



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

HARRY J. F. KORRELL
DIRECT (206) 628-7680
harrykorrell@dwt.com

2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

May 13, 2005

[The Honorable John E. Bridges]
Chelan County Superior Court
Department No. 3
401 Washington Street
Wenatchee, WA 98807

Re: *Borders v. King County, et al.*

Dear Judge Bridges:

Attached to this letter, we are filing some of Petitioners' designation of excerpts of deposition transcripts Petitioners intend to offer into evidence at trial. These depositions have not yet been signed by the witnesses, due to the compressed time schedule.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to be 'H. J. Korrell', written over a horizontal line.

Harry J. F. Korrell

cc: All Counsel

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

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, et al.,

Petitioners,

v.

King County and Dean Logan, its Director of
Records, Elections and Licensing Services, et al.,

Respondents

No. 05-2-00027-3

**PETITIONERS' DESIGATION
OF EXCERPTS OF
DEPOSITION OF SECRETARY
OF STATE SAM REED TO BE
USED AT TRIAL PURUSANT
TO CR 32(a)(2) and CR
32(a)(3)(B)&(E)**

Pursuant to the court's invitation at the hearing on May 2, 2005, Petitioners identify the following excerpts of the deposition of Washington Secretary of State Sam Reed to be offered in evidence by Petitioners in this action.

TOPIC	PAGE AND LINE CITATIONS
Witness's name and title	5:12-20
Responsibilities regarding the election	71:15-72:23
Serious mistakes were made in the election; canvassing boards are responsible for correcting errors before certification of county results	75:10-76:1
History of problems and the "culture of problems" in King County	76:19-82:19; 89:25-92:13
Inexperienced management and incompetent people within King County elections department, some of whom need to be fired.	92:14-96:3; also 34:1-15
Reed would have handled certain found ballots differently, but Mr. Logan now reports to Ron Sims, not Mr. Reed.	96:13-97:9; also 35:13-37:3
Importance of audit trail (including the importance of tracking how many absentee ballots are returned by voters) and the way the audit trail should work to prevent stuffing the ballot box or stealing ballots	99:13-102:17
King County was a "big problem"; errors are a problem for the outcome of the election and the voters' perception of the outcome	103:5-104:10

1 2 3	King County's problems went beyond "glitches" and the county needs to make significant changes in how it conducts elections	105:6-106:9
4 5 6 7	The discovery of 94 uncounted ballots months after the election confirms Reed's belief that there are deep and very significant problems in the King County elections division	108:24-110:18
8 9 10 11	Reconciling the number of ballots counted and rejected with the number received, prior to certification of the results, is a fundamental procedure to prevent stuffing or stealing ballots, which can change the outcome of an election	115:5-117:3
12 13 14	Accounting for absentee ballots is paramount in election administration and King County's failure to do so is appalling	118:4-119:3
15 16 17	An accurate ballot report is fundamental; the canvassing board depends on accurate reports so that they can certify a fair and accurate count in election or investigate problems	122:7-124:5
18 19 20 21	Absentee voter crediting occurs at the time the ballot is received and is the internal control to prevent double voting; it should be done prior to certification	124:8-125:7
22 23 24	It is a mistake or error to count a provisional ballot cast by someone who is not a registered voter	125:21-126:16
25 26 27	County should not count provisional ballots if they cannot find a voter registration signature on file	127:4-128:17

PETITIONERS' DESIGNATION OF DEPOSITION
EXCERPTS (REED) - 3

SEA 1644299v1 55441-4

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square · 1501 Fourth Avenue
Seattle, Washington 98101-1588
(206) 622-3150 · Fax: (206) 628-7699

1	It is a mistake or error to count votes cast by felons who did not have their civil rights restored	131:2-20
2		
3		
4	County should not allow people to cast multiple ballots and it is error to count multiple ballots cast by the same person	134:13-135:10
5		
6		
7	It is an error or mistake to keep deceased people's names on voter rolls and an error or mistake to count ballots cast in their names	135:11-136:1
8		
9		
10	There is a distinction between reconciliation and crediting; reconciliation refers to comparison of number of ballots voted with the number counted and rejected; reconciliation problems should be reported to canvassing boards prior to certification	136:21-138:12
11		
12		
13		
14	The 2004 gubernatorial election was the closest in the history of the nation, percentage-wise, and not likely to recur	139:23-140:22
15		
16		
17	It is a mistake or error for a county to certify results that do not accurately reflect the number of lawful votes cast	140:23-141:13
18		
19		
20	Secretary of State relies on counties to work through problems before certifying	141:15-22
21		
22	Secretary of State does not know that the certified returns of the manual recount were accurate within 129 votes	141:23-25
23		
24		
25	The Secretary of State cannot say with certainty that Ms. Gregoire actually received the highest number of lawful votes	142:1-25
26		
27		

PETITIONERS' DESIGNATION OF DEPOSITION
EXCERPTS (REED) - 4

SEA 1644299v1 55441-4

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square · 1501 Fourth Avenue
Seattle, Washington 98101-1588
(206) 622-3150 · Fax: (206) 628-7699

1 2 3	Secretary of State lacks authority to call for a re-vote, but if the court orders one, it is doable	144:22-145:13
4 5 6	If the court voids the certificate of election given to Ms. Gregoire, it would be best for the people of Washington that there be a new election	146:1-8
7 8 9	Secretary of State believes that proportional deduction is an appropriate method for dealing with the illegal votes cast in determining the true winner of the election	185:14-188:10
10 11 12	It was appropriate to count properly cast provisional ballots from registered voters, even if counties did not go about verification in the right way	193:8-194:2

13
14 DATED this 13th day of May, 2005.

15
16 Davis Wright Tremaine LLP
Attorneys for Petitioners

17
18 By 
19 Harry J. F. Korrell
20 WSBA #23173
21 Robert J. Maguire
22 WSBA #29909

Page 2

1 APPEARANCES
 2
 3 DAVIS WRIGHT TREMAIN, LLP
 4 BY: ROB MAGUIRE
 5 Attorney at Law
 6 2600 Century Square
 7 1501 Fourth Avenue
 8 Seattle, WA 98101
 9 (206) 628-7756
 10 (206) 903-3856 Fax
 11 robmaguire@dwt.com
 12 Appearing on behalf of the Petitioner
 13
 14 PERKINS COIE, LLP
 15 BY: JENNY A. DURKAN
 16 Attorney at Law
 17 1201 Third Avenue, Suite 4800
 18 Seattle, WA 98101
 19 (206) 359-8000
 20 (206) 359-9000 Fax
 21 Jdurkan@durkan.us
 22 Appearing on behalf of the Intervenor-Respondent
 23
 24
 25

Page 4

1 APPEARANCES CONTINUED
 2
 3 SNOHOMISH COUNTY PROSECUTING ATTORNEY, CIVIL DIVISION
 4 BY: GORDON W. SIVLEY
 5 Attorney at Law
 6 3000 Rockefeller
 7 Everett, WA 98201
 8 (425) 388-6330
 9 (425) 388-6333 Fax
 10 Gsivley@co.snohomish.wa.us
 11 Appearing on behalf of the Snohomish County Prosecutors
 12 Office
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 3

1 APPEARANCES CONTINUED
 2
 3 FOSTER PEPPER & SHEFLMAN
 4 BY: THOMAS F. AHEARNE
 5 Attorney at Law
 6 1111 Third Avenue
 7 Seattle, WA 98101
 8 (206) 447-8934
 9 (206) 449-1902 Fax
 10 Aheame@foster.com
 11 Appearing on behalf of the Secretary of State
 12
 13 ATTORNEY GENERAL OF WASHINGTON
 14 BY: JEFFREY T. EVEN
 15 Attorney at Law
 16 1125 Washington Street SE
 17 PO Box 40121
 18 Olympia, WA 98504
 19 (360) 586-0728
 20 (360) 664-2963 Fax
 21 Jeffe@attg.wa.gov
 22 Appearing on behalf of the Snohomish County Prosecutors
 23 Office
 24
 25

Page 5

1 Olympia, Washington;
 2 Monday, April 25, 2005
 3 9:21 a.m.
 4
 5 SAM S. REED,
 6 having been first duly sworn, was examined and testified
 7 as follows:
 8
 9 EXAMINATION
 10 BY-MS.DURKAN:
 11
 12 Q. Could you please state your full name for the
 13 record and your place of employment?
 14 A. I'm Sam Sumner Reed, Secretary of State,
 15 located in the legislative building in Olympia.
 16 Q. And how long have you had that position?
 17 A. January 10, 2001.
 18 Q. And what did you do before that?
 19 A. I was the Thurston County auditor from
 20 March 1, 1978 until that date.
 21 Q. Secretary, who's governor today?
 22 A. Christine Gregoire.
 23 Q. If there had not been a hand recount, would
 24 Christine Gregoire be governor?
 25 A. No.

Page 34

1 And is that responding to the "Are you
 2 publicly willing to say Dean Logan should be fired?"
 3 A. That is correct.
 4 Q. And you say you think that some personnel
 5 definitely need to be fired; is that correct?
 6 A. That is correct.
 7 Q. Did you have opinions at that time on who you
 8 thought should be fired, or did you feel you had a
 9 sufficient information base to make that judgment?
 10 A. On the basis of my experience as election
 11 administrator of the county over 23 years, some of the
 12 mistakes that were made up there were unacceptable, and
 13 there needs to be some accountability for it. And that
 14 was my point, is there's some people that need to be held
 15 accountable and removed from their position.
 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?

Page 35

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.
 13 Q. And looking again back at Exhibit 51, the
 14 fifth line of your e-mail to Bob Williams, you described
 15 Dean Logan as a very capable man and then stated, "I
 16 disagree with some of his decisions and actions this year,
 17 but I know he's now reporting to Ron Sims, not Ralph or
 18 me."
 19 Do you see that?
 20 A. Yes, I do.
 21 Q. What decisions of Dean Logan's do you
 22 disagree with?
 23 A. For example, the canvassing board meeting
 24 that I was at that I was mentioning I heard the other
 25 information about the electronic signatures, they brought

Page 36

1 up that they found ballots out at the polling sites that
 2 had -- as it turns out, they didn't pick up until late
 3 November, the last week of November, but they were sitting
 4 in churches and in schools unsecured.
 5 And if I were -- if it were myself, I would
 6 have just said, "We can't count these. I move that we
 7 not" -- instead, Dean said, "Well, let's study these and
 8 look at them." And it gave the impression that they were
 9 serious about doing it. In fact, that's still an
 10 impression some people have, even though they didn't
 11 count. Those were, I believe, provisional ballots.
 12 Also, the deputy prosecuting attorney said
 13 it was the first time he had seen a lot of this
 14 information, and he requested that he have a chance to go
 15 over it and discuss it, presumably with Norm Maleng, and
 16 that they take it up at their next meeting. And they, by
 17 a two-to-one vote, voted not to do that. And I just
 18 thought that wasn't a very smart thing to do. So it's
 19 those kind of judgments that...
 20 (Whereupon, Mr. Even enters the deposition
 21 proceedings.)
 22 BY MS. DURKAN:
 23 Q. Any other specifics you can think of where
 24 you disagreed with Dean Logan's decisions?
 25 A. A few times where I would have - when bad

Page 37

1 news was discovered - would have released it right away
 2 and dealt with it. And sometimes they didn't, and then it
 3 got worse as it went along, as it was discovered.
 4 THE WITNESS: Good morning, Jeff.
 5 MR. EVEN: Hi.
 6 MS. DURKAN: Do you need a break? Do you want
 7 to take a little break?
 8 THE WITNESS: No. I could use some more water,
 9 though.
 10 MS. DURKAN: Okay. Let's talk a two-minute
 11 break to get your water and...
 12 THE WITNESS: All right.
 13 (Pause in the proceedings.)
 14 BY MS. DURKAN:
 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

Page 70

1 marked as Exhibit No. 62, and I'll ask you to look at
 2 that.
 3 A. (Witness complies.)
 4 Okay.
 5 Q. Does this refresh your recollection that you
 6 might have been informed that perhaps someone from the
 7 Republican Party did call the White House?
 8 A. Yes. I did forget about this e-mail. Yes.
 9 Q. It wasn't something that stuck in your brain?
 10 A. No, it wasn't. As I say, I wouldn't be
 11 surprised.
 12 Q. And why is that?
 13 A. Both parties were asking for help throughout
 14 the country and contacting people, and so I wouldn't be
 15 surprised they contacted the White House.
 16 MS. DURKAN: Let's just take about a --
 17 THE WITNESS: But -- excuse me.
 18 BY MS. DURKAN:
 19 Q. Go ahead.
 20 A. I guess I would only add that the Election
 21 Assistance Commission has no authority or control over
 22 state and local elections, per se, so it isn't like Paul
 23 DeGregorio could have done anything, per se. Their role
 24 is overseeing the implementation of HAVA.
 25 MS. DURKAN: Let's just take about a seven-

Page 71

1 minute break and let me go through my notes.
 2 (Pause in the proceedings.)
 3
 4 EXAMINATION
 5 BY-MR.MAGUIRE:
 6
 7 Q. Mr. Secretary, my name is Rob Maguire. I
 8 represent the petitioners in the election contest pending
 9 in Chelan County --
 10 A. Okay.
 11 Q. -- Superior Court. And Ms. Durkan just
 12 finished asking her questions, and I'll have an
 13 opportunity to ask you some questions. We'll cover some
 14 of the same ground and some new ground.
 15 First, is it correct you were the chief
 16 elections officer for the state of Washington?
 17 A. That is correct.
 18 Q. And part of your responsibilities of the
 19 chief elections officer are to conduct or supervise fair
 20 elections in Washington; is that correct?
 21 A. I wouldn't state it that way. It's the
 22 responsibility of counties to conduct elections and to
 23 administer elections. It's the responsibility of the
 24 Secretary of State kind of to provide oversight, training,
 25 and some direction to them.

Page 72

1 Q. The Secretary of State's office is not a
 2 judicial body; is that correct?
 3 A. That is correct.
 4 Q. And it doesn't have investigative authority
 5 with respect to how counties conduct their canvasses?
 6 A. That is correct.
 7 Q. The role of the Secretary of State, upon
 8 receiving certified returns from counties, is ministerial;
 9 is it?
 10 A. That is correct.
 11 Q. And by that, do you mean that the Secretary
 12 of State must take the returns that are provided to his
 13 office as correct from the counties?
 14 A. Yes. The Washington State Constitution
 15 allows -- are premised on local government being the final
 16 authority, with the canvassing board having the final
 17 authority to certify these election results are true and
 18 correct.
 19 They convey them to me. And then, as in
 20 this case, a statewide official, Article 3 of the
 21 constitution specifically says, "I shall," basically "pass
 22 on the same to the legislature for purposes of swearing
 23 in."
 24 Q. Is it correct that the Secretary of State's
 25 office communicated with representatives of both the state

Page 73

1 Republican Party and the state Democratic Central
 2 Committee prior to, during, and after the
 3 November election?
 4 A. Yes, it is.
 5 Q. And also with representatives of the Rossi
 6 and Gregoire campaigns prior to, during, and after the
 7 election?
 8 A. Yes, quite extensive.
 9 Q. Are the communications between the Secretary
 10 of State's office and those entities about those entities'
 11 concerns with the election process?
 12 A. Sometimes concerns; often just wanting an
 13 explanation; wanting to know, in fact, what the rules or
 14 procedures were; wanting to understand why something's
 15 done a certain way it is.
 16 Q. Is part of the reason for that communication
 17 to ensure a fair election?
 18 A. Yes.
 19 Q. Did the communications you had with either of
 20 the political parties or the campaigns cause you to take
 21 actions that skewed the results in this election?
 22 A. No.
 23 Q. Did the communications cause you to do or not
 24 do something that you would otherwise have done or not
 25 done?

1 A. No.

2 Q. Is it correct that the Secretary of State's

3 office actually opposed some of the relief sought by the

4 state Republican Party in litigation related to this

5 election?

6 A. Yes, it is.

7 Q. In fact, you and your office have been

8 criticized heavily by some republicans with respect to the

9 actions you've taken with regard to the election?

10 A. Yes (indicating).

11 Q. You're holding up many e-mails in your hand.

12 MR. MAGUIRE: Mark this as the next exhibit,

13 please.

14 (Whereupon, a 3-page Associated Press article,

15 "Gregoire declared governor-elect, but Rossi wants new

16 vote" of e-mails was marked Exhibit-63 for

17 identification.)

18 BY MR. MAGUIRE:

19 Q. Mr. Secretary, the court reporter has handed

20 you a document marked as Exhibit 63 with the title

21 "Gregoire Declared Governor-Elect, but Rossi Wants New

22 Vote."

23 It appears to be an article by David

24 Ammons, A-M-M-O-N-S, on Thursday, December 30th, 2004; is

25 that correct?

1 right.

2 MR. MAGUIRE: Mark this as the next exhibit,

3 please.

4 (Whereupon, a 3-page Seattle Times article,

5 "Cascading errors shake voter confidence" was marked

6 Exhibit-64 for identification.)

7 BY MR. MAGUIRE:

8 Q. Mr. Secretary, the court reporter just handed

9 you a document marked as Exhibit 64 with the title

10 "Cascading Errors Shake Voter Confidence," by David

11 Postman of the Seattle Times dated December 16th, 2004; is

12 that correct?

13 A. Yes.

14 Q. Take a moment to read it. I'm only going to

15 ask you about a particular section, but feel free to read

16 it all if you'd like.

17 A. Well, why don't you go ahead and direct me to

18 the section.

19 Q. Okay. On the second page of Exhibit 64, the

20 last two paragraphs.

21 A. Okay.

22 Q. "Secretary of State Sam Reed, Logan's former

23 boss and still a fan, defended King County in recent

24 weeks. But yesterday he said he was deeply concerned

25 about what he termed 'serious problems.'"

1 A. That is correct.

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.

10 Q. Did you believe that serious mistakes were

11 made during the election?

12 A. Yes. I believe very serious mistakes were

13 made.

14 Q. And you saw them being corrected; is that

15 correct?

16 A. Yes. When the mistakes were reported to my

17 office, we dispatched a member of the staff out to that

18 county. And this happened, as I recall, in 20 counties.

19 That staff person usually stayed there until the issue or

20 the problem was resolved, correct.

21 Q. And is part of the process that mistakes that

22 are made are corrected prior to certification?

23 A. The county canvassing board -- it's the role

24 of the county canvassing board, if a mistake is reported

25 to them, to see that it is corrected before they certify,

1 Were you deeply concerned about serious

2 problems in King County?

3 A. Yes.

4 Q. What were the serious problems?

5 A. There were a number of situations of ballots

6 being found that weren't counted in the first count, with

7 the most dramatic being those that didn't have the

8 election -- I mean the electronic signatures. It was

9 referred to here as 573. I think there were actually

10 more, but initially found.

11 The ballots out in the polling places that

12 were left in the base of the equipment. And I can't

13 remember the context at that time, because this was as of

14 December 16, and there's -- since then, of course, there

15 have been other issues that have been raised. But back

16 then, as I recall, there were others raised as well.

17 And essentially, the way they reported or

18 not reported initially dealt with [witness mumbling].

19 THE COURT REPORTER: I'm sorry. Dealt with...?

20 THE WITNESS: The way that they were not

21 reported initially and not dealt with initially concerned

22 me.

23 BY MR. MAGUIRE:

24 Q. And let me make sure I understand that. You

25 were concerned that King County knew about a problem but

1 did not promptly report that information to the public or
2 to your office?

3 A. Yes. For example, the electronic signatures
4 they discovered in August. And it was when Councilman
5 Philips found out he didn't vote that it became -- that
6 his ballot didn't count that it became public, and I think
7 that was like the first week of December or so. And the
8 same thing with those ballots left out in the polling
9 places discovered in early November, and they weren't
10 reported until the first week of December.

11 Q. With respect to those absentee ballots where
12 the signature was missing from the electronic records of
13 King County, do you know whether your office assisted King
14 County in trying to find voter registration records for
15 those individuals once King County did identify that
16 problem?

17 A. Yes. We worked with them to -- because we
18 had copies of their voter registrations that we used for
19 checking initiative signatures, so we checked against our
20 records for them.

21 Q. That was something done in December that
22 could have been done prior to the completion of the first
23 canvass had King County identified the problems. Is that
24 your understanding?

25 A. That is correct.

1 Q. Exhibit 64, the next paragraph reads, "I
2 think unfortunately it reflects the fact that this is a
3 county that has had some real problems with its elections
4 operations for years," Reed said. "The problems in King
5 County aren't problems of lack of good policy or lack of
6 guidelines. It's a problem with execution."

7 Did you say that?

8 A. Yes, I did.

9 Q. Did you believe it to be true?

10 A. Yes.

11 Q. Do you still believe that's true?

12 A. I do.

13 Q. What are the real problems with King County's
14 elections operations that have existed for years?

15 A. As Thurston County auditor, I chaired our
16 legislative committee for many years - I served as
17 president until the middle '90s - and it was always
18 bothersome that King County was one of the most kind of
19 backward counties in the state in terms of how they were
20 preparing for the future.

21 In the '90s, the rest of us realized we're
22 going to a more of mail voting environment, and King
23 County basically resisted that and said they didn't want
24 them to vote that way, and so it didn't really prepare
25 like other counties were for this.

1 And they had a number of problems
2 throughout the years, including 2002, not even being able
3 to get the absentees out in a timely fashion.

4 Q. Were there any other ways in which King
5 County was one of the more backward counties in the state
6 with respect to its elections?

7 A. In 1997 they purchased a new vote tabulation
8 system and, incredibly, it was for a precinct-based
9 system. While the other counties were getting large
10 central count systems to handle mail, they basically
11 bought a system that instead was based upon precincts and
12 tabulation being done.

13 In fact, this election had 48 separate
14 counters in their office to process mail, while most large
15 counties have, you know, large equipment there to do that.
16 They basically organized for that, and that set up some
17 real problems for them.

18 Q. Let me make sure I understand that. King
19 County purchased vote tabulating equipment that would
20 allow votes to be tabulated at poll sites rather than at a
21 single central location?

22 A. That is correct.

23 Q. And you believe that gave rise to problems?

24 A. Right. And it was a good indication of their
25 thinking and planning. It, of course, then took a long

1 time. Like in 2000, when they tabulated the votes after
2 the presidential election, they -- it took two weeks just
3 to count their absentees because of the limitations they
4 have with their equipment.

5 Q. And by having individual pieces of equipment
6 at each poll site that allows ballots to be tabulated at a
7 poll site, does that increase the possibility that
8 provisional ballots would be counted prior to being
9 verified to determine whether they were cast by a lawful
10 registered voter?

11 A. Not necessarily. Obviously, it did in this
12 case. But with proper preparation, that shouldn't happen.

13 Q. What kind of proper preparation could prevent
14 that from happening?

15 A. By either bar coding those ballots so they
16 don't -- so they will be rejected by the precinct
17 counters. In Thurston County, what we do is we have
18 different colors of ballots. So if somebody, in this case
19 because it's a punch card, drops the card in the ballot
20 box rather than giving it back to the election board
21 worker, we can see that it was a provisional ballot and
22 not supposed to be in there, and separate it out. So
23 there are ways of dealing with the issue.

24 Q. Did King County deal with the issue prior to
25 the November 2004 election?

Page 82

1 A. As I understand, they did not.
 2 Q. They were not -- they did not have proper
 3 preparation, in your view?
 4 A. They were not prepared for this to happen,
 5 yes.
 6 Q. Okay. For how long has Thurston County
 7 identified its provisional ballots with a different color,
 8 or special ballots prior to provisional ballots?
 9 A. I don't remember specifically, but I would
 10 say four or five years probably. Maybe longer than that.
 11 Q. Was it prior to when you left as auditor and
 12 became Secretary of State?
 13 A. You know, I don't -- I believe so, but I
 14 don't recall specifically.
 15 But we used different colors for different
 16 ballots just so that we would be able to keep them all
 17 straight in terms of absentees, provisionals, the regular
 18 ones. And I think we've done that -- we did that going
 19 back to the early '90s, I believe.
 20 Q. Do you recall any discussions amongst or
 21 between auditors with respect to color coding provisional
 22 ballots prior to the November 2004 election?
 23 A. I do not, because provisional ballots were
 24 still rather unusual. And the election board workers were
 25 certainly trained thoroughly on how to deal with these.

Page 83

1 But because there weren't that many, it really hadn't been
 2 a problem like it ended up being in 2004.
 3 Q. So prior to the 2004 election, Washington had
 4 something called special ballots; is that right?
 5 A. Right. That is correct.
 6 Q. And they were similar to what is now
 7 provisional ballots?
 8 A. I would say identical, yes.
 9 Q. Identical?
 10 A. Right.
 11 Q. Okay. And why do you think there were more
 12 provisional ballots in 2004 than in previous elections?
 13 A. Because in the Help America Vote Act adopted
 14 by Congress, they authorized provisional ballots, and it
 15 received national attention, and the political parties
 16 were well aware of it. And so as they were planning for
 17 the 2004 election in doing voter turnout, they were
 18 actually promoting people, saying "Just get in there and
 19 vote and we'll give you a provisional ballot." So we
 20 ended up having far, far more provisional ballots than we
 21 had in the past.
 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?

Page 84

1 A. I don't think we did. That was a mistake,
 2 no, probably on our part as well as the County's.
 3 But we -- because we've had -- and it's
 4 because we've had them for so many years, Washington
 5 voters are used to it, our election board workers are used
 6 to it, we just didn't expect to have an impact because of
 7 the change at the national level.
 8 Q. Were there any other items in the way King
 9 County handles the elections that makes it one of the most
 10 backward counties in the state?
 11 MS. DURKAN: I'm just going to object to the
 12 form of the question.
 13 THE WITNESS: In the larger counties that deal
 14 with a large volume, what happened in the '90s is they got
 15 larger spaces to work in and -- like in Thurston County,
 16 we went out to Industrial Park, and we setup a workflow
 17 situation for mail balloting and bar coded the ballots in
 18 such a way where we could move them through the process
 19 very quickly in terms of crediting voters, of checking
 20 signatures, of properly securing ballots, and having the
 21 space to do that and do it in a workable situation.
 22 The same thing was done in Pierce,
 23 Snohomish, and more recently in Spokane. And King County
 24 really hasn't done that. They are spread in different
 25 places. So when they had to do the hand recount, they

Page 85

1 ended up having to lease space from The Boeing Company to
 2 do that.
 3 BY MR. MAGUIRE:
 4 Q. All right. King County did not have adequate
 5 planning for space to accommodate the election in
 6 November?
 7 A. Right. Or even adequate space. I think it
 8 puts the election staff -- they have some difficulty when
 9 they don't have the proper space to work in, as well as
 10 what it means when the ballots are being moved around from
 11 place to place.
 12 We prefer, once they get there, to have a
 13 secure situation where you have -- you know, basically all
 14 of your work is being done in one place.
 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.

Page 86

1 Q. What other consequences are there for not
 2 having adequate space?
 3 A. Their workflow is such that, you know, the
 4 timing of getting this accomplished, the ability of
 5 management to oversee the operation is compromised because
 6 the operation is being split up in different locales.
 7 That's the main thing I -- those are the main points I can
 8 think of.
 9 Q. So without adequate space planning, the
 10 ability of management to supervise is compromised?
 11 A. Correct, yeah.
 12 Q. So supervisors or management have to rely
 13 more heavily on independent actions by their subordinates?
 14 A. Right, or by lower-level supervisors, right.
 15 Q. Can you think of any other consequences
 16 for -- that arise from not having adequate space?
 17 A. Not off the top of my head.
 18 Q. So other than adequate space and resisting
 19 moving towards mail ballots and its acquisition of vote
 20 tabulation machines for precincts rather than a central
 21 location, are there any other reasons that you have the
 22 opinion that King County was one of the most backward
 23 counties in the state with respect to its elections?
 24 A. It appeared, and again, from the outside --
 25 and actually, we did -- my office conducted a review as

Page 87

1 well, that also they never -- they didn't re engineer the
 2 staffing of it in terms of how they're organized and
 3 carefully evaluated the competency of the individuals
 4 involved at various levels of the organization. And
 5 again, that's something fundamental to understanding that
 6 elections are changing and you have to operate in a
 7 different way.
 8 Q. Anything else?
 9 A. Nope. That's all I can think of right now.
 10 Q. Dean Logan, the director of Records,
 11 Elections, and Licensing Services in King County, used to
 12 work in your office; is that right?
 13 A. That is correct.
 14 Q. Did he talk to you and solicit your advice
 15 when he was considering taking the position with King
 16 County?
 17 A. Yes, he did.
 18 Q. What did he say to you?
 19 A. That he viewed this as a good opportunity and
 20 that there were some huge challenges, and he felt he
 21 understood that. I cautioned him because I realized what
 22 a difficult situation it was going to be that he was
 23 walking into. But I think he's a person who likes a big
 24 challenge. He certainly got it.
 25 Q. And Bill Huennekens, who is now the

Page 88

1 superintendent of elections for King County, he also used
 2 to work in your office; is that right?
 3 A. That is correct.
 4 And prior to that, he was the supervisor of
 5 elections in Mason County. And then he worked basically
 6 as kind of a policy analyst for us.
 7 Q. Prior to his acceptance of the job as
 8 superintendent of elections with King County, did he
 9 discuss with you that position?
 10 A. I don't remember him really discussing it
 11 with me other than kind of a very brief, you know, when he
 12 decided to do it, you know, and came in and talked to me a
 13 little bit, but it wasn't very extensive.
 14 Q. Do you remember any conversations with him in
 15 which you expressed an opinion about the position?
 16 A. Well, again, he was walking into a very
 17 difficult situation and what a huge challenge it was, and
 18 was he aware just how difficult it was going to be, again,
 19 because I had dealt with King County for so many years,
 20 yeah.
 21 Q. And the challenges that you mentioned or were
 22 referring to when talking to Mr. Logan or Mr. Huennekens
 23 are the same ones we've just discussed?
 24 A. Yeah.
 25 And I would have liked to have had both of

Page 89

1 them stay with me, so I also was saying "The opportunities
 2 here are more positive," so...
 3 MS. DURKAN: And you were right.
 4 BY MR. MAGUIRE:
 5 Q. If you could turn back to Exhibit 56, which
 6 Ms. Durkan marked earlier today. This was a December 19th
 7 e-mail from you to Julia Patterson responding to her
 8 December 17th e-mail to you.
 9 A. Right.
 10 Q. Who is Julia Patterson?
 11 A. King County Council member, former Washington
 12 State senator, and she had chaired the senate committee
 13 that consider elections legislation, so I got to know her
 14 quite well.
 15 Q. And in your e-mail to her, you say, among
 16 other things, "I'm getting pounded on by the hard-core
 17 partisans of both parties."
 18 Is that right?
 19 A. Mm-hm, yes, at different times.
 20 Q. That was as a result of your attempts to act
 21 fairly and impartially, you were receiving criticism from
 22 both sides of the aisle?
 23 A. Partly. But also partly the time-honored
 24 tradition of shooting the messenger.
 25 Q. All right. And the next paragraph of your

1 e-mail, you write, "Unfortunately, the years of neglect
 2 are really catching up to King County."
 3 Is that correct?
 4 A. Yes, that is correct.
 5 Q. Did you believe that when you wrote this
 6 e-mail?
 7 A. Yes.
 8 Q. Do you still believe that?
 9 A. Yes, I do.
 10 Q. And what kind of neglect were you referring
 11 to?
 12 A. What I'd mentioned before in terms of
 13 adequate space, adequate staffing, decisions that are more
 14 commensurate with realistic planning for the future.
 15 Q. You talk about staff issues. What
 16 specifically with respect to staff had King County
 17 neglected?
 18 A. The -- some of the lower and middle echelons
 19 of the office, it has been my impression that some of them
 20 aren't very capable. Some of them aren't -- have -- don't
 21 have an attitude that I like to see in elections people in
 22 terms of the transparency of elections and being
 23 accountable.
 24 Q. Okay. How did you form this view? On what
 25 do you base that view?

1 A. The organizational culture represented by
 2 these people over the years has often been to kind of
 3 protect themselves by not letting people at higher levels
 4 know about mistakes and problems. And in elections, you
 5 want them to have the opposite attitude. It is imperative
 6 that as soon as they discover a problem, that they report
 7 it upward.
 8 Q. The Secretary of State's office has noticed
 9 over the years that individuals in lower and mid-level
 10 echelons in King County do not have an attitude of
 11 transparency in their dealings?
 12 A. That's correct.
 13 MS. DURKAN: Object to the form of the question.
 14 THE WITNESS: Yes. What has surprised me is
 15 that they haven't come forward, you know, right away when
 16 there are mistakes or problems are made.
 17 And what was interesting is the other
 18 counties, they had their mistakes, but they were the first
 19 ones to, you know, kind of let the world know and to
 20 report it back up and to deal with them. That has not
 21 been the practice in King County.
 22 BY MR. MAGUIRE:
 23 Q. Even in the November 2004 election?
 24 A. That is correct.
 25 Q. Have you ever talked to Mr. Logan about King

1 County having a culture of problems?
 2 A. Yes, right.
 3 Q. What has Mr. Logan said to you about that?
 4 A. He agrees.
 5 Q. Has he indicated to you that he intends to do
 6 anything about the culture of problems?
 7 A. I think it has been his intention, yes, to do
 8 it, and realizes that it's now something that needs to be
 9 dealt with, you know, looking to the future, but I think
 10 he realized he had the problems before.
 11 Q. And the culture of problems existed during
 12 the November 2004 election?
 13 A. Yes.
 14 Q. Back on Exhibit 56, you continued by writing
 15 "Dean and Bill have made some corrections and
 16 improvements."
 17 A. Yes.
 18 Q. That's Dean Logan and Bill Huennekens?
 19 A. That is correct.
 20 Q. "But there are some very incompetent people
 21 in that section and an organizational culture that needs
 22 to be changed."
 23 Is that right?
 24 A. That is correct.
 25 Q. Did you believe that when you wrote this

1 e-mail?
 2 A. Yes.
 3 Q. Do you still believe that to be true?
 4 A. Yes, I do.
 5 Q. Now, if you could turn to Exhibit 54,
 6 Mr. Secretary, which is another e-mail exchange with
 7 Ms. Patterson, the King County councilwoman.
 8 A. Okay. (Witness complies.)
 9 Q. The first paragraph of your response, you
 10 wrote, "I think the problems in that section run very
 11 deep."
 12 Is that right?
 13 A. That is correct.
 14 Q. And you were referring to the King County
 15 elections department?
 16 A. Yes.
 17 Q. "I think Dean and Bill are very good, though
 18 these problems may reveal some of their inexperience
 19 regarding managing large organizations."
 20 Is that right?
 21 A. Yes.
 22 Q. In your view, did Mr. Logan and
 23 Mr. Huennekens have inexperience regarding managing large
 24 organizations?
 25 A. Yes. They both had managed smaller groups,

1 organizations.

2 Q. And King County is a large organization in
3 the elections department?

4 A. Yes.

5 Q. Could some of the problems that run very deep
6 in this section have been addressed by more experienced
7 managers?

8 MS. DURKAN: Object to the form of the question.

9 THE WITNESS: I think it was a challenge for
10 them in terms of dealing with these issues, not having the
11 experience, plus both of them are very capable
12 professionals themselves, so they addressed the specific
13 issues like the absentee process, the voter registration
14 system, some of the details of the operation. And that's
15 how they made -- as I pointed out in my e-mail, they
16 really made some significant improvements, but they didn't
17 deal with the larger issues.

18 BY MR. MAGUIRE:

19 Q. So the significant improvements weren't
20 enough to address the problems that ran very deep, in your
21 view?

22 A. That is correct.

23 Q. And Ms. Patterson, in her e-mail on
24 Exhibit 54, in her first sentence, writes "It worries me
25 that you feel that King County elections department is

1 Q. You were talking about personnel in the King
2 County elections department?

3 A. That's right.

4 Q. And Ms. Durkan asked you about the sentence
5 in which you wrote, "I disagree with some of his decisions
6 and actions this year, but I know he is now reporting to
7 Ron Sims, not Ralph or me."

8 Is that correct?

9 A. That is correct.

10 Q. And the person you were talking about was
11 Dean Logan?

12 A. Correct.

13 Q. What did you mean by the reference to
14 Mr. Logan "reporting to Ron Sims, not Ralph or me"?

15 A. The example I gave to Ms. Durkan was how he
16 handled the canvassing board that I was at in terms of
17 whether to let the prosecutors office have more time to
18 look at this - they voted no by a two-to-one vote -
19 whether to just say, "Since these ballots have been
20 sitting out at schools and churches unsecured, we just
21 shouldn't consider them." Instead they did the opposite.

22 And you know, again, if he were reporting
23 to me, I wouldn't have accepted that at all. But
24 obviously, he doesn't report to me. He reports to Ron
25 Sims. And I'm kind of assuming that that must have been,

1 still incompetent."

2 Do you see that on the --

3 A. Yes, I do.

4 Q. Did you feel that King County elections
5 department was incompetent?

6 A. I felt that there were definitely people
7 within the organization that were incompetent.

8 Q. Do you still believe that?

9 A. Yes.

10 Q. Mr. Secretary, if you could turn to
11 Exhibit 51, please. This was the e-mail exchange with Bob
12 Williams.

13 A. Okay. (Witness complies.)

14 MS. DURKAN: One of.

15 MR. MAGUIRE: One of.

16 BY MR. MAGUIRE:

17 Q. Ms. Durkan asked you about this
18 exhibit earlier this morning. I'd just like to follow up
19 on some of her questions.

20 The response at the top of the first page
21 of Exhibit 51 from you to Mr. Williams, the fifth line,
22 you write, "I think some of the personnel definitely need
23 to be fired."

24 Is that right?

25 A. Yes.

1 you know, the way he was supposed to be doing his job
2 there.

3 BY MR. MAGUIRE:

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.

10 Q. It's important to have a trail of tracking
11 ballots?

12 A. That's correct.

13 Q. And why is it important to have a trail of
14 tracking ballots?

15 A. The fundamentals of elections are that you
16 don't want to have your ballots in a position where they
17 could be altered in any way. And the way you protect
18 against that is by having real tight security arrangements
19 of the ballots, and including, you know, an audit trail of
20 where they went. And then if they are put in a secure
21 place and they are moved, then the people have to sign off
22 who removed them and basically indicate what they did. In
23 other words, there needs to be a trail like that to make
24 sure the ballots are handled properly.

25 Q. Should a County keep records of the number of

Page 98

1 ballots it produces or prints?
 2 A. Ballots it produces or prints. I don't think
 3 there's a requirement that they do that. They definitely
 4 need to know how many ballots that they sent out, however,
 5 you know, through the mail or sent to the polling places.
 6 They need to know how many they have.
 7 Q. The County should keep an inventory of --
 8 A. Well, I would assume they'd have the first,
 9 but I don't think it's a requirement, right.
 10 Q. So Counties should keep an inventory of the
 11 number of ballots it sends --
 12 A. Right.
 13 Q. -- to polling sites?
 14 A. Correct.
 15 Q. And should keep an inventory of the number of
 16 ballots it mails to individuals requesting a ballot?
 17 A. Yes.
 18 Q. Should a County keep a record of the number
 19 of ballots that return from a polling site unused?
 20 MS. DURKAN: Counsel, are you asking should they
 21 according to law or best practices or his opinion?
 22 MR. MAGUIRE: He can answer either. I'm asking
 23 for his opinion or best practices. I don't mean to --
 24 MS. DURKAN: To an extent, you're asking a
 25 question of law.

Page 99

1 MR. MAGUIRE: Yeah. I do not need him to opine
 2 on the law.
 3 BY MR. MAGUIRE:
 4 Q. As a matter of good practice, should a County
 5 keep records of the number of ballots that are unused at a
 6 polling site?
 7 A. I think not. The important point is to know
 8 how many ballots were counted, and we need to know that.
 9 In fact, some Counties destroy the unused ballots right
 10 then and there. So that has not been a practice that --
 11 what you want to know is how many you actually have that
 12 were voted.
 13 Q. It's important to know the number of ballots
 14 cast?
 15 A. That's correct.
 16 Q. And the number of ballots counted?
 17 A. Correct.
 18 Q. Is it important to know the number of ballots
 19 that were spoiled or voided?
 20 A. Yes.
 21 Q. Is a record of those things part of an audit
 22 trail?
 23 A. Yes, they are.
 24 Q. And why should a County keep an audit trail?
 25 A. Again, it's your basic elections practice to

Page 100

1 not allow for the stuffing of the ballot box by knowing
 2 how many, you know, voters you had that cast a ballot
 3 compared to how many you actually have within your ballot
 4 box.
 5 Q. So having a good audit trail is a basic
 6 election practice to not allow for stuffing of the ballot
 7 box?
 8 A. That's correct.
 9 Q. I think you testified that a County should
 10 keep track of the number of absentee ballots it mails out;
 11 is that right?
 12 A. Yes.
 13 Q. Whether it's mailed or delivered to someone
 14 in person who comes into an election office, the County
 15 should keep track of that number?
 16 A. Yes, as a matter of good practice.
 17 Again, the important point is more how many
 18 votes were actually cast than it is how many went out.
 19 But that is a good practice, right.
 20 Q. Should a County keep track of the number of
 21 absentee ballots returned by voters to the County?
 22 A. Yes.
 23 Q. Why should a County do that?
 24 A. When you count your ballots, you want to make
 25 sure you have all of them that have been received by the

Page 101

1 County. And the way you know that is by having a count
 2 that you can compare it to to make sure you in fact are
 3 including all of the ballots that have been returned.
 4 Q. And a County should keep track of the number
 5 of absentee ballots it counts?
 6 A. Yes.
 7 Q. And a County should keep track of the number
 8 of absentee ballots it does not count, correct?
 9 A. Yes.
 10 Not count for -- because they've been
 11 rejected for something like late postmarked, no signature,
 12 things like that.
 13 Q. And with respect to absentee ballots, that is
 14 part of an audit trail as well?
 15 A. That is correct.
 16 Q. Should a County keep track of the number of
 17 provisional ballots issued?
 18 A. Yes.
 19 Q. And the number of provisional ballots
 20 returned?
 21 A. Yes. It's supposed to be the same number,
 22 right?
 23 Q. And a County should keep track of the number
 24 of provisional ballots counted?
 25 A. Yes.

1 Q. And the number of original ballots rejected?
 2 A. That is correct.
 3 Q. Is that part of an audit trail for
 4 provisional ballots?
 5 A. Yes, it is, and they're supposed to report
 6 that to the canvassing board.
 7 Q. And is there any -- strike that.
 8 What's the purpose of an audit trail for
 9 absentee ballots and provisional ballots?
 10 A. Again, you need to know how many ballots were
 11 returned and returned to the absentees and how many you
 12 actually had in your count to make sure that you didn't
 13 miss any. Because one important internal control you have
 14 is to -- you know, the opposite of stuffing the ballot box
 15 is you can steal ballots or something to try to change the
 16 outcome of an election. So you need to make sure you have
 17 a correct number.
 18 Q. Okay. Perhaps a little later in the
 19 deposition, we might talk about that issue some more,
 20 but --
 21 MR. AHEARNE: Would it be a good time to take a
 22 break to distribute sandwiches?
 23 MR. MAGUIRE: Sure. Let's go off the record.
 24 (Pause in the proceedings.)
 25 BY MR. MAGUIRE:

1 A. Well, it's a big problem in terms of the
 2 operation itself, but also it's a problem in terms of the
 3 way that people perceive the outcome of the election
 4 and -- yeah.
 5 Q. People can conceive that errors can affect
 6 the outcome of an election?
 7 A. Right.
 8 Q. Do you believe that errors can affect the
 9 outcome of an election?
 10 A. Yes.
 11 (Whereupon, a 2-page Seattle Times article,
 12 "Reed proposes election reform" as marked Exhibit-65 for
 13 identification.)
 14 BY MR. MAGUIRE:
 15 Q. Mr. Secretary, the court reporter has handed
 16 you a document marked Exhibit 65, which is an article from
 17 the Seattle Times entitled "Reed Proposes Election
 18 Reform," dated Friday, January 7, 2005.
 19 Is that right?
 20 A. That is correct.
 21 Q. And the very last line of the article on the
 22 second page, referring to you, says, "He did, however, say
 23 King County's problems went beyond that and there needs to
 24 be significant changes made in how the County conducts
 25 elections." Is --

1 Q. Mr. Secretary, if you wouldn't mind picking
 2 up Exhibit 55.
 3 A. (Witness complies.)
 4 Okay.
 5 Q. This was an e-mail exchange on January 5th
 6 between you and Alan Gingras. Ms. Durkan asked you some
 7 questions about this earlier this morning.
 8 In it, you write, "You're right about
 9 problems with King County. It's a big problem."
 10 Is that right?
 11 A. Yes.
 12 Q. What is the big problem with King County that
 13 you were referring to in this e-mail?
 14 A. The big problem is their elections operation
 15 there and the problems they have. And with a close
 16 election like this, it ended up being the focal point
 17 and -- when mistakes were made, the problems that they
 18 had. And it's a huge problem as far as the way the
 19 elections process is viewed by everybody in the state.
 20 There could be just one county, but I think the public
 21 generally views -- you know, then there's this attitude
 22 towards the elections process, per se.
 23 Q. So in a close election, errors in King County
 24 can affect public confidence throughout the state
 25 regarding the election?

1 MS. DURKAN: Can you give me just a moment to
 2 read through it?
 3 MR. MAGUIRE: Oh, sure.
 4 MS. DURKAN: Thank you, Counsel.
 5 BY MR. MAGUIRE:
 6 Q. And Mr. Secretary, let me back up and start
 7 with the second-to-last paragraph. It says, "In my three
 8 decades involved in elections, this was my biggest fear,
 9 an election this close," said Reed, adding that despite
 10 glitches in some counties, the process worked well. He
 11 did, however, say King County's problems went beyond that
 12 and there needs to be significant changes made in how the
 13 County conducts elections."
 14 Did you say those things?
 15 A. Yes, I did.
 16 Q. Did you believe them to be true when you said
 17 them?
 18 A. Yes.
 19 Q. Do you still believe them to be true?
 20 A. Yes, I do.
 21 Q. The problems in King County went beyond
 22 glitches; is that right?
 23 A. That is right.
 24 Q. Do you remember specifically which problems
 25 you were referring to in this interview?

Page 106

1 A. Well, I wasn't referring to any specific
 2 problems but, again, just the overall perception of found
 3 ballots, mistakes made, and where they -- how they were --
 4 how the staff dealt with them, and this kept happening
 5 over a period of time.
 6 Q. Your biggest fear was an election as close as
 7 the November 2004 election where there were problems that
 8 went beyond glitches that could affect the outcome?
 9 A. That's correct.
 10 MR. MAGUIRE: Next exhibit, please.
 11 (Whereupon, a 3-page Seattle Times article,
 12 "King County discovers 87 more untallied ballots" was
 13 marked Exhibit-66 for identification.)
 14 BY MR. MAGUIRE:
 15 Q. I'll just give everyone a few moments to read
 16 over the article in Exhibit 66.
 17 A. (Witness peruses document.)
 18 Okay.
 19 Q. At some time in late March of 2005, did you
 20 learn that King County had discovered a number of
 21 uncounted ballot absentee ballots?
 22 A. Yes. Well, I didn't know they were -- yes, I
 23 guess they were absentees, right.
 24 Q. Okay. So sometime in late March you learned
 25 that there were uncounted ballots in King County --

Page 107

1 A. That's correct.
 2 Q. -- that should have been counted?
 3 MS. DURKAN: Object to the form.
 4 THE WITNESS: I learned that there were
 5 uncounted absentee ballots that apparently were valid,
 6 right, reportedly were valid.
 7 BY MR. MAGUIRE:
 8 Q. Exhibit 66, which the court reporter just
 9 handed you, is an article entitled "King County Discovers
 10 87 More Untallied Ballots," by two Seattle Times staff
 11 reporters, dated April 2nd, 2005.
 12 Is that right?
 13 A. That is correct.
 14 Q. And initially, did you understand that there
 15 were 87 untallied ballots, that that number later
 16 increased to 94?
 17 A. Yes, that's what I understand.
 18 Q. On the second page of Exhibit 66, the third
 19 paragraph says, "Secretary of State Sam Reed, the state's
 20 chief election official, was surprised by news of the most
 21 recently found ballots. 'Oh, my gosh,' he said."
 22 Did you say, "Oh, my gosh" upon learning of
 23 these recently found ballots?
 24 A. I probably did. I could have said worse,
 25 but...

Page 108

1 Q. Why did you have that reaction,
 2 Mr. Secretary?
 3 A. This long after the election, to find a
 4 number of ballots like this just sitting there just
 5 surprised me. It seemed -- well, anyway, that's why I
 6 said it.
 7 Q. "Oh, my gosh. This is a serious problem that
 8 surprises me"?
 9 A. Right.
 10 Q. The next paragraph in the article in
 11 Exhibit 66 says, "Reed said the news confirmed his belief
 12 that problems in the King County election division are
 13 'very deep and very significant.' Reed is a republican
 14 who has found himself a target of criticism from his own
 15 party members for not doing more to help Rossi."
 16 Is that what the article says?
 17 A. Yes, it is.
 18 Q. Did you believe that there were very deep and
 19 very significant problems in the King County elections
 20 division when you were interviewed for this article?
 21 A. Yes.
 22 Q. Do you still believe that?
 23 A. Yes, I do.
 24 Q. And you believe the discovery of the 94
 25 uncounted ballots confirmed the belief that there were

Page 109

1 very deep and very significant problems in the King County
 2 elections division?
 3 A. Yes. It was just one more indication that
 4 there are very deep problems in the King County elections
 5 division.
 6 Q. The article continues with a quote. It says,
 7 "The number of mistakes, the seriousness of mistakes, and
 8 the way they have gone unreported and allowed to sit there
 9 for a while all adds up to this very clear indication that
 10 they have some fundamental problems with the people who
 11 are working there in lower levels and mid-echelon levels,
 12 and they are going to have to deal with that," Reed said."
 13 Did you say that?
 14 A. Yes.
 15 Q. Did you mean it when you said it?
 16 A. Yes.
 17 Q. Do you believe it to be true still?
 18 A. Yes.
 19 Q. Which mistakes, in your view, were serious in
 20 King County?
 21 A. Again, I haven't reviewed over the past five
 22 months, but the continuing situation of finding ballots
 23 that were not counted that should have been counted; in
 24 the case of these, the fact that there had been a count
 25 and -- of a precinct's number of ballots they had, when

Page 110

1 they actually counted them there were less than went
 2 through by a significant amount in certain area precincts;
 3 and yet, nobody said anything that would indicate to me
 4 that there are some very serious problems.
 5 Q. The next paragraph of Exhibit 66 says, "Reed
 6 said he was disappointed that King County kept the
 7 discovery quiet for more than a week. He says his office
 8 has 'encouraged' King County to be more open about its
 9 problems."
 10 Were you disappointed that King County kept
 11 the discovery of the uncounted ballots quiet for more than
 12 a week?
 13 A. I believe I was responding to the question of
 14 the reporter, but yes. Yes, I was, right. But it wasn't
 15 something that I volunteered to the reporter.
 16 Q. And your office had encouraged King County to
 17 be more open about its problems?
 18 A. Yes.
 19 Q. Did King County have a difficult time being
 20 open about its problems with respect to the election?
 21 MS. DURKAN: Object to the form of the question.
 22 THE WITNESS: King County, I think because of
 23 the pressure, the press inquiries, the bloggers, the
 24 parties, all that, became kind of understandably
 25 defensive. And like in this case, you know, what they

Page 111

1 decided they really need to do is know the extent of the
 2 problem before they revealed the problem. And what I'd
 3 encouraged them to do is when they found the problem to be
 4 transparent, to reveal it and say, "We don't know the
 5 extent. We'll get back to you when we do," you know, that
 6 kind of a thing. And that was the basis of my comment.
 7 BY MR. MAGUIRE:
 8 Q. Did you feel that your office was kept
 9 promptly informed by King County of any problems it
 10 encountered during the election?
 11 A. Usually.
 12 But I will say that often it was after the
 13 news media knew about it that -- or sometimes from the
 14 news media we learned it or -- but often what would happen
 15 is because the news media was calling them, they called us
 16 so that we wouldn't be caught by surprise, which I
 17 appreciated that when we had reporters calling us.
 18 Q. Did your office offer its assistance in
 19 addressing any of the problems King County encountered?
 20 A. Yes.
 21 Q. Which problems?
 22 A. Well, both ways. Both with -- in terms of
 23 looking at the way they're organizing the procedures and
 24 all of that, but also in terms of their communications.
 25 Q. Did King County accept the offer of

Page 112

1 assistance from the Secretary of State's office?
 2 A. Overall, they were receptive to us making
 3 suggestions and all, but so far they haven't responded
 4 affirmatively to us coming in and actually doing --
 5 conducting a review of the elections process itself.
 6 Q. Do you think a review of the elections
 7 process in King County is needed?
 8 A. Yes, I do.
 9 Q. Your office is interested in conducting such
 10 a review?
 11 A. Yes, it is. One of the responsibilities of
 12 the Secretary of State is to conduct reviews. And we're
 13 uniquely positioned to do it because we are the ones who
 14 have the expertise in terms of coming in and reviewing the
 15 operations to see how they're set up, how they're
 16 organizing, their processes, their audit trails, their
 17 security, that type of thing.
 18 Q. Can the Secretary of State's office conduct
 19 such a review if King County does not invite the Secretary
 20 of State to do so?
 21 A. Currently, no, with an important exception,
 22 and that is actually during the election itself, I can go
 23 in -- and actually, during a recount, we can go in. But
 24 outside of the election, then it's a matter of invitation.
 25 Legislation just passed that is going to

Page 113

1 set up practice where we do go in to all 39 counties
 2 within a three-year period of time, so the counties are
 3 going to have to respond to that.
 4 Q. Okay. Back on Exhibit 66, the third
 5 paragraph from the bottom of the second page has a quote,
 6 "I just don't expect it to be much more than an example
 7 of problems," Reed said. "I'm not expecting these ballots
 8 to be counted or anything."
 9 Did you say that?
 10 A. Yes.
 11 Q. Do you have an opinion as to what should
 12 happen to these uncounted absentee ballots?
 13 MR. AHEARNE: I'd object to the extent you're
 14 asking for a legal conclusion.
 15 THE WITNESS: I was simply expressing my
 16 expectations and not, you know, again, as a legal
 17 authority or anything like that. But since it is so long
 18 after the election, I don't expect that there are -- there
 19 have been other ballots like this found in other counties
 20 or, you know, some come in way after. And to go back and
 21 reopen the election is something that I've never seen or
 22 heard happening.
 23 BY MR. MAGUIRE:
 24 Q. You haven't heard of any other counties in
 25 Washington finding uncounted ballots after certification

1 of the hand recount?
 2 A. Yes, I have heard that.
 3 Q. You have?
 4 A. Right.
 5 Q. What counties?
 6 A. I don't remember right now, but it's
 7 something that has happened. Usually not at the level of
 8 this. I mean, we're talking, you know, a small number of
 9 ballots.
 10 Q. With respect to the November 2004 election?
 11 A. No.
 12 Q. So with respect to the November 2004
 13 election, King County is the only county you know of that
 14 discovered uncounted ballots after certification of the
 15 hand recount?
 16 MS. DURKAN: Object to the form.
 17 THE WITNESS: It's the only county I'm aware of
 18 right now that had uncounted ballots, right.
 19 (Whereupon, a 2-page Seattle Times article, "3
 20 election workers suspended in King County special-election
 21 foul-up" was marked Exhibit-67 for identification.)
 22 BY MR. MAGUIRE:
 23 Q. Mr. Secretary, the court reporter handed you
 24 a document marked as Exhibit 67 with the title "Three
 25 Election Workers Suspended in King County Special-Election

1 isn't reading the ballots. Sometimes it's because they
 2 stuck together or something. But that's just a
 3 fundamental part of the process.
 4 Q. Is the process of comparing the number of
 5 ballots counted and the number of ballots received part of
 6 a process called reconciliation?
 7 A. Yes, it is.
 8 Q. Is there anything else to that process? How
 9 would you define "reconciliation"?
 10 A. The reconciliation is knowing how many
 11 ballots were cast at a polling site and how many were
 12 counted, how many absentees you received and how many were
 13 counted or rejected, and how many provisional ballots you
 14 had and how many were counted or rejected.
 15 Q. And is reconciliation a process that should
 16 occur prior to certification of the election returns?
 17 A. Yes, it is.
 18 Q. Is it an important process?
 19 A. It is important, but I must say that it is
 20 one place where counties have tended to cut corners
 21 sometimes when they are in a real crunch in terms of the
 22 amount of time and everything.
 23 But the Secretary of State's office has
 24 always taken the position that this is absolutely -- you
 25 know, it's absolutely critical that you do this.

1 Foul-Up," by Keith Ervin, Seattle Times reporter, dated
 2 April 6th, 2005.
 3 Is that correct?
 4 A. That is correct.
 5 Q. On the second page of Exhibit 67, third
 6 paragraph from the bottom, the article says, "Secretary of
 7 State Sam Reed says it is a 'fundamental' election
 8 procedure to look for uncounted ballots when the number of
 9 ballots counted is smaller than the number of ballots
 10 received."
 11 Is that correct?
 12 A. That is correct.
 13 Q. Do you believe it is a fundamental election
 14 procedure to look for uncounted ballots when the number of
 15 ballots counted is smaller than the number of ballots
 16 received?
 17 A. Absolutely.
 18 Q. Why is that?
 19 A. Again, as I mentioned earlier, it's kind of
 20 the opposite of stuffing the ballot box, it's ballots have
 21 been removed. You know, that can change the outcome of
 22 the election. So the fundamental process is that you know
 23 how many ballots you have, you look and see how many were
 24 counted, and if they don't match, then you stop and you go
 25 back and find out. Sometimes it's because the machine

1 Q. Why is it critical?
 2 A. It's your one check you have to make sure you
 3 don't have ballot box stuffing or removal of ballots.
 4 Q. The next paragraph of Exhibit 67 says, "Reed
 5 said his office will ask King County for more information
 6 about its auditing of ballots. As for the mail ballot
 7 report showing every ballot accounted for despite the
 8 86-vote discrepancy, he said, 'It makes me very curious.'"
 9 Is that what Exhibit 67 says?
 10 A. Yes, it is.
 11 Q. What is a mail ballot report?
 12 A. It's a report that the staff did on basically
 13 here are the number of ballots we have for this precinct
 14 and then here are the number of ballots that were counted.
 15 Q. And you would expect that if there were
 16 uncounted absentee ballots, that would be reflected
 17 somewhere in the mail ballot report?
 18 A. That is correct. Or if not, why not.
 19 Q. So explanations of discrepancies should be
 20 part of the reports given to canvassing boards?
 21 A. That's correct, like if it's so damaged that
 22 you can't determine the voter's intent or something like
 23 that.
 24 MR. MAGUIRE: Next exhibit, please.
 25 (Whereupon, a 2-page Seattle Times article

Page 118

1 "Ballot foul-up may lead to investigation by state" was
 2 marked Exhibit-68 for identification.)
 3 BY MR. MAGUIRE:
 4 Q. Mr. Secretary, the court reporter just handed
 5 you a document marked as Exhibit 68. It's an article
 6 entitled "Ballot Foul-Up May Lead to Investigation by
 7 State," by Keith Ervin, Seattle Times staff reporter, on
 8 April 8th, 2005; is that correct?
 9 A. That is correct.
 10 Q. Is this an article about the uncounted
 11 absentee ballots that were found in King County?
 12 A. Yes.
 13 Q. The first paragraph on Exhibit 68 says,
 14 "Secretary of State Sam Reed yesterday called King
 15 County's failure to properly account for absentee ballots
 16 'appalling' and offered to help the County get its
 17 election operation back on track."
 18 Is that right?
 19 A. Yes, it is.
 20 Q. Was King County's failure to properly account
 21 for absentee ballots appalling?
 22 A. Yes.
 23 Q. Why?
 24 A. The importance in election administration
 25 tied to the need to know how many ballots you have and

Page 119

1 then how many you actually counted is paramount because
 2 it's the one way to know what you're doing is -- that
 3 you're doing it correctly.
 4 Q. Was King County's election operation off
 5 track?
 6 MS. DURKAN: Object to the form of the question.
 7 THE WITNESS: Well, what I was offering -- and I
 8 don't remember using the term "on track," but I certainly
 9 was offering to have my staff come in and conduct a review
 10 to make recommendations on how to change the operation to
 11 make it operate better.
 12 BY MR. MAGUIRE:
 13 Q. And so far, King County has declined that
 14 request?
 15 A. So far they have not said they want me to do
 16 this, right. They haven't specifically declined; they
 17 just haven't reacted affirmatively.
 18 Q. In the middle of the page, five paragraphs
 19 from the bottom, the article says, "Reed, the State's top
 20 election official, was especially upset over the
 21 revelation that the county's mail ballot report didn't
 22 correctly report the number of absentee ballots returned
 23 by voters in the November election. That number was
 24 improperly calculated by adding the number of ballots
 25 counted or rejected rather than by analyzing actual

Page 120

1 records of ballots received."
 2 Is that correct?
 3 A. That is correct in the way that Keith Ervin
 4 wrote it. He wrote, I think, the -- that's the second
 5 sentence there.
 6 Q. Is he correct that the number was improperly
 7 calculated by adding the number of ballots counted or
 8 rejected rather than by analyzing actual records of
 9 ballots received?
 10 A. I do not know that.
 11 Q. Would it be improper to calculate the number
 12 of absentee ballots returned by voters by adding the
 13 number of ballots counted or rejected rather than by
 14 analyzing actual records of ballots received?
 15 A. You need to compare the two, right.
 16 Q. You need to know actually how many were
 17 returned --
 18 A. That's correct, right.
 19 Q. -- not simply add up the number of accepted
 20 and rejected to get to that number?
 21 A. Yes.
 22 Q. Were you upset that King County's mail ballot
 23 report didn't correctly report the number of absentee
 24 ballots returned by voters?
 25 A. Yes. What I have seen, and I think

Page 121

1 apparently happened in a few other counties, is that you
 2 have sometimes ballots, like for absentees, that just --
 3 where they didn't actually remove the ballot they thought
 4 they had. And so they're mixed in with a bunch of other
 5 envelopes that were opened and the ballots removed.
 6 And when I heard about King County's
 7 problem, I initially assumed that that was the problem.
 8 It turns out that it wasn't. The problem was more what's
 9 being described in this article.
 10 Q. The article continues with a quote, "'That's
 11 appalling that that would happen,' Reed said, 'and totally
 12 unacceptable. If that happened to me as county auditor,
 13 as I was in Thurston County, some heads would roll. You
 14 just don't do those things.'"
 15 Is that true? Did you say that?
 16 A. Yes, I said that.
 17 Q. And was it true?
 18 A. True in what respect?
 19 Q. You believe it?
 20 A. Oh, okay. Yes, I do believe that.
 21 Q. The next paragraph --
 22 A. There's a certain -- there's a certain ethic
 23 that you expect out of your election administrators in
 24 terms of accuracy and the integrity of the process.
 25 Q. And this problem in King County did not meet

1 that ethic of accuracy and integrity as a process?

2 A. It did not appear to, right.

3 Q. The next paragraph in the article --

4 MS. DURKAN: And I'll just, if I can, interject
5 an objection to the form of that question.

6 BY MR. MAGUIRE:

7 Q. -- of Exhibit 68 says, "One of the first
8 tasks for the County is to create an accurate ballot
9 report," he said."

10 Mr. Secretary, is one of the first tasks
11 for a County to create an accurate ballot report?

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

14 And actually, could I just have a standing
15 objection on that point so I don't have to keep
16 interrupting?

17 MR. MAGUIRE: Sure. And I'll tell you, I'm not
18 asking for legal conclusions. I'm simply asking for his
19 view of best practices based on his experience as a
20 Thurston County auditor for a great length of time and as
21 Secretary of State for the past five years or four years.

22 THE WITNESS: Yes. As a matter of best
23 practice, fundamental practice, you should be doing this.

24 BY MR. MAGUIRE:

25 Q. For the reasons we've already discussed?

1 Q. But the canvassing board should be informed
2 of the existence of a problem --

3 A. That is correct.

4 Q. -- prior to certification?

5 A. Right.

6 Q. Ms. Durkan was asking you some questions
7 about crediting.

8 Mr. Secretary, do you know whether the
9 crediting of absentee ballots takes place during the
10 canvass?

11 A. The crediting of absentee ballots takes place
12 at the time that they receive them. And the reason they
13 do that is so they'll know if they have more than one
14 ballot that has arrived in from a person or in case
15 there's a provisional ballot cast by the same person.

16 Q. The crediting process with respect to
17 absentee helps identify whether the person has submitted
18 multiple ballots?

19 A. That is correct, right.

20 Q. It's important that that is done prior to
21 certification?

22 A. That's correct. That's a control feature.

23 Q. A control feature?

24 A. Yeah. You know, kind of an internal control
25 feature you have to your system.

1 A. Yes.

2 Q. Mr. Secretary, is it an error for election
3 workers to provide reports to canvassing boards that do
4 not accurately reflect the number of absentee ballots
5 returned?

6 MS. DURKAN: Object to the form of the question;
7 calls for a legal conclusion.

8 THE WITNESS: The canvassing board does depend
9 upon staff to provide them accurate reports so that when
10 they do their certification, they are certifying that this
11 is, you know, an accurate -- fair and accurate account,
12 right.

13 BY MR. MAGUIRE:

14 Q. So election workers should provide accurate
15 information to canvassing boards prior to certification?

16 A. That's correct.

17 Q. Canvassing boards should investigate any
18 problems in the canvass prior to certifying the returns?

19 A. That is correct. Depending upon the size of
20 the county, the canvassing board, per se, may not do it.
21 You know, they may delegate somebody else to do it.

22 Q. They may delegate someone else to address the
23 problems?

24 A. Yeah, to do -- to investigate the problem and
25 come back to them with a recommendation, right.

1 Q. Internal control to prevent...

2 A. Duplicate voting, yeah.

3 And my experience over the years, it
4 happens sometimes like with elderly who vote, say, 18 days
5 before the election, and then it comes to election day,
6 they don't remember they voted, so they went to the polls
7 and they end up casting a provisional ballot, so...

8 Q. Okay. Mr. Secretary, I'm going to ask you
9 some more questions about best practices. I won't be
10 looking for legal conclusions, but your view --

11 MR. AHEARNE: And I understand from your comment
12 that I do have a standing objection --

13 MR. MAGUIRE: Correct.

14 MR. AHEARNE: So none of these questions or
15 answers are asking for a legal conclusion.

16 MR. MAGUIRE: Correct.

17 MS. DURKAN: Can I have the same standing
18 objection?

19 MR. MAGUIRE: Certainly.

20 BY MR. MAGUIRE:

21 Q. Mr. Secretary, should a County have counted
22 provisional ballots cast by individuals who are not
23 registered voters?

24 A. A County cannot count a ballot if this person
25 is not a registered voter, that is correct.

Page 126

1 Is that what you're asking?

2 Q. Yes.

3 A. Okay, right.

4 Q. In your view, would it be a mistake or an

5 error for a County to count provisional ballots that were

6 cast by individuals who were not registered voters?

7 MS. DURKAN: Can I just -- I want a standing

8 objection as to "mistake or errors." As to whether that's

9 a legal conclusion, "mistake or error," under the contest

10 statute, the judge is going to have to determine.

11 MR. MAGUIRE: Sure.

12 BY MR. MAGUIRE:

13 Q. Mr. Secretary, in your view, is it a mistake

14 or error for a County to count provisional ballots cast by

15 individuals who are not registered voters?

16 A. Yes, it is.

17 MR. EVEN: Counsel, just to make sure we're

18 clear on this, are you excluding from your question

19 overseas and military ballots, out-of-state ballots that

20 may or may not be by a registered voter?

21 MR. MAGUIRE: Certainly.

22 BY MR. MAGUIRE:

23 Q. I'm focusing just on provisional ballots

24 rather than --

25 A. Provisional ballots.

Page 127

1 Q. -- write-in ballots or [speaking

2 simultaneously] --

3 A. [Speaking simultaneously] that's right.

4 Q. Mr. Secretary, should a County have counted

5 provisional ballots if they could not find an original

6 voter registration signature on file for the person

7 casting the ballot?

8 A. No, they should not, except, you know, many

9 counties now have taken images of these original

10 signatures and have them in electronic records, and those

11 can be used for that purpose, right. You do need to have

12 a signature, right.

13 Q. You need to have a signature either

14 electronically or in hard copy --

15 A. Right.

16 Q. -- before counting a provisional ballot?

17 A. Yes.

18 Q. In your view, is it a mistake or error for a

19 County to count provisional ballots even if election

20 officials could not find an original voter registration

21 signature on file for that person?

22 A. Yes, it is.

23 Q. Should a County have counted absentee ballots

24 if it could not find an original voter registration on

25 file for the person casting the ballot?

Page 128

1 A. With the exception of military and overseas,

2 that is true for -- in other words, the domestic ones,

3 yes.

4 Q. And military and overseas are different

5 because --

6 A. Yes, they are.

7 Q. -- different laws apply to them --

8 A. That's right.

9 Q. -- that allow them to send in ballots even if

10 they aren't registered to vote?

11 A. That is correct, right.

12 Q. Other than those military and overseas

13 ballots, in your view is it a mistake or error for a

14 County to count absentee ballots even if election

15 officials could not find an original voter registration

16 signature on file for the person casting the ballot?

17 A. Yes, that is my view.

18 Q. Earlier, Ms. Durkan was asking you about the

19 voter registration database scheduled to go online

20 sometime in the next year.

21 A. Mm-hm.

22 Q. She asked you -- or she pointed out that the

23 database wasn't implemented prior to the November 2004

24 election, and I believe you said "unfortunately, yes."

25 A. I did. I noticed you noted that too, so...

Page 129

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.

12 Q. So had the database existed prior to the

13 November 2004 election, it's likely that many of the

14 felons who cast ballots in the November election would not

15 have had their ballots counted?

16 A. That is correct. If they were ineligible,

17 right, yeah.

18 Q. Is it also unfortunate because the casting of

19 ballots by felons may have affected the outcome of the

20 election?

21 MS. DURKAN: Object to the form.

22 THE WITNESS: Sounds like a question -- I don't

23 know...

24 MR. AHEARNE: Well, I have a standing objection,

25 but it's to the extent he's asking anything that has to do

Page 130

1 with a legal conclusion.
 2 THE WITNESS: Okay.
 3 MR. AHEARNE: He's just asking for your view, if
 4 you know.
 5 THE WITNESS: Right.
 6 MR. EVEN: I might add an objection also that it
 7 calls for speculation.
 8 THE WITNESS: Do you want to ask the question
 9 again?
 10 BY MR. MAGUIRE:
 11 Q. Sure. Why don't I back up.
 12 Have you seen the expert reports of
 13 petitioners?
 14 A. No, I haven't.
 15 Q. You haven't?
 16 A. No.
 17 Q. Are you familiar with the concept of
 18 proportional allocation of illegal votes?
 19 A. Yes, I am. I mean, I'm generally familiar
 20 with it.
 21 Q. You're generally familiar with the idea.
 22 A. Right.
 23 Q. And it's your view that circumstantial
 24 evidence can be used to identify for whom an illegal vote
 25 was cast in the election; is that right?

Page 131

1 A. That's my view, right.
 2 Q. I think I'll let you off the hook on the
 3 "unfortunate" question.
 4 Mr. Secretary, should a County keep on its
 5 voter registration rolls a felon whose civil rights have
 6 not been restored?
 7 A. No, they shouldn't.
 8 Q. And should a County allow to vote felons
 9 whose civil rights have not been restored?
 10 A. No, they shouldn't.
 11 Q. In your view, is it a mistake or error to
 12 count votes cast by felons whose civil rights have not
 13 been restored?
 14 A. Yes, it is.
 15 It's a very understandable mistake because
 16 of the highly complicated system we have in the state of
 17 Washington, both for restoring rights plus for
 18 communicating to the counties. So it is kind of an
 19 understandable error, but it definitely is an error,
 20 right.
 21 MR. MAGUIRE: Mark this as the next exhibit,
 22 please.
 23 (Whereupon, a 1-page e-mail from Sam Reed to
 24 Nick Handy dated 12/26/04 was marked Exhibit-69 for
 25 identification.)

Page 132

1 MS. DURKAN: Let's go off the record for a
 2 second.
 3 BY MR. MAGUIRE:
 4 Q. Back on the record. Mr. Secretary, the court
 5 reporter just handed you an e-mail marked as Exhibit 69
 6 from you to Nick Handy copied to Steve Excell with the
 7 subject of "alleged voter fraud" on December 26th; is that
 8 correct?
 9 A. It actually was to Nick Handy with a copy to
 10 Steve Excell, right, mm-hm.
 11 Q. In this e-mail, you write that you received a
 12 letter from a long-time friend, and I'm summarizing or
 13 paraphrasing. In his Christmas letter that went to the
 14 whole list, he made the following statement. In quotes:
 15 "I personally know of four voters where dead people have
 16 been voting. One guy voted as many as six times in this
 17 election, and another lady had her maiden name voted for
 18 her."
 19 A. Right. Yes, that's what the letter say.
 20 Q. And your e-mail also says, directed to
 21 Mr. Handy, "Please have someone call him on my behalf and
 22 get names, addresses, and any other proof he may have."
 23 A. Yes.
 24 Q. Do you know if someone called on your behalf
 25 to identify any proof that this individual had?

Page 133

1 A. Yes. An election staff member called --
 2 called him, and he said that he had heard this from
 3 somebody else. So "All right, who is this person?" So
 4 they called somebody else, and he said, well, he'd heard
 5 it from somebody else. And when we finally tracked it
 6 down, the person said it was kind of speculation, that no,
 7 no, he didn't really know this.
 8 Q. Okay. You weren't able to identify four
 9 voters where dead people had been voting?
 10 A. That's correct, right.
 11 Q. Okay. It's worth checking.
 12 MS. DURKAN: Especially since they're on his
 13 Christmas card list.
 14 THE WITNESS: As Thurston County auditor, it was
 15 always my practice, if there were ever any allegation like
 16 that, we followed up immediately. And if there was
 17 anything to it, we turned it over to the prosecuting
 18 attorney and the sheriff.
 19 BY MR. MAGUIRE:
 20 Q. Did you have instances like that when you
 21 were Thurston County auditor?
 22 A. As I said, we had had people making
 23 statements. Every time we followed up, it turned out
 24 there wasn't anything to it.
 25 But what did happen was we had people,

1 like, vote twice or who signed a ballot for somebody else,
2 and we -- I did turn those over to the prosecutor and the
3 sheriff.

4 Q. Those were double voting and were things that
5 you've looked for when you were the Thurston County
6 auditor?

7 A. That is correct, right.

8 Q. And tried to prevent?

9 A. Right.

10 Q. And when you learned of it, you disclosed it
11 to law enforcement authorities?

12 A. That is correct.

13 Q. Mr. Secretary, should a County allow a person
14 to cast multiple ballots?

15 A. No.

16 Q. In your view --

17 A. No. To be more precise, obviously we should
18 not count multiple ballots from a person.

19 As I said, we -- I certainly have had the
20 experience where people have voted twice by mistake, and
21 we found out it really was by mistake. They voted, say,
22 real early and then forgot they voted and voted again,
23 like election day or something. But we -- so what is
24 imperative is that you make sure that you don't count more
25 than one vote per person.

1 Q. And at least with respect to absentees, the
2 crediting process is part of what makes sure you don't
3 count --

4 A. That is correct.

5 Q. -- more than one vote -- one ballot cast by
6 the same person?

7 A. That is correct, right.

8 Q. Is it a mistake or error to count multiple
9 ballots cast by the same person?

10 A. Yes.

11 Q. Should a County keep deceased individuals on
12 its voter registration rolls?

13 A. No.

14 Q. In your view, is it an error or mistake to
15 keep deceased individuals on voter registration rolls?

16 A. It is, yes, an error or a mistake. But
17 again, it's a system that depends upon others to get that
18 information to the county elections office, the Department
19 of Health, in their system, and sometimes used other ways.
20 But it is, again, an ongoing challenge for the counties.

21 Q. Should a County count ballots cast in the
22 name of the deceased?

23 A. No.

24 Q. Is it a mistake or error to count ballots
25 cast in the name of the deceased?

1 A. Absolutely.

2 Q. Should election workers inform canvassing
3 boards of specific problems in the canvass that affect the
4 accuracy of the returns?

5 A. Yes.

6 Q. Should they inform canvassing boards prior to
7 certification of the election?

8 A. Yes.

9 Q. And what is the purpose of election workers
10 informing canvassing boards of specific problems in the
11 canvass?

12 A. In the state of Washington, we have a
13 decentralized elections process, where it is the county
14 canvassing boards that really have the final authority as
15 to the validity of an election. And that's one of the
16 reasons we have the prosecutor on there as well as the
17 person who chairs the board of commissioners, and then the
18 county auditor, or in the case of King County, manager of
19 elections. And so they need to know if this election is
20 valid before they certify it.

21 Q. Okay. And are problems with respect to
22 reconciliation some of the problems that should be
23 presented to canvassing boards prior to certification?

24 MS. DURKAN: I'll object just to the form of the
25 question, whether you're using "reconciliation" in terms

1 of crediting or ballot accountability, because it's been
2 used interchangeably. I just want to make sure.
3 BY MR. MAGUIRE:

4 Q. Well, Mr. Secretary, do you draw a
5 distinction between reconciliation and the crediting
6 process?

7 A. Yes, I do.

8 Q. They're two different things, right?

9 A. Yes.

10 Q. Okay. When we talk about reconciliation,
11 what is your understanding of the term?

12 A. The number of ballots that have been voted -
13 either through the mail, at a poll site, or provisional -
14 reconciled with the number that are counted or rejected.
15 And then --

16 Do you want to ask me the question again?

17 Q. I do.

18 If a County -- if election workers know of
19 problems with a reconciliation - in other words, the votes
20 counted and rejected don't balance with the number of
21 ballots issued - should election workers inform canvassing
22 boards of that problem --

23 A. Yes.

24 Q. -- prior to certification?

25 A. Yes.

1 Q. Should election workers inform canvassing
 2 boards prior to certification of provisional ballots
 3 getting counted that were not cast by lawful registered
 4 voters?
 5 A. Yes.
 6 Q. Should election workers inform canvassing
 7 boards prior to certification of uncounted ballots that
 8 were not included in the tabulation but cast by valid
 9 registered voters?
 10 A. Yes. Though if they're unaware of them, of
 11 course they couldn't do it. But they should be aware of
 12 them if they followed all of the proper procedures, right.
 13 Q. If election workers know that felons cast
 14 votes without having their civil rights restored, should
 15 they notify canvassing boards prior to certification?
 16 A. Yes. But obviously they, you know, shouldn't
 17 have allowed them to vote in the first place. So what do
 18 you mean; if after the time it's certified they find out
 19 these people were felons?
 20 Q. Yeah.
 21 A. Okay. Yeah, I suppose so. I don't recall
 22 ever being in that situation, but I don't --
 23 Q. They just shouldn't have been allowed to vote
 24 in the first place?
 25 A. That's correct.

1 of one percent difference.
 2 Q. In your view, is it likely that there will be
 3 another statewide election this close in Washington
 4 anytime soon?
 5 MS. DURKAN: Object to the form of the question.
 6 THE WITNESS: It is not likely that we would
 7 have an election this close again, though those are often
 8 the famous last words of somebody, right?
 9 BY MR. MAGUIRE:
 10 Q. What did you mean by "unreasonably
 11 historically close election"?
 12 A. What is viewed as reasonable in the election
 13 business is if you have -- the separation is less than
 14 one-half of one percent. And then in most races, that
 15 triggers a machine recount. If it's less than one-quarter
 16 of one percent, which now you're getting to the point of,
 17 "Oh, my God," again, in most races, that's when you do a
 18 hand recount.
 19 To have it 46 ten-thousandths of one
 20 percent, I mean, that's what I view as just way beyond the
 21 bounds of what, really, anybody thought was quite
 22 possible.
 23 Q. Mr. Secretary, should a County certify
 24 results that do not accurately reflect the number of
 25 lawful votes cast?

1 MR. MAGUIRE: Next exhibit, please.
 2 (Whereupon, a 2-page Seattle Times article,
 3 "Bills offer election fixes" was marked Exhibit-70 for
 4 identification.)
 5 BY MR. MAGUIRE:
 6 Q. Mr. Secretary, the court reporter just handed
 7 you a document marked as Exhibit 70, an article entitled
 8 "Bills Offer Election Fixes," by Andrew Garber, Seattle
 9 Times Olympia bureau, dated January 18, 2005.
 10 A. And you can tell this is a journalist. We
 11 never use the term "election fix."
 12 Q. Right. Subject to being misconstrued.
 13 A. Yeah, right, right.
 14 Q. Okay. The sixth paragraph from the bottom of
 15 the first page on Exhibit 70 is a paragraph that says
 16 "Reed also told lawmakers there were bound to be problems
 17 in this election, considering how close it was and the
 18 number of people involved in counting the votes. 'Really
 19 what we've seen is an unreasonably, historically close
 20 election.'"
 21 Is that right?
 22 A. Yes, that is correct, right.
 23 Q. Was this an historically close election?
 24 A. This is the closest governors race in the
 25 history of the nation percentage-wise; 46 ten-thousandths

1 A. No.
 2 Q. In your view, is it an error or mistake for a
 3 County to do so?
 4 A. One more time.
 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?
 8 MS. DURKAN: Object to the form.
 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.
 14 BY MR. MAGUIRE:
 15 Q. So when you receive certified returns from
 16 counties, you are relying on the county canvassing boards
 17 investigating and identifying any problems and resolving
 18 them to the extent they can prior to certifying the
 19 returns for their county?
 20 A. That is correct. It is the role of the
 21 canvassing board to -- if there are any problems, to work
 22 to resolve those before they certify the election.
 23 Q. Do you know whether the certified returns of
 24 the manual recount were accurate within 129 votes?
 25 A. I do not know that.

Page 142

1 Q. In your view, are the results from this
 2 election close enough that errors by elections officials
 3 in counties could have resulted in the certification of
 4 Ms. Gregoire when Mr. Rossi actually received the highest
 5 number of lawful votes cast?
 6 MS. DURKAN: Object to the form.
 7 MR. AHEARNE: Again, we have a standing
 8 objection that you're not asking for a legal conclusion;
 9 you're just asking for his personal view.
 10 THE WITNESS: Right.
 11 In my thinking about this, over the years
 12 I've conducted for so many elections, and a number of them
 13 have been very close, even one vote. I had a couple of
 14 small ones that were ties.
 15 And frankly, given the number of variables
 16 involved in this - the number of election board worker
 17 decisions, the way the voters didn't follow the rules as
 18 they were casting their ballots so it would be left up to
 19 understanding the voter intent, the temporary election
 20 workers who come in only for a couple of months and work
 21 the process, and then election workers who are working
 22 horrendous hours and are fatigued and stressed - I would
 23 say that, you know, you can't say with certainty when you
 24 get that close that this is absolutely the accurate
 25 result.

Page 143

1 BY MR. MAGUIRE:
 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

Page 144

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.
 6 Q. Okay.
 7 A. Sorry to give such a long answer to a short
 8 question, but..
 9 Q. Not at all.
 10 MR. MAGUIRE: Mark this as an exhibit, please.
 11 (Whereupon, a 3-page Seattle Times article,
 12 "Former Secretary of State pushes for new vote" was marked
 13 Exhibit-71 for identification.)
 14 BY MR. MAGUIRE:
 15 Q. Mr. Secretary, the court reporter just handed
 16 you a document marked Exhibit 71, an article entitled
 17 "Former Secretary of State Pushes for New Vote," by Ralph
 18 Thomas, the Seattle Times Olympia bureau, dated
 19 December 17, 2004.
 20 Is that right?
 21 A. That is correct.
 22 Q. On the first page of Exhibit 71, five
 23 paragraphs up from the bottom, the article says, "Current
 24 Secretary of State Sam Reed, a republican, said a revote
 25 is doable and may be worth considering."

Page 145

1 Is that right?
 2 A. That is right.
 3 One thing, I do not remember the context of
 4 the second part of the sentence, since one thing I made
 5 very clear whenever asked was I certainly had no authority
 6 to call for another vote and nor did anybody else other
 7 than the Courts. So I don't know quite the context of
 8 that second half of that statement.
 9 Q. Okay. You don't have the authority to do it,
 10 but if a Court ordered it --
 11 A. Right.
 12 Q. -- it's doable and --
 13 A. It is doable, that's correct. Right.
 14 Q. Throughout the course of the morning, you've
 15 talked about problems in King County that you identify as
 16 more than glitches; is that right?
 17 A. That is correct.
 18 Q. In light of those problems, do you think a
 19 new election is appropriate?
 20 MS. DURKAN: Object to the form of the question.
 21 THE WITNESS: I really believe that it's in the
 22 hands of the Court now, and so I -- it depends upon what
 23 they find. I haven't seen all the evidence myself, and so
 24 I'm not in a position to say at this point.
 25 BY MR. MAGUIRE:

Page 146

1 Q. If the Court orders -- if the Court voids
 2 Ms. Gregoire's certificate of election, it's your view
 3 that a new election could occur for the office of
 4 governor?
 5 A. It could occur, and it's kind of my personal
 6 opinion that that'd be for the best, not to have a judge
 7 decide the outcome and to let the people of the state
 8 decide. But again, that's up to the Courts to decide.
 9 Q. Okay. Mr. Secretary, if I could just take
 10 you back to Exhibit 57 from earlier today.
 11 A. (Witness complies.)
 12 Q. Ms. Durkan was asking you about this. This
 13 is an e-mail from January 29th, 2005 from you to Paul
 14 Miller regarding voting computers, with an e-mail chain
 15 below it, including an e-mail from Mr. Miller to you and
 16 to Pam Floyd.
 17 This e-mail is talking about the security
 18 of voting computer systems, isn't it?
 19 A. That is correct.
 20 Q. It's not talking about security generally of
 21 ballots in an election?
 22 A. That is correct, right.
 23 Mr. Miller dealt with the technology
 24 issues, which is what he specializes in in my office,
 25 right.

Page 147

1 Q. So when you were answering Ms. Durkan's
 2 questions earlier today about security when she was
 3 showing you this exhibit, you were thinking of computer
 4 security?
 5 A. That's correct, right.
 6 Q. Okay.
 7 A. For this particular one. We had other
 8 discussions, obviously, but..
 9 MR. MAGUIRE: Thank you, Mr. Secretary. Those
 10 are all of my questions. I appreciate your patience today
 11 and attending.
 12 THE WITNESS: Well, thank you, Rob.
 13 MS. DURKAN: You're next, Gordon.
 14 MR. SIVLEY: I don't have anything. Thank you.
 15 MS. DURKAN: Let's just take two minutes. I may
 16 have more than 20 minutes, and we should talk about
 17 whether we want to push through, come back, leave, come
 18 back.
 19 (Discussion off the record.)
 20 MS. DURKAN: It's about 1:25, and we're going to
 21 break the deposition right now. Mr. Secretary had a
 22 previous commitment that he informed us about before. It
 23 is our estimation that that will be approximately
 24 90 minutes, so we'll reconvene again in 90 minutes.
 25 MR. AHEARNE: Well, no. Actually, 90 minutes --

Page 148

1 it starts at 2:00. It's a 2:00 to 3:30 press conference.
 2 So if it's 1:30 now, we should be back here probably about
 3 3:45?
 4 THE WITNESS: Boy, I'm hopeful it's only going
 5 to take like 45 minutes to an hour, again, because I have
 6 to get to Wenatchee, so I would like to -- can we say 3:00
 7 and then I'll give you a call if I'm not going to make it
 8 at three?
 9 MS. DURKAN: We'll plan to start at 3:00 --
 10 THE WITNESS: Okay.
 11 MS. DURKAN: -- and we understand you'll get
 12 here as close as you can to that.
 13 THE WITNESS: Okay. All right.
 14 MS. DURKAN: Thank you.
 15 (Pause in the proceedings.)
 16
 17 FURTHER-EXAMINATION
 18 BY-MS.DURKAN:
 19
 20 Q. It's 3:15, and we are resuming the deposition
 21 of Secretary Reed. Mr. Secretary, thank you for coming
 22 back for additional questions.
 23 Could you go to Exhibit No. 63 in the
 24 exhibits in front of you, please?
 25 A. (Witness complies.)

Page 149

1 Okay.
 2 Q. This is an article that Mr. Maguire had
 3 marked during his questioning, and I'd like to draw your
 4 attention to the middle of the first page, the paragraph
 5 that begins "Nothing I've been informed of."
 6 A. Okay.
 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?

Page 182

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.
 18 Q. I'll try to find the specific exhibit if you
 19 need it, but let me ask the following question: In some
 20 of these e-mails, I believe you -- in articles, you have
 21 stated that you thought that the act of third parties
 22 collecting signatures for absentee ballots was one of the
 23 aspects of the election cycle that you found more
 24 disturbing; is that correct?
 25 A. That is correct.

Page 183

1 Q. Could you explain to me why that's the case?
 2 A. Because what it appeared to be - and
 3 apparently, the substance was there as well to the public
 4 - was that it was a case of political party operatives
 5 after the election out shopping for votes by asking people
 6 how they voted, first, or their party identification, and
 7 then based upon that, deciding whether to let them sign
 8 the affidavit for their provisional ballot.
 9 I view that as more properly the
 10 responsibility of the County. And I think, again, it hurt
 11 the sense of confidence and trust that people have in the
 12 elections process. And that was based upon a Superior
 13 Court decision made in King County.
 14 Q. If you'll look at Exhibit 65.
 15 A. (Witness complies.)
 16 Okay.
 17 Q. There's a sentence that starts with, "This
 18 was the most offensive part."
 19 Do you see that?
 20 A. (Witness peruses document.)
 21 Where is it?
 22 Q. In the middle of the --
 23 A. Okay.
 24 Q. -- first page.
 25 A. Yes, I see it. Uh-huh.

Page 184

1 Q. This -- Exhibit 65 is an article by Susan
 2 Gilmore of the Seattle Times, and it quotes you as saying,
 3 "This was the most offensive part, pictures of political
 4 partisans with affidavits. To have partisans on the hunt
 5 for select votes is a dangerous precedent that will erode
 6 public confidence."
 7 Is that an accurate quote of what you said?
 8 A. Yes, it is.
 9 Q. And did it reflect your sentiment at the
 10 time?
 11 A. Yes, it did.
 12 Q. And it reflects your sentiment still today?
 13 A. Yes.
 14 I proposed legislation that would require
 15 that the counties do that rather than having private
 16 parties out doing it.
 17 Q. You're aware, aren't you, that in the context
 18 of the election contest, there have been various people
 19 out scanning voter rolls for felons; is that correct?
 20 A. That is correct.
 21 Q. And would you agree that partisans hunting
 22 for select felons would be just as dangerous a precedent
 23 that would erode public confidence?
 24 A. No, I wouldn't. I think that a legitimate
 25 part of the contested election is to identify illegal or

Page 185

1 improper votes, and I would expect them to be doing that.
 2 Q. And would you expect them to be finding them
 3 just in those counties where it would benefit them?
 4 A. I would assume that is part of being an
 5 advocate for your side. I don't think elections officials
 6 ought to be doing that.
 7 Q. And do you think that the Court should be, as
 8 a matter public policy not as a matter of law, in deciding
 9 whether or not to set aside this election, should it be
 10 looking just at a select group of felons or should it be
 11 looking at any evidence it has for illegal votes?
 12 A. I think that the Court ought to look at the
 13 entire state when making decisions on this election.
 14 Q. Mr. Maguire had asked you a question about
 15 whether it would be possible to have an election if the
 16 Court were to declare the election void.
 17 Do you recall those questions?
 18 A. Yes, I do.
 19 Q. For the purposes of my next series of
 20 questions, I want you to assume for purposes of argument
 21 that the Court determines it does not have the ability to
 22 declare the office vacant but that if Mr. Rossi succeeds
 23 in his contest, the Court will be limited to declaring him
 24 the governor.
 25 Do you understand that distinction?

Page 185

1 A. I do.

2 Q. Does it change your analysis at all as to

3 whether - from a public policy point of view, not from a

4 legal point of view but from a public policy point of

5 view - it would be appropriate for the Court to do a

6 statistical analysis of alleged felons to assign them

7 from -- to one party or the other in order to declare

8 somebody governor; in other words, to determine the

9 election?

10 A. Since we have a constitutionally protected

11 secret ballot in the state of Washington, I think that the

12 Court is probably going to have to be in the position of

13 making judgments based upon some statistical analysis in

14 proportionality rather than knowing how everybody voted

15 and such.

16 Q. Okay. My question is a little different.

17 Let me see if I can phrase it differently.

18 A. Okay. All right.

19 Q. There could be some who have argued one

20 remedy would be you declare the office vacant and there's

21 a new election.

22 A. Right. Right.

23 Q. For my question purposes, assume that if

24 Mr. Rossi is successful, the Court will declare him

25 governor.

Page 187

1 A. Right.

2 Q. And in order to make that determination, the

3 Court is going to have to deduct votes, illegal votes,

4 from one candidate or the other.

5 Do you understand that?

6 A. Yes.

7 Q. And one of the ways the petitioners have

8 proposed that the Court do that is to do a statistical

9 analysis of alleged illegal felons, attribute them to one

10 party or the other, and deduct the votes.

11 You understand that that's what they're

12 arguing for?

13 A. Yes.

14 Q. And my question to you is: Does it make any

15 difference from a public policy standpoint as Secretary of

16 State whether it is appropriate for the Court to do that

17 to determine the election, to declare someone governor --

18 A. Oh, I see what you're saying.

19 Q. -- versus to declare the office void and have

20 an election?

21 A. No. I -- I don't think there necessarily

22 would be a difference in those two scenarios.

23 Q. So as the head elections official, you're

24 comfortable with a Court, in an election where there are

25 approximately 3,000,000 votes, for the Court to determine

Page 188

1 who wins based on a statistical analysis of illegal

2 voters?

3 MR. AHEARNE: Counsel, he's answered this

4 question twice already.

5 BY MS. DURKAN:

6 Q. You can answer.

7 A. Yes. I think it's up to the Court, though.

8 I think that the judge has to look at the evidence and

9 consider the expert testimony and, based upon that, make

10 that decision.

11 Q. Okay. Mr. Maguire had asked you some

12 questions about voters that were two-time voters.

13 A. (Witness nods head affirmatively.)

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.

Page 189

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.

10 MS. DURKAN: That's all the questions I have.

11 Thank you.

12 THE WITNESS: Oh, that's all? Oh, okay.

13 MR. AHEARNE: I don't know if you want to go

14 next. I have three follow-ups to both yours and yours.

15 MR. MAGUIRE: No.

16 MR. AHEARNE: It will be short. Three simple

17 things.

18

19 EXAMINATION

20 BY-MR.AHEARNE:

21

22 Q. First, a follow-up on: Do you remember

23 Mr. Maguire had asked you about the Secretary of State's

24 office communicating with the Democratic and Republican

25 Parties in the Gregoire and Rossi campaign?

Page 190

1 A. Yes.

2 Q. And Ms. Durkan has introduced some e-mails

3 about being in regular contact with certain persons

4 associated with either the republicans or the Rossi

5 campaign?

6 A. Yes.

7 Q. Do you recall that?

8 A. Yes, I recall that.

9 Q. Okay. Would it be accurate to say that to

10 the extent that you or your office were in regular contact

11 with persons affiliated with the republicans and the Rossi

12 campaign, was you or your office similarly in regular

13 contact with persons affiliated with the Democratic Party

14 or the Gregoire campaign?

15 A. Yes.

16 As I understand it, it would probably be on

17 a daily basis. We were -- the Democratic Party, or the

18 Gregoire campaign, was talking with Nick Handy or other

19 people in our elections section. And the Rossi people

20 were talking with Steve Excell, or sometimes Nick Handy,

21 in my office.

22 Q. Okay. Second point. Ms. Durkan had

23 introduced some e-mails from your home e-mail address

24 responding to e-mails that you received at your home

25 e-mail address.

Page 191

1 Do you recall that generally?

2 A. Yes, I do.

3 Q. And when we're talking about your home e-mail

4 address, we're referring to the .org address?

5 A. That is correct.

6 Q. And is your .org address something that only

7 your friends know, or do people that don't know you, are

8 they able to get that?

9 A. Well, kind of unfortunate for me, you can get

10 there through the campaign website, which we kept up.

11 It's not as direct, but it -- and then there is

12 HQ@SamReed.org or through Patsy Excell, who would monitor

13 that.

14 Q. Okay. But it is possible for someone who

15 doesn't even know you --

16 A. Yes.

17 Q. -- to get your .org address, correct?

18 A. That is correct, right, and it happened

19 several times, right.

20 Q. And to the best of your recollection, did

21 anyone from the Democratic Party or the Gregoire campaign

22 send you an e-mail at your .org address?

23 A. I do not recall that.

24 Q. And if they had sent you an e-mail at your

25 .org address, would there be any reason why you would

Page 192

1 respond from your .org address differently than the, for

2 example, the e-mails that Ms. Durkan had introduced?

3 A. No. I tried to respond to everybody other

4 than the most kind of obnoxious ones.

5 Q. Third point. Ms. Durkan introduced an e-mail

6 from former Governor Evans referring to some people

7 accusing you of bending over backwards, or referring to

8 bending over backwards for one party or the other.

9 Mr. Maguire talked about criticism from the republicans.

10 In this 2004 governors election, you've

11 been on the defendant or respondent side in four lawsuits;

12 is that correct?

13 A. That is correct.

14 Q. That's the suit that was filed in Federal

15 Court with respect to the machine recount, a state Supreme

16 Court the beginning of December, State Supreme Court

17 middle of December, and then the current election contest;

18 is that correct?

19 A. That is correct, right.

20 Q. And of those four suits, how many of those

21 four suits where you've been on the defendant or

22 respondent side have those suits been brought by persons

23 affiliated with either the Republican Party or the Rossi

24 campaign?

25 A. Three of the four, right.

Page 193

1 MR. AHEARNE: Okay. That's all I have.

2 MR. MAGUIRE: If you don't mind, just a few

3 questions.

4

5 FURTHER-EXAMINATION

6 BY-MR.MAGUIRE:

7

8 Q. Mr. Secretary, do you draw any distinction

9 between the counting of provisional ballots prior to the

10 verification of the signature of the ballots when it is

11 later confirmed that the person casting the ballot was a

12 lawful registered voter and situations where it's later

13 determined that the person was not a lawful registered

14 voter?

15 A. Yes --

16 MS. DURKAN: I'm just going to object to the

17 form of the question in terms of you're asking for a legal

18 conclusion versus his opinion.

19 Can I have just the same standing

20 objection?

21 MR. MAGUIRE: Mm-hm.

22 MS. DURKAN: Okay.

23 THE WITNESS: Yes. If they were legal voters,

24 then of course it's appropriate for them to be counted

25 even though they didn't go about it the right way.

Page 194

1 If they were not registered voters, then
 2 they should not have been counted in the first place.
 3 BY MR. MAGUIRE:
 4 Q. Ms. Durkan asked you some questions about
 5 Kittitas County and Grant County finding absentee ballots
 6 during the recounts.
 7 Do you know whether those absentee ballots
 8 were included in the election returns certified by those
 9 counties at the end of the hand recount?
 10 A. Yes, they were included in the final count.
 11 I don't remember exactly at what point along the way, but
 12 they did include those, yes.
 13 Q. Would you draw a distinction between finding
 14 ballots, absentee ballots, during the recount and
 15 including them in the certified totals and finding
 16 absentee ballots months after the recount had concluded
 17 and the election had already been certified?
 18 A. I would, though -- and I would not expect
 19 ballots found that much later to be counted in an
 20 election. That's just as a matter of opinion. But I
 21 suppose the Court looks at them if they had been properly
 22 secured and there's no evidence of them being out of a
 23 highly secured environment, I suppose they could count
 24 them. But I would view the elections as having been over
 25 when we finished the hand recount. The statutes say we

Page 195

1 shall have an election and we can't, you know, have more
 2 than two recounts.
 3 MR. MAGUIRE: Okay. Thank you, Mr. Secretary.
 4 I don't have any more questions. I appreciate you
 5 sticking around. Good luck getting to Wenatchee.
 6 MS. DURKAN: Could you read his first question
 7 back?
 8 (Whereupon, a previous question was read back by
 9 the court reporter, as requested.)
 10
 11 FURTHER-EXAMINATION
 12 BY-MS.DURKAN:
 13
 14 Q. Let me ask just a follow-up on that.
 15 If I understand Mr. Maguire's question, he
 16 asked you with regard to provisional ballots that were
 17 counted before the signatures were verified.
 18 Was that your understanding of the question
 19 as well?
 20 A. Yes.
 21 Q. Are you aware of anything in law that allows
 22 for those votes -- for the signatures to be matched
 23 afterwards?
 24 MR. MAGUIRE: I'll raise your objection on
 25 asking him for a legal opinion.

Page 196

1 MS. DURKAN: I'm not asking him what his
 2 opinions are.
 3 BY MS. DURKAN:
 4 Q. Are you aware of anything in the law that
 5 allows that to happen?
 6 A. No, I'm not.
 7 Q. Okay. With regards to provisional ballots
 8 that were counted because the person voted them directly
 9 without them being verified before, I asked you some
 10 questions about those.
 11 Do you recall?
 12 A. Yes, uh-huh.
 13 Q. And would your answer be the same with those
 14 as it would be to those provisional ballots that were
 15 voted without the signature being matched; and that is, if
 16 it's later determined that the person actually was a
 17 registered voter and was entitled to vote, would that
 18 affect whether those votes should be counted?
 19 A. Of course in that case, they've already been
 20 counted, but they should not have been counted because
 21 they were cast improperly or, you know, in error or
 22 mistake.
 23 Does that answer your question?
 24 Q. No. I think we're having a big breakdown.
 25 A. Okay. All right.

Page 197

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.
 23 MS. DURKAN: Thank you.
 24 THE COURT REPORTER: Before we go off the
 25 record, would you like to order the transcript of the

1 deposition?
 2 MS. DURKAN: Yes.
 3 THE COURT REPORTER: And would you like a copy?
 4 MR. MAGUIRE: Yes, please.
 5 THE COURT REPORTER: And would you like a copy?
 6 MR. EVEN: Yes.
 7 THE COURT REPORTER: Copy?
 8 MR. SIVLEY: Yes.
 9 THE COURT REPORTER: Copy?
 10 MR. AHEARNE: I'm with him.
 11 MS. DURKAN: And they'll waive signature.
 12 MR. EVEN: Since I said yes, he said no.
 13 MR. AHEARNE: And we're not waiving -- we're not
 14 waiving signature.
 15 (Whereupon, the deposition was concluded at
 16 4:15 p.m.)
 17 (Signature reserved.)
 18
 19
 20
 21
 22
 23
 24
 25

1 CERTIFICATE
 2 .
 3 I, Tia B. Reidt, 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 WHEREOF, I have hereunto set my
 15 hand this 1st day of May, 2005.
 16 .
 17 .
 18 _____
 19 Tia B. Reidt Commission Expiration
 20 .
 21 .
 22 .
 23 .
 24 .
 25 .

1 3. On May13, 2005, I caused the documents listed below:

2 **Petitioners' Designation of Excerpts of CR 30(b)(6) Deposition of Walla**
3 **Walla County to be Used at Trial Pursuant to CR 32(a)(2) and CR**
4 **32(a)(3)(B)&(E)**

5 **Petitioners' Designation of Excerpts of CR 30(b)(6) Deposition of**
6 **Adams County to be Used at Trial Pursuant to CR 32(a)(2) and**
7 **CR 32(a)(3)(B)&(E)**

8 **Petitioners' Designation of Excerpts of Deposition of Secretary of State**
9 **Sam Reed County to be Used at Trial Pursuant to CR 32(a)(2) and**
10 **CR 32(a)(3)(B)&(E)**

11 **Petitioners' Designation of Excerpts of CR 30(b)(6) Deposition of**
12 **Stevens County to be used at Trial Pursuant to CR 32(a)(2) and CR**
13 **32(a)(3)(B)&(E)**

14 to be filed with the Clerk of Chelan County Superior Court via Electronic Filing Legal
15 Services (E-Filing.com) which sent notification of such filing to the following persons,
16 with this Certificate to follow:

17 **Kevin Hamilton, Esq.**
18 Perkins Coie LLP
19 Attorneys for Washington State Democratic
20 Central Committee
21 1201 Third Avenue, Suite 4800
22 Seattle, WA 98101

23 **Russell J. Speidel**
24 Speidel Law Firm
25 7 North Wenatchee Avenue, Suite 600
26 Wenatchee, WA 98807

27 **Dale M. Foreman**
Foreman, Arch, Dodge, Volyn &
Zimmerman P.S.
124 North Wenatchee Avenue, Suite A
P.O. Box 3125
Wenatchee WA 98807-3125

Thomas Ahearne
For: Secretary of State Sam Reed
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle WA 98101

Richard Shepard
John S. Mills
For: Libertarians
Shepard Law Office, Inc.
818 S. Yakima Avenue, #200
Tacoma, WA 98405
Tim O'Neill
Klickitat County Prosecuting Attorney
205 South Columbus Ave., MS-CH18
Goldendale WA 98620

1 **Gary Riesen**
2 Chelan County Prosecuting Attorney
3 PO Box 2596
4 Wenatchee WA 98807-2596

5 **Barnett N. Kalikow, Esq.**
6 For: Klickitat County Auditor
7 Kalikow & Gusa PLLC
8 1405 Harrison Avenue NW, Suite 207
9 Olympia WA 98502

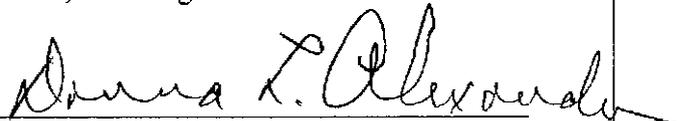
10 **Gorden Sivley**
11 **Michael C. Held**
12 Snohomish County Deputy Prosecuting
13 Attorneys
14 2918 Colby Avenue, Suite 203
15 Everett WA 98201-4011

L. Michael Golden
Lewis County Senior Deputy Prosecuting
Attorney
345 West Main Street
Chehalis WA 98532

Jeffrey T. Even, Asst. Attorney General
For: Secretary of State Sam Reed
Attorney General's Office
PO Box 40100
Olympia WA 98504-0100

16 I certify under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true and correct.

18 DATED this 13th day of May, 2005, at Seattle, Washington.

19 

20 Donna L. Alexander