when the ballots
3 were discovered?
4 A. No, I was not aware of that.
5 Q. Assume for the purposes of my question that
6 that was the case and that counsel advised them not to
7 release information until they determined the full scope
8 of the problem.
9 Would you fault King County for following
10 the advise of its counsel?
11 A. No, I would not.
12 Q. And it's fair to say that Mr. Maleng's office
13 would not be complaisant in trying to promote any type of
14 cover-up or culture of cover-up?
15 A. I think that would be true.
16 Q. And in fact, there could be other legitimate
17 reasons why you might not necessarily release any
18 information post election until you had the full scope of
19 it; is that correct?
20 A. That's correct.
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Q. And do you think that the public confidence in the election system was helped by the numerous press accounts relating to the possibility that military ballots hadn't gotten to our soldiers?

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5 THE WITNESS: I do think that it had a
6 deleterious effect on trust and confidence as well as many
7 accusations that were not valid that were being made, and
8 the bloggers and talk radio and such.
9 BY MS. DURKAN:
10 Q. I'm going to ask you some similar questions
11 about issues related to crediting. You recall that at
12 the -- shortly after the certification of the hand count
13 that the issue of crediting discrepancies in at least four
14 counties was the topic of a number of news stories.
15 Do you recall that?
16 A. Yes, I do.
17 Q. And in fact, it led some to make some
18 allegations of potential fraud in those counties.
19 Do you recall that?
20 A. I do.
21 Q. And your office developed a series of talking
22 points and FAQs for the auditors on that so that they
23 could deal with those issues, correct?
24 A. That is correct.
25 Q. And based on what you've read, you

1 determined, in conjunction with your office, that the
2 crediting issue did not reflect upon the authenticity of
3 the election; is that correct?
4 A. That is literally correct. We concluded that
5 crediting, per se, was not the issue; however, we still
6 had the expectation, given the directions that my office
7 provided, that they reconcile the number of ballots
8 received and the number of ballots counted or rejected.
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Q. I want to talk to you a little bit about some of the errors that you described earlier to Mr. Maguire that King County made.

You'll recall that at the end of the machine recount, Dino Rossi was ahead by 42 votes.

Do you recall that?

A. Yes, I do.

1 Q. And I think in my earlier questions to you,
2 and perhaps earlier this morning, you had described as
3 perhaps the most dramatic of the mistakes King County made
4 was the discovery that hundreds of ballots had been
5 rejected because signatures were missing from their files.
6 Do you recall that?
7 A. Yes.
8 Q. And would you agree that that was perhaps one
9 of the most dramatic or significant mistakes that King
10 County made?
11 A. Yes.
12 Q. And that resulted in over 700 ballots being
13 wrongly rejected; is that right?
14 A. I understand when they actually processed
15 them, it ended up being like 573 or so were wrongly
16 rejected. But it started off at that 700 number, right.
17 Q. And when they counted those ballots,
18 Christine Gregoire netted over 140 votes; is that correct?
19 A. That's my kind of vague recollection, yes.
20 Q. So if that error had not been made or if it
21 had been corrected before the machine recount, she
22 actually would have been ahead at the end of the machine
23 recount, wouldn't she have?
24 A. Yes.
25 Q. And so the error that -- the most dramatic

1 error that King County made actually hurt Christine
2 Gregoire, did it not?
3 A. Yes, in terms of the machine recount.
4 Q. And if she had been ahead at the end of the
5 machine recount, she would not have been in the position
6 to have to request a hand recount, would she?
7 A. That is correct.
8 Q. It would have been Mr. Rossi and the
9 republicans, if they had gotten the proceeds, would have
10 had to request the hand recount; is that correct?
11 A. That is correct.
12 Q. And if they had corrected that error earlier,
13 and assuming the same vote totals we had today, Christine
14 Gregoire would have been ahead at the end of the hand
15 recount; is that correct?
16 A. Yes.
17 Q. And so had King County not made the error,
18 dramatic error, of excluding over 700 ballots wrongfully,
19 Christine Gregoire would have won two of the three counts;
20 is that correct?
21 A. Yes.
22 Q. As you sit here today, are you aware of a
23 single error made by King County that you can show hurt
24 Dino Rossi?
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4 THE WITNESS: I don't -- I can't remember all of
5 the errors, and I understand there's some people who are
6 alleging that some of these mistakes were made in
7 republican areas more than the democratic areas and such
8 in terms of reconciliation areas, but I personally do not
9 know of one.
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17 Q. Okay. And King County has over 540 polling
18 locations; is that correct?
19 A. Right.
20 Q. They have, in this last election, processed
21 almost 647,000 absentee ballots; is that correct?
22 A. That is correct.
23 Q. And over 31,000 provisional ballots; is that
24 correct?
25 A. Yes.

1 Q. Now, there's no other county in the state
2 that comes close to processing that number of absentee
3 ballots, is there?
4 A. No, there isn't.
5 Q. And once the absentee ballots have been
6 processed and the envelopes moved to a different location,
7 there would not be an election purpose to be going through
8 those what are supposed to be empty envelopes, would there
9 be?
10 A. That is correct.
11 Q. And in fact, had they been rifling through
12 empty envelopes, it might have led them to criticism from
13 some quarters. Isn't that fair to say?
14 A. Yeah. It's possible, yes.
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22 Q. -- it wasn't necessarily the fact that they
23 were recently discovered but the fact that King County had
24 not properly accounted for them that you found appalling?
25 A. Yes.

1 There was a count of how many ballots they
2 had, and they ran them through the machine and counted
3 them, and the totals didn't match the number of ballots.
4 And that is, you know, just one of the most fundamental
5 rules of election administration. And so I found it
6 appalling that they wouldn't have said, "Wait a minute.
7 We have a problem" and dealt with it, even though I
8 realize they're doing a huge volume.
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4 Q. And so the fact that 74 absentee ballots out
5 of almost 647,000 ballots were misplaced is not in itself
6 an appalling fact, is it?
7 A. That is true.
8 Q. And in fact, you're aware, aren't you, that
9 Kittitas County misplaced 33 absentee ballots which it
10 found during the machine recount?
11 A. Right.
12 Q. And presumably, Kittitas County's canvassing
13 board certified the results of the original count,
14 correct?
15 A. Right. But -- and I'm not sure of the exact
16 details, but I don't believe that they had those in their
17 count originally. In other words, they -- they were set
18 aside prior to the time that they said, "This is how many
19 ballots we have for this number of precincts," and so when
20 they ran them through, there wasn't a discrepancy in terms
21 of that. I'm not sure of that, but that was my
22 impression.
23 Q. Assume for purposes of my question that
24 Kittitas County had sent 33 ballots to its canvassing
25 board which it approved to be counted.

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4 Q. Didn't -- misplaced them and rediscovered
5 them during the machine recount, correct?
6 A. Right. That is correct.
7 Q. Their canvassing board still should have had
8 record keeping that showed how many ballots they received,
9 right?
10 A. Oh, okay. That's correct, yes.
11 Q. How many ballots they counted, correct?
12 A. Mm-hm.
13 Q. You have to say "yes" or "no."
14 A. Oh, yes. That is correct, right.
15 Q. And how many were rejected, correct?
16 A. Yes, that is correct.
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24 Q. And 33 absentee ballots is a much larger
25 percentage of the overall absentee ballots that Kittitas

1 County received than 74 ballots is of the 647,000 that
2 King County received, correct?
3 A. That is correct.
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14 Q. And you're aware, are you not, that Grant
15 County discovered 52 probably absentee ballots during the
16 machine recount as well?
17 A. Yes.
18 Q. And again, Grant County should have an audit
19 trail that shows how many absentee ballots it receives,
20 correct?
21 A. Right.
22 Q. How many it counted, correct?
23 A. (Witness nods head affirmatively.)
24 Q. You have to say "yes" or "no."
25 A. I'm thinking, too, here. Let's see. Yes.

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2 A. Yes.
3 Q. And its canvassing board certified election
4 results that would have had numbers that somehow 52
5 absentee ballots were omitted from, correct?
6 A. That's correct, yeah.
7 Q. And again, 52 absentee ballots in Grant
8 County would be proportionally a much greater number of
9 percentage of absentee ballots than 74 absentee ballots in
10 King County, which received 647,000 absentee ballots,
11 correct?
12 A. That is correct.
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Q. Snohomish County discovered 252 absentee ballots during the machine recount, did they not?

A. Yes, they did.

Q. And again, Snohomish County's canvassing board should have received an accounting form which accounted for all of its absentee ballots before certifying the original count, correct?

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2 Q. And it would appear that Snohomish County
3 canvassing board did so without accounting for 252
4 absentee ballots, correct?
5 A. That is correct, right.
6 Q. And again, 252 absentee ballots is a greater
7 percentage of Snohomish County's absentee ballots than the
8 74 absentee ballots recently discovered in King County,
9 which had approximately 645,000 absentee ballots, correct?
10 A. That is correct.
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24 Q. And is the failure for Kittitas County to be
25 able to account for all of its absentee ballots something

1 you would call appalling?
2 A. It certainly is a serious mistake, I think.
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8 Q. So the term "appalling," when describing King
9 County's situation, if that shoe would fit other counties,
10 it should equally be described. Is that fair to say that?
11 A. That is fair to say that, yes.
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Q. Okay. Are you familiar with where exactly absentee ballots are processed by King County and how they're processed?

A. No, I'm not. I just have reports from staff who have been up and observed all of this.

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14 Q. How many employees did you have when you were
15 in charge of Thurston County elections?
16 A. Five, I think, then six -- seven permanently,
17 and then we would hire temporaries to come in during the
18 election.
19 Q. And when you were there, what was the total
20 number of votes cast in the last presidential election
21 that you oversaw; do you recall?
22 A. I would guess 70- to 80,000.
23 Q. Is there any auditor or election official in
24 the state that manages an election organization the size
25 of King County?

1 A. No.
2 Q. So when you say that Dean Logan or Bill
3 Huennekens didn't have experience in managing that large
4 of an organization, nobody else has had that experience
5 managing that large of an organization either, have they?
6 A. In this state, that's correct. Certainly
7 around the country there are even bigger shops than that.
8 Q. And when Mr. Maguire was asking about whether
9 there were decisions that Mr. Logan made with which you
10 didn't agree, I think you were able to cite two, both from
11 the canvassing board that you attended; the first that
12 Mr. Satterberg, who is Mr. Maleng's representative, had
13 asked for more time in order to assess whether the ballots
14 for which there was no signature be counted.
15 Was that one of the incidents?
16 A. That's right.
17 Q. And the second was the fact that ballots had
18 been discovered in machines that were left at polling
19 sites; is that correct?
20 A. Yes, it is, right.
21 Q. And on the first issue, two of the canvassing
22 board members decided to move ahead, and the vote was two
23 to one, correct?
24 A. That is correct, right.
25 Q. And certainly that is a discretionary duty

1 the canvassing board had; is that correct?
2 A. That is correct.
3 Q. And on the second issue with regards to the
4 ballots that were found in machines and polling sites, I
5 believe it was your testimony that you would have just
6 stated "Those won't be counted, period"; is that correct?
7 A. Yes, in terms of like the provisional ballots
8 that they left sitting out there, right.
9 Q. And I believe your testimony was that
10 Mr. Logan wanted to find out more information about those
11 ballots before making that decision; is that correct?
12 A. That's correct, right.
13 Q. And different people could have reached
14 different conclusions on whether getting more information
15 would be an appropriate thing under the circumstances,
16 correct?
17 A. Yes.
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Q. And do you think that the Court should be, as a matter public policy not as a matter of law, in deciding whether or not to set aside this election, should it be looking just at a select group of felons or should it be looking at any evidence it has for illegal votes?

A. I think that the Court ought to look at the entire state when making decisions on this election.

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14 Q. And you gave an example of when you were in
15 Thurston County that an elderly person might vote an
16 absentee, can't remember if they voted, and show up at the
17 polls.
18 Do you recall that?
19 A. Yes.
20 Q. And in those circumstances, would you count
21 the first vote you received?
22 A. Yes, we would, right.
23 Q. Mr. Maguire also asked you some questions
24 with regards to what was more accurate, hand count versus
25 machine count.

1 Do you remember that?
2 A. Yes, I do.
3 Q. And I believe you gave descriptions of each
4 had its advantages; is that correct?
5 A. That's correct, right.
6 Q. And I understood your testimony at the end to
7 say that ideally, having both would be most accurate; is
8 that correct?
9 A. Yes.
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21 Q. Are you aware of anything in law that allows
22 for those votes -- for the signatures to be matched
23 afterwards?
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4 Q. Are you aware of anything in the law that
5 allows that to happen?
6 A. No, I'm not.
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1 Q. Some provisional ballots --
2 A. Some were put through, right.
3 Q. -- were taken, counted --
4 A. Right.
5 Q. -- and they never had a signature match.
6 A. That's correct.
7 Q. And the law requires, as you understand it,
8 for them to match the signatures?
9 A. That's correct.
10 Q. Some provisional ballots are taken, fed
11 through, and they don't check signatures or the fact that
12 the person is lawfully registered, correct?
13 A. Correct.
14 Q. And those are fed through?
15 A. Yes.
16 Q. In your mind, the ones that are verified for
17 everything but signature are different than the ones that
18 are not verified for anything?
19 A. I'm saying that both of them are mistakes or
20 errors. Is that what you're getting to?
21 Q. Right. That's all I needed.
22 A. Okay.
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CERTIFICATE

I, Tia B. Reidt, do hereby certify that pursuant to the Rules of Civil Procedure, the witness named herein appeared before me at the time and place set forth in the caption herein; that at the said time and place, I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 1st day of May , 2005.

Tia B. Reidt

Tia B. Reidt

June 10, 2006

Commission Expiration

Exhibit 2

WSDCC Objections and Cross-designations of
Adams County 30(b)(6) deposition

WSDCC Objections and Cross-Designations of
Adams County 30(b)(6) Deposition

OBJECTIONS

51:2-15 (testimony does not support petitioner's description)

CROSS-DESIGNATIONS

13:23-14:2 (two provisional ballots were cast directly into the ballot box)

17:8-23 (checked signatures on absentees but did not do that on provisional ballots)

20:5-20 (108 provisional ballots counted as registered voters; none failed because of signature check; some absentee ballots were rejected for signature mismatch)

43:1-44:13 (15 more ballots reported as having been cast by precinct than were reported by county as having been counted)

48:6-49:25 (produced actual provisional ballot envelopes for those who were counted)

52:16-55:7 (Ballots come from printer in sealed packages; sometimes packages are opened before election; sometimes sequentially number packages from printer omit ballots; county does not count the unused ballots to verify; unused ballots are discarded and thrown away when they come back to the auditor's office)

57:4-58:7 (confirms that county did not check any signatures of provisional ballots at the time because they do not check any signature of any voter who casts a ballot at the polls)

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF CHELAN
3
4 TIMOTHY BORDERS et al,
5
6 Petitioners,
7
8 v. Case No.05-2-00027-3
9
10 KING COUNTY et al,
11 Respondents.
12 _____
13 DEPOSITION OF NANCY MCBROOM and DEBBIE HUNT
14 Taken on behalf of the Respondents
15 WEDNESDAY, APRIL 20, 2005
16 -- -- --
17 BE IT REMEMBERED THAT, pursuant to the Washington
18 Rules of Civil Procedure, the deposition of NANCY MCBROOM and
19 DEBBIE HUNT was taken before Luke Jagot, Certified Shorthand
20 Reporter for the State of Washington, on Wednesday, April 20,
21 2005, commencing at the hour of 2:00 p.m., at 207 Washington
22 Street, Ritzville, Washington.
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23 Q. Did you receive any reports or become aware of
24 anyone who was issued a provisional ballot and then placed it
25 directly into the ballot box without putting it into their

1 envelopes?

2 A. Yes, two.

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8 Q. And so when you're verifying an absentee ballot you
9 make an actual comparison between the signature that's on
10 this record and the signature that's on the envelope.
11 A. Right, and that's the only thing we're checking on
12 absentees because everything else is a given.
13 Q. And then when you check a provisional ballot you
14 check first to confirm they're registered and then pull up
15 this screen and check the number, all the rest of the
16 information.
17 A. Exactly.
18 Q. Do you do a signature-to-signature comparison at
19 that time?
20 A. To say that we do it specifically the way we do
21 absentees and by mails we probably don't, and yet it's so
22 visible on the envelope and on the screen we're checking the
23 whole record.
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5 Q. You said 108 that were --
6 MS. MCBROOM: Counted were registered voters.
7 Q. And then the remainder were not registered.
8 A. That is correct.
9 MS. TEBELIUS: Which is how many as long as you're
10 answering?
11 MS. MCBROOM: 27.
12 MS. TEBELIUS: I just wanted to make sure. Sorry
13 Beth.
14 BY MS. COLGAN:
15 Q. No, that's fine. And were there any provisional
16 ballots rejected because the signatures didn't match?
17 A. No.
18 Q. Were there any absentee ballots rejected because
19 the signatures didn't match?
20 A. Yes. I think we ended up with a total of three.
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1 Q. And the number of signatures in the inspector's
2 book, is my understanding correct that that would include
3 both the signatures of people who cast standard ballots as
4 well as those who signed in to vote provisionally?
5 MS. MCBROOM: That is correct.
6 MS. HUNT: It should.
7 Q. Turn to the next page which is the Balance Transfer
8 Certificate for Othello City Number 3. I'm not going to go
9 through all of that, but I just want to make sure that I'm
10 understanding that for this particular poll site it's your
11 understanding that there were 42 provisional ballots cast.
12 A. That's correct.
13 Q. Turn the page to Othello City Number 4. This one
14 has a little more detail, and I'm little confused on some of
15 the numbers.
16 A. Me, too.
17 Q. It appears that in Othello City Number 4 that there
18 were 150 ballots sent and that they removed all 150 from the
19 supply bag.
20 A. Yeah.
21 Q. And there were -- They have noted that there were
22 33 provisional ballots cast; is that correct?
23 A. That is correct.
24 Q. And is it your understanding that there were
25 actually 33 cast?

1 A. You know I don't -- I could look. I believe so.
2 Q. And one ballot spoiled.
3 A. Uh-huh.
4 Q. They've listed as the total ballots used 116 and 34
5 unused. So is it your understanding that there were -- of
6 the 116 ballots voted at that polling site 33 were
7 provisional?
8 A. I'm not sure that I ever found out where they got
9 the 116 ballots. There were 101 signatures in the poll book
10 minus the 33 provisionals which would be 68 ballot votes cast
11 at the polls. I believe we determined that that did match
12 up. That was what was tallied, what was scanned at the
13 election night.
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6 Q. Thank you for checking. While you were out we were
7 looking at the Provisional Ballot Envelopes that were brought
8 in today. My understanding, and I want to make sure I'm
9 clear on the record, is that those are the Provisional Ballot
10 Envelopes for provisional ballots that were ultimately
11 counted.
12 A. Correct.
13 Q. And is part of your business, your responsibility
14 to maintain those Provisional Envelopes for a period of time
15 after the election?
16 A. That is correct.
17 Q. And how long is that period of time?
18 A. To my knowledge it's 22 months for a federal
19 election. I would have to check a Retention Schedule. We do
20 check that.
21 Q. So these envelopes are kept in the course of that
22 Retention Schedule.
23 A. That would be correct.
24 Q. And as we also discussed I have made a request that
25 we receive a copy of those envelopes. The person that we

1 talked about earlier, I believe, or the two people rather
2 that had directly inserted their ballots, the provisional
3 ballots into the boxes, if I'm recalling correctly your
4 testimony was that you were able to determine those were
5 registered voters.
6 A. Yes.
7 Q. And did you maintain their Provisional Ballot
8 Envelopes as well?
9 A. No. They did not complete an envelope, although
10 they signed in the poll books, but they did not complete an
11 envelope. There would be no envelope for them.
12 Q. And then have you ever gone back through those
13 Provisional Ballot Envelopes and done a verification of the
14 signatures as compared to your registration records?
15 A. Yes.
16 Q. When did that happen?
17 A. I'm uncertain of the date. It was prior to
18 certification.
19 Q. I'm sorry? So prior to the November 17th
20 certification?
21 A. Before certification.
22 Q. Before certification you did an actual verification
23 of the signatures on those ballots to the signatures in your
24 database.
25 A. Of the envelopes, yes.

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16 Q. Now I'm going to ask you a series of questions that
17 partially you've already answered, so I apologize for going
18 back, but maybe you can help me. This is keeping track of
19 the printed ballot, and frankly in your Exhibit 4 you've done
20 part of that, and that is let me see if I can explain this
21 process and help me understand it. You order a certain
22 number of ballots for every election; is that correct Ms.
23 McBroom?
24 MS. MCBROOM: Yes.
25 Q. And when those ballots come to you in your office

1 are they sealed in packages of like 100 or 200, or how are
2 they sealed? Ms. Hunt?
3 MS. HUNT: They're sealed by precinct, so 412 may
4 only get 200 ballots, but they're all sealed together.
5 Q. And you do not open them at that time at all.
6 A. There have been times when I have opened them.
7 Q. Did you open any at this election?
8 A. I don't recall.
9 Q. So if they're not -- Whether they're opened or not
10 opened they go to the polling places of the election; is that
11 correct?
12 A. That is true.
13 Q. Does someone open the box to see if they're sealed
14 or anything at all, an inspector on site before they start
15 voting?
16 A. Wrapping in cellophane isn't part of a security
17 process. That's just part of the shipping process just to
18 keep the ballots separated by precinct. The only reason for
19 me to open it is to verify because they'll put a sticky on
20 saying 001 to 0200, and sometimes it will say missing 199,
21 198. I would go through and verify and make sure that those
22 ballots are actually there.
23 Q. Now after ballots are voted is it fair of us to say
24 that at precincts often there are unvoted ballots; is that
25 correct?

1 MS. MCBROOM: Yes.
2 Q. Is it?
3 A. Yes.
4 Q. Ms. Hunt?
5 MS. HUNT: Yeah.
6 Q. So the question I have relates to your keeping
7 track of these printed ballots because it's possible some of
8 those printed ballots could disappear if you don't have a
9 tracking system. It looks to me like what you did here is on
10 your Exhibit 4, and if you check on pages what I have
11 numbered as 30, 31, 32, 33, because they start at Othello
12 City Number 2, Othello City Number 3.
13 A. Right.
14 Q. It shows that you sent 200 ballots, for instance,
15 Precinct 412, or Othello City Number 2. It shows how many
16 were voted, and it shows then how many were unused, and those
17 totals the number used and the number unused should total the
18 number that were sent.
19 A. It should.
20 Q. It should.
21 MS. MCBROOM: Yes.
22 Q. Did you check that to make sure in fact it was
23 correct, that you weren't missing any ballots?
24 A. We do not count the unused.
25 Q. So you have no way of tracking the used or unused

1 -- I mean no way of tracking the unused; right?

2 A. That's correct because they are --

3 MS. HUNT: They're spoiled at the polling sight

4 tear.

5 MS. MCBROOM: They're not counted individually, but

6 they are spoiled, and they come back to our office and they

7 are discarded.

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4 Q. In the materials in the course of this election

5 since November 2nd there have been numerous cases filed, one

6 by the Democrats, one by the Republicans, both ending up in

7 the Supreme Court of this state. In the first case which

8 dealt with the provisional ballots there was a declaration

9 submitted by a man whose name was Youngman, and he contacted

10 all the auditors, and here's what he said about Adams County.

11 He said Adams County -- He must have called someone. It

12 says, "Don't check signatures on ballots voted at polls or

13 provisional ballots." Do either of you recall answering a

14 phone call from someone from the Democrat party or related to

15 the democratic party that might have been calling to ask you

16 about that? That's the very issue we were just talking

17 about.

18 MS. MCBROOM: Right, exactly. The only person I

19 remember talking to was a man from the PI. I think I was

20 quoted in there saying, but I said it with the lenience

21 saying that the signature was checked at the poll sites, that

22 when they come in we check registration, we check blah, blah,

23 blah, but we did not specifically check signatures, and he

24 quotes me as saying we didn't check signatures.

25 MS. HUNT: I received a phone call from -- I didn't

1 know who it was from the Democratic party. I talked to so
2 many people from various parties. I didn't remember names.
3 It was a simple one line question, and I said we do not check
4 signatures of ballots voted at the polls. Click.
5 Q. Which was relating to the provisionals because
6 provisionals are voted at the polls.
7 A. Yes.
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1 CERTIFICATE

2 .

3 I, Luke E. Jagot, do hereby certify that

4 pursuant to the Rules of Civil Procedure, the witness

5 named herein appeared before me at the time and place

6 set forth in the caption herein; that at the said

7 time and place, I reported in stenotype all testimony

8 adduced and other oral proceedings had in the

9 foregoing matter; and that the foregoing transcript

10 pages constitute a full, true and correct record of

11 such testimony adduced and oral proceeding had and of

12 the whole thereof.

13 .

14 IN WITNESS HEREOF, I have hereunto set my

15 hand this 9th day of May, 2005.

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19 Signature Expiration Date

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Exhibit 3

WSDCC Objections and Cross-designations of
Stevens County 30(b)(6) deposition

1 SUPERIOR COURT OF THE STATE OF WASHINGTON
2 FOR CHELAN COUNTY
3
4 Timothy Borders, et al.;,
5 Petitioners,
6
7 v. No. 05-2-00027-3
8
9 King County et al.,
10 Respondents,
11 and
12
13 Washington State Democratic Central
14 Committee
15
16
17 30(B)(6) DEPOSITIONS OF TIMOTHY GRAY and BEVERLY LAMM
18 APRIL 18, 2005
19 - - -
20 BE IT REMEMBERED THAT, pursuant to the Washington Rules of
21 Civil Procedure, the depositions of TIMOTHY GRAY and BEVERLY
22 LAMM, were taken before Mark Sanchez, Certified Shorthand
23 Reporter and Notary Public, on April 18, 2005, commencing at
24 the hour of 1:15 p.m., the proceedings being reported at 215
25 South Oak, Colville, Washington

WSDCC Objections and Cross-Designations of
Stevens County 30(b)(6) Deposition

OBJECTIONS

27:18-24 (speculative testimony)

CROSS-DESIGNATIONS

15:14-17:24 (instructions to poll workers regarding handling of provisional ballots; poll workers reported about 11 provisional ballots being cast directly into ballot box without verification)

19:23-20:15 (no way to separate provisional ballots, which have in fact been counted)

28:11-29:4 (at no time were election workers instructed to do a signature match on provisional ballots)

31:1-13 (other than the 11 that went directly into the ballot box, one additional provisional ballot was counted in error)

54:13-55:5 (Exhibit 6 is a 2004 General Election Reconciliation, the third page of which is a list of provisional ballots dropped directly in ballot box)

57:18-58:5 (page 3 of Exhibit 6 lists the 12 people who cast provisional ballots directly into the ballot box and their precinct)

59:15-60:6 (Exhibit 7 is Stevens County Provisional Ballot Envelopes and Poll Book entries compiled by election staff at direction of auditor in response to subpoena from WSDCC)

69:11-71:14 (Exhibit 7 contains a list of all provisional ballots that were counted; all of these ballots were counted without having their signatures verified before certification; exhibit also has the pages and envelopes that have the signatures of those voters who received and cast provisional ballots)

83:10-84:7 (signature verification may have occurred on a provisional ballot if there was a duplicate registration record or if there was an ID display requirement or if the record was pulled—in order to be sure that they had the right record)

90:12-22 (Exhibit 6 are the lists of provisional ballots inadvertently counted, with the precinct where cast)

96:7-12 (reconciliation and credit comparisons that are supposed to be part of the certification process are not completed in Stevens County until after certification)

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14 Q. Do you know if the poll workers were instructed on
15 how to handle provisional ballots?
16 A. Yes, they were.
17 Q. And how were they instructed?
18 A. To -- if a person comes to a polling place and
19 their name cannot be found in the poll book, then they need
20 to issue a provisional ballot, have them complete the outside
21 envelope, make their notations of why it was an absentee
22 ballot -- or a provisional ballot, excuse me. And then
23 they're instructed to make sure that the ballot gets into a
24 white security envelope, and then into the outside envelope
25 with the information on the outside. And then go into a

1 ballot box.
2 Q. Was -- apart from the security -- or from the
3 envelopes that you just described, was your -- were your poll
4 workers instructed to have a person who is issued a
5 provisional ballot sign anything other than the envelopes?
6 A. They sign in the back of the poll (Inaudible).
7 THE REPORTER: They sign in the back of the poll?
8 THE WITNESS: They sign in the back of the poll
9 book.
10 THE REPORTER: Thank you.
11 BY MS. COLGAN:
12 Q. And is that the same poll book that's used for all
13 other voters?
14 A. Yes, it is.
15 Q. How is that, the process you just described, given
16 to poll workers? Is that written? Is it an oral
17 instruction?
18 A. It's -- we hand a -- we have -- each board worker
19 has a -- written instructions. And then I review it as part
20 of a two-hour class that we do before we do -- we do the
21 classes, usually, in late August, prior to the primary. And
22 then we hold another one, excuse me, the day before the
23 general election.
24 Q. And are all poll workers required to attend those
25 meetings?

1 A. I'm not sure that they're required. We -- we ask
2 them to attend but we don't -- I don't know that we eliminate
3 a someone if they haven't attended.
4 THE REPORTER: I don't know that we what? I'm
5 sorry.
6 THE WITNESS: I'm sorry. I don't know that we
7 eliminate a board worker if they have not attended.
8 THE REPORTER: Thank you.
9 BY MS. COLGAN:
10 Q. Apart from the description you gave about handling
11 provisional ballots, is there any other instruction given
12 regard -- specifically regarding provisional ballots to
13 instruction given to your poll workers?
14 A. There's no other. I'd say it's stress to go over
15 it two or three times, or try to make sure that they
16 understand that once -- the importance of getting into those
17 two envelopes. Because as soon as it is dropped in the box,
18 it is not retrievable.
19 Q. Did any of your poll workers report that
20 provisional ballots were mistakenly fed into ballot machines
21 without being put into the envelopes that you described?
22 A. Well, we don't have any ballot machines.
23 Q. Or the ballot box.
24 A. Right. Yeah, we had about 11 cases of that.
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23 Q. If a provisional ballot had been mis-fed into the
24 ballot machines at the polls, would it have been tabulated
25 and counted in the process that you just described?

1 A. Oh. So if the ballot was dropped in the ballot
2 box.
3 Q. Without being in the envelopes.
4 A. Right.
5 Q. Right.
6 A. Yeah. Once it -- once it goes into the ballot box
7 without an envelope, there is no identifying mark on the
8 ballot itself; there's no number, there's no way to
9 determine. There's also no way to determine what way the
10 ballot might have fallen into the box or landed in the bottom
11 of the box. So it's -- at that point we -- you have little
12 choice but to count the ballots that are in that box.
13 Q. So those ballots have not been separated out, in
14 any way, from the remaining ballots.
15 A. No.
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11 Q. And so based on your description, my understanding
12 is that at no time does your staff do a signature -- engage
13 in a signature verification process when researching and
14 verifying provisional ballots; is that correct?
15 A. That's correct. We didn't realize that until we
16 were -- until the question was brought to our attention,
17 actually.
18 Q. Okay. Go ahead.
19 A. They do -- in discussing that with them, they do --
20 if they get to the point of looking at the actual
21 registration card, there's probably -- I'm gonna say --
22 they're looking at the card so I would think there's probably
23 some degree of signature matching. But I don't believe that
24 there was any conscious, specific effort to do that.
25 Q. And they were not, at any time, directed to do that

1 type of signature --
2 A. No.
3 Q. Okay.
4 A. That's my fault.
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1 Q. Okay. You can go ahead and set that exhibit aside.
2 Earlier, I believe you answered that there were 11
3 provisional ballots that you believe were mis-fed -- or were
4 fed into the ballot box without being placed into the
5 security envelopes; is that correct?
6 A. There were 11 that were dropped into the box,
7 correct.
8 Q. Were there any other problems related to
9 provisional ballots?
10 A. There was one provisional ballot counted in error,
11 and I believe that was a ballot that came from another county
12 that the first thought was registered and counted, and turned
13 out not to be registered.
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13 Q. Mr. Gray, I'm handing you what has been marked as
14 Deposition Exhibit No. 6. You can take a second to look at
15 that? Let me know when you're ready to answer questions.
16 A. Okay.
17 Q. Can you identify this document for the record?
18 A. It's a 2004 General Election Reconciliation.
19 Q. And that's the first page of the exhibit?
20 A. Yes.
21 Q. Okay. And the second page of the exhibit?
22 A. Voter records posted manually.
23 Q. Okay. And the third page of the exhibit?
24 A. Provisional ballots dropped in ballot box.
25 Q. Okay. We'll take those one at a time. Have you

1 seen this exhibit before, or these documents before?
2 A. Yes, I have.
3 Q. Okay. And do you have any reason to believe that
4 they're not accurate?
5 A. No, I do not.
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18 Q. Have you turn to the next page. This is the page
19 you previously identified as provisional ballots dropped in
20 ballot box. Are these people listed on this sheet the same
21 11 -- or rather 12 people that are detailed in the first page
22 of this exhibit?
23 A. Correct.
24 Q. And these are, therefore, the individuals whose
25 provisional ballots were counted erroneously.

1 A. Correct.
2 Q. And are precinct names listed to the left of the
3 individual person's names the precinct in which those ballots
4 were cast?
5 A. Correct.
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15 (Whereupon, a Provisional Ballot Envelopes and Poll
16 Book Entries were marked as Exhibit-7 for identification.)
17 BY MS. COLGAN:
18 Q. Mr. Gray, I'm handing you what has been marked as
19 Exhibit No. 7. Can you identify this exhibit for the record?
20 A. This is Stevens County, Washington general election
21 November 2nd, 2004 provisional ballot envelopes and poll book
22 entries.
23 Q. And did you compile this exhibit? The documents
24 within this exhibit.
25 A. No.

1 Q. Who did?
2 A. My election staff.
3 Q. Okay. And what was the reason for compiling these?
4 A. It was at your request.
5 Q. Was it in response to the subpoena that was issued?
6 A. Yes.
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11 Q. And is -- thank you. In a moment we'll take a
12 little break, I'm gonna double check to see which ones are
13 missing. We'll just do it all at once. The next sheet in
14 this exhibit is a yellow sheet which is entitled Provisional
15 Ballot Envelopes. And it's followed by an about an inch of
16 documents that appear to be copies of a number of provisional
17 ballot envelopes, three to a page; is that correct?
18 A. Correct.
19 Q. And are the three boxes on these envelopes the same
20 as the three boxes in the envelopes that were in the first
21 portion of this exhibit?
22 A. Yes.
23 Q. And are these the provisional ballot envelopes that
24 were counted? Or were these rejected as well?
25 A. I believe these were the ballots that were counted.

1 Q. Okay. So if we counted up the number of ballots
2 represented in this section of this exhibit, we should come
3 up with 568 provisional ballots?
4 A. That, I'd have to check with my staff with.
5 Q. Is there anything unusual about these -- the
6 ballots that are in this section, that you're aware of?
7 A. Not that I'm aware of, no.
8 Q. But it's your understanding that each of these
9 ballots was, in fact, counted in this election.
10 A. Correct.
11 Q. Okay. And it's also your understanding that the
12 signatures on these ballots were not verified prior to the
13 certification of the election.
14 A. Correct.
15 Q. Let's go to the next yellow sheet. It's entitled
16 Poll Book Entries; is that correct?
17 A. Yes.
18 Q. And can you explain for me what the pages are
19 behind that yellow sheet?
20 A. These would be the information and signatures of
21 the voters that received provisional ballots at the various
22 precincts.
23 Q. So each of these sheets would correspond to a
24 specific -- the signature -- at least one signature on each
25 of these sheets would be of a person would voted by

1 provisional ballot.
2 A. Correct.
3 Q. So this isn't the total of all signature sheets,
4 only those related to provisional ballot voters.
5 A. Correct.
6 Q. Okay. And with respect to all of the documents in
7 this exhibit. Are these documents that are regularly kept by
8 your office, by the auditor's office?
9 A. Yes.
10 Q. Okay.
11 A. We...
12 Q. They'd be maintained in the normal course of your
13 business?
14 A. Right. Correct.
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10 Q. And were you involved in doing the research and
11 verification of ballots that were then presented the
12 canvassing board?
13 A. Yes, I was.
14 Q. And that was for all of the 417 put through that
15 process.
16 A. Yes.
17 Q. And in that process, were you aware of any
18 signature verification that occurred?
19 A. Signature verification will happen if we have a
20 duplicate record when we're verifying the record of a
21 registered voter. If we had multiple names come up --
22 multiple records come up for the same name, we would look at
23 the signature to identify which record we need to be -- look
24 into the provisional ballot. We would also be looking at
25 signatures if we had an ID requirement, because we would have

1 to pull the registration card to be able to update the
2 information if the ID was required. And so we would be
3 looking at signatures at that time. If we had any anomaly
4 that we needed to pull the registration card if we had a
5 canceled record and we needed to go pull the card to find out
6 why they were canceled, we would also be looking at the
7 signature to ensure that we had the correct card.
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12 Q. Looking at -- I'm trying to think. Can you look
13 at -- take a look at Exhibit No. 6. And I just wanted to --
14 there we go. Third page on Exhibit No. 6, Ms. Lamm. Those
15 are the lists of the provisional ballots that were
16 inadvertently counted. Is that my understanding?
17 A. That's correct.
18 Q. Now, that's broken out by precinct?
19 A. That's correct.
20 Q. So we could identify each precinct where those
21 provisional ballots came from.
22 A. That's correct.
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7 Q. And is that -- in Stevens County in the 2004
8 general election, was that reconciliation process completed
9 after certification of the election?
10 A. The final portion of the reconciliation was
11 completed after certification.
12 MS. COLGAN: Thank you.
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Exhibit 4

WSDCC Objections and Cross-designations of
Walla Walla County 30(b)(6) deposition

WSDCC Objections and Cross-Designations of
Walla Walla 30(b)(6) Deposition

OBJECTIONS

4:10-5:20 (designation omits the question; should be 4:7)

13:4-7 and 14:13-17 (speculative opinion testimony)

101:15-102:4 (speculative opinion testimony in response to an improper hypothetical)

CROSS-DESIGNATIONS

9:16-10:14 (county first saw WAC requiring signature match on provisional ballots two days after election)

21:6-22:7 (at least one provisional ballot went directly into the ballot box without verification)

25:25-28:20 (Exhibit 4 is a complete list of provisional ballots and absentee ballots presented to county canvassing board in the ordinary course of business; 473 provisionals cast; 342 "yeses" indicating the provisional was accepted and counted; 131 no's)

63:1-64:10 (when county answered Petitioners' Interrogatories saying it had verified all provisional ballots, it did not mean to include in her definition of "Verified" signature checking as required by the WAC)

65:1-4 (county has not gone back and done a signature verification on the provisional ballots)

89:18-90:1 (county does not know how many ballots it had printed; does know how many were issued to them)

91:10-18 (county does not have a system for tracking how many ballots are not used)

93:6-14 (county does not know how many ballots they gave to the precincts but they come in sealed packages from the printer)

94:23-96:10 (county does not do an audit trail to ensure the number of unused ballots and voted ballots totals the number of ballots given to a precinct)

102:23-103:3 (county did not specifically verify signatures on provisional ballots as they did for absentee ballots)

103:4-104:22 (county compiled a list of all provisional voters whose ballots were counted, in compliance with WSDCC subpoena, and also provided WSDCC copies of the provisional ballot envelopes; which were used at deposition (and faxed afterwards))

1 SUPERIOR COURT OF THE STATE OF WASHINGTON
2 FOR CHELAN COUNTY
3 TIMOTHY BORDERS, et al.,
4 Petitioners,
5 vs. Case No. 05-2-00027-3
6 KING COUNTY, et al.
7 Respondents,
8 and
9 WASHINGTON STATE DEMOCRATIC
10 CENTRAL COMMITTEE,
11
12 Intervenor-Respondent.
13
14 DEPOSITION OF KAREN MARTIN and KATRINA MANNING
15 Taken on behalf of the Intervenor-Respondent
16 April 20, 2005
17 ---
18
19 BE IT REMEMBERED THAT, pursuant to Washington Rules
20 of Civil Procedure, the 30(b)(6) deposition of Karen Martin
21 and Katrina Manning was taken before Jea H. Oh, a Certified
22 Shorthand Reporter, CSR #29906, on April 20, 2005, commencing
23 at the hour of 9:10 a.m., at the Walla Walla County
24 Prosecutor's Office, 240 West Alder Street, Suite 201, Walla
25 Walla, Washington.

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16 Q. Ms. Martin and Ms. Manning, I'm now handing you
17 what's been marked as Deposition Exhibit No. 2. Again, if
18 you could take a quick minute to look at that and let me know
19 if you have any questions.
20 A. (Ms. Manning) This right here?
21 Q. Yes.
22 A. (Ms. Martin) You're referring to the
23 WAC 434-253-048 or just the --
24 Q. The 047 on the left-hand side of the page.
25 A. (Ms. Martin) Okay. I've got a copy of that here.

1 Q. Okay. And, Ms. Martin, can you identify this
2 document, then, for the record?
3 A. (Ms. Martin) Washington Administrative Code
4 434-253-047 about provisional ballots.
5 Q. And do you have a recollection of the first time
6 you saw this provision?
7 A. (Ms. Martin) As far as it being a new WAC in the
8 amendment?
9 Q. Yes.
10 A. (Ms. Martin) Actually, it would have been November
11 4th when I received an e-mail from the Secretary of State's
12 office.
13 Q. And that's November 4, 2004?
14 A. (Ms. Martin) Yes.
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6 Q. Did you have any occasions where you did find
7 ballots in the secrecy envelope but not the outer envelope in
8 your ballot boxes?
9 A. (Ms. Martin) (No response.)
10 Q. Sorry?
11 A. (Ms. Martin) Yes. Sorry.
12 Q. That's okay.
13 A. (Ms. Martin) I can't hear with that head rattling.
14 Q. And how often did that happen?
15 A. (Ms. Manning) I know two for sure.
16 Q. Okay. Are you aware or did you receive any
17 reports of whether or not a voter accidently put their ballot
18 directly without being in either envelope?
19 A. (Ms. Martin) Yes. We believe we had one.
20 Q. Do you know what precinct that was at?
21 A. (Ms. Martin) Edison.
22 MS. TEBELIUS: Addison or something.
23 MS. MARTIN: Edison; 0807 is the number. We have
24 them named as well as numbered.
25 BY MS. COLGAN:

1 Q. And how did you learn of that ballot being
2 mistakenly put in the box directly?
3 A. (Ms. Martin) I believe the poll worker let us know
4 that on their poll book, as well as having the --
5 A. (Ms. Manning) Envelope.
6 A. (Ms. Martin) -- envelope and no ballot in it, she
7 kind of gets the idea of where it went.
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25 (Whereupon, a document entitled "Interrogatory

1 No. 5" was marked as Exhibit-4 for identification.)
2 BY MS. COLGAN:
3 Q. Ms. Manning, can you take a second to look at
4 that and let me know it if it's the right document?
5 A. (Ms. Manning) It look likes the list I made you.
6 Q. Okay.
7 A. (Ms. Manning) This is the complete list. What I
8 have brought here is just the ones we're talking about which
9 is all the approved provisionals.
10 Q. Okay. Let's start with the complete list and
11 we'll walk along, and maybe you can clarify a few things for
12 me. And before we do that, is this list a list that you
13 generated to present to the canvassing board, or is this
14 something you created for the litigation?
15 A. (Ms. Manning) This is what I create for every
16 election --
17 Q. Okay. So this is a document --
18 A. (Ms. Manning) -- for the canvassing board.
19 Q. And this is a document, then, that you keep in
20 the regular course of your business?
21 A. (Ms. Manning) Correct.
22 Q. Okay. If you can turn to Page 1 of your list,
23 which is the second page of the exhibit, you were just
24 discussing the category, "Absentees Who Have Voted in Correct
25 Precinct At the Poles."

1 A. (Ms. Manning) Uh-huh.
2 Q. And so to the -- to the very -- The very
3 left-hand column is that Number 1 through 20 on this page.
4 Are those the numbers that you've assigned to the ballot, or
5 is that a number that was printed on the ballot?
6 A. (Ms. Manning) That's a number that we take a
7 Sharpie pen, and while I'm investigating them, I put that
8 number on the corner of the envelope.
9 A. (Ms. Martin) The provisional envelope, not the
10 ballot in any way.
11 A. (Ms. Manning) Right.
12 A. (Ms. Martin) Everything else is still sealed up --
13 A. (Ms. Manning) Right, right.
14 A. (Ms. Martin) -- when this is numbered.
15 Q. Okay. And then the second column over, is that
16 the voter identification number?
17 A. (Ms. Manning) Correct. That's the registration
18 number.
19 Q. And then the next columns are the voters' name
20 and address?
21 A. (Ms. Manning) Correct.
22 Q. And I notice that there are two different
23 addresses here.
24 A. (Ms. Manning) Uh-huh. It goes name, and then the
25 address that we have in our system.

1 Q. I see.
2 A. (Ms. Manning) And then the new address is printed
3 below.
4 Q. Okay. And then the last column on the right
5 says -- on this page is all "Yes".
6 A. (Ms. Manning) Uh-huh.
7 Q. What does that indicate?
8 A. (Ms. Manning) That means, yes, it was approved by
9 the canvassing board, and we are going to count it.
10 Q. Okay. All right. Do you know how many
11 provisional ballots in total were cast in the 2004 general
12 election?
13 A. (Ms. Manning) I think -- Well, on the very last
14 page -- Oops. I just tore that out. The total is 657. But,
15 really -- I'm sorry. Really, if you look under the
16 provisionals, there was 342 yeses and 131 nos. Because then
17 the absentees go to canvassing board, too, and they're
18 included on this list, so --
19 Q. So the total provisionals would have been 473?
20 A. (Ms. Manning) Yeah.
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1 Q. Okay. I'm handing you what's been marked
2 Deposition Exhibit No. 8. There's an extra copy there for
3 you. And are you familiar with this document?
4 A. (Ms. Manning) When was it sent to us, do you know?
5 Q. I am not certain when it was sent to you. If I
6 can -- Maybe I can point out to you, this appears to be the
7 Petitioner's discovery request to Walla Walla County, and if
8 I can have you look at Page No. 3, for example, this seems to
9 include your answers as well.
10 A. (Ms. Manning) Okay.
11 MS. TEBELIUS: Could I go on the record and say I
12 think these were for the Petitioners. The original was sent
13 sometime after the lawsuit was filed, so it would have been
14 the third week in January.
15 MS. MARTIN: This is just the interrogatories
16 with our answers added to them.
17 MS. MANNING: I've never actually seen this, but
18 yeah.
19 BY MS. COLGAN:
20 Q. Okay. Great. If I can direct --
21 A. (Ms. Manning) Not with my answers on it and all
22 that, no. But --
23 A. (Ms. Martin) you didn't?
24 A. (Ms. Manning) Huh-uh.
25 Q. If I could have you take a look at Page No. 4,

1 Interrogatory No. 4. The beginning of that interrogatory
2 reads, "Please: A) State the number of provisional ballots
3 counted that have never been verified in your county during
4 the November 2004 general election." And your answer for
5 Section A is, "None."
6 A. (Ms. Manning) Uh-huh.
7 Q. And when answering this question, were you
8 including in your definition of what it meant to be verified,
9 whether you checked signatures or not?
10 A. (Ms. Manning) No, I wasn't including in that.
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1 Q. Have you at any time gone back through the
2 provisional ballots that were accepted by the canvassing
3 board to do a signature verification process?
4 A. (Ms. Martin) No.
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18 Q. Right. Okay. Do you keep track of the number --
19 And these questions I'd like to address to Ms. Martin if I
20 could. Do you keep track of the number of printed ballots
21 that you have done before the election? Do you know how many
22 ballots -- Let me rephrase that question. Do you know how
23 many ballots you asked to be printed in this election?
24 A. (Ms. Martin) Off the top of my head, if you want
25 an answer, no. But, yes, we do have how many were issued to

1 us.
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Q. Okay. And how -- What system do you have to track where those ballots are that were not voted?

A. (Ms. Manning) After the election?

Q. Uh-huh.

A. (Ms. Martin) I would say we don't have a system that tracks that. We could. They're all in sealed containers that you can go back and count how many were left over, and we have the sheet from the printer that says how many they sent to us in total.

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6 Q. Do you know how many you sent to each of those
7 when you sent them to the community center for each precinct?
8 A. (Ms. Martin) Not off the top of my head, no.
9 Q. Did you count them before you sent them out?
10 A. (Ms. Martin) No. They're in sealed and wrapped
11 containers, and we don't open those sealed, wrapped --
12 Q. How do they come in sealed, wrapped from the
13 people who printed them?
14 A. (Ms. Martin) From the printer.
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23 Q. Okay. When those ballots are returned, you have
24 the voted ballots and the unvoted ballots. They should total
25 the number that was sent to them on election day, correct?

1 A. (Ms. Martin) Correct.
2 Q. Did you do an audit trail on that to make sure
3 that was the case?
4 A. (Ms. Martin) No, I don't believe we did.
5 Q. All right.
6 A. (Ms. Manning) Can you clarify "audit trail"? What
7 do you mean?
8 Q. Well, audit trail means that you audited the
9 numbers to make sure that you had -- if you sent a hundred
10 ballots, 50 were voted, do you have 50 ballots left? The
11 50 unvoted --
12 A. (Ms. Martin) Did we go back and manually count the
13 unused to find out --
14 Q. You could do it different ways, but manually
15 would probably be the easiest way.
16 A. (Ms. Martin) No.
17 A. (Ms. Manning) What's the other way if you don't
18 manually do it?
19 Q. Unless you have a machine that actually spit them
20 through and count them, the unvoted ones.
21 A. (Ms. Martin) No. Because they have to -- there
22 wouldn't be any way to send them through because they have to
23 tear them so they're unusable.
24 Q. Okay. So you would have to manually do it?
25 A. (Ms. Martin) Yeah.

1 Q. And you didn't do a manual audit?
2 A. (Ms. Martin) Not a manual audit of that, no. As I
3 said, they give us a ballot accountability sheet which states
4 on there how many ballots they started with, how many were
5 issued, how many signed a poll book, and those numbers are
6 there, but there's no requirement for us to you go back and
7 hand-count all the unused ballots. By the time we do that, I
8 guess, there would be -- you know, if somebody had requested
9 it and was considering that there was something incorrect in
10 what we did.
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20 MS. COLGAN: I have two quick follow-ups.
21 EXAMINATION
22 BY-MS.COLGAN:
23 Q. Just, again, to make sure we have a clear record,
24 as Ms. Tebelius stated, you never actually verified that the
25 signatures were the same. You may have viewed them, but

1 didn't specifically verify them in the way you did absentee
2 ballots, correct?
3 A. (Ms. Martin) That would be correct.
4 Q. Okay. And the only other thing I have is that my
5 understanding is that you have compiled some materials in
6 response to the subpoena that was issued today. Are those
7 materials copies of provisional ballot envelopes?
8 A. (Ms. Manning) Correct.
9 Q. And do they also contain copies of poll book
10 pages?
11 A. (Ms. Martin) No.
12 A. (Ms. Manning) No.
13 Q. Okay. Is there anything other than copies of
14 provisional ballot envelopes?
15 A. (Ms. Manning) A list of all the provisional
16 ballots that are here, all the yeses that are provisionals.
17 Q. So all provisional ballots that were accepted?
18 A. (Ms. Manning) Right, correct.
19 Q. And are these documents that you keep in the
20 normal course of your business?
21 A. (Ms. Manning) Do we keep this?
22 Q. Yes.
23 A. (Ms. Manning) I keep the master canvassing board
24 list, and that's it. We don't make copies of all this stuff.
25 It's locked up, stored for two years, and destroyed.

1 Q. Okay. So for at least a period of time, you keep
2 the actual provisional ballots in the course of maintaining
3 election records?
4 A. (Ms. Manning) As soon as the election is
5 certified, they are locked up and sealed, stored for two
6 years, and then we destroy it. Once it's destroyed, we're
7 over it.
8 Q. Okay. And then the list that you've created
9 here, is that something you typically do or is it something
10 that was done just for the purposes of this litigation?
11 A. (Ms. Manning) No. This one's done purposely for
12 the litigation. The master list that's got yeses and nos,
13 that's done for every election, and we keep on file.
14 Q. Okay. And so this list that you've given us
15 today is -- it's the same information that's on that master
16 list; it's just it's shrunk down to be only those that were
17 accepted?
18 A. (Ms. Manning) Right.
19 Q. Okay.
20 A. (Ms. Manning) And the corresponding copies of the
21 envelopes that you guys asked for are with it.
22 Q. Okay.
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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al., Petitioners, v. King County et al., Respondents, and Washington State Democratic Central Committee, Intervenor-Respondent.	NO. 05-2-00027-3 [PROPOSED] ORDER REGARDING DEPOSITION DESIGNATIONS

The following rules will govern use of depositions at trial.

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

(a) Use of depositions in opening statements. Excerpts from transcripts of depositions that have been designated may be used in opening statements if no objection to the testimony has been raised, or if raised has been overruled.

(b) Depositions and live testimony. Parties can present testimony by deposition or live testimony, but not both. Where a party chooses to present live testimony from a witness who another party is presenting by deposition, the party wishing to present the live testimony shall be restricted in its cross-designations in the same manner as if cross-examining a live witness (scope, completeness, etc.). When making cross-designations, as outlined below, the party intending to present live testimony must specifically notify the other parties that it reserves the right to present live testimony and that its cross-designations are therefore limited. If a party that has reserved the right to present live testimony decides not to do so, it may designate the deposition testimony it intends to use and provide such designations to the other parties at least 48 hours in advance to provide an opportunity to cross-designate and object, as below.

(c) Use of depositions as evidence. Designations and counter-designations shall be offered together, in the order in which they appear in the deposition but without any portions of the deposition not designated by a party. The proponent will provide at least 48 hours for counter-designations. Counter-designations may but are not required to include material that the other party would otherwise have introduced in its case in chief. Designations shall initially be made by highlighting the deposition transcript, in blue for petitioners, yellow for intervenor-respondent WSDCC and green for the Secretary of State. Objections shall be noted in the margin as follows: A for asked and answered/cumulative; F for lack of foundation/personal knowledge; H for hearsay; L for leading; LO for lay opinion; O for other (to be supplemented by explanation); P for privileged; and R for relevancy. When

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designated testimony relates to a deposition exhibit, the offering party will note corresponding trial exhibit in the margin. The offering party will then prepare for the Court a copy with only the designated and cross-designated testimony, with objections indicated in the margin. The Court will review the designations as time allows and indicate on the record only those objections that are sustained, with all other objections overruled. The Court will not consider any deposition designations submitted prior to entry of this Order.

ENTERED this _____ day of May, 2005.

_____
The Honorable John E. Bridges

DATED: May 17, 2005

Presented by:

/s William C. Rava
Kevin J. Hamilton, WSBA # 15648
David J. Burman, WSBA # 10611
William C. Rava, WSBA # 29948
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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al., Petitioners, v. King County et al., Respondents, and Washington State Democratic Central Committee, Intervenor-Respondent.	NO. 05-2-00027-3 CERTIFICATE OF SERVICE

The undersigned is a citizen of the United States and resident of the State of Washington, is over the age of eighteen and is not a party to the within action.

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
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The following documents were caused to be served:

1. Intervenor-Respondent Washington State Democratic Central Committee's Objections to Petitioners' Deposition Designations and Proposed Order;

2. [Proposed] Order Regarding Deposition Designations; and

3. this Certificate of Service.

These documents were served in the manner described below.

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I declare under penalty of perjury that the foregoing is true and correct, and that this certificate was executed in Seattle, Washington on May 17, 2005.

By _____
Susan L. Bright

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