

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

DEPARTMENT 73

HON. JOEL WOHLFEIL

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

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REPORTER'S APPEAL TRANSCRIPT  
OCTOBER 6, 2016  
Volume 3 of 3  
Pages 368 - 554

Appearances:

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

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

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

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4  
5                   THE COURT:   Okay.  We are starting a few  
6 minutes late, Counsel.  I apologize for that.

7                   Okay.  Counsel, is there anything you would  
8 like to discuss with the Court before we resume with the  
9 taking of testimony?

10                  MR. BARRY:  Your Honor, I'm not sure how you  
11 want to handle it, but we received what was represented  
12 to us to be the complete set of documents that Mr. Lutz  
13 said he had requested and received from the Secretary of  
14 State.  The letter from Secretary of State Bruce  
15 McPherson dated August 30th is not included in these  
16 documents, so I'm not sure how you explain that or what  
17 the source of that document was, but it wasn't in the  
18 packet.

19                  THE COURT:  All right.  So Mr. Geraci.

20                  MR. GERACI:  First I'm hearing of the  
21 objection, your Honor, I just received myself the full  
22 copy so I haven't inspected it yet.  The Court granted  
23 me until Tuesday to review it and get it -- place in the  
24 file.  I'd like that opportunity.

25                  THE COURT:  Okay.  Now, the Court is not going  
26 to be scrutinizing the materials however many or few  
27 there may be until this matter is under submission.  I  
28 want both sides to be satisfied.  You had a reasonable

1 opportunity to go through the contents.

2 Now, Counsel, you've been in front of me  
3 enough, you've heard me say -- until counsel give me a  
4 good reason not to do so, nobody has given me a good  
5 reason not to do so, I tend to err on the side of your  
6 representations. All right? Combined, of course, with  
7 the evidence that support the representation.

8 Mr. Lutz's testimony appears to have supported  
9 the representation from plaintiffs' counsel that a  
10 request was made to the Secretary of State's office, a  
11 response was made and they already sent corroboration of  
12 that, which I indicated should be included within the  
13 package provided to defense.

14 So what I -- what I'm going to direct  
15 plaintiffs' side to do is let's locate the corroboration  
16 and include that in the materials you provided to the  
17 defense side.

18 MR. GERACI: And just as further corroboration,  
19 representation, I see Mr. Lutz has brought in a copy of  
20 the receipt for the documents that is dated  
21 September 28, 2016, from the California state -- or  
22 Secretary of State archives, and we'll include that in  
23 the materials.

24 THE COURT: Well, we don't need to spend a  
25 whole lot more time right now. Again, nobody is being  
26 advantaged or disadvantaged right now because I haven't  
27 looked at anything. So -- but before we -- before the  
28 matter is deemed submitted, which I'm anticipating now

1 will be sometime Tuesday, next Tuesday, make sure that  
2 you all have met and conferred and, in this case, the  
3 plaintiffs' side has given the defense everything that I  
4 felt indicated you need to give to them. Or, in the  
5 absence of that, be prepared to give the Court an  
6 awfully good explanation why you can't do so.

7 All right. And then, if you can't do so, then  
8 that may be a cause for the Court to reevaluate its  
9 decision to grant you disadvantage. So we are going to  
10 get there one way or the other.

11 Anything else, Counsel?

12 MR. BARRY: No your Honor.

13 THE COURT: Okay. And anything from  
14 plaintiffs' side?

15 MR. GERACI: Not at this time.

16 THE COURT: All right. So have a seat. Let me  
17 just make note of what I just discussed or what we just  
18 discussed.

19 Remind me, what exhibit number is that again?

20 MR. GERACI: Fifty-nine.

21 THE COURT: Fifty-nine.

22 Okay. So if I understand correctly, subject  
23 to -- is it Dr. Stark? Is it Dr. Stark?

24 MR. GERACI: Yes, your Honor.

25 THE COURT: Okay. Subject to plaintiff calling  
26 Dr. Stark on Tuesday and the admission of any additional  
27 exhibits -- and Counsel, I'm going to ask that, before  
28 we close shop up for today, you take a look at your list

1 and see if there is any documents that you want to offer  
2 up -- offer into evidence today subject, of course, to  
3 any additional ones that may be offered during  
4 Dr. Stark's testimony.

5 But we are done here from plaintiffs' side with  
6 those qualifications, right?

7 MR. GERACI: I believe so, your Honor. I was  
8 going to recall Mr. Lutz for the sole purpose of  
9 explaining a few things that came out during defendants'  
10 testimony yesterday.

11 THE COURT: Well, when do you propose to do  
12 that? After Dr. Stark is done testifying?

13 MR. GERACI: No. I was assuming we could do  
14 that today. It's not going to take very long. But I  
15 realize we are taking defense witnesses out of order for  
16 the convenience of witnesses and I have no problem with  
17 that.

18 THE COURT: All right.

19 MR. BARRY: Well, your Honor, yesterday  
20 plaintiff rested except for calling Dr. Stark. So  
21 they've rested their case.

22 THE COURT: That's kind of what I recall  
23 hearing too. So if plaintiff wants to recall Mr. Lutz,  
24 it sounds like you would do so in rebuttal.

25 All right. So now it's the defendants' case in  
26 chief. Your first witness -- or, I should say, your  
27 next witness.

28 MR. BARRY: Yes, your Honor. I call Jill

1 LaVine.

2 THE COURT: All right. Is it Ms. LaVine --

3 THE WITNESS: Ms. LaVine.

4 THE COURT: Dr. LaVine?

5 THE WITNESS: No. Ms. LaVine is fine.

6 THE COURT: All right. So if you could follow  
7 the directions of my deputy -- first of all, good  
8 morning. If you could follow the directions of the  
9 deputy and clerk, please.

10 THE BAILIFF: Face the clerk.

11 THE CLERK: Please raise your right hand.

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

15 THE WITNESS: I do.

16 THE CLERK: Please take the stand.

17 MR. BARRY: Your Honor, can I approach the  
18 witness?

19 THE COURT: You bet.

20 MR. BARRY: Looks like we might want to do some  
21 housekeeping real quickly.

22 THE COURT: No, I understand. I need a few  
23 moments myself.

24 THE CLERK: Please state your full name. Spell  
25 your last name for the record.

26 THE WITNESS: Jill LaVine. Last name is L-a,  
27 capital, V-i-n-e.

28 THE CLERK: Thank you.



## 1 DIRECT EXAMINATION

2 BY MR. BARRY:

3 Q. Ms. LaVine, are you employed?

4 A. Yes, I am.

5 Q. By whom are you employed?

6 A. Sacramento County.

7 Q. What is your position?

8 A. I'm the registrar of voters.

9 Q. And how long have you held that position?

10 A. For 13 years now.

11 Q. And what are your duties?

12 A. Basically I oversee the office, the different  
13 functions of the office. I -- correspondence. Right  
14 now I'm overseeing the election, making sure the  
15 different sections are following the task calendar and  
16 kind of like the mediator between the two sections or  
17 different sections to make sure everything is completed  
18 and done timely.

19 I -- you know, most of it is correspondence to  
20 different voters, different, you know, different  
21 entities such as a water district or something that will  
22 need some information for an election. Just making sure  
23 we stay on task of all the different duties.

24 Q. And how many years of experience do you have in  
25 elections?

26 A. I started in elections in 1987 as a temporary  
27 worker, and I have worked in every position in the  
28 office, every -- and worked my way all the way up.

1 Q. And are you a member of CACEO?

2 A. Yes, I am a member.

3 Q. And that's the California Associations of  
4 Clerks and Elections Officials?

5 A. Yes.

6 Q. And have you held any executive office with  
7 CACEO?

8 A. Not in executive office. I'm a committee  
9 chair -- co-chair.

10 Q. What committee are you co-chair of?

11 A. The legislature committee.

12 Q. And how long have you held that position?

13 A. For 13 years.

14 THE COURT: One moment, Counsel. I need to  
15 catch up with something.

16 All right. Continue on, please.

17 MR. BARRY: Thank you.

18 BY MR. BARRY:

19 Q. Approximately how many eligible voters are  
20 there in Sacramento County?

21 A. Eligible voters are just a little over 900,000.

22 Q. And how many registered voters are there  
23 currently in Sacramento?

24 A. 733,000.

25 Q. And what percentage of those voters are  
26 registered as vote-by-mail voters?

27 A. That's 61 percent.

28 Q. And how many County employees -- how many

1 employees does your office employ?

2 A. We have 34 permanent employees in our office  
3 with an additional four embedded IT staff.

4 Q. And for the upcoming presidential general, how  
5 many poll workers will you employ?

6 A. We will employ approximately 2800 poll workers.

7 Q. And those would be part-time or at least  
8 full-time for a short period of time, correct?

9 A. Basically a one day for that particular job.

10 Q. And if I refer to elections workers as opposed  
11 to poll workers, do you have an understanding --

12 A. Yes, mm-hmm.

13 Q. -- as to what I'm referring to?

14 A. Yes, I do.

15 Q. What's your understanding?

16 A. Election workers are those that come in as a  
17 temporary worker to assist in the office during the  
18 elections season.

19 Q. And how many elections workers will you be  
20 hiring for the upcoming presidential general?

21 A. Currently we have 63 in the office. We will  
22 bump that up between 150 to 200 before the election is  
23 over.

24 Q. And if I refer to the 1 percent manual tally,  
25 do you understand what I'm referring to?

26 A. Yes, I do.

27 Q. And do you have an understanding as to the  
28 purpose of the manual tally?

1 A. Yes, I do.

2 Q. And what is your understanding as to the  
3 purpose of the manual tally?

4 A. Manual tally verifies the equipment, the  
5 counting of the equipment, of the vote tallying  
6 equipment.

7 Q. And is it your understanding that elections  
8 officials are required to perform the manual tally  
9 during the canvass?

10 A. Yes.

11 Q. And are you familiar with that process?

12 A. Yes, I am.

13 Q. And what does that process entail?

14 A. The 1 percent manual tally involves tallying,  
15 basically, you know -- pulling 1 percent of the  
16 precincts and then making sure also that all contests  
17 are covered, and then doing a hand count of each one of  
18 those precincts and verifying them against the machine  
19 count.

20 Q. And so the manual tally is not a recount,  
21 correct?

22 A. No, it is not.

23 Q. And do you conduct the manual tally by the  
24 precinct method or the batch method?

25 A. By the precinct method.

26 Q. And why is it you perform it by the precinct  
27 method?

28 A. We count our ballots by precinct. They are all

1 sorted down in a precinct.

2 Q. Have you always done it that way?

3 A. Yes, we have.

4 Q. For the upcoming November election, when do you  
5 expect to conduct the random selection of precincts to  
6 be included in the manual tally?

7 A. We've been doing that the day after the  
8 election.

9 Q. And do you tabulate vote-by-mail ballots  
10 differently than you do precinct ballots?

11 A. Yes, we do.

12 Q. And why is that?

13 A. Our precinct ballots -- each one of our  
14 precincts have a scanner in the precinct, and so  
15 precinct ballots are counted on the scanner. Our  
16 vote-by-mail ballots come into the office and they are  
17 counted on our central count units.

18 Q. Prior to the amendment of Elections Code  
19 Section -- let me step back.

20 Are you familiar with changes that were made to  
21 the Elections Code effective January 1st, 2007?

22 A. Yes.

23 Q. And what changes did that amendment make to  
24 Section 15360?

25 A. That changed to include all vote -- to include  
26 vote-by-mail ballots included in the count and also  
27 included the random selection process a little quicker.

28 Q. And prior to the amendment of Elections Code

1 15360 effective 2007, did Sacramento include  
2 vote-by-mail ballots in its random selection process?

3 A. No.

4 Q. And why not?

5 A. It was not required at that time.

6 Q. And prior to the amendment of the Elections  
7 Code 15360 in -- effective 2007, did Sacramento include  
8 any provisional ballots in the 1 percent manual tally?

9 A. No.

10 Q. And why not?

11 A. It was not required.

12 Q. If I can refer you to Exhibit 109. It would be  
13 in Volume I, I think it's up here.

14 A. This one?

15 Q. Have you found it?

16 A. Yes, I got it. Mm-hmm.

17 Q. Can you explain to the Court what this document  
18 is?

19 MR. GERACI: Objection. Lacks foundation.

20 THE COURT: All right. Just give me one  
21 moment.

22 Well, Exhibit 109 is currently in evidence, so  
23 the objection at this point is overruled. Let's see  
24 what the witness has to say.

25 Do you have the question in mind, ma'am?

26 THE WITNESS: Yes, this is a -- what we call  
27 CCROV, which means County Clerks Registrar of Voters is  
28 a member to the -- you know, County Clerks Registrar of

1 Voters. It's a directive from the Secretary of State,  
2 clarification of maybe a question that we have asked and  
3 a clarification of maybe code.

4 BY MR. BARRY:

5 Q. And if you look at the attachments to the  
6 succeeding pages, can you indicate or can you testify as  
7 to what the CCROV was pertaining to?

8 A. This was pertaining to the post election manual  
9 tally requirement.

10 Q. And those were emergency regulations that were  
11 enacted by then Secretary Bowen?

12 A. Correct, mm-hmm.

13 Q. Now, in your capacity as the registrar of  
14 voters, co-chair of the legislative committee for CACEO,  
15 were you familiar with amendments that were made -- or  
16 rather, an addition that was made to the Elections Code  
17 pursuant to AB 46?

18 A. I'm not exactly sure. Can you --

19 Q. There was legislation that added as a provision  
20 to the Elections Code --

21 MR. GERACI: Objection, your Honor. The  
22 question is becoming leading.

23 THE COURT: Objection sustained.

24 BY MR. BARRY:

25 Q. Are you familiar with urgency legislation that  
26 was enacted relating to the 1 percent manual tally in  
27 2010?

28 A. 2010. That was the -- there were four

1 counties, and they were given the opportunity to do the  
2 post election manual tally.

3 Q. And what was the option that was provided  
4 pursuant to 15360.5?

5 A. At that time you could add the batch process as  
6 well as the precinct process.

7 Q. So prior to that, the only option to counties  
8 was to perform the 1 percent manual tally by precinct;  
9 is that correct?

10 A. By precincts, correct.

11 Q. Now, you indicated that this bill only  
12 pertained to four counties; is that correct?

13 A. That is correct.

14 Q. And do you understand what was the urgency in  
15 enacting this legislation?

16 A. Those four counties needed another method to do  
17 the manual tally and we were looking at an option.

18 Q. Now, did AB 46 change or allow Sacramento to  
19 change the methodology used to perform the 1 percent  
20 manual tally?

21 A. We were not included as one of those four  
22 counties and, like I say, we count by precinct.

23 Q. Are you familiar with amendments that were made  
24 to 15360 effected January 1, 2012?

25 A. A lot of changes. In 2012, that took off --  
26 took out the emergency regulations and made it an option  
27 to add the batch.

28 Q. And even after the enactment of those



1 amendments effective January 1, 2012, did Sacramento  
2 continue to conduct its manual tally by the precinct  
3 method?

4 A. Yes, we continued by the precinct.

5 Q. And I believe -- between the amendments in 2007  
6 and 2012, had Sacramento continued to conduct the manual  
7 tally in the same manner?

8 A. Yes, we had.

9 Q. And did Sacramento County base its manual tally  
10 on the semi final official canvass?

11 A. Yes, we did.

12 Q. And what is the semi final official canvass?

13 A. That is the -- at the close of election night,  
14 that's the semi official tally. So at that point, all  
15 precincts have reported in and it's at -- the end of the  
16 night everything is done.

17 Q. I'd ask you to look at Exhibit 107.

18 A. Yes.

19 Q. Can you identify what that document is?

20 A. This is a recent CCROV from our current  
21 Secretary of State written by his legal counsel.

22 Q. And I direct you to page three of that document  
23 under "Conclusion."

24 A. Yes.

25 Q. And let me step back for a second.

26 So after 2012, did you continue to base the  
27 1 percent manual tally on the semi final official  
28 canvass?

1 A. Yes, we did.

2 Q. And that would include some vote-by-mail  
3 ballots or vote-by-mail ballots that have been included  
4 in the count as of election night?

5 A. Correct.

6 Q. And it did not include or does not include  
7 vote-by-mail ballots that are processed during the  
8 canvass, correct?

9 A. That is correct.

10 Q. And does not include provisional ballots which  
11 are also processed during the canvass?

12 A. That is correct.

13 Q. Now, I'd ask you to read that paragraph to  
14 yourself under "Conclusion."

15 MR. GERACI: Your Honor, I'm going to object.  
16 I'm not sure why she is reading something written by  
17 someone else that she didn't state she had any issue of  
18 memory failing or much -- otherwise this particular  
19 document is hearsay.

20 THE COURT: One moment, Counsel. Please state  
21 your evidentiary objections.

22 MR. GERACI: Objection. Hearsay.

23 MR. BARRY: Objection. Your Honor, subject to  
24 the business record exception, Evidence Code 1280.

25 THE COURT: Lay the foundation for this  
26 document which is 107 being a business record.

27 MR. BARRY: I can lay more of a foundation if  
28 you'd like.

1 THE COURT: All right. The objection is  
2 sustained on foundation.

3 BY MR. BARRY:

4 Q. So, again, will you describe for the Court what  
5 a CCROV is.

6 A. CCROV is a directive from the Secretary of  
7 State, usually clarifies a point of law, a question that  
8 we've had or it can be a reminder of something coming up  
9 or a question that we had.

10 Q. And are these CCROVs something that you receive  
11 in the normal course of business?

12 A. Yes.

13 Q. And do you maintain these CCROVs in your office  
14 during the normal course of the business?

15 A. Yes, I do.

16 Q. And do you generally as a rule follow the  
17 directives and guidance of the Secretary of State?

18 A. Yes, I do.

19 Q. And the Secretary of State is the chief  
20 elections official in the state of California, correct?

21 A. Correct.

22 Q. Now, I'd like to ask you, after having read the  
23 paragraph that I asked you to read, is the process  
24 that's referenced in that paragraph consistent with the  
25 process that's followed by your county?

26 A. Yes, it is.

27 MR. BARRY: Your Honor, I would move for  
28 admission of Exhibit 107.

1 THE COURT: Any objection?

2 MR. GERACI: I would object, your Honor. It's  
3 hearsay.

4 THE COURT: Objection is sustained.

5 One moment.

6 Okay. Counsel, may I see you at sidebar.

7 (Sidebar; unreported.)

8 THE COURT: Okay. So, Counsel, again, I remind  
9 you that to the extent that a record needs to be made of  
10 our sidebar conversations, do so so that nobody is  
11 disadvantaged.

12 Now, the Court had a discussion about a hearsay  
13 objection to the submission of Exhibit 107. The  
14 exceptions argued at sidebar included 1271 and 1280.

15 The Court is not persuaded that the proffering  
16 party in this case, the defendants, have satisfied the  
17 elements of either 1271 or 1280 so the Court sustains  
18 the objection on hearsay.

19 However, during our sidebar conversation, the  
20 defense asked the Court to take judicial notice under  
21 Section 452 of the contents of Exhibit 107. I'm  
22 inclined to grant that request and take judicial notice  
23 of Exhibit 107.

24 Objections, if any, from the plaintiff side?

25 MR. GERACI: Your Honor, yes, we would object  
26 to taking judicial notice of an opinion letter of an  
27 attorney for the Secretary of State. It is not a  
28 document that was sent by the Secretary of State in his

1 function as chief officer for the state of California,  
2 but from his attorney or an attorney in his office  
3 directed to the County Clerks and Registrars of Voters.

4 Insofar as the Court will admit that document  
5 and take judicial notice, we would on rebuttal have a  
6 rebuttal letter that was sent to that counsel that we'll  
7 take up at another time, I suppose.

8 THE COURT: Just give me one moment.

9 So Exhibit 107 is admitted pursuant to the  
10 Court having granted the defendants' request to take  
11 judicial notice of it.

12 (Exhibit 107 was received in evidence.)

13 THE COURT: Just give me one moment. Okay.

14 MR. BARRY: Your Honor, also, if I may offer,  
15 since we are not concluding until Tuesday, we could also  
16 probably get a certification from Secretary of State's  
17 office with respect to the document and submit it to the  
18 Court on Tuesday.

19 THE COURT: Well, I did ask at sidebar if  
20 Exhibit 107 was a complete document, and I heard counsel  
21 say it is.

22 Let me suggest that counsel confer with one  
23 another. And if, after conferring with one another,  
24 plaintiff is of the position that the defense should be  
25 put to the task of obtaining a certification of this  
26 letter, then I'll hear further from you. But right now  
27 I'm satisfied with what I've seen and what I've heard  
28 that it should be admitted pursuant to the Court having

1 granted a request for judicial notice.

2 But like with what the Court did yesterday with  
3 the plaintiffs' request, if an issue or a question  
4 emerges, I'll revisit it.

5 So let's step back and complete your  
6 examination of this witness on Exhibit 107.

7 MR. BARRY: Thank you, your Honor. I believe  
8 I'm done with the document.

9 THE COURT: Well, Counsel, now, you were  
10 beginning to ask Ms. -- is it LaVine?

11 THE WITNESS: LaVine.

12 THE COURT: Okay. I'm sure I'm not the first  
13 person.

14 THE WITNESS: You are not.

15 THE COURT: All right. So you were beginning  
16 to ask her one of her questions about what's reflected  
17 in the conclusion paragraph on page three of 107.

18 Can I ask that you step back and go back over  
19 that. I just want to make sure I'm clear on what you're  
20 asking of her at this time.

21 MR. BARRY: Sure.

22 BY MR. BARRY:

23 Q. So having reviewed and read the conclusion on  
24 this document, and specifically the last sentence of the  
25 conclusion, are your -- are the procedures that you  
26 follow for conducting the 1 percent manual tally  
27 consistent with the conclusions set forth in  
28 Exhibit 107?

1 A. Yes, they are.

2 Q. Now, during the election, how long does it take  
3 for you to process vote-by-mail ballots?

4 A. Vote-by-mail ballots, okay. Because it will  
5 take approximately two weeks to process all the  
6 vote-by-mail ballots. Okay. Clarification. After  
7 election day?

8 Q. Yes.

9 A. During the canvass? Yes, about two weeks.

10 Q. And then how about provisional ballots?

11 A. Provisional ballots, that is a two-step  
12 process. The first step is we have about 24 people  
13 working on those for about seven, eight days to verify  
14 that they are eligible to vote or not eligible to vote  
15 or eligible to vote on part of the ballot. After that  
16 they go back to being remade, opened and remade as  
17 necessary to accommodate that, and that takes an  
18 additional week.

19 Q. And do you include provisional ballots in the  
20 count before you're done processing vote-by-mail  
21 ballots?

22 A. No, I do not.

23 Q. And why not?

24 A. The process of provisional ballots is one of  
25 the last things that we do because we are waiting for  
26 the voter history to come in, and we need to know who  
27 voted a vote-by-mail ballot before we can process  
28 provisional ballots.

1 Q. Now, if you're required to include provisional  
2 ballots in the 1 percent manual tally, would that create  
3 a logistical problem for your county?

4 A. Yes, it would.

5 Q. And if you were required to include all  
6 vote-by-mail ballots that were counted during the  
7 official canvass, would that also provide a logistical  
8 problem for your county?

9 A. Yes, it would.

10 Q. Would it jeopardize your ability to certify the  
11 election within the 30-day time frame?

12 A. Yes, it would.

13 Q. To the best of your knowledge, has your  
14 system -- voting system ever been hacked?

15 A. No, it has not.

16 Q. And to the best of your knowledge, has there  
17 ever been an attempt to hack into your voting system?

18 A. No, there has not.

19 MR. GERACI: I have no further questions, your  
20 Honor.

21 THE COURT: One moment, please.

22 Cross-examination.

23 MR. GERACI: Your Honor, I have a few documents  
24 that were part of that.

25 MR. BARRY: Your Honor, excuse me.

26 THE COURT: Are you going to add documents to  
27 the exhibit list?

28 MR. GERACI: Yes.



1 THE COURT: Counsel, you three are giving me a  
2 headache. All right, now --

3 MR. GERACI: Well, Your Honor, these were  
4 previously marked.

5 THE COURT: Oh.

6 MR. GERACI: But they are part of the group of  
7 documents I sent that late hour that were part of the  
8 discussion, but they pertain to the Sacramento registrar  
9 of voters.

10 THE COURT: Okay. Now --

11 MR. GERACI: So I bring it up.

12 THE COURT: Counsel, we're going to hear  
13 further, but let me just ask you to reflect upon  
14 something. In one way or the other, each or both of you  
15 were asking me to exclude materials or witnesses at the  
16 front of the case and I expressed reluctance to do so,  
17 and my reluctance is being highlighted to what's now  
18 beginning to happen.

19 As witnesses take the stand and testimony is  
20 elicited, reasons emerge why materials that were  
21 exchanged as late as they were, in this case by  
22 plaintiff to defense, becomes -- becomes a bases to  
23 allow those to be put before the trier of fact. They  
24 overcome the cause that was previously argued as a  
25 reason to exclude that.

26 So let me ask defense counsel, did you get  
27 these materials now?

28 MS. KARNAVAS: Well, this is the first that I

1 heard he was going to be trying to use -- well, so I'm  
2 just asking I don't even know which ones he's talking  
3 about.

4 THE COURT: Let's make -- counsel, take a  
5 moment to confirm among yourselves, do you know the  
6 exhibit numbers?

7 MR. GERACI: These were the previously marked  
8 Exhibits 68, 69 -- actually, that's it. 68 and 69.

9 THE COURT: Okay. So let me just step back  
10 here. Now, my exhibit list does not contain any  
11 description of 68 and 69.

12 MR. GERACI: I realize that.

13 THE COURT: Without prejudice to the defense,  
14 let me get a description of what 68 is.

15 MR. GERACI: Sixty-eight is the -- from the  
16 County of Sacramento dated November 19, 2014, memorandum  
17 to Alice Jarboe from Sally Pujol. Pertains to that one  
18 percent manual tally, that election cycle.

19 THE COURT: All right. What's 69?

20 MR. GERACI: The same for -- dated June 30th,  
21 2016. So pertaining to the last election.

22 THE COURT: Again, Sacramento memo?

23 MR. GERACI: Sacramento memo dated June 30,  
24 2016, from Alice Jarboe -- I mean to Alice Jarboe from  
25 Courtney Bailey, the canvass manager, pertaining to the  
26 1 percent manual tally.

27 THE COURT: All right. Just give me a moment.

28 All right. Let's take the threshold issue,

1 which is tantamount to a request that the court will  
2 reconsider its decision to exclude materials being used  
3 at the front. I'm persuaded, based on what I hear from  
4 plaintiff, combined with what I heard from this witness,  
5 that a reason has emerged that would cause the Court to  
6 reconsider and allow the documents to be used.

7 Let me hear from the defense.

8 MR. BARRY: Your Honor, with respect to the  
9 document from 2014, I'm not sure the relevance of that  
10 document.

11 With respect to the document from this year's  
12 election, same issue with relevance, but it certainly  
13 might have more relevance with respect to what the  
14 results were from June.

15 So, other than that, we would not have any  
16 objections as to those two documents.

17 THE COURT: All right. So let's do this. The  
18 objections on relevancy may be a bit premature right  
19 now. So let's take up -- let me rephrase.

20 Those are preserved. And as we move forward,  
21 neither one has been offered yet so let's see where we  
22 go as we proceed without prejudice to the defense in  
23 opposing relevancy or any other objection you think  
24 appropriate.

25 So relief is granted to proceed with Exhibit 68  
26 and 69. Counsel, move forward.

27 MR. GERACI: May I approach the witness just  
28 to --

1 THE COURT: You bet.

2 MR. GERACI: -- assist with the voluminous  
3 notebooks in front of her?

4 Okay. We shuffled around notebooks, she has  
5 got the right notebook. It's number 68.

6 THE WITNESS: Yes.

7

8 CROSS-EXAMINATION

9 BY MR. GERACI:

10 Q. Okay. Good morning, Ms. LaVine.

11 A. Good morning.

12 Q. The -- counsel asked you questions about the  
13 number of registered voters, et cetera, at beginning of  
14 your testimony. Was that all pertaining to this past  
15 election cycle?

16 A. That is actually current as of now.

17 Q. Current as of now. So 900,000 eligible and 733  
18 registered?

19 A. Correct.

20 Q. In the County of Sacramento?

21 A. Correct.

22 Q. Excuse me. Of the 733 registered, how many --  
23 how many voted in the June 7, 2016, presidential  
24 primary?

25 A. Approximately 340,000.

26 Q. And your testimony concerning 61 percent  
27 vote-by-mail pertained to this last election cycle?

28 A. Correct.

1 Q. So 61 percent of the 340,000 votes were done by  
2 mail?

3 A. Correction. 61 percent are per vote-by-mail.  
4 67 percent actually voted by mail.

5 Q. In the last election?

6 A. In the last election.

7 Q. Which, by logic, would mean the other  
8 33 percent voted at the polls?

9 A. Correct, mm-hmm.

10 Q. Some of which were provisional votes and some  
11 of which were not provisional votes?

12 A. Correct.

13 Q. Okay. As I understood your testimony, you have  
14 never optioned to use batching as a method of conducting  
15 the 1 percent manual tally for votes by mail, correct?

16 A. That is correct.

17 Q. Is there any logistical reason why you've  
18 chosen not to?

19 A. All of our ballots are counted and stored by  
20 precinct, so it is -- we don't count by batch, just the  
21 way we count.

22 Q. It's simpler administration for your counting  
23 to do it by precinct?

24 A. Correct.

25 Q. Do you understand that the purpose of allowing  
26 counties to use batching was to expedite their ability  
27 to do the 1 percent manual tally when they are not  
28 organized by precinct like your county?

1 A. Yes, mm-hmm.

2 Q. Take a look at Exhibit 68.

3 A. Yes.

4 Q. Is this a true and correct copy of a memorandum  
5 letter dated November 19, 2014, to Alice Jarboe from  
6 Sally Pujol?

7 A. Yes, it is.

8 Q. J-a-r-b-o-e, P-u-j-o-l.

9 And what is Exhibit 68?

10 A. This is a report of the 1 percent manual tally.

11 Q. This is your method of reporting the results of  
12 the 1 percent manual tally?

13 A. Correct.

14 Q. Is this a document you publish on the web site  
15 for the County?

16 A. Yes, I do.

17 Q. And did this particular 1 percent manual tally  
18 communication follow the general election in 2014?

19 A. Yes.

20 Q. And as a result of your 1 percent manual tally,  
21 you found certain errors that did not match the computer  
22 count on election night, correct?

23 A. That is correct.

24 Q. And you noted in several places on page one,  
25 two and three of those contests for which the computer  
26 count did not properly tally the actual vote?

27 A. Correct.

28 Q. And you made those corrections?

1 A. Correct.

2 Q. Would you take a look at Exhibit 69.

3 A. (Witness complies.)

4 Q. Is this a similar document relative to the  
5 June 7, 2016, presidential primary?

6 A. Yes, it is.

7 Q. It is --

8 THE COURT: One moment, Counsel.

9 Okay. Continue on.

10 BY MR. GERACI:

11 Q. Is this the communication for the 1 percent  
12 manual tally for the 2016 presidential primary election?

13 A. It is.

14 Q. And this is also published on your web site,  
15 correct?

16 A. Correct, mm-hmm.

17 Q. And does it communicate errors that were found  
18 not to match the computer count on election night?

19 A. Yes.

20 Q. And there are two pages, correct?

21 A. There are two pages to this memo, yes.

22 Q. And from page one to page two describe the  
23 various contests for which the 1 percent tally did not  
24 match the computer count on election night?

25 A. Correct.

26 Q. And you made those corrections before your  
27 official verification of the vote, correct?

28 A. Correct.

1 Q. Now, if you were required to conduct your  
2 1 percent manual tally to include all vote-by-mail and  
3 provisional votes, how would you make that adjustment in  
4 your office to accomplish that task?

5 A. Please restate the question.

6 Q. If you were required to conduct your 1 percent  
7 manual tally to include all poll votes, all vote-by-mail  
8 ballots and all provisional ballots, how would you make  
9 that adjustment in your office to accomplish that task?

10 A. It would require additional people and time and  
11 I'm not sure that I could meet that deadline.

12 Q. So you would have to increase your staffing,  
13 correct?

14 A. Correct.

15 Q. You would have to basically make adjustments to  
16 tasks for different teams?

17 A. Increase staffing, but there is still a limited  
18 amount of computers and time available.

19 Q. Okay. So there is a resource issue?

20 A. Yes.

21 Q. There is a labor issue?

22 A. Mm-hmm.

23 Q. And would at any time utilizing the batching  
24 method for votes by mail be a consideration for your  
25 county to assist in expediting the 1 percent  
26 vote-by-mail tally?

27 A. Not at this time.

28 Q. Would that be something you could adjust to if



1 you were required to include all vote-by-mail ballots in  
2 your 1 percent manual tally?

3 A. To -- say -- can I clarify the question? Or  
4 what would --

5 Q. You can answer the question and clarify through  
6 your answer.

7 A. If you are asking about move the batch process  
8 to move faster, at this particular time the answer is  
9 no, we can't let precinct, that's the system we use.

10 Q. No, I understand that that's the system you  
11 use. But if you are required to include all  
12 vote-by-mail ballots, not just the vote-by-mail ballots  
13 processed on election -- by election day, could you use  
14 the batching method as a tool to expedite your 1 percent  
15 manual tally?

16 A. No, I would not.

17 Q. Why not?

18 A. Precincts -- I don't use -- I don't count by  
19 batches. I count by precinct.

20 Q. So because of the way you sort your ballots --

21 A. Sort them, mm-hmm.

22 Q. -- initially by precinct, batching wouldn't be  
23 a tool for your office?

24 A. No, it would not.

25 Q. But you do see that it could be a tool for  
26 other administrators in the state?

27 A. Correct.

28 MR. BARRY: Objection. Calls for speculation.

1 THE COURT: Overruled.

2 BY MR. GERACI:

3 Q. Just one more point of clarification.

4 You testified that 67 percent of the vote -- of  
5 the past election votes were by mail, correct?

6 A. Correct.

7 Q. How many of -- what was the breakdown and  
8 percentage of the vote-by-mail you received by election  
9 day versus after?

10 A. You are asking for a percentage. After  
11 election day, after election night, we had 136,000  
12 vote-by-mail ballots left to count and -- ballots left  
13 to count, that includes the provisional.

14 Q. And can you estimate how many of the  
15 vote-by-mail ballots then were already counted by  
16 election night?

17 A. It was over a hundred thousand.

18 Q. And do you know the breakdown of that 136,000  
19 ballots remaining to count, how many of those were  
20 provisional and how many of those were vote-by-mail?

21 A. 15,000 approximately were provisionals and the  
22 rest were vote-by-mail.

23 MR. GERACI: Thank you. Thanks for coming  
24 down.

25 THE COURT: Counsel, before you -- I need some  
26 clarification. It is clarification.

27 When you said 136,000 ballots left to be  
28 counted, I'm not sure if that means that you had gotten

1 those before election night but hadn't had a chance to  
2 count them or they were received after the election.

3 And I'm not trying to lead you, but for  
4 clarification, I need to be clear on what you're saying.

5 THE WITNESS: It would be both. Some of those  
6 were received and not processed prior to election day  
7 and some of them were received on election day coming in  
8 from the precincts that night. Some of them were from  
9 our -- the new law that allows postmarks to count, we  
10 got an additional 8,000 of those received by that  
11 following Friday. And then some of them were made good  
12 because of the unsigned ballot statement, and that's an  
13 additional eight days after the election.

14 THE COURT: Of those 136,000 ballots,  
15 regardless of when you received them, how many, if any,  
16 were not included within those that were the subject of  
17 the 1 percent manual tally?

18 THE WITNESS: The 136,000, none of them were in  
19 the 1 percent manual tally. Only those would --

20 THE COURT: All right. So thank you.

21 THE WITNESS: Mm-hmm.

22 THE COURT: If anybody -- you want to continue  
23 some cross -- all right, yeah -- cross-examination  
24 because of what the Court has asked.

25 And Counsel, again, I'm just trying to get  
26 clarification here. So give me a moment.

27 All right. Did you want to ask any follow-up  
28 questions as a result of, again, I want to emphasize,

1 from my perspective, clarification.

2 MR. GERACI: No further questions. But I would  
3 move for admission Exhibit 68 and 69.

4 THE COURT: All right. Let's go to Exhibit 68  
5 and 69 objections, if any.

6 MR. BARRY: Your Honor, I object to 68 on  
7 relevancy grounds. It's an election that occurred a  
8 couple years ago.

9 Sixty-nine is certainly current as to this year  
10 so it's reflective of what happened this year.

11 THE COURT: Thank you very much.

12 Those objections will be overruled and the  
13 Court will admit both 68 and 69.

14 (Exhibits 68 and 69 were received in evidence.)

15 THE COURT: All right. Counsel, just give me  
16 one moment, please.

17 So redirect examination.

18 MR. BARRY: Yes, your Honor.

19

20 REDIRECT EXAMINATION

21 BY MR. BARRY:

22 Q. So, Ms. LaVine, when may you start actually  
23 counting vote-by-mail ballots?

24 A. We start processing and doing the counting  
25 seven to ten days before the election, depending on the  
26 volume received.

27 Q. And by statute, can you begin that process  
28 before ten days?

1 A. No.

2 Q. So you only have -- you can only count those  
3 ballots that you receive prior to the election counting  
4 those ten days before the election?

5 A. Correct.

6 Q. And do you make every effort to get as many of  
7 the vote-by-mail ballots that you receive before  
8 election day into the count?

9 A. Yes, we do.

10 Q. And do you recall approximately how many  
11 vote-by-mail ballots you had included in the count as of  
12 the semi final official canvass?

13 A. I'm trying to remember that number. I think it  
14 was closer to 200,000 that were included. I would have  
15 to pull up one of my reports.

16 Q. Now, counsel characterized the variances in the  
17 hand tally and the automated count as an error by the  
18 tabulating system. Do you recall that?

19 A. Yes.

20 Q. And was that a correct characterization?

21 A. No.

22 Q. And how would you characterize the  
23 discrepancies?

24 A. When you are doing a manual tally versus the  
25 machine count, the machine does not pick up voter  
26 intent. As an example, if a voter had put a big X  
27 through a particular circle, the machine would have  
28 counted that, but doing voter intent, which is part of

1 the -- of a recount, they would have noticed that, that  
2 it was not supposed to be counted. But the machine did  
3 not count incorrectly, but it was voter intent.

4 Q. Now, in reviewing Exhibit 68 and 69, is there  
5 anything in either of those documents which would  
6 indicate to you that the automated vote tabulating  
7 system was not functioning properly?

8 A. No.

9 MR. BARRY: No further questions.

10 THE COURT: One moment, please.

11 Okay. Recross, if any.

12 MR. GERACI: Yes, your Honor. Sorry. Looking  
13 at exhibit in conjunction with follow-up question.

14

15 RE CROSS-EXAMINATION

16 BY MR. GERACI:

17 Q. Ms. LaVine, look again at Exhibit 69.

18 A. Yes.

19 Q. On the second page, the last entry, that was a  
20 description of part of your 1 percent manual tally for  
21 the last election, correct?

22 A. Could you tell me where you -- the very last  
23 entry?

24 Q. Yes. Where it starts "all of the contests."

25 A. Yes.

26 Q. Can you describe just for the record what  
27 occurred there relative to the correction that you made?

28 A. If you're looking at the last paragraph where

1 it says "all of the contests and the following  
2 consolidated precincts were chosen to be manually  
3 tallied in accordance with the procedures" -- is that  
4 where you're at?

5 Q. Yes.

6 A. During election day, if a precinct scanner  
7 fails during the day, that scanner is brought back in  
8 and that entire precinct is recounted manually.

9 Q. So in the last contest that event occurred --

10 A. Yes, it did.

11 Q. -- that you just described?

12 A. It did.

13 Q. And you had to manually tally the votes from  
14 that precinct?

15 A. We did.

16 Q. And that's -- this is your report of what  
17 occurred as a result of that manual tally?

18 A. Correct. They were not all included so needed  
19 to be manual tally.

20 Q. Thanks for that clarification.

21 A. Mm-hmm.

22 MR. GERACI: No further questions.

23 THE COURT: All right. Okay. Anything else?

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

25 THE COURT: Can Ms. LaVine be excused?

26 MR. BARRY: Yes.

27 MR. GERACI: Yes, with our thanks.

28 THE COURT: Thank you very much, Ms. LaVine.

1 THE WITNESS: Thank you.

2 THE COURT: All right. Next witness.

3 MR. BARRY: Yes, your Honor. Defense would  
4 call Dean Logan.

5 Ms. LaVine can stay in the courtroom now?

6 THE COURT: You bet.

7 All right. Good morning, sir. If you could  
8 follow the directions of my deputy and my clerk, please.

9 THE BAILIFF: Follow me, please.

10 Please raise your right hand and face the  
11 clerk.

12 THE CLERK: Please raise your right hand.

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

16 THE WITNESS: I do.

17 THE CLERK: Please take the stand.

18 THE BAILIFF: Be seated in the chair and make  
19 sure you speak into the mic.

20 THE CLERK: Sir, please state your full name  
21 and spell your last name for the record.

22 THE WITNESS: Sure. It's Dean Logan,  
23 L-o-g-a-n.

24 THE CLERK: Thank you.

25 THE COURT: Just give me one quick moment,  
26 Counsel.

27 All right. Whenever you are ready.

28 MR. BARRY: Thank you, your Honor.



## 1 DIRECT EXAMINATION

2 BY MR. BARRY:

3 Q. Mr. Logan, are you employed?

4 A. Yes, I am.

5 Q. By whom are you employed?

6 A. Los Angeles County.

7 Q. And what's your job title?

8 A. I'm the registrar of voters county clerk.

9 Q. And I refer you to Exhibit 139. Can you take a  
10 look at that. It's in the white binder. There is two  
11 volumes. It would be in the white binder.

12 Can I approach the witness, your Honor?

13 THE COURT: You bet.

14 THE WITNESS: You said 139?

15 BY MR. BARRY:

16 Q. Yes, please.

17 A. Okay. I apologize the binder is coming apart.

18 Q. That's standard issue.

19 A. Okay.

20 Q. Have you found the document?

21 A. Yes, I have.

22 Q. Can you identify that document?

23 A. This is my resume.

24 Q. Okay. Can you please describe for the Court  
25 what your experience is in elections.

26 A. Sure. I have over 25 years of experience in  
27 elections administration both at the local and state  
28 level in the state of California, most recently in the

1 state of Washington prior to that and --

2 Q. May I ask you to slow down a little bit --

3 A. Sure.

4 Q. -- because the reporter will like you better.

5 A. Sure.

6 So 25 years elections administration experience  
7 at the state and local level. Most recently in the  
8 state of California in Los Angeles County for the past  
9 ten years. And prior to that in the state of  
10 Washington, both at the County level in two different  
11 counties, and as the state elections director in  
12 Washington Secretary of State's office.

13 Q. And does Exhibit 139 accurately reflect your  
14 educational and professional background?

15 A. Yes, it does.

16 MR. BARRY: I move for admission of 139.

17 MR. GERACI: No objection.

18 THE COURT: One moment, please.

19 The Exhibit 139 will be admitted.

20 (Exhibit 139 was received in evidence.)

21 BY MR. BARRY:

22 Q. As the registrar county clerk for the County of  
23 Los Angeles, what do your duties entail?

24 A. I'm an appointed department head serving at the  
25 pleasure of Los Angeles Board of Supervisors, and I'm  
26 responsible for three primary functions of county  
27 government.

28 First as the registrar of voters. In that

1 capacity, I administer all local, state and federal  
2 elections within Los Angeles County and maintain the  
3 registered voter database and records for Los Angeles  
4 County.

5 Also serve as the recorder for L.A. County. As  
6 the recorder of deeds, all real property documents I  
7 record and maintain in my office.

8 And as the County Clerk -- as the County Clerk,  
9 I maintain vital records for the County, issue marriage  
10 licenses, perform civil marriage ceremonies and issue  
11 business licenses.

12 Q. Approximately how many registered voters are  
13 there currently in Los Angeles County?

14 A. Currently about 5,042,000.

15 Q. Approximately how many people turned up to vote  
16 in the primary in June?

17 A. In the June primary, our turnout was 2,026,068  
18 voters.

19 Q. And approximately how many of those who voted  
20 in the June primary cast vote-by-mail ballots?

21 A. Approximately 722,000.

22 Q. And approximately how many voters cast  
23 provisional ballots in the June primary?

24 A. There were about 271,000 provisional ballots in  
25 the June primary.

26 THE COURT: Okay. Just, Counsel, let me just  
27 catch up with you. I think I'm seeing 222,000  
28 provisional ballots? Is that what I heard you say?

1 THE WITNESS: No. 271,000 provisional ballots.

2 THE COURT: Oh.

3 THE WITNESS: 722 vote-by-mail ballots.

4 THE COURT: All right. Just give me a moment  
5 to catch up. There are a lot of numbers, Counsel. All  
6 right.

7 MR. BARRY: There is a lot of people in  
8 Los Angeles.

9 THE COURT: There certainly is. But welcome to  
10 San Diego.

11 THE WITNESS: Thank you.

12 THE COURT: All right. Here we go.

13 BY MR. BARRY:

14 Q. What was the primary reason that people were  
15 required to vote provisional ballots in the June  
16 primary?

17 A. In the June primary, as well as in most  
18 elections in Los Angeles County, the two primary reasons  
19 that the voters cast provisional ballots are, one, that  
20 they have been issued a vote-by-mail ballot and they  
21 show up at the polling place to vote and they don't have  
22 that vote-by-mail with them to surrender. And the  
23 second reason is that they are not listed as a  
24 registered voter at the location where they appear to  
25 vote.

26 Q. And do you expect to receive more vote-by-mail  
27 ballots in the November general election than you  
28 received in June primary?

1 A. Yes, I do.

2 Q. Do you expect to receive more provisional  
3 ballots in the November general election than you did in  
4 the June primary?

5 A. It's a little more difficult to speculate with  
6 regard to provisional ballots. I think, based on past  
7 election trends, I think we will see a significant or  
8 similar significant number of provisional ballots, but  
9 there is a difference in the dynamics of a presidential  
10 primary and general election so it's difficult to  
11 speculate on that.

12 Q. How many permanent staff does your office  
13 employ?

14 A. Department wide 849.

15 Q. And if I refer to election season, I would mean  
16 three months leading up to and two months after. How  
17 many of those employees are working on election matters?

18 A. In one capacity or another, all of our  
19 employees have some role to play in the elections  
20 process. Full-time employees, probably about 400 to 450  
21 of those permanent employees are full time in the  
22 elections activity and then we augment that as with many  
23 as three to 500 additional temporary election employees  
24 that we bring in during a presidential election cycle.

25 Q. So for this current general presidential  
26 general -- presidential general election, you will  
27 employ an additional how many temporary election  
28 workers?

1           A.    In the course of the election, we will probably  
2   employee between 400 and 500 temporary employees.

3           Q.    And how many poll workers do you expect to  
4   employ for the November general election?

5           A.    Approximately 22,000.

6           Q.    Approximately how many vote-by-mail ballots  
7   were included in the semi final official canvass for the  
8   June primary?

9           A.    Approximately 387,000.

10          Q.    And for the Court, can you explain what the  
11   semi final official canvass is?

12          A.    So the semi final official canvass refers to  
13   the results that are reported on election night, and  
14   those results include vote-by-mail ballots that are  
15   processed and counted and included in the count on  
16   election night as well as the votes cast at polling  
17   places and tabulated and report in election night.

18          Q.    And approximately how many vote-by-mail remain  
19   to be processed during the official canvass for the June  
20   primary?

21          A.    Approximately 334,000.

22          Q.    And how many employees, permanent and  
23   temporary, are required to process vote-by-mail ballots?

24          A.    Working primarily on a full-time basis on  
25   vote-by-mail ballots, about -- in the June election,  
26   about 150 employees.

27          Q.    And are you familiar with the process for  
28   processing and counting vote-by-mail ballots?

1 A. Yes, I am.

2 Q. And can you just give a general overview of  
3 what that entails?

4 A. So there are a number of processes involved in  
5 preparing and counting the vote-by-mail ballots. That  
6 starts with a receipt from the post office, which  
7 includes our staff actually going to the U.S. Postal  
8 Service to pick up the ballots.

9 I do a count of those to record what we  
10 received. Those ballots are then run through a scanner  
11 to capture the signature of the voter on the affidavit  
12 envelope. That signature is compared to the voter  
13 signature on the voter registration to validate the  
14 authenticity of the ballot.

15 The ballots are then sorted by precinct and  
16 they go through an extraction process which allows the  
17 staff to separate the voted ballot from the envelope  
18 that identifies the voter to ensure the secrecy of the  
19 ballots.

20 Those ballots are then manually inspected to be  
21 sure that they are readable and that there are no  
22 damage, there is no damage, tears or extraneous writing  
23 on the ballots.

24 Then those are, again, put in trays by precinct  
25 and transferred to our ballot tabulation process where  
26 they are scanned in for tabulation and then they are  
27 stored in precinct order in secure sealed containers in  
28 our tabulation center.

1 Q. Would you call the process for processing and  
2 counting vote-by-mail ballots as fairly labor intensive?

3 A. Yes, I would. It's very labor intensive and  
4 tedious.

5 Q. Do you provide training to workers to process  
6 vote-by-mail ballots?

7 A. Yes, we do.

8 Q. And what type of training do they receive?

9 A. We do orientation, training on the systems that  
10 are involved in the various processes, and then we also  
11 have on-the-job training where employees are shadowed by  
12 experienced staff. We do various methods of quality  
13 control and quality assurance to ensure that those  
14 procedures are being followed.

15 Q. And how many employees are required to provide  
16 training?

17 A. We have about 12 supervisory staff that are  
18 responsible for the training and quality assurance.

19 Q. And prior to election night, approximately how  
20 many hours does your office spend or how much -- how  
21 many hours did your office spend processing vote-by-mail  
22 ballots in the June primary?

23 A. Prior to election day on the June primary, we  
24 estimate that we spent about 57,700 hours processing  
25 vote-by-mail ballots.

26 Q. And after election night, approximately how  
27 many man hours does your office -- or did your office  
28 spend processing vote-by-mail ballots after the June



1 primary?

2 A. We estimate that was an additional 12,600 hours  
3 for vote-by-mail.

4 Q. Now, you indicated that for the June primary  
5 you received approximately 271,000 provisional ballots,  
6 correct?

7 A. Correct.

8 Q. How many of those ballots were included in the  
9 count?

10 A. In the final certified results of the election,  
11 236,788 of those ballots were validated and included in  
12 the count.

13 THE COURT: Counsel, just give me a moment  
14 here.

15 All right. Please continue.

16 BY MR. BARRY:

17 Q. When do you begin processing provisional  
18 ballots?

19 A. We start processing provisional ballots the day  
20 after the election.

21 Q. And what is the sequence for including  
22 provisional ballots into the official count?

23 A. Provisional ballots are processed throughout  
24 the counts period. Those that are cast by voters or by  
25 individuals who were not listed as registered voters or  
26 voters who were not issued vote-by-mail ballots in the  
27 election are processed first, and then those are --  
28 those go through a process of verifying the registration

1 and eligibility of the voter, making sure they didn't  
2 also cast a ballot at another polling place, that type  
3 of situation.

4 Those voters who cast provisional ballots who  
5 were also issued vote-by-mail ballots during the  
6 election are held until all the vote-by-mail ballots  
7 that were eligible in the election has been processed,  
8 and that's to ensure, again, that a provisional voter  
9 hasn't voted a vote-by-mail ballot.

10 Q. And how many employees, permanent and  
11 temporary, are required to process provisional ballots?

12 A. That's a little bit difficult to tie down  
13 because people are doing very parallel tasks during the  
14 canvass period. But I would say that in a -- in the  
15 June election, probably about 150 people whose primary  
16 task during the canvass was processing provisional  
17 ballots and then depending on the time of the canvass,  
18 that could be as many as 400 people working on that  
19 task.

20 Q. And do you have procedures for processing  
21 provisional ballots?

22 A. Yes, we do.

23 Q. And are you familiar with those procedures?

24 A. I am.

25 Q. So without going into the detail on those, how  
26 would you compare -- is the processing of provisional  
27 ballots more or less labor intensive than processing  
28 vote-by-mail ballots?

1           A.    Provisional ballots are more labor intensive  
2 because there is the initial process of first  
3 determining the eligibility of the person that cast the  
4 provisional ballots.

5           Q.    Are the workers that process provisional  
6 ballots provided training?

7           A.    Yes, they are.

8           Q.    What type of training do they receive?

9           A.    Again, they receive orientation at the  
10 beginning of the process.  There are written procedures  
11 that are included, including desk cards that they go  
12 over the procedures.  They are given training on the  
13 systems, voter registration and election management  
14 system used in the department.  Then there is on-the-job  
15 training and quality assurance and supervision during  
16 the process.

17          Q.    And how many employees are required to provide  
18 the training?

19          A.    In June we had 14 supervisors assigned to  
20 provisional ballots processing; and then throughout the  
21 process, four lead workers who -- whose primary role  
22 during the canvass was specifically provisional,  
23 overseeing the provisional processing.

24          Q.    And for the June presidential primary, how many  
25 man hours does your office expend processing vote -- I'm  
26 sorry, processing provisional ballots during the  
27 canvass?

28          A.    We estimate about 61,600 hours.

1 Q. And during the canvass, elections officials are  
2 required to perform what is require -- referred to as a  
3 1 percent manual tally, correct?

4 A. Correct.

5 Q. And are you familiar with that process?

6 A. Yes, I am.

7 Q. And what is your understanding as to the  
8 purpose of the 1 percent manual tally?

9 A. The 1 percent manual tally is a required  
10 process in the Elections Code to provide for a manual  
11 comparison of a count of ballots to the vote tally  
12 system to demonstrate the integrity of the tally system  
13 or determine if there are issues with the tally system  
14 that need to be corrected before the election is  
15 certified.

16 Q. Now --

17 THE COURT: Counsel, we are right at 10:30.  
18 I'm going to stop for just a moment. We are going to be  
19 in recess for approximately 15 minutes.

20 Mr. Logan, feel free to step down, please.

21 (Recess taken.)

22 THE COURT: I don't know if counsel saw, but  
23 sometime before we took our morning break, there was a  
24 classroom of kids. I wasn't quite clear on how old they  
25 were. The Court routinely has kids come into the  
26 courtroom to observe legal proceedings. I'm not so sure  
27 how much they appreciated what was going on here. They  
28 almost have to be a lawyer or a registrar of voters or a

1 judge to appreciate the process in a case like this.

2 But it is inspiring, from my perspective, and I  
3 hope in your perspective, that there is nowhere else in  
4 the world that we will engage in this process to make  
5 sure that everybody's vote is counted. I mean, it's a  
6 pretty impressive thing.

7 That's not an indication that I'm inclined to  
8 favor one side or the other. We are working hard to get  
9 to the right result. So you should be proud of  
10 yourselves.

11 So, with that having been said, Mr. Barry,  
12 continue with your direct examination of Mr. Logan.

13 MR. BARRY: Sure. Madam Reporter, can I have  
14 the last question read back.

15 (The question was read by the reporter.)

16 BY MR. BARRY:

17 Q. Now, with respect to the 1 percent manual  
18 tally, the Elections Code requires that it be performed  
19 during the canvass, correct?

20 A. Correct.

21 Q. And is that process going on simultaneously  
22 with the reconciliation of the election?

23 A. It is. The 1 percent manual tally begins the  
24 day after the election at the beginning of the canvass  
25 process and then continues in parallel with the other  
26 canvass activities.

27 Q. And if you are required to delay performing the  
28 1 percent manual tally until after all vote-by-mail and

1 provisional ballots have been included in the count,  
2 would that jeopardize your ability to conclude the -- or  
3 canvass the election within the -- certify the election  
4 within the statutorily required time?

5 A. I believe that would be in conflict with the  
6 purpose of the canvass. And the purpose of the canvass  
7 being to count every eligible vote that should be  
8 counted in the election.

9 So if we waited until all of those votes were  
10 counted before we conducted the 1 percent manual tally,  
11 the canvass period would be over and we would also lose  
12 the ability to take any corrective action with regard to  
13 the voting system that might be identified during the  
14 conduct of the 1 percent manual tally.

15 Q. And just as an overview, how is it -- how do  
16 you conduct the 1 percent manual tally?

17 A. We begin, again, the day after the election by  
18 publicly conducting the random selection of the  
19 1 percent of the precincts in the election. That's done  
20 with, again, public notice and in a public environment.

21 We typically have observers who come and  
22 participate in that process. In fact, we have one  
23 observer who usually does the actual random selection  
24 for us.

25 And so we select the 1 percent -- the random  
26 selection of the 1 percent of the precincts. Then we  
27 check that to ensure that that also represents all of  
28 the contests and measures that were listed on the

1 ballot, as well as ballots that were tabulated in each  
2 of the systems so to make sure that the sample reflects  
3 all of the equipment that was included in the  
4 tabulation.

5           If that random sample does not include all  
6 contests and measures or all systems used for counting,  
7 then we do additional random selection in order to  
8 ensure that we have the full -- the full representation  
9 of contests and measures and the full representation of  
10 the systems.

11           Then we go through a process of pulling the  
12 physical ballots from the secured storage and taking  
13 those to the counting boards. The counting boards are  
14 trained to do the manual tally. It's a very intricate  
15 process, again, done publically and open observation,  
16 and they go through this process of manually tallying  
17 all of the votes cast on those ballots.

18           Our staff then compares those tallies on a  
19 precinct-by-precinct level to the machine count that  
20 came out of our vote tabulation system.

21           Q. And how many employees are required to conduct  
22 the manual tally when you are conducting or canvassing a  
23 statewide election?

24           A. In the June election, we utilized 55 people for  
25 completing the 1 percent manual tally.

26           Q. And approximately how many hours does it take  
27 to complete the manual tally?

28           A. Again, in June that was about 7500 hours.

1 Q. And do you have employees that provide training  
2 for the 1 percent manual tally?

3 A. We do.

4 Q. And how many employees are required to provide  
5 training for that?

6 A. In the June election we had five lead workers  
7 who provided the training and the oversight of the  
8 process.

9 Q. And for the June presidential primary, how many  
10 ballots did your office include in the 1 percent manual  
11 tally?

12 A. 20,217.

13 Q. And what percentage of that is 20,217 in the  
14 universe of ballots that were cast in the election?

15 A. In the June election, it actually represented  
16 roughly 1 percent of the ballots cast in the election.  
17 So there were 2,026,068 votes cast in the June election.  
18 20,217 manually counted in the manual counts. Roughly  
19 1 percent of the total ballots cast.

20 Q. And in conducting the 1 percent manual tally,  
21 what are the universe of ballots that are included  
22 within the random draw selection?

23 A. The 1 percent manual tally represents the votes  
24 that were counted and included in the semi official  
25 election night results. So those are the polls ballots  
26 that were cast on election day that -- cast on election  
27 day and counted on election night and reported as well  
28 as the vote-by-mail ballots that were processed prior to



1 election day and counted in the election night count.

2 Q. And in the June primary, did your office use  
3 the method -- the batch method or the precinct method?

4 A. In Los Angeles County we used the precinct  
5 method.

6 Q. And why is that?

7 A. It's just it's consistent with our voting  
8 system. Our particular voting system is -- it's a  
9 rather old voting system and the ballots are sorted and  
10 stored in precinct order so there is no -- there is no  
11 benefit to counting in a batch -- in a batch method.

12 Q. Do you include vote-by-mail ballots that were  
13 processed and included in the count during the official  
14 canvass in the 1 percent manual tally draw?

15 A. We include vote-by-mail ballots that were  
16 counted and included in the semi final election night  
17 result.

18 Q. But those vote-by-mail ballots that are  
19 processed after election night are not included in the  
20 random draw process?

21 A. That's correct. They are not included in the  
22 process.

23 Q. And do you include provisional ballots in the  
24 random draw process?

25 A. We do not.

26 Q. And why is that?

27 A. Those ballots are not included in the election  
28 night results that are used to compare to the manual

1 count conducted in the 1 percent tally.

2 Q. Is there any provision in the Elections Code  
3 that you're aware of that requires you to include  
4 provisional ballots in the 1 percent manual tally?

5 MR. GERACI: Objection. Calls for a legal  
6 conclusion.

7 THE COURT: Sustained.

8 BY MR. BARRY:

9 Q. Elections Code Section 15360 is the provision  
10 in the Elections Code that requires election officials  
11 to conduct a manual tally, correct?

12 A. Yes.

13 Q. And when is it that you started your employment  
14 with Los Angeles?

15 A. I started with Los Angeles County in July of  
16 2006.

17 Q. And prior to that you were employed in  
18 Washington?

19 A. Correct. In King County, Washington.

20 Q. And do you recall when the primary occurred in  
21 2006?

22 A. The California primary?

23 Q. Yes.

24 A. In June of 2006.

25 Q. So were you employed by Los Angeles County at  
26 that time?

27 A. No, I started at the end of July of 2006.

28 Q. And were you employed then by the County of

1 Los Angeles for the general election?

2 A. Yes, I was.

3 Q. Now, there were amendments to 15360 in 2006  
4 that became effective January 1, 2007. Are you familiar  
5 with those amendments?

6 A. Yes, I am.

7 Q. And prior to those amendments, did Los Angeles  
8 include vote-by-mail ballots in the random draw  
9 selection?

10 A. No, L.A. County did not include vote-by-mail  
11 ballots in the random or 1 percent manual tally until  
12 2007.

13 Q. And why did L.A. County change its process  
14 beginning 2007?

15 A. That was in response to the amendments that you  
16 referenced that were passed and signed into law in the  
17 2006 legislative session.

18 Q. Now, prior to the effective date of the 2007  
19 amendments, did Los Angeles County include provisional  
20 ballots in the 1 percent manual tally?

21 A. No.

22 Q. And after the effective date of the 2007  
23 amendments, did -- has L.A. County at any time included  
24 provisional ballots in the 1 percent manual tally?

25 A. No.

26 Q. And why is that?

27 A. Two reasons. One is that we did not believe  
28 that's what the law calls for in terms of what needs to

1 be included in the 1 percent manual tally; and again,  
2 the purpose of the 1 percent manual tally is to verify  
3 the validity and the integrity of the vote tally system.

4 And provisional ballots are precinct ballots  
5 cast at polling places and they are tabulated on the  
6 same equipment as all other precinct ballots. So in  
7 terms of checking the validity of the voting systems and  
8 used to validate the votes, there is no difference  
9 between provisional ballots and precinct votes.

10 Q. Now, in 2011 the legislature again amended  
11 15360 effective January 1, 2012. Are you aware -- are  
12 you familiar with that amendment?

13 A. Yes, I am.

14 Q. And can you describe for the Court what effect  
15 that -- or what changes were made by those amendments?

16 A. My recollection and understanding of those  
17 changes was that the law was changed to allow for the  
18 two different methods of conducting the 1 percent with  
19 regard to vote-by-mail ballots, either to do it by  
20 precinct or to do it by batch.

21 Q. And do you have an understanding as to why that  
22 law was passed?

23 A. My understanding is that the history behind  
24 that was that the counties with certain voting systems  
25 that processed vote-by-mail ballots by batch were better  
26 able to conduct the 1 percent and include vote-by-mail  
27 ballots by comparing the batch count to a manual count  
28 of the batch as opposed to doing the

1 precinct-by-precinct results.

2 Q. And would that be more efficient and less  
3 costly for those counties to perform the manual tally in  
4 that manner?

5 A. That's my understanding for those counties and  
6 those voting systems, yes.

7 Q. Now, after the enactment of the amendments in  
8 2011 effective January 1, 2012, did L.A. County change  
9 its practice to include all vote-by-mail ballots in the  
10 1 percent manual tally?

11 A. No, we did not.

12 Q. And why was that?

13 A. Again, we don't believe that that's required  
14 and that the change that was made in 2011 was to allow  
15 for the batch count process. We don't utilize the batch  
16 count process so there was no -- there was no material  
17 change to our process based on those minimums.

18 Q. And after the 2011 amendments effective  
19 January 1, 2012, did L.A. County change its practice  
20 with respect to provisional ballots?

21 A. No, we did not.

22 Q. And why not?

23 A. Again, we did not believe that that was  
24 included in the amendments. There was no reference in  
25 those amendments to provisional ballots.

26 Q. Now, there has been a couple amendments  
27 recently relating to the submission and processing of  
28 vote-by-mail ballots; is that correct?

1 A. I'm sorry. Can you repeat that?

2 Q. Yeah. There has been an amendment in the  
3 Elections Code that allows or requires the registrar to  
4 include vote-by-mail ballots that are received up to  
5 three days after the election in the count, correct?

6 A. Yes. So two changes, two recent changes to  
7 vote-by-mail ballot processing. One is the postmark  
8 plus three requirement that will allow a vote-by-mail  
9 ballot received with a postmark on or before election  
10 day up to three days after the election and for that to  
11 be valid and included in the count.

12 And the other is I believe it's an eight-day  
13 period to allow voters who did not sign their  
14 vote-by-mail ballot to be notified and to cure that by  
15 providing a signature to validate their vote-by-mail  
16 ballot.

17 Q. And is your office required to attempt to give  
18 notification to those voters who have not signed their  
19 vote-by-mail ballot?

20 A. Yes, we are.

21 Q. If you were to include all vote-by-mail ballots  
22 in the manual tally, would that impact your ability to  
23 complete the canvass and certify the election in a  
24 timely manner?

25 A. I believe it would. Again, I -- I don't know  
26 how you could include all the vote-by-mail ballots  
27 during the canvass when the purpose of the canvass is to  
28 count all of those ballots. So you would have to do

1 that after the canvass and certification of the election  
2 in order to include all ballots.

3 Q. Have you considered what the cost might be to  
4 the County to include all vote-by-mail ballots in the  
5 1 percent manual tally?

6 A. We have looked at that, and we estimate that it  
7 would be an additional \$500,000, an additional ten to 12  
8 staff people in order to do that. Again, that doesn't  
9 compensate for the time period.

10 Again, from my perspective, in order to include  
11 all of those ballots, that can't be done during the time  
12 period even, regardless how many people you put on it,  
13 that canvass period is to allow for the counting of all  
14 the ballots. So if you can't verify that count until  
15 after they are all counted, that can't be done during  
16 the canvass period.

17 Q. Now, do you have -- is the process of  
18 conducting the 1 percent manual tally open to the  
19 public?

20 A. Yes, it is.

21 Q. And do you have individuals who regularly  
22 observe that process?

23 A. We do.

24 Q. And do you recall having receiving an e-mail  
25 from Mr. Lutz dated July 4th of this year?

26 A. I believe I received multiple e-mails from  
27 Mr. Lutz during the course of the June election, so I do  
28 recall receiving e-mails.

1 Q. And did one or more of those e-mails relate to  
2 the 1 percent manual tally?

3 A. Yes.

4 Q. And was he raising concerns or complaints with  
5 respect to how you processed and conduct the 1 percent  
6 manual tally?

7 A. I would have to look at the e-mail. I believe  
8 that he was expressing concerns with the conduct of the  
9 1 percent manual tally in the state.

10 MR. BARRY: Your Honor, may I approach?

11 THE COURT: You bet.

12 BY MR. BARRY:

13 Q. So I've handed you a document we've marked as  
14 Exhibit 195. I'd ask you to take your time, read  
15 through that and let the Court know whether this is a  
16 document you received.

17 A. Yes, I do recall this e-mail.

18 Q. And can you identify what this document is?

19 A. This is an e-mail that was sent to registrars  
20 of voters throughout or in various counties advising of  
21 Mr. Lutz's belief that the -- or basically requesting  
22 that the County not certify the election until after the  
23 case was heard with regard to his action here in  
24 San Diego County.

25 Q. And how many people reside in Los Angeles  
26 County, approximately?

27 A. Approximately 12 million.

28 Q. And out of 12 million people, have you received



1 any other complaints about the manner in which you  
2 conduct the 1 percent manual tally other than Mr. Lutz?

3 A. I don't recall anything of that nature, no.

4 Q. To the best of your knowledge, has anyone ever  
5 hacked into Los Angeles County voting system?

6 A. No.

7 Q. And to the best of your knowledge, has anyone  
8 attempted to hack into Los Angeles County's voting  
9 system?

10 MR. GERACI: Calls for speculation.

11 MR. BARRY: I'm asking to the best of your  
12 knowledge.

13 THE COURT: The objection is overruled.

14 THE WITNESS: With regard to the vote  
15 tabulation system and vote counting system, not to my  
16 knowledge.

17 BY MR. BARRY:

18 Q. And do you continue to validate and include  
19 ballots in the canvass up until the last day of the  
20 canvass?

21 A. We continue to process and include ballots up  
22 until the date we certify the election.

23 Q. In a major election such as the upcoming  
24 November election, is it difficult for your office to  
25 complete the canvass within the statutorily required  
26 period?

27 A. I would characterize the canvass process as a  
28 challenging task. It's tedious. There is a lot

1 involved in it. And it does take us the full period of  
2 time in order to do that, yes.

3 MR. BARRY: Your Honor, move for admission of  
4 Exhibit 195.

5 THE COURT: Any objection?

6 MR. GERACI: No objection.

7 THE COURT: Exhibit 195 is admitted.

8 (Exhibit 195 was received in evidence.)

9 THE COURT: Just give me one moment, please.  
10 Next.

11 MR. BARRY: I have no further questions, your  
12 Honor.

13 THE COURT: All right. Cross-examination.  
14

15 CROSS-EXAMINATION

16 BY MR. GERACI:

17 Q. Good morning, Mr. Logan.

18 A. Good morning.

19 Q. Your department has a budget of \$178,572,000,  
20 correct?

21 A. That's approximately correct, yes.

22 Q. That's what's on your resume?

23 A. Yes. That was probably for a fiscal year a few  
24 years ago, but that's roughly the correct amount, yes.

25 Q. I'm sure Mr. Vu wishes he had that budget.

26 THE COURT: That's 178 million?

27 THE WITNESS: Yes.

28 THE COURT: All right.

1 THE WITNESS: Just for clarification, that is  
2 for the entire department. So that's not solely for the  
3 registrar of voters.

4 BY MR. GERACI:

5 Q. That's because your duties overlap. You do  
6 county clerk duties and recorder duties?

7 A. Correct.

8 Q. In addition to registrar of voters?

9 A. Right.

10 Q. I just want to make sure I got all the numbers  
11 that you were stating. In the last election, 5,042,000  
12 eligible voters in L.A. County?

13 A. That's current eligible registered voters.

14 Q. That's current?

15 A. Yes.

16 Q. Okay. In the last election, 2,026,028 actually  
17 voted?

18 A. 2,026,068.

19 Q. Thank you.

20 Of which 722,000 -- I assume that's an  
21 estimate -- were vote-by-mail?

22 A. Correct.

23 Q. And 271,000 were provisional votes?

24 A. 271,000 provisional ballots were cast.  
25 236,700, roughly, were validated and included in the  
26 certified returns.

27 Q. Remainder were excluded for -- because they  
28 couldn't be verified or they had voted already by mail,

1 et cetera?

2 A. Correct, they couldn't be validated as eligible  
3 voters and valid ballots for the election.

4 Q. And as of election night, 387,000 of the  
5 722,000 votes by mail had been included in the semi  
6 official results?

7 A. Correct.

8 Q. All right. Calculate that to be about  
9 53 percent. Does that roughly sound right?

10 A. That sounds right.

11 Q. L.A. County conducts its 1 percent manual tally  
12 utilizing a sorting by precinct and not by batch,  
13 correct?

14 A. That's correct.

15 Q. Is that because you have equipment that can  
16 sort the ballots in their envelopes before starting the  
17 1 percent manual tally?

18 A. That's correct. So our voting system -- in  
19 order to report vote-by-mail ballot results by precinct,  
20 which is required by law in terms of the results, we  
21 have to presort the ballots by precinct prior to  
22 tabulation.

23 Q. Is that done while the ballots are still in  
24 their envelopes?

25 A. Yes.

26 Q. And what kind of machinery do you use to do  
27 that sort?

28 A. The envelopes are sorted using a Bell & Howell

1 automated sorting equipment.

2 Q. And does L.A. County have additional precincts  
3 in order to accomplish the task of sorting into precinct  
4 and -- during the official canvass, do you add  
5 additional precincts?

6 A. No.

7 Q. Once all of the vote-by-mail ballots are sorted  
8 into their precincts, and as I understood your  
9 testimony, there is overlapping time frame in which the  
10 1 percent manual tally has begun, the random process,  
11 are the ballots kept in a storage place?

12 A. I'm sorry. Could you repeat that?

13 Q. After the sorting by precinct, do you store the  
14 ballots in a particular place in a warehouse?

15 A. So the ballots are stored in secured facilities  
16 throughout the process. So the vote-by-mail ballots, as  
17 they come in and are processed, they're stored -- prior  
18 to tabulation, they are stored and secured -- in one  
19 secured facility. Once they go into the tabulation  
20 center and are counted, then they are secured and stored  
21 in that facility by precinct.

22 Q. So after the 1 percent draw occurs, which I  
23 heard you say was the day after election day?

24 A. Correct, that's when we do the random selection  
25 of precincts, yes.

26 Q. Do you first send out public notice?

27 A. Yes, we do.

28 Q. And you do that before election night?

1 A. Yes.

2 Q. So you're able to actually start the 1 percent  
3 manual tally the day after election day?

4 A. We do the random selection the day after  
5 election day and then we have to go through the process  
6 of pulling those ballots and preparing the tally sheets,  
7 so the actual manual tally starts, depending on the  
8 election, usually two to three days after the election.

9 Q. How long does it take to sort all of the  
10 vote-by-mail ballots before you can actually start the  
11 1 percent tallying?

12 A. The vote-by-mail ballots that are included in  
13 the 1 percent tally are already -- they are already  
14 sorted by precinct. They just have to be pulled from  
15 the ballot trays and tabulation. There can be multiple  
16 groups of ballots for an individual precinct. So that's  
17 going to vary, depending on the volume of the election.

18 Q. Okay. And that's because you're only including  
19 in the 1 percent manual tally process the vote-by-mail  
20 ballots that were processed and received before election  
21 night, correct?

22 A. We are only including those that were counted  
23 and reported on election night.

24 Q. So once the random draw occurs, your staff  
25 pulls those precincts from storage and they begin the  
26 process of the 1 percent tally?

27 A. Correct.

28 Q. And how long does it take to complete the

1 1 percent tally?

2 A. That depends on the volume of the turnout in  
3 the election.

4 Q. In this past election?

5 A. It takes approximately -- it can take eight to  
6 ten days then, depending on -- if there is a need to go  
7 back and do additional counts, it can add on additional  
8 days.

9 Q. When you say "it can." Is that what it took in  
10 this past election?

11 A. I would have to -- I would have to verify the  
12 exact number of days in the election. That's what it  
13 takes on average in a counting by election.

14 Q. Based on your recollection, did this past  
15 election take more time, less time or the average time  
16 that you just testified to?

17 A. It was on par for an election with the number  
18 of ballots that were included.

19 Q. Now, if your department was required to include  
20 all vote-by-mail ballots, 100 percent universe, and all  
21 provisional ballots, how would you accomplish that task  
22 if the law requires you to do that?

23 A. Well, I think first we would want to look at  
24 how the law required us to do that how to comply with  
25 that.

26 Q. Assume that it does.

27 A. Again, without specific direction, I -- can you  
28 repeat the question to be sure I understand?

1 Q. Assume the law required you to conduct the  
2 1 percent manual tally use -- tallying 100 percent of  
3 the universe of ballots, including the provisional  
4 ballots and all vote-by-mail ballots in addition to the  
5 precinct ballots. How would you adjust to accomplish  
6 that task?

7 A. We would have to delay the start of the manual  
8 tally until much later in the canvass period until all  
9 of those ballots were counted and tabulated until we had  
10 cumulative results so we could compare to those precinct  
11 counts.

12 Q. Would you need additional staff to do that?

13 A. Yes.

14 Q. Would additional resources or machinery assist  
15 in that task?

16 A. It could.

17 Q. Anything more that you would require in order  
18 to accomplish that task?

19 A. As I stated earlier, I think my concern would  
20 be time frame because if we couldn't conduct that until  
21 all the votes were counted, then I don't think there  
22 would be sufficient time to conduct that tally and still  
23 meet the requirements, certify the election on the date  
24 that the law requires the election be certified.

25 Q. If the law require -- then allowed you to  
26 utilize batching as part of that process, could you  
27 begin the 1 percent manual tally concurrent with your --  
28 the time frame within which you are doing the official



1 canvass and continue with batches until you've completed  
2 the entire 1 percent manual tally?

3 A. Not sure that I completely understand what you  
4 mean by batch system. Our voting system does not  
5 process vote-by-mail ballots by batch. They process  
6 them by precinct.

7 Q. Other counties in the state of California  
8 utilize batching as a method of conducting their  
9 1 percent manual tally for vote-by-mail ballots,  
10 correct?

11 A. Correct.

12 Q. And they utilize that because it's a more  
13 efficient way for them to conduct the 1 percent manual  
14 tally and complete that task during the official  
15 canvass?

16 A. And that efficiency is based on the vote  
17 tallying system and the balloting systems that they have  
18 in place which are different than the vote tallying  
19 systems and ballots we have in Los Angeles County.

20 Q. Understood that that's the administration that  
21 you're choosing and that you're used to, but --

22 MR. BARRY: Objection. Assumes facts not in  
23 evidence that it's his choice.

24 THE COURT: Sustained. Let's rephrase.

25 BY MR. GERACI:

26 Q. These other counties implement, because the law  
27 allows them to implement, batching as a process to do  
28 the 1 percent manual tally in their counties, correct?

1           A.     Correct.  The law allows both options and  
2 allows the selection based on the voting system that's  
3 in use in that jurisdiction.

4           Q.     In fact, the 2007 amendment that added that  
5 subsection to the 1 percent manual tally section in the  
6 Election Code was designed to and address the counties  
7 that were concerned about their ability to complete the  
8 1 percent manual tally during the official canvass?

9           A.     I believe that was the 2011 amendments.

10          Q.     Oh, thank you.  You're correct.  But my  
11 statement is correct?

12          A.     That's my understanding of the purpose of those  
13 amendments.

14                   MR. GERACI:  Thank you.  Nothing further.

15                   THE COURT:  Redirect.  
16

17                                   REDIRECT EXAMINATION

18 BY MR. BARRY:

19          Q.     So, Mr. Logan, what is the -- does the vote  
20 tabulating system used by Los Angeles County have a  
21 name?

22          A.     It does.  It's the microcomputer tally system.  
23 It was the vote tabulation system that was originally  
24 developed by the Internal Services Department of  
25 Los Angeles County originally in the late 1960s.

26          Q.     And if I were to refer to the Ink-A Vote  
27 system, what would I be referring to?

28          A.     Ink-A Vote is a component of our voting system.

1 What Ink-A Vote -- there is actually -- it's also  
2 referred to Ink-A Vote Plus -- Ink-A Vote represents the  
3 conversion of the legacy punch card voting system in  
4 Los Angeles County to an optical scan system, so the  
5 ballots that used to be IBM punch cards, they still look  
6 like IBM punch cards, but instead of punching holes  
7 through the ballots, the oval is inked in using an  
8 inking device. The Ink-A Vote Plus component is the  
9 precinct-based reader that alerts a voter if they over  
10 voted or if the ballot is being read as entirely blank  
11 and that provides accessible voting options at the  
12 polling place.

13 Q. And are the components of L.A. County's voting  
14 system required to be certified by the Secretary of  
15 State?

16 A. Yes, they are.

17 Q. And has that system been certified?

18 A. Yes, it is certified.

19 Q. And if you were to change any component or  
20 process of that voting system, would you have to have  
21 that system recertified by the Secretary of State?

22 A. Yes, it would have to be -- it would have to be  
23 reviewed for recertification.

24 Q. And is your voting system as it's currently  
25 structured capable of processing vote-by-mail ballots by  
26 batch?

27 A. The system is capable of processing  
28 vote-by-mail ballots by batch. So the system is capable

1 of doing that. If we did it in that manner, we would be  
2 unable to report those results on a precinct-by-precinct  
3 basis which is required by law.

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

5 THE COURT: One moment. Anything further?

6 MR. GERACI: Just to clarify, your Honor.

7 THE COURT: Give me one moment.

8 Ink-A, I-n-c-a?

9 THE WITNESS: I-n-k-a.

10 THE COURT: I-n-k-a. Okay. Is it all in caps?

11 THE WITNESS: No. It's Capital I, small n-k,  
12 and then hyphen A.

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

14 The court reporter and I are in the same boat.

15 MR. GERACI: Don't forget Ink-A Vote plus.

16 THE COURT: Okay. Counsel.

17

18 RE-CROSS-EXAMINATION

19 BY MR. GERACI:

20 Q. Mr. Logan, what's your definition of the  
21 batching? What's your understanding of what the batch  
22 method is?

23 A. My understanding of batching means you don't  
24 have to presort the physical ballots by precinct, you  
25 can run them through the tabulator en masse and that  
26 those results will be reported in a precinct-by-precinct  
27 basis.

28 Q. Can you batch by precinct?

1           A.    I guess I would have to understand what you  
2 mean by batch by precinct.  I guess arguably a precinct  
3 is a batch.

4           Q.    Arguably a precinct is a batch.

5                    No further questions.

6           THE COURT:  One moment.

7                    Okay.  Anything further?

8           MR. BARRY:  No, your Honor.

9           THE COURT:  May Mr. Logan be excused?

10          MR. BARRY:  Yes, your Honor.

11          MR. GERACI:  With our thanks.

12          THE COURT:  Thank you, Mr. Logan.

13          THE WITNESS:  Thank you.

14          THE COURT:  Okay.  Next witness.

15          MR. BARRY:  Defense calls Michael Vu.

16          THE COURT:  All right.  Mr. Vu, good morning.

17          MR. BARRY:  Your Honor, we could do -- we could  
18 read the deposition testimony of Julie Rodewald,  
19 probably fill up -- I think counsel has --

20          THE COURT:  Any objection?

21          MR. GERACI:  No objection.

22          THE COURT:  Do you have a transcript to provide  
23 to the Court?

24                    As a matter of fact, Counsel, let me suggest  
25 that we do the following, which is consistent with the  
26 way we normally do when excerpts are in lieu of a live  
27 appearance, that the excerpts be lodged and have them  
28 marked as a separate exhibit but lodged with the Court.

1 Counsel present them. But the reporter be relieved of  
2 reporting the excerpts.

3 So your record will be the actual hard copy of  
4 the excerpts lodged as part of the Court's transcript.

5 MR. GERACI: That's agreeable.

6 MR. BARRY: Your Honor, I don't have the text  
7 of --

8 THE COURT: Can you do so?

9 MR. BARRY: I can do so.

10 THE COURT: Okay. So why don't we do this.  
11 Let's have marked next in order, and understanding you  
12 don't have it prepared quite yet, but before we wrap up  
13 on Tuesday in this case that the defendants are directed  
14 to lodge a true and correct copy of the excerpts from  
15 Ms. --

16 MR. BARRY: Rodewald.

17 THE COURT: -- Rodewald's deposition.

18 Let me just go through this. 196.

19 (Exhibit 196 was received in evidence.)

20 THE COURT: And when was Ms. Rodewald's  
21 deposition taken?

22 MR. GERACI: September 23rd, I think.

23 THE COURT: September 23, '0 --

24 MR. GERACI: '16.

25 THE COURT: '016. All right.

26 MR. GERACI: It was a telephonic deposition,  
27 your Honor.

28 THE COURT: All right. So just give me a

1 second here.

2 Will there be any counter designated excerpts  
3 from the plaintiff?

4 MR. GERACI: Your Honor, I have lodged with  
5 your clerk our excerpts along with a cover sheet that  
6 identifies the page and line numbers. So I've already  
7 done that.

8 I would also ask the Court to include in that  
9 exhibit the attached exhibit in the deposition, which is  
10 Exhibit 1.

11 THE COURT: All right. Well, again, normally  
12 what I do is that we identify the excerpt presented by  
13 one side and we separately mark the excerpts or the  
14 counter designation by the other side.

15 So what we are going to do is Exhibit 197 will  
16 be the counter designation excerpts presented by  
17 plaintiff for Ms. Rodewald's deposition of September 23,  
18 '016.

19 (Exhibit 197 was received in evidence.)

20 THE COURT: Just give me a moment here.

21 Okay. So, again, do you have something I can  
22 look at as you're reading them?

23 MR. BARRY: Yes. We can provide you -- for now  
24 I'll provide you with the original.

25 THE COURT: Okay. That's fine.

26 MR. BARRY: And then we have a certified copy  
27 here.

28 THE COURT: Now, I'm not so sure -- again, I

1 described the normal process. The record of the  
2 testimony presented, it becomes Exhibits 196 and 197 and  
3 the reporter is relieved of the obligation to report  
4 while counsel are presenting to the Court.

5 Is there an agreement of that or do you -- to  
6 do it that way or do you all have a different process by  
7 which you like to do it?

8 MR. GERACI: Your Honor, just for  
9 clarification, the exhibit that's attached to the  
10 deposition will be part of my excerpts submitted as  
11 Exhibit 197.

12 THE COURT: Well, okay. That was an exhibit  
13 that Ms. Rodewald was examined about at her deposition?

14 MR. GERACI: Yes.

15 THE COURT: That should be separately marked as  
16 the next exhibit in order, which will become  
17 Exhibit 198.

18 MR. GERACI: Very well.  
19 (Exhibit 198 was received in evidence.)

20 THE COURT: But -- so I think I'm hearing an  
21 agreement to the process by plaintiff.

22 How about the defense?

23 MR. BARRY: Yes, that's fine, your Honor.

24 THE COURT: Okay. All right. So -- okay.

25 So I'm staring at a transcript of  
26 Ms. Rodewald's deposition taken September 23, '016.  
27 What I would like counsel to do as you go through it --  
28 are you going to read it by yourself, Counsel, or the



1 question and answer?

2 MR. BARRY: Tag team, yes.

3 THE COURT: All right. So make sure as you go  
4 through it, though, you identify page and line of the  
5 excerpts and then present it to me like that or present  
6 it afterwards.

7 MR. BARRY: Essentially what we have -- and  
8 forgive me, I've misplaced the actual designation that I  
9 provided to counsel. But I do know that what I  
10 designated is the initial identification of the witness,  
11 the first few lines. Then I know where my designation  
12 starts within the transcript itself, and it essentially  
13 is my questioning of Ms. Rodewald consists really of  
14 about ten pages.

15 THE COURT: Well, I'm not trying to limit  
16 either one of you. I just want to make sure I'm clear  
17 on what I should be marking in a transcript.

18 MR. BARRY: Understand. Once we start, there  
19 won't be any end.

20 THE COURT: All right. So whenever you are  
21 ready.

22 You're relieved of having to report the actual  
23 excerpts.

24 THE REPORTER: Thank you.

25 MR. BARRY: Page four, line seven.

26 THE COURT: All right. That's fine. Go ahead.  
27 (Transcript read; not reported.)

28 MR. BARRY: If you would refer then to page

1 seven, beginning at line seven.

2 (Transcript read; not reported.)

3 MS. KARNAVAS: Your Honor, excuse me. There is  
4 an errata sheet so I'm going to try to correct.

5 MR. BARRY: It's really nothing of substance,  
6 just --

7 THE COURT: And I hear what you're saying and I  
8 did note -- okay.

9 MR. GERACI: Perhaps the errata sheet needs to  
10 be attached as part of the excerpts.

11 THE COURT: Now, let's just stop for a moment.  
12 I want you all to be assured that the record you're  
13 creating is accurate.

14 The reason I'm asking you to present this to me  
15 now is you have me fully focused, fully engaged in this  
16 process. So whatever the defense wants to do so too  
17 will plaintiff be allowed to do, but I need to make sure  
18 you two are following each other.

19 MR. BARRY: That's fine, your Honor.

20 MR. GERACI: My only disadvantage, your Honor,  
21 is I didn't get a certified copy delivered to me by the  
22 court reporter so I would like -- Mr. Barry was kind  
23 enough to loan me his copy last night and I drew my  
24 excerpts that I submitted.

25 THE COURT: Do you have the --

26 MR. GERACI: I don't have the errata sheet.

27 THE COURT: Do you have the page where  
28 Ms. Rodewald signed off on the corrections?

1 MR. GERACI: I do not.

2 THE COURT: Okay.

3 MR. GERACI: So I'll just rely on counsel when  
4 I'm reading my excerpts that she'll identify where there  
5 is an errata.

6 THE COURT: Okay. So, with that in mind, if  
7 you get to a point where -- now, here is what I just  
8 want to explore with counsel for a moment.

9 Occasionally, not always, a witness will make a  
10 change to a deposition testimony that one side does not  
11 want to present to the trier of fact but another side  
12 does. So is it the defenses' expectation that you will  
13 be presenting every single change Ms. Rodewald changed  
14 to her testimony?

15 MS. KARNAVAS: Your Honor, I think that the  
16 changes are noncontroversial.

17 THE COURT: I'm not even going there yet.

18 MR. BARRY: Yes.

19 THE COURT: Okay.

20 MR. GERACI: I assume to the changes to the  
21 portion of the excerpts that we're reading, not the  
22 changes to the entire testimony.

23 THE COURT: So what I understand defense  
24 counsel doing is wherever there is a change noted by  
25 Ms. Rodewald on the signature page, that they will be  
26 substituting that change with the testimony presented at  
27 the time of her deposition.

28 MR. GERACI: That's what I understood.

1 THE COURT: All right. There you go.

2 So let me ask counsel to back up and present  
3 what you were about to present.

4 MR. BARRY: Okay. May I restart on page seven,  
5 line seven?

6 THE COURT: You bet.

7 (Transcript read; not reported.)

8 THE COURT: Counsel, can you hold on just a  
9 second, please.

10 Okay. Continue on, please. I think you were  
11 at page 15, line 11.

12 MR. BARRY: That's where I was going to start.  
13 (Transcript read; not reported.)

14 MR. BARRY: That's where I conclude, your  
15 Honor.

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

17 All right. Do you want to present your  
18 excerpts from Ms. Rodewald's deposition at this time?

19 MR. GERACI: Yes, your Honor. We'll continue  
20 with the same method. I'll ask the questions and  
21 counsel will be Ms. Rodewald. So we'll continue.

22 THE COURT: If that's okay with you?

23 MS. KARNAVAS: That's fine, your Honor.

24 THE COURT: All right.

25 MS. KARNAVAS: Can you just give me one moment,  
26 just making sure I'm looking at the right thing.

27 THE COURT: That's fine. If you -- if that's  
28 how you want to do it, that's fine.

1           On the other hand, Counsel, if you just want to  
2 read the question and answer and move forward, we can do  
3 that too.

4           MR. GERACI: Either way I'm happy. I just  
5 don't have the errata sheet, that's the disadvantage.

6           THE COURT: All right. I got you.

7           MR. GERACI: I'm starting at page 21, line 25.

8           THE COURT: Oh, 21, okay.

9           MR. GERACI: I'll read the question; you just  
10 read the answer.

11          THE COURT: You are at page 21?

12          MR. GERACI: Line 25.

13          THE COURT: Twenty-five, got you.

14          MR. GERACI: And continuing to page 25, line  
15 two.

16          THE COURT: Got you.

17 (Transcript read; not reported.)

18          MR. GERACI: And continuing on page 30,  
19 lines --

20          THE COURT: One moment, Counsel.

21          Okay. Thank you very much. Please continue.

22          MR. GERACI: Continuing on page 30, lines ten  
23 through 13.

24          THE COURT: Okay. Let me jump ahead. Okay.  
25 I'm there.

26 (Transcript read; not reported.)

27          MR. GERACI: Continuing to page 36, line 19.

28          THE COURT: All right. Just give me a moment.

1 All right. Please continue.

2 MR. GERACI: Page 36, line 19 through page 40,  
3 line five.

4 THE COURT: All right. Let me leap ahead.  
5 Okay. I'm there.

6 (Transcript read; not reported.)

7 MR. GERACI: That concludes.

8 THE COURT: All right. So, Counsel, we will --  
9 Madam Deputy, will you return this official transcript  
10 to counsel.

11 THE BAILIFF: Yes, your Honor.

12 THE COURT: So who do you have lined up for  
13 this afternoon?

14 MR. BARRY: Mr. Vu.

15 THE COURT: Is he the last witness?

16 MR. BARRY: Yes.

17 THE COURT: How much time do you anticipate  
18 you'll need for that?

19 MR. BARRY: Maybe two hours.

20 THE COURT: All right. And how about you,  
21 bearing in mind you already conducted one examination?

22 MR. GERACI: No more than a half hour.

23 THE COURT: So it sounds like we are going to  
24 finish well before the close of business today?

25 MR. GERACI: If I'm permitted, your Honor, I'll  
26 call Mr. Lutz to do the rehabilitation portions,  
27 rebuttal portions of his testimony. Or would you prefer  
28 I wait until Tuesday?

1 THE COURT: Probably the latter.

2 MR. GERACI: Okay.

3 THE COURT: Okay. So we'll be in recess now.

4 MR. BARRY: Real quickly, your Honor. One of  
5 the concerns we have, of course, is we don't know what  
6 Professor Stark is proposing to testify to. So in  
7 considering -- once we conclude with Mr. Vu and after we  
8 hear Professor Stark, we discussed at the outset that we  
9 may need to bring in some testimony.

10 THE COURT: Absolutely. Let's take that up  
11 after we get through -- after we conclude the testimony  
12 on Tuesday.

13 Now, what I'm anticipating would be a single  
14 expert to respond to Dr. Stark's testimony. That's what  
15 I'm anticipating.

16 MS. KARNAVAS: Your Honor, I'm going to handle  
17 Dr. Stark.

18 But my question is what -- the proffer that we  
19 received, albeit vague at this point, is that he was  
20 going to testify as to the language in Elections Code  
21 Section 15360.5 in terms of what the term "verify"  
22 means, and that's really invading the province of the  
23 Court to make a determination. So --

24 THE COURT: It could. It could as you're  
25 describing it. And as you all have seen, I'm not shy.  
26 If it looks to me like a witness is being asked to  
27 interpret the Elections Code, I'm not shy about  
28 sustaining an objection on legal opinion, but I'm just

1 not sure if that's what he's going to say.

2 MS. KARNAVAS: So I think it would be  
3 appropriate for us to get a proffer on the record.

4 THE COURT: Why don't you, Counsel, talk to one  
5 another, see if you can reach an agreement on the scope  
6 before, for example, plaintiff incurs the expense of  
7 bringing Dr. Stark down, I understand, from Northern  
8 California?

9 MR. GERACI: Yes, sir.

10 THE COURT: All right. So just chat with one  
11 another, discuss with one another, bring it back to my  
12 attention. We'll talk.

13 MS. KARNAVAS: All right.

14 THE COURT: So we'll be in recess until 1:30.

15 MR. BARRY: Thank you, your Honor.

16 (Lunch recess taken.)

17 THE COURT: All right. Before we resume,  
18 anything else from either counsel?

19 MR. BARRY: No, your Honor.

20 MR. GERACI: No, your Honor.

21 THE COURT: All right. Defense, next witness.

22 MR. BARRY: Michael Vu.

23 THE COURT: All right. Mr. Vu, if you could  
24 follow the directions of my deputy, please, and take the  
25 stand.

26 Do you recall you're still under oath, sir?

27 THE WITNESS: I do, your Honor.

28 THE COURT: All right. Just give me one



1 moment, Counsel.

2 All right. Whenever you're ready, Counsel.

3

4 DIRECT EXAMINATION

5 BY MR. BARRY:

6 Q. Mr. Vu, you're the registrar of voters for the  
7 County of San Diego?

8 A. I am, yes.

9 Q. Can you refer you to Exhibit 140.

10 A. (Witness complies.)

11 Q. Is that your resume?

12 A. It is, yes.

13 Q. And does that document accurately reflect your  
14 experience in elections?

15 A. It is.

16 MR. BARRY: Your Honor, I'd move admission of  
17 Exhibit 140.

18 THE COURT: Any objection?

19 MR. GERACI: One second, your Honor. I'm  
20 sorry. No objection.

21 THE COURT: Exhibit 140 will be admitted.  
22 (Exhibit 140 was received in evidence.)

23 BY MR. BARRY:

24 Q. And can you tell the Court, what do your job  
25 duties entail?

26 A. My job duties entails the overall  
27 administration of the elections and the direction of the  
28 administration of the elections for the department as

1 well as for the County. That includes things such as  
2 working with my staff of 65 to train and recruit nearly  
3 seven to 8,000 poll workers during the life of a  
4 countywide, statewide election.

5 It includes campaign finance disclosure  
6 reporting, which we post online.

7 It includes the overall department's budget,  
8 the hiring in of staff as well as such things as the  
9 ballot layout and the tabulation of all votes cast  
10 within the County.

11 It also includes securing nearly 1,300 physical  
12 polling places throughout the entire county for a  
13 countywide, statewide election in making sure that we  
14 abide by federal and state laws.

15 Q. Now, you've been the registrar of -- registrar  
16 of voters for San Diego for how long?

17 A. Since 2012.

18 Q. And prior to that, were you employed by the  
19 County of San Diego?

20 A. I was.

21 Q. And what was your position?

22 A. I was the assistant registrar.

23 Q. And when did you begin your employment with the  
24 County of San Diego?

25 A. In, I believe, April of 2007.

26 Q. Approximately how many registered voters are  
27 there currently in San Diego County?

28 A. There is approximately 1.56 million active

1 registered voters in the county.

2 Q. And do you expect that number to increase  
3 before the November general election?

4 A. I do.

5 Q. And why is that?

6 A. Well, it is a big presidential election year.  
7 It's an open presidential election. During presidential  
8 election years, it, of course, increases voter interest  
9 in terms of participating to vote for the presidential  
10 contest.

11 Q. And what percentage of the voters who are  
12 registered are vote-by-mail voters?

13 A. Approximately 62 percent.

14 Q. Approximately how many people turned out to  
15 vote in the June presidential primary?

16 A. The June presidential primary there is  
17 approximately 775,000.

18 THE COURT: Now, let me back up. Percentage of  
19 voters who vote by mail, I thought I heard 62 percent,  
20 but maybe you said 52 percent.

21 THE WITNESS: It's 62, your Honor. You heard  
22 correctly.

23 THE COURT: Excuse me for interrupting you.

24 BY MR. BARRY:

25 Q. And approximately how many people did you  
26 expect to turn out to vote for the November general  
27 election?

28 A. I anticipate anywhere from a million to

1 1.2 million individuals casting a ballot.

2 Q. And how many precincts will there be for the  
3 June -- I'm sorry, for the November general?

4 A. Can you repeat that question?

5 Q. Yes. How many precincts will there be for the  
6 November general election?

7 A. We will have 1,552 precincts.

8 Q. And how many polling places? You mentioned  
9 1,300?

10 A. Over 1,300 physical polling places.

11 Q. And how many iterations of the ballot will  
12 there be?

13 A. There will be 623 different official ballot  
14 types for this upcoming election.

15 Q. And compared to most elections, is that a lot?

16 A. That's one of the highest that I've seen. The  
17 last presidential election I believe it was 527, so we  
18 certainly surpassed that number.

19 Q. And so why is it -- why so many ballot types  
20 this year?

21 A. Well, first of all, you've got to understand  
22 the overall demographics in the geography of the county.  
23 We have over 300 political jurisdictions over the county  
24 which overlap one another, and then depending on what  
25 contests require an election which drives the total  
26 number of ballot types that there are, so in this  
27 upcoming election you will have 184 contests on the  
28 ballot, 52 of those which are statewide propositions or

1 17 measures -- 17 -- sorry, 17 statewide propositions  
2 and 35 local measures. There will also be 132 offices  
3 that will be on the ballot. Now, there is also 468  
4 candidates across all those respective contests.

5 MR. BARRY: Your Honor, I have a demonstrative  
6 document that I want to have -- I've marked as  
7 Exhibit 196. I have provided a copy to Mr. Geraci.

8 THE COURT: Now, this morning we identified 196  
9 to be the -- your -- the defendants' excerpts from  
10 Ms. Rodewald's deposition.

11 197 is plaintiffs' excerpts from Rodewald's  
12 deposition. Let's identify your demonstrative --

13 MR. GERACI: 198, your Honor, is the exhibit  
14 for Ms. Rodewald's deposition that I haven't provided  
15 you yet.

16 THE COURT: I don't know if we actually  
17 assigned an exhibit number to it, did we?

18 MR. GERACI: 198 is what I wrote down.

19 THE COURT: Okay. So 198 will become Rodewald  
20 exhibit.

21 So now we are up to 199, which is -- what do  
22 you call that, Counsel?

23 MR. BARRY: These are sample ballots for the  
24 upcoming presidential election.

25 THE COURT: All right. 199 will be identified  
26 as sample ballots.

27 BY MR. BARRY:

28 Q. So, Mr. Vu, can you identify what Exhibit 199

1 is?

2 A. Exhibit 199 is a sample of our official ballot  
3 for specific precincts which we will be using for our  
4 poll worker training purposes, and what it consists of  
5 for a ballot for this upcoming election is two cards,  
6 what we call card A and a card B, that voters should be  
7 mindful of as we approach the upcoming election.

8 Q. And, in your experience, have you ever had to  
9 spread an election contest over more than one ballot?

10 A. We have not had to spread it over one ballot  
11 card, no. This is the very first time. It's  
12 unprecedented in that regard.

13 Q. And if you look at the upper right-hand corner  
14 on each of the pages, is there reference to card A and  
15 card B, correct?

16 A. That's correct.

17 Q. So during your testimony, you may be referring  
18 to card A and card B. I just wanted to point out to the  
19 Court as what we are speaking to when we have that  
20 conversation.

21 So does this provide -- or does the two-card  
22 ballot present problems for conducting the election?

23 A. It does. It presents additional challenges.  
24 Let me just say that every presidential election is  
25 always a Herculean task. This puts it over the top in  
26 terms of that Herculean effort that our office is  
27 undergoing at this point in time because of the two-card  
28 situation.

1           Some of the things that we have had to address  
2 associated with this, first of all, is poll worker  
3 training. There is going to be additional poll worker  
4 training to ensure that voters are issuing two cards for  
5 every voter, card A and card B. That's why you see a  
6 color here, a green and a red, so that way when we  
7 instruct our poll workers to let them know that if they  
8 see a red card B on top of their pad, they know that  
9 they have either done one of two things. They have  
10 issued one too few cards or one too many cards, which,  
11 of course, then they know that they've erred.

12       Q.    Okay. Now --

13       A.    Can I continue on in terms of the operational  
14 issues regarding the card?

15       Q.    Sure. I'm sorry.

16       A.    That's only a little bit of the whole piece of  
17 the puzzle. There are definitely operational issues  
18 associated with this election we had to overcome and  
19 face.

20           A couple things that we had to do with the poll  
21 workers in general is they pick up their supplies ten  
22 days in advance of the election. That's their election  
23 supplies. And, again, we recruit anywhere from 7,000 to  
24 8,000 for this upcoming election.

25           What we've had to do is reengineer all of our  
26 supply boxes. And the reason why we had to reengineer  
27 all of our supply boxes size-wise is because we are  
28 issuing more supplies to them and there was a concern

1 associated with are they going to be able to fit all of  
2 these supplies in their vehicle. So that was one step  
3 of doing that.

4 By doing the reengineering of such things as a  
5 supply box which converts over to the ballot box on  
6 election day, there was concerns about all of two cards  
7 being submitted into the ballot box and stacking up so  
8 high that there wasn't going to be sufficient space in  
9 it. So what we've added now is going to be a securable  
10 mail ballot bag at every single one of these voting  
11 precincts to ensure that that occurs.

12 There is also other challenges. Storage. For  
13 the voter, they may just see one card. For us, we see  
14 not just 1.56 million cards that we have to print and  
15 mail, but in this upcoming election we are going to  
16 produce anywhere from three to 3.5 million cards for  
17 this upcoming election, which needs to all come back to  
18 our office. So there are storage space that we have to  
19 address at our facility to be able to conduct that  
20 process.

21 We know that the tally process, the tabulation  
22 and the -- of these ballots, not only for the mail  
23 ballots, it's going to take longer and we are addressing  
24 those, but also on election night it's going to take  
25 longer to process all of these ballots.

26 And then, of course, on the official canvass,  
27 which is part of this conversation, is there is a huge  
28 dramatic impact related to the two-card ballot that's



1 associated with our ability to finish off the official  
2 canvass.

3 Let me give you some of those nuances for the  
4 mail ballots, though.

5 If a voter -- mail ballot voter submits one of  
6 the two cards back to us, right, they vote their ballot  
7 and we receive it and they only submit one, the voter  
8 cannot then turn around and try to submit the second  
9 card later on, okay. Because they've already submitted  
10 their vote for this election. There is no way of  
11 tracking that for every single one of the registered  
12 voters within the county. So that's number one.

13 Number two, we have to sometimes suspend and  
14 reissue ballots for mail ballot voters. When a mail  
15 ballot voter doesn't say that they received their mail  
16 ballot, what we will do to ensure the integrity of the  
17 election is to suspend that mail ballot and then reissue  
18 them another ballot. So, let's say, for example, the  
19 variations that may come back to us in terms of a mail  
20 ballot.

21 Let's say it comes back with two A cards and  
22 one B card. What is our decisions going to be in terms  
23 of counting that ballot? Those cards? What if -- so  
24 there is going to be additional research associated with  
25 this. Absolutely additional research because what we  
26 also do is to ensure that we count every vote possible  
27 that we can, what we will go through -- and we'll talk  
28 about this, I assume, later on -- is determine whether

1 or not there are situations where there are multiple  
2 people in household of voters that receive their mail  
3 ballots and are casting it and somehow they switch their  
4 envelopes, and now we see that they've got two A cards  
5 and two B cards in the one envelope, perhaps to save  
6 postage.

7           So we are looking at all these various  
8 iterations of what happens in a two-card situation to  
9 ensure that we are able to count every single one of  
10 those ballots.

11           Let's talk about the polling place. At the  
12 polling place, when a person who is a mail ballot voter  
13 and they try to surrender only one of their two cards,  
14 again, that mail ballot voter is going to have to vote a  
15 provisional ballot. And the reason why they are going  
16 to have to vote a provisional ballot is because we don't  
17 know what the disposition of the other card is.

18           So every single mail ballot voter who decides  
19 not to vote their mail ballot but decides to go to a  
20 polling place is going -- that can only submit either --  
21 they have to either submit both cards, and if they  
22 can't, then they are going to have to vote  
23 provisionally.

24           Those are just but a few. I'm sure I'll  
25 continue some of the other operational challenges that  
26 we have with the two-card situation.

27           Q. Okay. Now, approximately how many people voted  
28 vote-by-mail ballots in the June presidential primary?

1           A.    There was approximately 490,000 individuals  
2   that cast a -- that voted a mail ballot.

3           Q.    And approximately how many do you expect to  
4   cast -- how many vote-by-mail voters do you expect to  
5   cast in the upcoming November general?

6           A.    In the upcoming November general, I anticipate  
7   anywhere from 675,000 to 725,000 vote-by-mail ballots  
8   being returned to us.

9           Q.    And how many people do you -- how many people  
10   cast provisional ballots in the June presidential  
11   primary?

12          A.    There was approximately 75,000 provisional  
13   ballots that were voted upon and brought back to our  
14   office on election night.

15               MR. BARRY:  Your Honor, I would move admission  
16   of Exhibit 199.

17               THE COURT:  All right.  One moment, please.  
18   That's the sample ballot?

19               MR. BARRY:  Yes, yes.

20               THE COURT:  Any objection?

21               MR. GERACI:  I thought it was demonstrative.

22               MR. BARRY:  It's up to you.

23               THE COURT:  I noticed you said for  
24   demonstrative purposes, but nonetheless he's now moving  
25   it into evidence.  Any objection?

26               MR. GERACI:  No objections.

27               THE COURT:  One moment, please.

28               Counsel --

1 MR. BARRY: Yes.

2 THE COURT: -- the Court would like a little  
3 clarification. I'm looking at 199. And continuing on  
4 this overall ballot is a whole bunch of items that a  
5 voter can vote on.

6 MR. BARRY: Right.

7 THE COURT: What I'm not clear on, and Mr. Vu  
8 may have said so, but I'm going to invite you to clarify  
9 for the Court is what are each of these items called if  
10 they do have a name associated with them?

11 MR. BARRY: Each of these items would be a  
12 particular contest.

13 THE COURT: A contest, okay.

14 MR. BARRY: Could be --

15 THE COURT: That's all I needed to know. Just  
16 give me a moment.

17 (Exhibit 199 was received in evidence.)

18 THE COURT: All right. Please continue on.

19 BY MR. BARRY:

20 Q. Mr. Vu, I would refer you to Exhibit 148.

21 A. Yes.

22 MR. GERACI: What number was called, your  
23 Honor?

24 THE COURT: 148.

25 MR. BARRY: Your Honor, if I just may go back  
26 for a moment.

27 BY MR. BARRY:

28 Q. Earlier, Mr. Vu, you testified that there would

1 be 600 and --

2 A. Twenty-three --

3 Q. -- twenty-three --

4 A. -- different types of the official ballot for  
5 this upcoming election. So this is one of the 623  
6 different types.

7 Q. So there will be 623 variations of --

8 THE COURT: Got you.

9 BY MR. BARRY:

10 Q. -- of this particular ballot.

11 Now, I've asked you to look at Exhibit 148.  
12 You just mentioned in your testimony that there were  
13 75,386 provisional ballots cast in the June primary,  
14 correct?

15 A. That's correct.

16 Q. And can you tell the Court what Exhibit 148 is?

17 A. Exhibit 148 is all the provisional ballots  
18 broken down by three categories, those that were grouped  
19 that we counted the provisional ballots, the entire  
20 ballot, that is. Those that we partially counted the  
21 ballot. And then, lastly, those that we could not count  
22 the ballot.

23 Q. And how many of the 75,386 that were cast were  
24 counted in their entirety?

25 A. There was 51,427, which represents 68.2 percent  
26 of the total -- of the universe of provisional ballots  
27 that were voted on.

28 Q. And within the category of a provisional ballot

1 that was counted in its entirety, what was the largest  
2 section of those voters?

3 A. The largest section of those voters were mail  
4 ballot voters who couldn't surrender their ballot at  
5 their assigned -- what that means is instead of voting  
6 their mail ballot, they decided to vote at the polling  
7 place and they couldn't surrender their mail ballot.  
8 There were 37,172 situations that occurred in.

9 Q. And the reason that you require them to vote  
10 provisionally is to prevent voters voting multiple  
11 times, correct?

12 A. That's correct. We are, again, in the field of  
13 ensuring election integrity, and part of that is to  
14 ensure that there is no double voting situations  
15 occurring between a voter being able to cast a mail  
16 ballot and it being counted and then also voting a  
17 provisional ballot and that one also being counted.

18 Q. And if I refer you to the lower right-hand  
19 corner of Exhibit 148, there is a category for voters  
20 who voted both provisionally and vote-by-mail ballots,  
21 correct?

22 A. That's correct. There were 521 situations  
23 where a voter voted a mail ballot and then also a  
24 provisional ballot.

25 Q. Now, with respect to the lower middle portion  
26 where it says "partially counted" --

27 A. Yes.

28 Q. -- how many ballots were -- provisional ballots

1 were partially counted?

2 A. There were 17,226.

3 Q. And where would be -- what would be an instance  
4 where you would only partially count a ballot?

5 A. Well, the bottom portion of that chart are  
6 situations where the voter went to their unassigned  
7 polling place and voted a ballot that was different than  
8 what they were eligible to vote on, so there were  
9 contests on there that they were not allowed to vote on.  
10 So by law we are to redact those contests that they were  
11 not eligible to vote on off the ballot.

12 Q. And that is done manually?

13 A. That is done manually, yes.

14 The other situation that's represented here for  
15 the June election, because it -- what I will call a semi  
16 open, semi closed primary, party primary election  
17 because the Democratic Party, the American Independent  
18 Party and the Libertarian Party opened up their primary  
19 to nonpartisan voters; whereas, the Republican Party,  
20 Peace and Freedom Party as well as the Green Party  
21 closed off their presidential candidates to everyone  
22 except for those that were registered with their  
23 political party.

24 So what's represented here are situations where  
25 it says 10,269 registered status different than eligible  
26 party ballot voted is situations where the voter's  
27 political party preference status they were registered  
28 with us was different and not -- it was different than

1 the party ballot that they selected and voted upon, and  
2 they were situations where they were not eligible to  
3 vote that political party ballot, and what I mean by  
4 political party ballot, I'm talking specifically about  
5 the presidential contest as well as central committee  
6 contest as well.

7 Q. Now, in the -- again, referring back to the  
8 lower right-hand corner where it says "not counted" --

9 A. Yes.

10 Q. -- there were 6,733 provisional ballots that  
11 were not counted?

12 A. Six -- yes, that's correct. 6,733.

13 Q. And what was the largest portion of the voters  
14 who voted provisionally whose ballots were not counted?

15 A. That would be those individuals that are not  
16 registered within the County.

17 Q. And then there is a number of different  
18 categories under that, including people who voted  
19 vote-by-mail and provisional, correct?

20 A. That's correct.

21 Q. In the instance where someone voted their  
22 vote-by-mail ballot provisionally, which ballot would  
23 you count?

24 A. We would count the vote-by-mail ballot.

25 Q. So you do count that voter's ballot, you just  
26 don't count both?

27 A. That's correct.

28 Q. And so all of the 75,386 provisional ballots



1 were adjudicated during the canvass?

2 A. They were adjudicated during the official  
3 canvass, yes.

4 Q. And all legitimately cast ballots were counted?

5 A. That's correct. Every legitimate and valid  
6 ballot that was voted upon was counted in this election.

7 Q. And does that extend not only to provisional  
8 ballots but vote-by-mail and poll ballots?

9 A. All ballots, including vote-by-mail ballots and  
10 polls ballots.

11 Q. For staffing, what is your permanent staff at  
12 the registrar?

13 A. As I had mentioned earlier, we are allocated 65  
14 full-time employees, so 65.

15 Q. And you mentioned earlier that you're going to  
16 be hiring or have hired between 800 and 900 temporary  
17 workers?

18 A. We are, yes, seasonal staff members we bring on  
19 to be able to conduct an election of the size we embark  
20 on or actually we are embarking on.

21 THE COURT: I'm sorry. What was that number  
22 again you just said?

23 THE WITNESS: 800 to 900 seasonal staff are  
24 needed to be brought on in addition to the 65 full-time  
25 employees.

26 THE COURT: I got you.

27 BY MR. BARRY:

28 Q. And how many poll workers will you need to

1 staff the 1,300 plus polls?

2 A. We are in the process of recruiting 7,040 poll  
3 workers. But in every situation, we know that they are  
4 going to be poll workers that drop out. So we are  
5 adding another 607 individual standby poll workers. So  
6 nearly 8,000 poll workers that we bring on.

7 We have become one of the largest employers for  
8 one day. I think it fits anywhere between Qualcomm as  
9 well as -- and Kaiser Permanente in terms of the total  
10 number of employees we hire for that one day.

11 Q. Approximately how many vote-by-mail ballots  
12 were included in the semi final official canvass for the  
13 June presidential primary?

14 A. Approximately 256,000 vote-by-mail ballots.

15 Q. And approximately how many vote-by-mail ballots  
16 remain to be processed during the official canvass?

17 A. Approximately 233,000.

18 Q. How many employees, permanent and temporary,  
19 are required to process the vote-by-mail ballots?

20 A. It takes approximately 230 individuals to  
21 process the mail ballots.

22 Q. And do you have procedures for processing  
23 vote-by-mail ballots?

24 A. We do.

25 Q. Are you familiar with those procedures?

26 A. I am.

27 Q. I refer you to Exhibit 146.

28 A. Yes.

1 THE COURT: One moment, Counsel.

2 All right. 146?

3 MR. BARRY: Yes.

4 BY MR. BARRY:

5 Q. Can you identify what this packet of documents  
6 consists of?

7 A. It consists of our vote-by-mail procedures from  
8 beginning to end.

9 Q. And with respect to pages one through 37, can  
10 you describe what it is that those procedures represent.

11 A. Essentially, those procedures are addressing  
12 when a mail ballot voter applies for a mail ballot and  
13 how we enter it into our voter registration system mail  
14 ballot module.

15 Q. And with respect to pages 38 through 80, what  
16 do those documents represent?

17 A. Thirty-eight through 80 represents when the  
18 mail ballot has been voted upon and that's been received  
19 in our office and how we process that mail ballot.

20 Q. Are workers that process vote-by-mail ballots  
21 provided training?

22 A. They are.

23 Q. And what type of training do they receive?

24 A. There is hands-on training. There is  
25 instructional training that we provide. And then there  
26 is the procedures that we provide as well. And then  
27 there is, of course, supervision for individuals that  
28 begin the process of processing the mail ballots.

1 Q. And how many supervisors are required to  
2 provide training?

3 A. Four to five individuals.

4 Q. If I can refer you to Exhibit 177.

5 THE COURT: Are you offering 146, Counsel?

6 MR. BARRY: Yes, your Honor.

7 THE COURT: Any objection?

8 MR. GERACI: No objection.

9 THE COURT: Just give me one moment, please.  
10 146 is admitted.

11 (Exhibit 146 was received in evidence.)

12 THE COURT: Now we are on to 177.

13 BY MR. BARRY:

14 Q. Mr. Vu, I would like to discuss with you the  
15 steps that we take to process mail ballots. Can you  
16 identify to the Court what Exhibit 177 represents.

17 A. Exhibit 177 is a really summarized snapshot of  
18 what it takes to process a vote-by-mail ballot.  
19 We've kind of distilled it into seven steps. I think  
20 the Court should realize that there are so many other  
21 steps that are not represented on this chart, but for  
22 the sake of trying to understand what it takes to  
23 process the vote-by-mail ballots, we've tried to distill  
24 those into respective steps and all the exceptions  
25 associated with vote-by-mail ballots as they're coming  
26 into our office.

27 Q. Now, prior to election night, approximately how  
28 many man hours does your office spend processing

1 returned vote-by-mail ballots?

2 A. Tens of thousands of hours.

3 Q. And when does voting start?

4 A. Voting has already started for the November  
5 election.

6 Q. I'm sorry. What was your answer?

7 A. When does it start? It has already started for  
8 the November election. We are required as a result of  
9 the Military and Overseas Voting Empowerment Act, it's a  
10 federal act that was passed in 2010 where it requires us  
11 to mail, fax or e-mail a ballot to an active deployed --  
12 actively deployed military or overseas voter.

13 There was approximately 10,000 of those ballots  
14 that were e-mailed, mailed or faxed to those voters, and  
15 we've already started to receive those ballots back from  
16 voters.

17 Q. Now, when can you then mail vote-by-mail  
18 ballots to voters?

19 A. So the general -- if they are outside the  
20 military and overseas that are actively deployed, we are  
21 able to mail out the ballots 29 days in advance of the  
22 election. For this upcoming election, that will be  
23 October 11th when we will mail out the ballots. And the  
24 reason why it's October 11th, it's not necessarily the  
25 29th day, the reason why we have to mail it out on  
26 October 11th as opposed to October 10th, which is the  
27 29th day, because October 10th is Columbus Day and the  
28 post office is closed that day.

1 Q. And how many ballots -- vote-by-mail ballots  
2 will your office be mailing out beginning on  
3 October 11th?

4 A. Over 960,000 mail ballots will be submitted to  
5 the post office to mail.

6 Q. Now, if we can go back to Exhibit 177, and I'd  
7 like you to try and detail for the Court what the  
8 process is for getting a vote-by-mail ballot from the  
9 time you receive it back from the voter to the time it's  
10 included in the count.

11 A. So after we've received a sufficient quantity  
12 of mail ballots, what we do is we go through and  
13 manually review the mail ballot envelopes. And what we  
14 do is we do a cursory review and what we are trying to  
15 identify by manually doing that is to see if there is  
16 any situations where a voter has not signed their  
17 envelope. That way we can pull it immediately and  
18 contact the voter so that they can cure their unsigned  
19 envelope. That way we can actually process them.

20 If there are any other extraneous items,  
21 envelopes that are not mail ballot envelopes, we pull  
22 those as well.

23 So the very first step here in what you're  
24 seeing is we place a mail ballot that has been received  
25 from the post office onto our Pitney Bowes sorter with a  
26 56-pocket mail ballot sorter or envelope sorter. It  
27 runs approximately 24,000 envelopes per hour and creates  
28 essentially a batch of 400.

1           Now, when I refer to a batch, I'm referring to  
2 a different type of batch than what prior testimonies  
3 have been associated with batches, okay.

4           So this is only specific to the sorter. The  
5 batches -- as the envelopes are going through the  
6 sorter, they are creating the batch of 400. The reason  
7 why we do it in batches of 400 is to provide some level  
8 of quality assurance through the entire process of the  
9 envelope.

10           Now, as it's going through that sorter, what's  
11 happening is it's going -- the -- there is a camera that  
12 is on the sorter. It's a high speed camera that's  
13 taking a snapshot of every single one of the envelopes  
14 as it's going through. And what it's capturing is the  
15 full face of the envelope. And the reason why is  
16 because there could be situations where the voter on the  
17 top right-hand corner of our mail ballot envelope is a  
18 check box that says, essentially, I'm paraphrasing here,  
19 is "I spoil my ballot." If they check mark that, the  
20 system has an ability to detect that and see that that's  
21 an exception and that it will out stack those types of  
22 envelopes, okay.

23           As well as it's going through the -- and the  
24 camera is seeing this envelope, it's capturing the  
25 signature as well as the bar code. Now, the bar code is  
26 essentially the voter because that's the voter's I.D.  
27 that's embedded in that bar code.

28           That information is stored on to memory, hard

1 drive, and all that information is then imported into  
2 our voter registration system.

3 Now, as you can see in step one, there are  
4 already a couple of exceptions to the process. You have  
5 situations where, as I mentioned, a spoil situation  
6 where it gets out stacked, it gets handled differently,  
7 takes time to be able to do that.

8 You have situations where the camera is not  
9 able to recognize the bar code, and that's an exception  
10 so those envelopes get out stacked and we have to  
11 process those a little differently, either re-create  
12 the -- generate another -- print another label with the  
13 bar code to slap on to the envelope or hand manually  
14 scan that bar code into the system.

15 As it's going through the system now, I know  
16 that in prior testimony it made it sound like we just  
17 simply do a one check in terms of the signature. We do  
18 do a signature verification of the envelope. But let me  
19 just say that at minimum we look at every single  
20 envelope manually twice. Every single one that came  
21 back, particularly of the 490 that were -- thousand mail  
22 ballots that were counted and processed into the count  
23 on the June election was verified at minimum twice.

24 Now, as we get to the signature checking  
25 process, what you see here -- what we do is when we have  
26 captured the digital image of the signature, we are now  
27 able to bring it and run it against our voter  
28 registration system and compare on a computer screen the



1 registration of that -- the signature off the  
2 registration for that voter as well as the signature  
3 from the envelope for that voter, and we are doing a  
4 comparison.

5           If we look at our screens on the voter  
6 registration system, there's four signatures to --  
7 there's four signature sets to every screen, and that's  
8 how we were able to see if there is a match.

9           If they don't match, as you can see here, there  
10 are going to be situations where they are going to get  
11 challenged. And so that's the very first step is that  
12 if there is a situation of the signature does not match  
13 what's on their registration form, we will challenge  
14 that.

15           Again, if we have missed it manually in terms  
16 of a no signature situation, at that point in time we  
17 will be able to then pull it and get it back -- not the  
18 actual ballot, but notify the voter that they need to  
19 cure and provide us their signature.

20           You also see here on the -- under step two  
21 under the exception signature box error, when we  
22 converted over to this current voter registration system  
23 and poured it over all of the signatures, there was a  
24 subset of those signatures that we cannot pour over  
25 because it can just not be transitioned over to our new  
26 voter registration system at the time.

27           So when we run into these situations, we  
28 actually have to go to microfiche, print out an image of

1 that signature off of microfiche to be able to draw that  
2 comparison. Again, that's what we call a signature box  
3 error.

4 And then a printed signature situation as well.

5 Now, that's only the very first step of the  
6 signature checking process because you get to step  
7 three. Step three is, again, the verification. We go  
8 through step two again, look at every single one of  
9 those signatures. It's done by separate set of eyes to  
10 confirm are we correctly adjudicating the signature  
11 appropriately. And we liberally construe in favor of  
12 the voter pursuant to the Elections Code.

13 As you can see here, we verify the challenges.  
14 At that point in time, if we verify the challenge and  
15 say, you know what, no, this does match the voter's  
16 signature, then we will take the challenge off so we can  
17 actually count the ballot or whatever is inside that  
18 envelope.

19 We determine at that point in time, again,  
20 another exception, where it's one of those his or her  
21 signature types of situations. Again, doesn't  
22 necessarily mean his or her, but it could be multiple  
23 voters voting mail ballots in same household and they  
24 somehow switched envelopes but signed the envelope,  
25 okay.

26 So, again, that takes time for us to be able to  
27 say, you know what, Michael Vu signed his wife's  
28 envelope and put his ballot inside there then took his

1 wife's -- my wife's envelope -- or, I'm sorry, my wife  
2 signed my envelope and submitted her ballot inside.

3           So once we are able to make that match, we can  
4 count both, but it takes time to be able to make that  
5 determination.

6           Q. Let me just step back for one instance. So  
7 when you send the vote-by-mail ballots, you send an  
8 envelope for the ballot to be returned to you, correct?

9           A. Correct.

10          Q. And that ballot or that envelope has the  
11 preprinted name of the voter whose ballot is supposed to  
12 be inside that envelope, correct?

13          A. Not only is it preprinted with a person's name;  
14 but, again, that bar code represents that person.

15          Q. So you would be able to tell from reviewing the  
16 envelope, you'd look at the preprinted name on the  
17 envelope and see that the signature of the person and  
18 the printed name of the person would be different than  
19 the preprinted?

20          A. That's correct. So we would challenge that.  
21 And again, to ensure that we are giving all benefit to  
22 that voter and what we presume is a ballot inside the  
23 benefit of the doubt, we will segregate that as an  
24 exception to the overall process. And you would be  
25 surprised on how many exceptions there are that they  
26 switched the envelope. It happens all the time. And  
27 that takes time to be able to adjudicate those types of  
28 situations throughout the process there.

1           Now, again, it's a batch of 400. Batch of  
2 envelopes of 400 that's run through the Pitney Bowes  
3 system, right.

4           Once that's done, we get to step four. Once  
5 all -- what we are trying to do is just clear the entire  
6 batch. If there is one challenge in there, we haven't  
7 cleared it or if we haven't verified the challenge, then  
8 that whole batch stops, okay. We can't process that  
9 because, again, there is the -- the Pitney Bowes sorter  
10 is keeping track of every single batch of envelopes and  
11 which envelope is in which batch for quality assurance  
12 purposes.

13           So, let's say, for example, that all the  
14 challenges were adjudicated, those that were definitely  
15 challenged were challenged, those that were unchallenged  
16 we took off the challenge from our voter registration  
17 system.

18         Q.   So before we go on to step four real quickly,  
19 so the challenge process. The person who is reviewing  
20 the signature initially makes the challenge, I don't  
21 think this matches, then that challenge is elevated to  
22 someone else, correct?

23         A.   It is elevated to another individual, yes.

24         Q.   And if that person still says I don't think it  
25 matches, do you then go to look to other records that  
26 you have for that voter?

27         A.   Not in this process. We will, though, we will  
28 look at -- pull other documents associated with this.

1 So when it comes down to signature checking, regardless  
2 of the process here, we can upwards go to four different  
3 types of individual looking at an envelope. And part of  
4 that is pulling other documents. Other registration  
5 forms that the person has filled out. Other types of  
6 election materials where we may see a signature that  
7 they have that we could allow and unchallenge that  
8 ballot.

9           It was something that was actually passed  
10 recently. One of the recent election legislations is to  
11 be able to do that. And so we do so so that way we can  
12 count that ballot.

13       Q. Thank you. Could you --

14       A. Do you want me to continue?

15       Q. Sure.

16       A. Okay. So after the verification and  
17 reconciliation process, we run through a second pass,  
18 which is known as an audit pass. And during that audit  
19 pass, all the ballots that were validated will go  
20 through the system, and there is a slicer on the  
21 Pitney Bowes sorter which will slice it and it will out  
22 stack into one of the 56 pockets.

23           Now, at this -- this is the point where we sort  
24 them by the city level and we batch them in batches of  
25 200. Again, the batches that we're referring to here is  
26 not the same batches that has been provided to prior  
27 testimony. We'll get to that in terms of the overall  
28 process at the end of step seven, during step seven.

1           Slicing of the envelope, it occurs for those  
2 envelopes that are validated. Those that remain  
3 challenged get out stacked. And when they get out  
4 stacked, they get manually handled at this point  
5 because, again, after they've been run through the first  
6 time, they don't really get manually handled again till  
7 the second pass. It's during that second pass is where  
8 we pull out situations where a signature has been  
9 challenged multiple times and then we'll elevate it  
10 upwards to one of our chief deputies to look at it.

11           And at that point in time, the chief deputy is  
12 looking at the physical printed out registration form as  
13 well as any other supporting documentation that they  
14 have for that specific voter, and he goes through it and  
15 looks at it and adjudicates to determining, erring on  
16 the side of the voter, whether or not that challenge  
17 should be removed. So that's step four.

18           Step five is the opening and extraction  
19 process. This occurs 14 days in advance of the  
20 election. Now, the Elections Code says ten business  
21 days, but for us every day is a day to process mail  
22 ballots, particularly for this upcoming election, we  
23 need every single moment of that time.

24           So it begins 14 days in advance of the election  
25 by the Elections Code. It's a manually intensive  
26 process where we require just 60 individuals for this  
27 one process of just pulling out the -- hopefully a  
28 ballot out of the envelope, okay. And the process to be

1 able to do that is that all of the 60 individuals that  
2 are going to extract the ballot or whatever contents are  
3 inside that envelope out of the envelope, all of the  
4 signatures are face down. The reason why we want the  
5 signatures face down is so that way we can secure the  
6 privacy of the vote for that voter.

7           Then they take out the hopefully ballot.

8           Now, this is where a whole set of exceptions  
9 comes into play in terms of what's inside. We have  
10 situations where voters cast their ballot, vote their  
11 ballot, on a sample ballot and -- sample ballot. That  
12 is what's contained in a sample ballot and information  
13 pamphlet, it's not their official ballot, okay. They  
14 vote that ballot and they insert it into the envelope.  
15 That requires us, as an exception, to remake that on to  
16 official ballot so we can scan it.

17           There are situations where the ballot may be  
18 damaged. Again, to be able -- if it's a damaged ballot,  
19 then we have to remake that ballot, and I believe that  
20 was described by Mr. Wallis yesterday in terms of how  
21 that process is handled, but it's, again, a one off  
22 situation to be able to ensure that we are counting  
23 every single vote and every single ballot that's  
24 eligible to be counted.

25           There are going to be situations where we see a  
26 ballot that is not even from the election. We've seen  
27 ballots that were from the 2000 -- I anticipate we are  
28 going to see a ballot from the 2014 election. In the

1 2014 election, we saw one from the 2012 election. I  
2 cannot speak as to why we see that. It just happens.

3 We also see situations where voters have  
4 written all around the edges of the ballot; and if they  
5 write inside the timing mark is what Mr. Wallis has  
6 described to you yesterday, particularly if they've done  
7 all around it, it might cause us to remake that ballot  
8 so that way we can scan it into the system.

9 There are going to be situations, as I  
10 mentioned before, where there may be too many ballots.  
11 In a too many ballot situation when there is only one  
12 signature, we may not -- we cannot count that ballot  
13 because we just don't know which one is the voter's  
14 ballot. Again, that gets highlighted even more and  
15 accentuated more with the two-card ballot situation.

16 Identifying marks. We redact any identifying  
17 marks off of the ballot. I believe Debra Seiler  
18 described that yesterday is that a new law was passed a  
19 couple years ago, which before we couldn't count the  
20 ballot if there was an identifying mark of the voters on  
21 the voter's ballot. Now we can redact the identified  
22 mark off the ballot so we can count the ballot, but it  
23 takes time to be able to do that.

24 So if we go to step six here, we go -- once the  
25 ballots are now outside of the envelope, okay, they are  
26 then submitted to a whole different group of individuals  
27 to do what we call a quality assurance of that, of those  
28 ballots. There is a group that are remaking, redacting



1 potentially votes off of ballots. And we talked about  
2 the reasons why they would redact votes off the ballot  
3 because they were not eligible to vote to a specific  
4 contest perhaps.

5           There are situations where there's voter intent  
6 enhancement that we have to make. Now, on the voter  
7 intent enhancements, I believe that Mr. Wallis did a  
8 great job of describing that yesterday, but let me go  
9 through that again as to what we do.

10           To enhance a ballot, when we know there is a  
11 consistent mark of a voter on a ballot, but we know that  
12 the scanners are not going to pick up those votes.  
13 Let's say they circled around the bubble of the ballot  
14 as opposed to filling in the bubble and they have done  
15 that with all of the different respective contests.  
16 Well, we know that -- the voter's intent in that regard  
17 because we know what the Secretary of State uniform  
18 counting guidelines standards are.

19           So what we do is we take a blue highlighter and  
20 we highlight those marks, keeping intact the voter's  
21 mark but also keeping track as to what was our mark  
22 associated with that. That way a voter's ballot and  
23 votes are counted once it goes through the counting  
24 system.

25           It's at that point we also box the ballots into  
26 a batch of nearly 400 at that point in time. Now, that  
27 may change for the upcoming November election because of  
28 the two-card situation. In part, it's 400 to a batch,

1 and that is what is considered the batch that gets run  
2 through the tabulation system of what's been discussed  
3 in terms of the 1 percent manual tally.

4 Now, step seven. We talked about exceptions in  
5 all these different areas. Step seven even has  
6 exceptions associated with this as well. Again,  
7 although our folks are looking at it when they are  
8 extracting to see if there's any damaged situations, we  
9 really don't know if there is a damaged ballot in there  
10 or an unscannable ballot until it actually goes through  
11 the scanner.

12 So when the tabulation team receives the box  
13 and they are running a ballot through, they may hit upon  
14 a ballot that cannot be scanned and it requires, again,  
15 a one off exception of how to handle that specific  
16 situation as I've described.

17 Again, there may be voter enhancement  
18 situations. Double voting. I think multiple registrars  
19 as well as my staff have spoken about voter enhancement  
20 intense situations where they over voted, they voted  
21 for, let's say, in this upcoming election they voted for  
22 Trump and they voted for Hillary Clinton and then they  
23 X'd out for one of the candidates. Well, we know,  
24 again, using the Secretary of State uniform counting  
25 standards, that we can count the vote that was not X'd  
26 out. So, in that regard, that's where we may redact  
27 that ballot or enhance that ballot.

28 And that pretty much completes it before that

1 box then gets stored in our secure facilities.

2 Q. Now, I'd like to go back to the procedure where  
3 you would remake a ballot.

4 A. Yes.

5 Q. If you remake a ballot in its entirety, how is  
6 it -- that's on a whole new ballot, right?

7 A. That's correct.

8 Q. And is there -- do you track the ballot that  
9 you remade to the remade ballot?

10 A. We do. We serialize -- what we do is if there  
11 is a situation where we need to remake a ballot, for the  
12 most part, let's say it's a damaged ballot that we know  
13 it's not going to be scannable, what we will do is just  
14 take the same ballot type, again, from that specific  
15 precinct, and we will have two individuals, one that  
16 calls out the vote and the other individuals to mark the  
17 new, if you will, ballot. And they are both serialized,  
18 and that way we can go back to that respective ballot  
19 should we be questioned on whether or not we have  
20 properly handled it.

21 Q. So it sounds like it's fairly labor intensive.  
22 Would that be correct?

23 A. It is. It's not just labor intensive. It  
24 takes a lot of focus. It takes a lot of understanding  
25 of the overall process to be able to do all of these  
26 various components of processing a mail ballot.

27 Q. And for the June presidential primary, you had  
28 to go through that process with 490,000 vote-by-mail

1 ballots?

2 A. We did have to go through that with 490,000  
3 plus -- these are the 490,000 was only what was counted.  
4 There were many more that were not counted that were  
5 not -- I guess I wouldn't say not very many more, let me  
6 describe that as generally the 99th percentile when we  
7 receive a mail ballot that we are going to count that  
8 mail ballot, but there are ballots that weren't counted  
9 that had also gone through this rigorous process.

10 Q. Now, the ballots that are redacted with  
11 Wite-Out, are they also maintained by your office?

12 A. We do maintain the redacted Wite-Out taped  
13 ballots. They have to be secured for 22 months for  
14 federal elections. And then for local elections, they  
15 have to be retained for six months.

16 Q. And if you use Wite-Out tape on a particular  
17 ballot, why is it you use Wite-Out tape?

18 A. Well, the reason why we use Wite-Out tape is  
19 because really we are not obliterating the voter's vote.  
20 We are just ensuring that the voter's intent is made --  
21 that we're able to count the voter's vote or situations  
22 where they were not eligible to vote for that specific  
23 contest. You know, if anyone questioned us, we could  
24 look at that ballot, peel off the tape and see what the  
25 actual -- what had actually happened.

26 Q. So let me step back also a moment. So I wanted  
27 to discuss the official canvass, which all of this is  
28 part of the official canvass, correct?

1 A. This is part of the official canvass, yes.

2 Q. And so what activities occur during the  
3 official canvass?

4 A. What parts of activities happen during the  
5 official canvass? Well, during the official canvass, we  
6 are to process and -- all the remaining ballots that  
7 needs to be considered for the election. These include  
8 any unscannable ballots, any polling place ballots,  
9 provisional ballots as well as mail ballots that did not  
10 get into the count as the semi final official canvass.

11 It also includes the reconciliation of voting  
12 precincts. What I mean by reconciliation of the voting  
13 precincts is however many ballots that were issued to  
14 the poll workers, we need to adjudicate and determine  
15 whether or not how many ballots we receive back, we need  
16 to also look at the roster of voters to determine how  
17 many poll ballots did the poll workers issue and how  
18 many did we count. We have to look at how many spoiled  
19 ballots that were cast to arrive back at a specific  
20 number.

21 There's many other places to that  
22 reconciliation to the precincts that needs to occur.

23 Another piece to the official canvass is to  
24 ensure that, again, no double voting situation is --  
25 occurs. So we are preventing that from occurring.

26 And then, finally, a component of the official  
27 canvass is the 1 percent manual tally.

28 Q. So, Mr. Vu, if I could, I would like you to

1 take a look at a provision in the Elections Code  
2 Section 15302.

3 Before I ask you that, do you recall any other  
4 processes as part of the official canvass?

5 A. Processes that we had as part of the official  
6 canvass. For the most part, that's pretty much all  
7 encompassing associated with the official canvass.

8 Q. I would like you to take a look at  
9 Section 15302 and tell me if there are any other parts  
10 to the official canvass that are set forth in  
11 Section 15302.

12 A. So although I've stated, I think it's really  
13 clear here in 15302 what we do by reconciliation of the  
14 ballots, which is -- or a reconciliation of the  
15 precinct, I'm sorry, a reconciliation of the number of  
16 signatures on the rosters with the number of ballots  
17 recorded on the ballot, on the statement is part of  
18 that.

19 Other things that I didn't describe but is part  
20 of it is counting any valid write-in votes associated  
21 with it.

22 Again, we've already talked about the  
23 reproducing any damaged ballots, if necessary. The  
24 remaking of those. And, as it states here, reporting  
25 the final results to the Secretary of State's office.

26 For the most part, that's all 15302.

27 Q. And how long do you have to certify the  
28 election?

1           A.    We have 30 days to certify election.

2           Q.    And effective this election or this election  
3 cycle, there were a couple of new laws enacted by the  
4 legislature relating to the return of vote-by-mail  
5 ballots and efforts that you may have to make to contact  
6 voters in certain circumstances as well as efforts to  
7 contact voters or notify voters if their vote-by-mail  
8 ballot has not been signed, correct?

9           A.    That's correct.  There were two laws, one that  
10 was passed in 2014 that was under bill -- under what is  
11 known as Senate Bill 29.  We call it -- elections  
12 officials call that postmark plus three.  I believe  
13 Mr. Logan referred to that in his testimony.

14                    Let me just reinforce that.  It's a situation  
15 where we are now able -- before postmark plus three and  
16 before SB 29 came into law, a voter's mail ballot had to  
17 be within our possession at 8:00 a.m. on election night.  
18 Any mail ballots that were not received as of that  
19 moment in time could not be considered and were not  
20 eligible for the count, okay.  Those were invalidated  
21 because they were not timely received.

22                    After SB 29 was passed in 2014 and signed into  
23 law, now, if a voter submitted their ballot through the  
24 U.S. Postal Service and it was postmarked on election  
25 day and received within three days of election day, we  
26 can now consider those as part of the count and are  
27 timely received.

28                    There is other parts to that as well within the

1 law that I'm not referring to that's part of SB 29 that  
2 allows us to count the mail ballot. I won't go into any  
3 great detail associated with it. But that, for the most  
4 part, describes what SB 29 was about.

5           The other bill you're referring to is what I  
6 call the eight-day cure period. That bill was Assembly  
7 Bill 477. That was passed last year in 2015. So  
8 effective this year for the very first time. The  
9 eight-day cure period, there are situations where the  
10 mail ballot was not signed by the voter. As I described  
11 before, we notify the voter that they have not signed  
12 the ballot envelope, and they are able to cure that  
13 signature which is not on the envelope eight days -- up  
14 to eight days after the election day.

15       Q. And what efforts do you then make to contact  
16 the voter?

17       A. Well, we send them a letter. And if they have  
18 not responded, we may go so far as contacting them if we  
19 have a telephone number or an e-mail to notify them.

20           If we do notify them and they need the  
21 affidavit to -- that they need to fill out and to give  
22 us their signature, that's posted online. We provide  
23 that online so the voter can print it out, sign it and  
24 get it back to us.

25       Q. Now, what impact will those new laws have on  
26 your ability to complete the official canvass within the  
27 statutorily required period?

28       A. Well, it prolongs the overall process. This



1 becomes a potential voter behavior issue, right. So I  
2 anticipate that, depending on the voters' behavior, if  
3 they submit it through the post office, that there are  
4 going to be more and more of these situations which  
5 would then prolong the ability to finish counting all of  
6 the -- or to process all the vote-by-mail ballots.

7 Q. Now, I would refer you to Exhibit 171 if I  
8 could.

9 THE COURT: Are you offering 177?

10 MR. BARRY: Yes, your Honor.

11 THE COURT: Any objection?

12 MR. GERACI: No objection.

13 THE COURT: One moment. 177 will be admitted.  
14 (Exhibit 177 was received in evidence.)

15 THE COURT: And you are on to 171?

16 MR. BARRY: Yes, your Honor.

17 THE COURT: Just give me a moment. All right.

18 BY MR. BARRY:

19 Q. Mr. Vu, can you identify what Exhibit 171 is?

20 A. Yes, Exhibit 171 is a diagram of how paper  
21 ballots are scanned and tabulated as well how touch  
22 screen votes are voted and counted as well.

23 May I describe?

24 Q. Yes.

25 A. So if you look at the diagram, there's really  
26 only two methods by which a voter votes. They either  
27 vote by paper or they vote on a touch screen, either at  
28 the polls; by mail, it's, of course, by paper.

1           So if you look quickly through the touch screen  
2 ballots path in the flow, every single ballot that's  
3 cast -- voted upon on the touch screen is transferred,  
4 all those votes are transferred from the voter  
5 verifiable paper trail on to paper, okay.

6           And, as you can see here, is that paper ballot,  
7 once the votes have been transferred from the voter --  
8 VVPAT, in short, on to a paper ballot, it's run through  
9 the optical scanner, central count scanner is what we  
10 call it. And then that's directly connected to our GEMS  
11 tabulation system.

12         Q.    And when you say that the touch screen ballots  
13 are transferred on to a paper ballot, that's done  
14 manually, correct?

15         A.    That's done manually, yes.

16           As you can see above, you have a paper ballot.  
17 And it forks out into two different paths.

18           Let me just say a couple of things, which is, I  
19 believe, significant in this regard. If I can go back  
20 to Exhibit 199. The only difference between a mail  
21 ballot and a polls ballot or even a provisional ballot I  
22 think it's been described, again, a provisional ballot  
23 is a polls ballot.

24           The only difference between a mail ballot and a  
25 polls ballot is the word on the top right-hand corner of  
26 the ballot, because it's coded all the same way for  
27 every single precinct. That's the only difference that  
28 separates the mail ballot and polls ballot.

1           So the only -- so if we talk about the polls  
2 ballot, and it's been described before, the polls ballot  
3 gets run on election night through the optical scanner,  
4 okay, and that's the precinct count optical scanner.  
5 And those ballots and those votes are retained on the  
6 memory card. The memory card then goes to an upload  
7 device, which is really just an optical scanner that is  
8 directly then connected to the GEMS tabulation system,  
9 and that memory card is inserted into that scanner and  
10 uploaded into -- the votes uploaded into the tabulation  
11 system.

12           I described provisional ballots. Provisional  
13 ballot is a polls ballot, and those ballots don't go  
14 through that channel because, again, this happens after  
15 election day when we process -- after we've processed  
16 the provisional envelope and/or any damaged ballots at  
17 that time. Damaged ballots, those are the polling place  
18 ballots from election night or maybe even a mail ballot  
19 that were damaged are run through -- again through the  
20 optical scanner and then -- which, again, is directly  
21 connected to the GEMS tabulation system.

22           I think what's distinct about this is  
23 regardless of whether it happened -- the ballot is  
24 received before or after, it's going through the same  
25 exact method and the exact same hardware to get into the  
26 GEMS tabulation system. There is no difference between  
27 the two.

28           So once you are able to determine the devices,

1 again, which is outlined in blue, the optical scanner,  
2 the optical scanner central, the upload device and the  
3 GEMS tabulation system, that's what we are talking about  
4 in terms of verifying the accuracy of the tabulation  
5 system.

6 And again, the bottom right-hand corner, again,  
7 let me just reinforce, the GEMS tabulation system is not  
8 in any way connected to the Internet.

9 MR. BARRY: One second, your Honor. You don't  
10 wan me to touch that, I'm sure.

11 THE COURT: She makes you look good, Counsel.

12 MR. BARRY: She does.

13 BY MR. BARRY:

14 Q. So, Mr. Vu, we have a short video that's  
15 approximately -- it's less than two minutes, and I would  
16 like for you -- we will stop it periodically. I would  
17 like you to describe for the Court what the process is  
18 that we are going through at this point.

19 THE COURT: Now, what exhibit number, Counsel?

20 MR. BARRY: We are only offering this for  
21 demonstrative. I'm not going to ask to admit this.

22 THE COURT: That's fine. Have we seen this  
23 before?

24 MS. KARNAVAS: No.

25 THE COURT: Let me make note of it.

26 MR. BARRY: It's 181, I believe.

27 THE COURT: All right. Just give me a moment.

28 My exhibit list identifies it as Pitney Bowes

1 video?

2 MR. BARRY: Yes.

3 THE COURT: Just give me a moment.

4 MR. BARRY: And your Honor, before we go on,  
5 can I ask permission to move Exhibit 171?

6 THE COURT: Any objection?

7 MR. GERACI: No objection.

8 THE COURT: Give me a moment.

9 All right. Exhibit 171 will be admitted.

10 (Exhibit 171 was received in evidence.)

11 THE COURT: All right. So we've dimmed the  
12 lights. And why don't you proceed.

13 BY MR. BARRY:

14 Q. Sure. Mr. Vu, if you would like us to stop at  
15 some point in time, tell us what's going on.

16 A. Well, right there what you're seeing is  
17 envelopes going through the Pitney Bowes sorter. And  
18 those are part of the hardware there. I'll let it keep  
19 on going as the envelopes are going through.

20 As you can see, the person over to the right  
21 there, she is putting envelopes into the stacker so that  
22 they'll continue being processed through.

23 Again, those -- go ahead and stop right there.

24 That's where you see, again, batches that are  
25 created as a result of the Pitney Bowes sorter. But,  
26 again, not the same batches that are referred to when it  
27 comes down to the actual ballots. These are batches of  
28 envelopes, not batches of ballots.

1           As I mentioned, there's 56 pockets to this  
2     sorter.

3           And again, go ahead and stop there.

4           As I mentioned before, Debra there carefully  
5     pulled out that envelope. Again, we are pretty careful  
6     in pulling any envelopes out of any of these batches,  
7     and the reason why, again, is because if a ballot  
8     envelope is pulled out and during the second pass, the  
9     Pitney Bowes sorter is trying to find every single  
10    envelope and seeing that again to be able to out stack  
11    it into the challenged pile bin or the valid bin. And  
12    if it doesn't see it, it creates an orphan so we are  
13    able to track that envelope through the life cycle of it  
14    being processed.

15           There is -- go ahead and stop there.

16           That's where you saw that spoiled box that I  
17    was referring to earlier where if a voter checks that  
18    box, the sorter, the camera on that sorter, will be able  
19    to see it and out stack that envelope into a separate  
20    bin so that way we could suspend that ballot and reissue  
21    a new ballot to the voter so that they can vote what  
22    their intentions are.

23           THE COURT: One moment. Okay.

24           THE WITNESS: That's where -- okay. So go  
25    ahead and stop there.

26           So that's essentially, if you will, for the  
27    most part, the beginning of the process of them going  
28    through the sorter. They were jogged. That's what's

1 known as a jogger that they put it on. And now they are  
2 putting it on to the hopper. I think I called it the  
3 stacker. It's really a hopper. As you can see there,  
4 she is ready to close the stopper behind it so that way  
5 it pushes the envelopes through the sorter.

6 Go ahead and continue.

7 As I mentioned, 24,000 in an hour is what goes  
8 through the envelopes -- or through the sorter, I'm  
9 sorry.

10 THE COURT: One moment. Can you stop there,  
11 Counsel. Okay.

12 THE WITNESS: Go ahead and stop right there.

13 Right below Debra's finger right there, you can  
14 see a round piece, that's the high speed -- that's the  
15 high speed camera right there when it's going through  
16 the system. I think you'll see another picture of it,  
17 if I remember this video correctly.

18 Go ahead. That round piece right there. There  
19 it is right there. And again, that's taking a snapshot  
20 of the full face of the envelope, the bar code and the  
21 signature.

22 Go ahead and stop right there.

23 This is kind of -- I'm getting ahead a little  
24 bit of myself, but you see how there is just smaller  
25 batches right there, that's really during the second  
26 pass when the ballots have now been adjudicated on  
27 screen. We either challenged the envelope or we didn't  
28 challenge the envelope. And then we create smaller

1 batches of that -- specific for that specific city  
2 because we sort by city level.

3 Go ahead.

4 Okay. Go ahead and stop right there.

5 Did you see all those shavings of pieces of  
6 paper? That's the actual sorter slicing those that were  
7 valid, not challenged, valid envelopes. Right there.  
8 Those shavings is coming from the slicer. It's --  
9 actually it's a slicer. It's a miller. There is a  
10 milling device on the machine.

11 Go ahead.

12 As you can see, there is multiple staff members  
13 trying to process and maintain those ballots.

14 BY MR. BARRY:

15 Q. So after election night, approximately how many  
16 man hours does your office spend processing vote-by-mail  
17 ballots?

18 A. Again, tens of thousands of hours.

19 Q. And is that working eight hours a day, five  
20 days a week?

21 A. I would say there's multiple shifts that are  
22 happening each and every single one of those days during  
23 the official canvass, and a it's seven-day process to be  
24 able to meet the 30-day official certification deadline.

25 Q. And in June, you had approximately 235,000  
26 vote-by-mail ballots that you were processing during the  
27 canvass, correct?

28 A. That's correct.



1 Q. And for the upcoming June -- general election,  
2 do you expect to have more vote-by-mail ballots to  
3 process during the canvass?

4 A. The November general election?

5 Q. Yes.

6 A. I anticipate that we will be processing more as  
7 a result of what's anticipated to be a much higher  
8 turnout because it's the presidential general election.

9 Q. And for each of those ballots cast, you're  
10 going to have two-ballot sheets, correct?

11 A. Two-ballot cards for every voter.

12 Q. And you indicated earlier the logistical  
13 problems that creates, correct?

14 A. That's correct.

15 Can I go into the nuances of some of those  
16 challenges for mail ballots, particularly?

17 MR. GERACI: Objection, your Honor. I don't  
18 know why the witness is asking questions.

19 THE COURT: The objection is sustained.

20 BY MR. BARRY:

21 Q. Mr. Vu, would you please go into some of the  
22 nuances relating to challenges of vote-by-mail ballots.

23 A. So, again, when a ballot is being extracted,  
24 the question is going to be if you have -- one, there  
25 could be situations where you have one B card. Maybe  
26 you have one A card. You may have multiple cards in a  
27 ballot. So let's say there's two A cards and one B  
28 card, what are you going to do in that situation?

1           What are you going to do when there's a  
2 situation when there's two B cards, one A card, what  
3 happens if you have two A cards and two B cards? Those  
4 are all exceptions to the overall process and we have  
5 to, again, take those as one offs in terms of handling  
6 to be able to make the proper decision before we decide  
7 a ballot is not going to get counted.

8           Q.    I'd like to move on to provisional ballots. So  
9 I would ask you to take a look at 147.

10          A.    147 did you say?

11          Q.    Yes.

12          A.    Yes.

13          Q.    And can you identify what Exhibit 147 is?

14          A.    Exhibit 147 are our provisional ballot  
15 processing procedures.

16          Q.    Those are procedures that are maintained by  
17 your office in the course of business?

18          A.    It is, yes.

19                MR. GERACI: Your Honor, I move admission of  
20 Exhibit 147.

21                THE COURT: Any objection?

22                MR. GERACI: No objection.

23                THE COURT: One moment, please.

24 BY MR. BARRY:

25                Q.    Mr. Vu, I would like to refer you to --

26                THE COURT: Exhibit 147 is admitted.

27 (Exhibit 147 was received in evidence.)

28                ///

1 BY MR. BARRY:

2 Q. Mr. Vu, I'm going to refer you to a document we  
3 marked as Exhibit 178. Can you describe for the judge  
4 what is this document?

5 A. 178 you said?

6 Q. Yes.

7 A. Oh, yes, okay. So this is similar to the mail  
8 ballot processing steps that we described for the  
9 vote-by-mail ballots. This is a quick synopsis, a  
10 summarized synopsis. I don't think you would want to  
11 see how big of a chart this lays out to in terms of how  
12 to process a provisional ballot. There are hundreds of  
13 steps involved, how many branches it breaks out to.

14 But let me just describe what this is. This is  
15 a simplified breakdown of how a provisional ballot  
16 envelope is processed, and eventually, whatever its  
17 contents is inside, is handled and that's what this  
18 document is about.

19 Q. Have you found Exhibit 178?

20 A. 178. Yes, I have.

21 Q. Why don't you -- we'll put that back together.

22 A. Thank you.

23 THE COURT: That's happened to me more than  
24 once. I am commenting that one or more volumes of the  
25 exhibits have exploded on Mr. Vu.

26 The record should reflect we are all smiling.

27 It looks to me like you are marking a series of  
28 additional exhibits?

1 MR. BARRY: This is actually an exhibit that's  
2 on our list. Our list says provisional ballot. It  
3 should say provisional ballot process.

4 THE COURT: 176?

5 MR. BARRY: Yes.

6 MS. KARNAVAS: It should say "envelope" on the  
7 exhibit list instead of "provisional ballot."

8 THE COURT: So modify the list to say  
9 "provisional ballot envelope"?

10 MS. KARNAVAS: Yes.

11 THE COURT: All right.

12 BY MR. BARRY:

13 Q. Mr. Vu, I've handed you a document referred to  
14 as provisional ballot envelope. Is that a correct  
15 description of what this document is?

16 A. That's correct.

17 Q. And so when this comes back from the polls, how  
18 is it completed?

19 A. So there is two sides of this envelope that  
20 needs to be filled out. One of the sides is the -- for  
21 the poll workers to fill out as to what type of  
22 provisional situation this is that a person would be  
23 casting a ballot that gets sequestered into a  
24 provisional envelope and also a checklist to make sure  
25 that they are following all the respective steps  
26 correctly.

27 On the other side of it is for the voter where  
28 they fill out such things as their -- they sign, they

1 provide their current residence address, they provide  
2 such things as their driver's license or state I.D. or  
3 last four digits of the social security number and any  
4 other previous address they may have.

5           It also on that side has the voter receipt  
6 where it gets torn off and handed to the voter pursuant  
7 to the Help America Vote Act where a voter who casts --  
8 who votes a provisional ballot, after we certify the  
9 election 30 days after that period, they are able to  
10 contact our offices to determine whether or not their  
11 provisional ballots was counted and, if not, why.

12           MR. BARRY: Your Honor, I would move for  
13 admission of Exhibit 176.

14           THE COURT: Any objection?

15           MR. GERACI: No objection.

16 BY MR. BARRY:

17           Q. Now going back to Exhibit 178 --

18           THE COURT: 176 will be admitted.

19           MR. BARRY: Oh, I'm sorry.

20           THE WITNESS: Yes.

21 (Exhibit 176 was received in evidence.)

22 BY MR. BARRY:

23           Q. Can you describe for the judge, I think maybe  
24 you have, but if you would again explain for the judge  
25 what Exhibit 178 represents.

26           A. Exhibit 178 represents my efforts to distill a  
27 process -- a multifaceted process to process provisional  
28 ballot envelopes and the ballot, eventually the ballot,

1 once it's been validated. It's a document that I  
2 created from a business process reengineering effort  
3 that spent nearly six months to go through with my staff  
4 to determine the most efficient and most -- efficient  
5 but also safeguards in place to ensure we are counting  
6 every single provisional ballot that we can. And so we  
7 boiled it down into these various steps.

8 Q. So step one is sort. It's fairly  
9 self-explanatory.

10 A. Well, yes. The very first step in the whole  
11 process, again, as I mentioned before, the only  
12 difference between a mail ballot and provisional -- a  
13 mail and a polls ballot is the top right-hand corner.  
14 As I said before, a provisional ballot is only a polls  
15 ballot that is sequestered inside an envelope because it  
16 needs to be adjudicated.

17 So when these provisional ballots are coming  
18 back to our office from election night, they are in a  
19 secured red bag, and inside that red bag are also the  
20 mail ballots that were dropped off there. So on  
21 election night, as well as the following morning and  
22 day, we are trying to sort out mail ballots from the  
23 provisional ballots; and guess what that red bag also  
24 becomes, it also becomes essentially almost the  
25 catch-all for everything else that didn't make it in a  
26 box or whatnot.

27 So there is a lot of sorting that goes on on  
28 election night and the day or two afterwards to just get

1    them in an order between the mail ballots, the  
2    provisional ballots and all the other extraneous  
3    materials that might be in that bag.

4           Q.    And step two?

5           A.    So step two is where we start breaking out the  
6    provisional ballots into two separate types of  
7    provisional ballot envelope situations.  Again, we don't  
8    know what's inside of the envelope.  All we know is is  
9    what the poll worker marked on the outside of it.

10                   And on the outside of the envelope, they are to  
11    mark is this a situation where they cannot find the  
12    voter inside their roster of voters at the precinct?

13    It's a situation where it could be a mail ballot voter  
14    who was issued a mail ballot and decided to go to their  
15    polling place but couldn't surrender their mail ballot  
16    and so they have to vote the provisional ballot, that's  
17    item B.

18                   It's a situation where as a result of the Help  
19    America Vote Act, again, a federal act that was passed  
20    as a result of Bush V. Gore of the 2000 presidential  
21    election, that situation where when the Help American  
22    Vote Act and when the Congress passed that act, it  
23    required every individual to supply some type of last  
24    four digits of their social security number or a  
25    driver's license number; and if they didn't do so, they  
26    would still be allowed to be a registered voter, but  
27    they would be marked in the roster of voters that they  
28    needed to provide some type of sufficient

1 identification.

2           There's very limited number of situations, but  
3 we still have to comply with federal statutes associated  
4 with that.

5           And then for political party primaries, okay,  
6 again, this only happens every four years, item D here  
7 is where the -- it's the voter is requesting a different  
8 political party ballot than what they are registered as.  
9 And again, in this past election, the only voters that  
10 had a -- an ability and options available to them other  
11 than the one that -- the one in specifically the  
12 nonpartisan -- were the nonpartisan voters.

13           That's what is on the outside of this envelope.

14           So we are segregating these envelopes.

15           Now, those that are what I call true  
16 provisional situations, that would be item A, they were  
17 not found in the roster. An identification would be  
18 another situation where I would call a true provisional.  
19 And then as well as a different ballot request, it would  
20 be a true provisional. Those go to our registration  
21 section of our office.

22           Now, item B, mail ballot voters. Those go to  
23 our vote-by-mail section so they can hold those  
24 vote-by-mail ballots as you can see here in step one as  
25 the diagram shows there with mail ballot provisionals.

26           Now, let me go through, if I may, the polls  
27 site. May I go and continue?

28           THE COURT: Before you do so --



1 MR. BARRY: I was looking at the judge.

2 THE COURT: -- I lost track of time. Let's  
3 take our afternoon break. It's a couple minutes after  
4 3:00 o'clock. We'll be in recess for 15 minutes.

5 (Recess taken.)

6 THE COURT: All right. Counsel, continue with  
7 your direct examination.

8 MR. BARRY: Thank you, your Honor.

9 BY MR. BARRY:

10 Q. Mr. Vu, would you continue to describe what  
11 Exhibit 178 represents.

12 A. Again, 178 is our breakdown of the provisional  
13 ballot processing for provisional ballot envelopes as  
14 well as eventually what is hopefully inside that  
15 envelope.

16 I believe we were on step two, if I'm correct.

17 Q. Okay.

18 A. After -- for step one, again, we are holding  
19 those what I'll clarify as VBM provisional ballots off  
20 to the side.

21 Now, our polling place ballots are true  
22 provisionals that I discussed before. We can start  
23 processing those -- those provisional -- true  
24 provisional envelopes. As you can see here on step two,  
25 you can see that we have to look up a voter, we do such  
26 things as confirm the name, the residence, the date of  
27 birth or the CDL to look up the voter, and that's what  
28 some of the things that we are confirming.

1           But as you can see there, there is a much  
2 larger box of exceptions that come into play here.

3           When we are searching a voter, again, for true  
4 provisional situation, we don't know if the person that  
5 voted this ballot that's inside a provisional envelope  
6 is even a registered voter. So not only are we now  
7 essentially hunting, as I described before, we have  
8 1.56 million active registered voters, but there is  
9 another 1.2 million inactive voters that are eligible  
10 for the election.

11           So, essentially, what we are doing is going  
12 into our voter registration system. And if I put  
13 Mike Vu in the -- on my envelope but I'm really  
14 registered as L. Michael Vu in our voter registration  
15 system, I may not come up, and so I'm now having to look  
16 in a database of nearly 3 million records to determine  
17 whether or not there is a valid record for Michael Vu.

18           There is even -- of course, our voter  
19 registration system has the ability to do wild cards, if  
20 you will. Wild cards is like doing Vu and then an M.  
21 and then an asterisk to pull all of those types of names  
22 with a Vu and an M. So we are able to narrow in on  
23 every single one of these situations.

24           But, again, this person may not be really  
25 registered to vote. That's what takes so long in terms  
26 of processing provisional ballots.

27           Signature not a match is an exception. Record  
28 canceled is an exception that we reverify. All of these

1 exceptions we reverify to double check even our work in  
2 terms of the overall process.

3           Record pended. A record that is pended is a  
4 situation where a voter has registered to vote but let's  
5 say they did not sign. They are eligible to be  
6 considered if they cure their signature on to us if we  
7 get their signature off of the registration form because  
8 we send that voter an affidavit to give us the  
9 signature, and if that comes back to us that they voted  
10 provisionally, we are able to count that ballot, that  
11 provisional ballot.

12       Q. What about a situation where a voter didn't  
13 sign the envelope but signed the roster?

14       A. Again, we do that, we go into the rosters  
15 themselves. So if a person does not sign their  
16 envelope, we give them the benefit of the doubt. We  
17 have what is known as roster pages in the roster of  
18 voters -- or provisional -- provisional roster pages in  
19 the roster of voters where they sign in.

20           If they had signed in there, we are able to  
21 validate this provisional envelope. If they didn't  
22 provide us the address, we go to the -- we go to the  
23 roster of voters.

24           Now, the roster of voters is in an entirely  
25 different space than where all these envelopes are at.  
26 So that requires people to get to those roster of voters  
27 that are in -- generally in a specific spot in our  
28 office, but it takes time to be able to do that level of

1 research.

2           But, as you can see there, above exceptions are  
3 all -- are verified on the respective rosters. Those  
4 include no residence address situations, nonexistent  
5 residence address situation where they provide us a  
6 P.O. Box on these envelopes which you cannot do.

7           And again, when the situations where they did  
8 not sign the envelope where we go back to the roster and  
9 say whether or not they signed there so we can accept  
10 the ballot.

11           Step three. We verify. And even there you see  
12 exceptions to that.

13           As I mentioned before, like the vote-by-mail  
14 ballots, we escalate in terms of our office when it  
15 comes down to signatures. We are looking at multiple  
16 things throughout the entire process to interact with  
17 this envelope to see if we can validate in many  
18 different ways. Again, that requires a lot of diligence  
19 on our part, but it requires a lot of diligence on the  
20 part of the person that's processing the provisional  
21 envelope as well.

22           And then, as you can see here on step three, it  
23 bifurcates itself in terms of the overall process  
24 because of Elections Code 14311. Now, what is Elections  
25 Code 14311? That is what we call the failsafe process.  
26 This is a situation where the voter has marked on their  
27 envelope -- on their -- on the provisional envelope a  
28 residence address that's different than where they're

1 registered.

2           So what do we do in that specific situation?

3 Well, this envelope then ultimately becomes a  
4 reregistration form for that voter so we can actually  
5 count the ballot. That's what is known as failsafe  
6 voting in terms of our lexicon at the registrar of  
7 voters office, but it's a way again that the Election  
8 Code provides to count the person's ballot just because  
9 they did not reregister to vote by the close of  
10 registration, okay.

11           Step four is quality assurance. Count the  
12 number of envelopes that we have so we have a count of  
13 those. And then we send it to be counted. And let me  
14 just say, when we do the quality assurance, we break  
15 that up in categories from the registration section.  
16 Our registration section breaks it up into count, remake  
17 situations, and then into a -- into a no count situation  
18 before we then deliver it to our tabulation team.

19           Now, there is a movie called "Forest Gump."  
20 Never know what -- life is like a box of chocolates, you  
21 never know what you're going to get. We don't know  
22 what's inside this envelope. We don't know what we're  
23 going to get.

24           Although on the outside surface of the outside  
25 of the envelope, it may say that they were a -- they  
26 were registered as a Democrat and they took a Democratic  
27 ballot on this line two here on the envelope, inside may  
28 be a Republican ballot inside. So it may be --

1 ultimately when it gets sent over to our tabulation team  
2 to extract out, it may say, hey, there is a Democratic  
3 ballot inside but really it's a Republican. What does  
4 that do? Well, it goes into not the count pile, it goes  
5 into the remake pile, the partially counted pile so that  
6 way we can properly process that envelope.

7           Now, on the mail ballot side, as I've  
8 described, we hold on to those mail ballots. We review  
9 them for completeness. And similar to the registration  
10 section, our vote-by-mail team is if they see that it's  
11 not complete, guess what they do. They, again, go to  
12 the roster of voters to see if there is complete  
13 information in there so we can supplement that  
14 information that we have on the envelope.

15           Step three. We look up the voter, determine  
16 whether or not they are registered. Again, it's a  
17 provisional envelope that's here. And we run into many  
18 different situations. If we find out that this person  
19 was never issued or not a registered voter, we bring it  
20 back to the registration section.

21           So this is where you now start seeing  
22 provisional envelopes being traded between sections  
23 within our office. The reason why is because these are  
24 different types -- at the end of the day -- types of  
25 provisional ballots, envelopes that are being voted  
26 upon.

27           As you see here, step four, we have a  
28 vote-by-mail ballots -- has a vote-by-mail been issued?

1 That's the very first question. Has it been issued? Is  
2 this person really a vote-by-mail voter?

3 Two, if they are a vote-by-mail voter, has that  
4 vote-by-mail ballot been returned? And I think that's  
5 pretty key here, right?

6 You've got to determine what's inside again.  
7 Ultimately we were verifying situations like what's  
8 inside this envelope. We don't know what's ultimately  
9 inside. We do a comparison match of the signature. We  
10 do a residence address match. And again, there is that  
11 failsafe process that's getting entered into the process  
12 here again where they potentially failsafe themselves.

13 And potentially we have to go through these  
14 other different exceptions and one off situations to be  
15 able to properly count votes.

16 Step five and step six are essentially the same  
17 thing. Step 6, which gets to our technical services  
18 staff, those are all those different situations.  
19 Damaged ballots, voter intent enhancement that you  
20 saw -- that we just talked about. The wrong ballot  
21 type, whether it be a wrong ballot type in terms of them  
22 going to the wrong precinct, wrong ballot type of  
23 contests that they were not eligible to vote on, or  
24 ineligible party ballot situations.

25 So, again, you have a situation where it seems  
26 simple on the surface, but it's very complex in terms of  
27 how we are able to process every single one of these  
28 provisional ballots as well as vote-by-mail ballots so

1 that we can count the votes.

2 Q. Couple real quick hypotheticals. So if I'm a  
3 registered voter, my precinct is in Poway and I show up  
4 in Chula Vista to vote, could I vote?

5 A. You can vote, yes.

6 Q. Would I have to vote provisionally?

7 A. You would have to vote provisionally because  
8 your name is not in the roster of voters.

9 Q. And when that ballot is then transferred back  
10 to the registrar's office, what happens with that  
11 ballot?

12 A. We verify -- we search your name. If we find  
13 you and we see that you're really registered in Poway  
14 but you voted a Chula Vista ballot, we know that there  
15 are Chula Vista contests that you perhaps voted upon  
16 that we may need to redact off of the ballot.

17 Q. Now, if I am registered in your records, your  
18 database, in Poway, I show up in Chula Vista, I complete  
19 a provisional envelope and I write down an address -- a  
20 residence address in El Cajon, what happens then?

21 A. Well, that's a failsafe situation, wrong  
22 precinct ballot, the type that you're eligible to vote  
23 on. So, again, that is a redact process because you're  
24 failsafing yourself, that is, essentially reregistering  
25 yourself at your new address at El Cajon, but you went  
26 and voted a ballot type that you were not eligible to  
27 vote on. So we have to look at that ballot and make  
28 sure that you are not voting on any contest that you



1 were ineligible to vote on.

2 Q. And would you remake that ballot on the  
3 assumption that I'm now residing in El Cajon?

4 A. We would be, yes.

5 Q. Now, how many employees do you have engaged in  
6 the provisional process or provisional ballot process?

7 A. I would say approximately a hundred  
8 individuals.

9 Q. And how many of those are permanent employees?

10 A. Not very many of those individuals are  
11 permanent employees. As I mentioned before, the  
12 majority are going to be seasonal staff members. And  
13 there are permanent employees in there. I would say  
14 four to five individuals that are supervising that  
15 entire process.

16 Q. Does everyone that you hire as a temporary  
17 seasonal employee go through a background check?

18 A. They do, yes.

19 Q. And what does that background check entail?

20 A. The background check is to go through the  
21 County's background process. Are you referring to the  
22 seasonal staff members or --

23 Q. Yes, not the employment workers.

24 A. They -- in many cases, they go through what is  
25 the Livescan process, fingerprinting processing, to make  
26 sure that during the life of them coming on board with  
27 our office, if they so happen to do something over the  
28 weekend, that creates a red flag for us and someone from

1 our human resources office comes and tells us that  
2 someone did something that they perhaps shouldn't have  
3 done something.

4 But it keeps intact any situations that -- of  
5 activity that perhaps they shouldn't have done, and we  
6 get notified immediately.

7 Q. Now, do you try to use only more experienced  
8 either temporary or permanent workers processing  
9 provisional ballots?

10 A. We do use experienced staff members. But  
11 even -- we call even the experienced seasonal staff  
12 members out because, again, this is a very attentive  
13 process that you need to be immersed in as you're  
14 processing a provisional ballot and adjudicating that  
15 provisional ballot correctly and finding all the ways to  
16 find this potential voter.

17 Q. Now, when does your office generally finish  
18 processing and counting the provisional ballots?

19 A. Almost by the time the deadline for the  
20 certification of the election, so nearly all 30 days it  
21 takes.

22 Q. Now, if you were to allow someone to vote  
23 twice, a vote-by-mail and provisionally, would that be  
24 protecting the integrity of the election?

25 A. No, it would not.

26 Q. And if you were to allow a person who has moved  
27 from their present location to vote in a precinct and  
28 have those votes counted in total at that location,

1 would that be protecting the integrity of the voting?

2 A. That would not be protecting the integrity of  
3 the election, no.

4 Q. So voters would be able to vote on contests  
5 that they weren't eligible to vote for?

6 A. That's correct. They would be voting on  
7 contests that they were ineligible to vote for and  
8 that's right for a contest.

9 Q. And so when you go through all these different  
10 steps, is the purpose to maintain and protect the  
11 integrity of the voting process?

12 A. That's correct. It's to balance between the  
13 ability to count voters' votes but also to balance the  
14 election integrity of individuals and where they are  
15 eligible to vote.

16 Q. For the June presidential primary, how many man  
17 hours did your office expend processing provisional  
18 ballots?

19 A. Similar to the vote-by-mails, I would say tens  
20 of thousands of hours. Again, vote-by-mail numbers are  
21 smaller than the vote-by-mails but they take so long.

22 Q. Can you -- can you read back that answer?

23 THE COURT: Madam Reporter, can you do so?

24 (The question was read by the reporter.)

25 THE WITNESS: Let me rephrase that. Sorry  
26 about that.

27 Our vote-by-mail numbers that we need to  
28 process are so much higher and the provisional ballot

1 situations are lower, but they take that -- almost an  
2 equal amount of time to process. And the reason why is  
3 because for vote-by-mail voters, we issue them the  
4 ballot and they are bringing back their envelope or  
5 returning their ballot in an envelope that we issue to  
6 them. So it's easier to process through.

7           Again, provisional situations, we don't --  
8 provisional ballot envelopes, we don't know whether or  
9 not the person has even registered to vote in the  
10 county.

11 BY MR. BARRY:

12       Q.    Okay. I would like you to discuss the  
13 1 percent manual tally. So during the canvass, you're  
14 required to perform what's referred to as the 1 percent  
15 manual tally, correct?

16       A.    That's correct.

17       Q.    And what is the purpose of the manual tally?

18       A.    The purpose of the manual tally is to verify  
19 the programming and coding of the tabulation system that  
20 it's counting accurately.

21       Q.    And is there a difference between a manual  
22 tally and a recount?

23       A.    There are -- there is differences between a  
24 tally and a recount.

25       Q.    And when does a recount occur?

26       A.    A recount occurs after the election has been  
27 certified.

28       Q.    And are you familiar with the process for

1 conducting the 1 percent manual tally?

2 A. I am.

3 Q. And when must the tally begin?

4 A. The tally must begin during the official  
5 canvass. That's pretty clear in the Elections Code.  
6 During the official canvass.

7 Q. And is there a need to begin that process as  
8 soon as possible after election night?

9 A. It is, yes.

10 Q. And why is that?

11 A. So we can ensure that we are able to certify  
12 the election within that 30-day time frame of the  
13 official canvass.

14 Q. I'd ask you to look at Exhibit 179.

15 A. Yes.

16 MR. BARRY: Your Honor, going back to  
17 Exhibit 178, I move that to be admitted into evidence.

18 MR. GERACI: Without objection.

19 THE COURT: 178 will be admitted.

20 (Exhibit 178 was received in evidence.)

21 THE COURT: Now you are on to 179.

22 MR. BARRY: Correct, your Honor.

23 BY MR. BARRY:

24 Q. Mr. Vu, can you identify what Exhibit 179 is.

25 A. Exhibit 179 is a 1 percent manual tally sheet  
26 for one specific precinct. It contains all of the  
27 candidates on a -- in a specific precinct and it lists  
28 it, and then there is a series of numbers which the

1 tally board crosses out as they are conducting the  
2 1 percent manual tally.

3           So, in this specific case, it appears there are  
4 12 pages of candidates, yes, no, blank and over vote  
5 situations that they have to catalog and tally during  
6 this precinct's processing.

7       Q.   And can you describe the set up. How many  
8 people are on a board who would be conducting the  
9 1 percent manual tally?

10       A.   There are three individuals per board for a  
11 given precinct.

12       Q.   And what does each of the members -- each of  
13 the members do as part of that board?

14       A.   One member calls out the vote and two  
15 individuals cross -- use as this tally sheet that's  
16 prepared and crosses when the -- if you will, the reader  
17 calls out the vote for a specific candidate. The other  
18 two create the hash mark across on to the tally sheet.

19       Q.   And how many employees are required to complete  
20 the manual tally?

21       A.   Are you talking about -- may I ask for  
22 clarification in terms of just the people that are doing  
23 the actual tally versus the people that are potentially  
24 pulling the ballots?

25       Q.   Why don't you give us both. How many people do  
26 you have on the boards and how many people do you have  
27 supporting that process?

28       A.   So individuals that are -- Charlie pulling the

1 ballots and it depends on the method in which we are  
2 pulling the ballots, could take upwards of 40  
3 individuals, as you heard by Mr. Wallis.

4           And then in terms of the tally teams, so there  
5 were approximately 31 individuals there that were  
6 supporting the tally -- the -- either supporting or  
7 conducting the tally for each precinct.

8           Q.   Now, how many man hours does it take your  
9 office to complete the manual tally?

10          A.   It takes thousands of hours.

11          Q.   In the June presidential primary, how many  
12 ballots did your office include in the manual tally?

13          A.   In the manual tally, there was, I believe,  
14 7,800 ballots that were included into the manual tally.

15          Q.   And during the canvass of the election, did  
16 your office run additional precincts?

17          A.   We do.  Again, that goes to the part of the  
18 official canvass called the reconciliation of precincts,  
19 and we do -- we did rerun 69 precincts back through the  
20 system.  Those, again, 69 precincts -- when I say  
21 precincts, I'm talking about 69 precincts worth of  
22 ballots -- back through the system which I think was  
23 equivalent to about 10,000 additional ballots.

24          Q.   And why is that fact that you ran additional  
25 precincts relevant to the discussion of the 1 percent  
26 manual tally?

27          A.   Well, it affirms the 1 percent -- the  
28 tabulation system is counting votes accurately.

1 Q. So the -- these are ballots that were included  
2 in the semi final official canvass?

3 A. That's correct.

4 Q. And at some point during the canvass, those  
5 precincts get rerun?

6 A. Those precincts get rerun, yes.

7 Q. And if something had happened to either the  
8 software or the vote tabulating system as a whole, to  
9 change how votes were being counted, then the rerun of  
10 those precincts you would think would be different?

11 A. There would be red flags that would be raised  
12 if there were differences associated with those, yes.

13 Q. And the rerunning of these additional 69  
14 precincts occurs throughout the canvass?

15 A. It occurs during the official canvass, yes.

16 Q. Were there any issues with the vote tabulating  
17 system at any point during this canvass?

18 A. None that I'm aware of.

19 Q. When I say "this canvass," I mean --

20 A. June? None that I'm aware of.

21 Q. What percentage is 7,800 of the total ballots  
22 cast in point?

23 A. I believe that equates to 1.02 percent.

24 Q. And what are the universe of ballots -- what is  
25 the universe of ballots that are included in the random  
26 draw for the manual tally?

27 A. These are, again, the semi final official, so  
28 that would include mail ballots as well as pulling the



1 precinct ballots or poll ballots.

2 Q. And do you include vote-by-mail ballots that  
3 are processed after election night in the manual tally?

4 A. Can you repeat that one more time?

5 Q. Do you include vote-by-mail ballots that were  
6 processed after election night in the manual tally?

7 A. We do not, no.

8 Q. And do you have an understanding as to whether  
9 provisional ballots are included in the 1 percent manual  
10 tally?

11 A. They are not included in the 1 percent manual  
12 tally.

13 THE COURT: One moment, Counsel.

14 Counsel, the Court is not clear on an issue.  
15 When I hear Mr. Vu say that mail by -- what's -- the  
16 mail ballots did not include ballots that were processed  
17 after election night, I'm not clear if that includes  
18 ballots that were received but not processed as of the  
19 election date or were not received and processed until  
20 after the election.

21 MR. BARRY: So --

22 THE COURT: Can you ask for clarification?

23 MR. BARRY: Yes, I can.

24 THE COURT: All right.

25 BY MR. BARRY:

26 Q. So what ballots does the one per- -- I'm  
27 sorry -- does the semi final official canvass include?

28 A. The ballots that are included in the semi final

1 official canvass are those that are processed and  
2 counted and reported out to the public as of election  
3 night.

4 Q. And that would include all the poll ballots or  
5 most of the poll ballots?

6 A. That would include most of the poll ballots as  
7 well as the mail ballot -- most of the mail ballots that  
8 were received timely that could be processed through  
9 what we already discussed in terms of the overall  
10 vote-by-mail processing into the count and that we  
11 reported out as of election night.

12 Q. And there may be some vote-by-mail ballots that  
13 were received by your office either on election day or  
14 shortly before election day that have not yet been  
15 processed and included in the count as of the semi final  
16 official canvass; is that correct?

17 A. That is correct. Again, it has to go through  
18 that series of steps before we can actually get to the  
19 actual tabulation of those ballots.

20 MR. BARRY: Does that answer your question,  
21 your Honor?

22 THE COURT: It does. Thank you very much.

23 BY MR. BARRY:

24 Q. Do you have an understanding as to whether  
25 provisional ballots are to be included in the 1 percent  
26 manual tally?

27 A. I do. They are not. They are not.

28 Q. And what is your understanding based upon?

1 A. It's based on my reading of Elections Code  
2 15360.

3 Q. And do you include provisional ballots in the  
4 manual tally?

5 A. We do not.

6 Q. Now, when you started with San Diego County was  
7 in mid 2007, correct?

8 A. That's correct. April of 2007, if my memory  
9 serves me correctly.

10 Q. And when was the first statewide contest that  
11 you participated in as the assistant registrar for  
12 San Diego County after you were employed?

13 A. That would be the February 2008 presidential  
14 primary election.

15 Q. And do you have any recollection as to whether  
16 the County included provisional ballots in the 1 percent  
17 manual tally when doing the canvass for that election?

18 A. We did not include provisional ballots into the  
19 1 percent manual tally.

20 Q. And has that process ever changed?

21 A. It has not.

22 Q. Now, with respect to vote-by-mail ballots, did  
23 the County of San Diego include vote-by-mail ballots  
24 that were included in the semi final official canvass in  
25 the 1 percent manual tally for the 2008 February  
26 primary?

27 A. We did include vote-by-mail ballots into the  
28 1 percent manual tally as of the semi final official.

1 Q. And did the County include vote-by-mail ballots  
2 that were processed after the semi final official  
3 canvass during the official canvass?

4 A. We did process vote-by-mail ballots after  
5 election night for the official canvass, but we did not  
6 include the -- we do not include those into the  
7 1 percent manual tally back in 2008.

8 Q. If you were to include all vote-by-mail ballots  
9 in the manual tally, what impact would that have on your  
10 ability to complete the canvass within the statutorily  
11 required time frame?

12 A. Did you say the vote-by-mail ballots?

13 Q. Yes.

14 A. Well, considering this November election for  
15 the presidential election, it's always severe in terms  
16 of trying to even accomplish conducting a presidential  
17 election and certifying within the 30-day time frame.  
18 So we go from severe to grave, I would say, in terms of  
19 the ability to now have to add all mail ballots into the  
20 count before doing the 1 percent manual tally.

21 Q. Now, explain to the Court how it would impact  
22 your ability to process vote-by-mail ballots,  
23 provisional ballots and then conduct the 1 percent  
24 manual tally if you had to include all vote-by-mail  
25 ballots in the 1 percent manual tally.

26 A. How would it impact us? Well, it would impact  
27 us where I believe that we would be able to process, but  
28 the question becomes accuracy and the integrity of the

1 overall election, right. So although we are processing  
2 these mail ballots, we may be -- all those exceptions  
3 that I referred to in my prior testimony, we would have  
4 to consider whether or not those processes need to be in  
5 place.

6 So as I think Debra said, there is this theory  
7 of Mongolian horde, but this is not the process that --  
8 which you want to apply that Mongolian horde theory to  
9 this.

10 You just cannot throw people at this to process  
11 mail ballots. I think what suffers from that, at the  
12 end of the day, is the accuracy and the ability for me  
13 to confidently certify the election results. I think  
14 that's where it hurts the overall process.

15 If we are in the business of counting and asked  
16 to count every single vote, well, because we are now  
17 trying to apply a rule that deals with the manual tally  
18 forces everything to be managed entirely different, an  
19 overhaul of how the official canvass needs to be run to  
20 only accommodate this one piece.

21 Q. And the 1 percent manual tally is but a small  
22 portion of what you are required to do during the  
23 canvass period, correct?

24 A. That's correct.

25 Q. But increasing the size of the manual tally  
26 would impact many other activities that you have to  
27 conduct and finish during the canvass, correct?

28 A. That's correct. And at what purpose is what I

1 would say as well. As I described before in my earlier  
2 diagrams, the system -- the purpose of the 1 percent  
3 manual tally is to verify the tabulation of the devices.  
4 As you saw in the diagrams is is that we're testing all  
5 the ways in which a ballot is counted through the  
6 system, and that's what the purpose of the 1 percent  
7 manual tally is.

8 Q. Now, you've also heard some comments about all  
9 votes count. Have you heard that mentioned?

10 A. I have, yes.

11 Q. And does your office count every vote?

12 A. We do count every vote, those that are validly  
13 cast.

14 Q. And there was also some discussion earlier,  
15 some testimony, about maybe performing somewhat of a  
16 rolling 1 percent manual tally so you continue to do a  
17 random draw throughout the process.

18 What would be the impacts of that and what are  
19 the problems of that?

20 A. Well, one of the problems with it is, number  
21 one, it's -- essentially you would have to start and  
22 stop, start and stop because, again, you don't know how  
23 many ballots are ultimately going to be in the count on  
24 the vote-by-mail ballots or even the provisional  
25 ballots.

26 As I mentioned before, there are other  
27 provisionals that we haven't spoken within the Elections  
28 Code that allows a voter to correct their provisional

1 ballots or their mail ballot, and it can last all the  
2 way up until the day I certify the election. And so if  
3 those are not to be considered and we just put those off  
4 to the side, then we wouldn't be counting those and we  
5 would never get to this point of this all notion that's  
6 being discussed because we were all -- we would be in  
7 this continuous maybe vicious cycle, if you will, about  
8 when I can actually certify the election results and how  
9 many batches or decks that have been created.

10 Q. Also, if you were to wait to conduct the  
11 1 percent manual tally until the end of the canvass,  
12 what would happen is -- if you did discover a problem?

13 A. Well, what public good, I guess, would come of  
14 that? Again, we would not be able to -- bottom line, we  
15 would not be able to certify the election. I would not  
16 certify the election if that was the case. I would miss  
17 my 30-day deadline and break another law.

18 MR. BARRY: Thank you, your Honor. I have no  
19 further questions.

20 THE COURT: All right. How long is your  
21 portion of examination?

22 MR. GERACI: Not terribly long, your Honor.

23 THE COURT: Well, you've given me 30 minutes  
24 earlier.

25 MR. GERACI: I don't even think 30 minutes.

26 THE COURT: Are you going to have any?

27 MR. GERACI: I think we should be done before  
28 your deadline.

1 THE COURT: Well, okay. All right. I just  
2 wanted to make sure. All right, so --

3 MR. GERACI: I don't have that much.

4 THE COURT: All right.

5 MR. BARRY: Your Honor, if I move 179 to be  
6 admitted.

7 THE COURT: Any objection?

8 MR. GERACI: No objection.

9 THE COURT: All right. Exhibit 179 will be  
10 admitted.

11 (Exhibit 179 was received in evidence.)

12 THE COURT: All right. Counsel, begin your  
13 cross.

14

15 CROSS-EXAMINATION

16 BY MR. GERACI:

17 Q. Good afternoon, Mr. Vu.

18 A. Good afternoon.

19 Q. Probably good reasons for this, it's just more  
20 my curiosity. You spent a lot of time on the two-card  
21 ballot that dropped in the mail pretty soon.

22 I notice that there is a lot of empty space on  
23 the cards.

24 A. That's correct.

25 Q. And there is a lot of empty space between the  
26 text and the section where it says yes or no or who to  
27 vote for, et cetera.

28 A. That's correct.



1 Q. Is that by particular design or regulation of  
2 which I'm unfamiliar, or why is there so much space?

3 A. I believe in my prior testimony -- the reason  
4 why we reserve that much space, white space, is, again,  
5 your Honor, is we have to reserve that space because we  
6 translate the ballot in four additional languages. And  
7 sometimes, to be able to translate that appropriately,  
8 it extends the ballot all the way through.

9 Those bubbles that you see there have to remain  
10 the same regardless of the translation. So what we end  
11 up doing is reserve approximately 30 percent of space  
12 for languages like Filipino, which takes a lot -- many  
13 more characters to translate a measure dealing with  
14 legalization of marijuana.

15 So that's the reason why we reserve that space  
16 across the ballots and why it leads into multiple cards.  
17 And that happens every election, not just in this  
18 two-card situation.

19 Q. Okay. So, essentially, we are just reserving  
20 space for additional language translations and  
21 characters that might exceed the space that you have on  
22 the English version of the card?

23 A. Again, the reason why we reserve the space is  
24 because those ovals have to be the same identical across  
25 all the translated ballots. Again, there is five  
26 different ballots that we have to create.

27 Q. I understand.

28 A. Translated ballots that we have to create. And

1 those ovals have to be in the same spot because if they  
2 don't, then the tabulation system, when we talk about  
3 the programming of the system, wouldn't be correct.

4 Q. And the ovals are the little orange or red  
5 ovals that are on each page, yes or no and the  
6 candidates' names, et cetera?

7 A. That's correct.

8 Q. So regardless of the language that it's printed  
9 in, as far as the card itself and how it's scanned,  
10 those bubbles just have to appear right there so you  
11 have to fit all the Chinese characters, for example, in  
12 this little box and make sure the bubbles are in the  
13 same exact place?

14 A. That's correct. That's why you see throughout  
15 generally the entire ballot card, for example, even in  
16 the instructions, we reserve space there for the  
17 translation of Filipino, Vietnamese, Chinese and  
18 Spanish.

19 Q. Thank you for that clarification.

20 A. And those are under the Voting Rights Act of  
21 1965 in terms of the languages.

22 Q. Thank you for that clarification.

23 So if I'm understanding this last prior  
24 election as far as the numbers, I'm seeing different  
25 numbers at different times, they were approximately  
26 775,000 votes cast, correct?

27 A. In the June election.

28 Q. The June presidential primary election?

1 A. 2016, that's correct.

2 Q. Let's try not to talk over each other.

3 A. I apologize.

4 Q. I know it's getting late.

5 And of those 775,000 votes, approximately  
6 490,000 were cast by mail?

7 A. 490,000, I'm sorry, were cast by mail, yes.

8 Q. And as I asked your colleagues, I'll ask you,  
9 has that been an increasing trend election cycle to  
10 election cycle? Have you observed that more and more  
11 voters are electing to vote-by-mail?

12 A. That's correct.

13 Q. So that seems to be the continuing trend and  
14 you're expecting that continuing trend this November?

15 A. I anticipate that it will. In fact, we are  
16 encouraging voters to consider voting by mail, and we  
17 are also -- part of our messaging is to vote it and get  
18 it back to us promptly as well as we heard today in  
19 terms of the operational and logistical issues that we  
20 face.

21 Q. Thereby increasing your semi final official  
22 canvass number, correct?

23 A. Whether it is, it will be dependent on the  
24 voter themselves. It's a voter behavior issue as I see  
25 it.

26 Q. And to continue along on my thought process,  
27 there were 75,000 provisional votes as of election night  
28 that were ready for you to start the process that you've

1 described?

2 A. That's correct. There was 75,000, a little  
3 over 75,000 if I'm correct.

4 Q. Of the 490,000 vote-by-mail, 233,000 were  
5 received by election night, correct?

6 A. 233,000 were received by, I would say, the  
7 three days because of the postmark plus three within  
8 those three days.

9 Q. Actually, let me correct myself and reask the  
10 question so we are clear.

11 A. Okay.

12 Q. Because my notes say as of election night,  
13 256,000 votes by mail had been -- plus three had been  
14 received and processed as part of your semi final  
15 official canvass?

16 A. Not the plus three. The 256,000 were part of  
17 the semi final official count, and those were the  
18 ballots that -- vote-by-mail ballots that were received,  
19 processed, validated, extracted and added into the  
20 count.

21 Q. And then the remainder of approximately 233,000  
22 were left to be processed in the official canvass?

23 A. That's correct.

24 Q. So 233,000 vote-by-mail ballots plus 75,000  
25 provisional ballots were not going to be part of the  
26 1 percent manual tally, correct?

27 A. That's correct.

28 Q. And that is approximately 37 percent of the

1 total votes from June of 2016, correct?

2 A. I will take your word for the 37 percent.

3 Q. Okay.

4 THE COURT: One moment, Counsel.

5 All right. Continue on.

6 BY MR. GERACI:

7 Q. Concerning the extensive questions on the  
8 provisional ballot process, counsel and yourself  
9 testified to Exhibit 176, which is the sample envelope?

10 A. That's correct.

11 Q. Do you recall that?

12 I notice that on flip side of the envelope  
13 under 1D, which relates to the primary elections, it  
14 says, "The voter requested a ballot that is different  
15 from the party on the roster as one of the four choices  
16 that a poll worker would choose to place a voter's  
17 ballot in this envelope." Correct?

18 A. That's correct.

19 Q. Just so we're clear, since there has been some  
20 information about the subject, if a nonparty registered  
21 voter wishes to cross over and vote on the Democratic  
22 Party primary ballot, would the poll worker be correct  
23 to place that ballot in a provisional envelope?

24 A. If they were asking for, again, a Democratic  
25 ballot from -- if a nonpartisan voter requested a  
26 Democratic ballot, the voter would need to vote a  
27 provisional ballot and have that ballot placed inside  
28 the envelope.

1                   Is that what your question was?

2           Q.    My -- except I didn't use the word provisional  
3 on the ballot. Let me reask the question so everybody  
4 is clear.

5           A.    Okay. Thank you.

6           Q.    Okay. I am a nonpartisan voter or a nonparty  
7 preference voter, which means I'm registered under no  
8 party, correct?

9           A.    That's correct.

10          Q.    And I wish to vote, which is allowed in  
11 California in the primary, I wish to vote for the  
12 Democratic Party presidential primary. So I go to my  
13 polling place and I say, "I would like to vote on the  
14 Democratic Party primary ballot."

15                   The poll worker hands me what?

16          A.    The poll worker gives you a chart that we  
17 provided at the polling location, every single location,  
18 and gives that nonpartisan voter a list of four options.

19          Q.    One of them is the Democratic Party, correct?

20          A.    One is a nonpartisan ballot. The second one is  
21 a nonpartisan version of the Democratic Party ballot,  
22 which excludes the Democratic central committee raised.  
23 The other one is an American Independent Party ballot.  
24 And the last is the Libertarian Party ballot.

25          Q.    Okay. So the second one you mentioned, the  
26 nonpartisan Democratic ballot, is that what's commonly  
27 called a crossover ballot?

28          A.    That is perhaps -- we didn't call it for

1 purposes because we knew from a voter perspective that  
2 we would want to call it a nonpartisan Democratic  
3 ballot. But for all intents and purposes for this  
4 discussion, yes, crossover ballot. It would be a  
5 crossover ballot.

6 Q. And if I went ahead and I voted on that  
7 nonpartisan Democratic ballot and now I'm finished and  
8 I hand it back to the poll worker, do they put it in one  
9 of these provisional envelopes?

10 A. No.

11 Q. What type of envelope should they have put it  
12 in?

13 A. They should not have put it in any envelope.

14 Q. It should have been processed as a poll ballot  
15 like everyone else's ballot?

16 A. It would -- that would be correct.

17 Q. In this last election, were you aware of the  
18 circumstances where poll workers were placing such  
19 ballots in provisional envelopes?

20 A. There may have been those situations.

21 Q. So can you explain then what option D, like  
22 dog, is on number one of the flip side of the envelope  
23 where it says "a different ballot requested," et cetera?

24 A. Again, that would be part of that chart, that  
25 provisional breakdown chart that I was referring to, is  
26 that the registered party of the voter that's within our  
27 office, that voter's political party preference doesn't  
28 match a political party ballot that they are selecting

1 of which the political party has said they cannot vote  
2 on their particular presidential candidates.

3 Q. So if I was a nonpartisan voter and asked for a  
4 Republican Party ballot, it would get put in a  
5 provisional envelope and letter D would be checked?

6 A. It would -- that's correct. And then per our  
7 instructions to our poll workers is they would fill out  
8 the number two there, "Primary elections, write the  
9 party of the ballot placed in this envelope."

10 Q. Carrying my hypothetical now to the next level  
11 where the ballot is received, assume that the poll  
12 worker put my Democratic -- my nonpartisan Democratic  
13 ballot in a provisional envelope, it's received in the  
14 registrar's office on election night, and it goes  
15 through this rigorous scrutiny that you described, what  
16 would be the next step as to what would happen to my  
17 ballot under the circumstances I limited it to?

18 A. As I discussed, we would verify, search for  
19 your name. We would determine whether or not you were a  
20 registered voter. We would look at the political party  
21 preference you were and look at the nonpartisan  
22 Democratic ballot and put that, then ultimately, kind of  
23 fast tracking the conversation here, we would put that  
24 in the count pile. That means that it would be counted,  
25 the entire ballot.

26 Q. But it wouldn't become part of the semi final  
27 official canvass, would it?

28 A. It would not, no.



1 Q. Because it's in a provisional envelope, right?

2 A. That's correct.

3 Q. I heard you say at least twice that provisional  
4 ballots are ballots that are exercised at the polling  
5 place, correct?

6 A. That's correct.

7 Q. So they are polling ballots, correct?

8 A. That's correct.

9 Q. There is nothing that distinguishes them other  
10 than the irregularity from the rest of the poll ballots,  
11 correct?

12 A. The only difference between them is it gets  
13 sequestered inside an envelope.

14 Q. And it's required to go through additional  
15 steps and scrutiny, correct?

16 A. It requires additional steps for us to  
17 validate.

18 Q. Okay. Drawing your attention to your testimony  
19 concerning the 1 percent manual tally, just to clarify  
20 the process that occurred in this past election cycle,  
21 again, there was a decision -- you talked about this the  
22 other day -- there was a decision to change from the  
23 batching method of conducting the 1 percent manual tally  
24 on the vote-by-mail ballots to the precinct method of  
25 the same section, Election Code section, correct?

26 A. That's correct.

27 Q. And you participated in that decision or made  
28 that decision?

1 A. The going from -- I'm sorry?

2 Q. Going from batch to precinct.

3 A. That's correct.

4 Q. You made the decision?

5 A. I made the decision, yes.

6 Q. Okay. And when along the process -- how far  
7 along the process of the 1 percent manual tally had the  
8 team gone before the decision -- your decision to change  
9 was made?

10 A. I'm not quite sure when that had occurred.

11 Q. What's your best estimate in the 30-day cycle?

12 A. The time -- ultimately, the time frame is as  
13 when we got the -- I believe the lawsuit from  
14 Mr. -- from Mr. Lutz.

15 Q. So it was your belief that Mr. Lutz's lawsuit  
16 was the trigger for that decision?

17 A. That's correct. We had -- once the complaint  
18 came in, we considered and tried to satisfy, as I  
19 mentioned before, say to Mr. Lutz in terms of going back  
20 to a process that had been in law prior to the batch  
21 method.

22 Q. Did you believe he was objecting to your  
23 procedure of batching vote-by-mail ballots?

24 A. I didn't know what he was objecting to. I was  
25 moving towards the precinct method, which was a method  
26 that was, I considered, tried and true, that had never  
27 been complained about before.

28 Q. Except that you had already batched the ballots

1 and randomly selected for the 1 percent manual tally the  
2 batches to be reviewed and tallied, correct?

3 A. I believe that was the case.

4 Q. And isn't it true that Mr. Lutz was just asking  
5 you to increase the number of batches to reflect the  
6 37 percent of ballots that you weren't including in the  
7 1 percent manual tally process?

8 A. Again, I don't recall the time frames. There  
9 was the initial request and then there was the lawsuit.  
10 So I don't know at what point in time that had occurred  
11 in.

12 So, yes, I know that there was a complaint --  
13 or an e-mail by Mr. Lutz, and then there was a response  
14 from myself and then there was the lawsuit, and I can't  
15 remember how quickly those respective days occurred.

16 But some were during that line -- I believe it  
17 was after the lawsuit was filed that we considered a  
18 different approach in going back to the precinct method.

19 Q. You could have, instead of switching from  
20 batching to precinct, just added two more batches of  
21 vote-by-mail ballots and satisfied his objection, his  
22 concern, correct?

23 MR. BARRY: Your Honor, objection. Lacks  
24 foundation. Assumes facts not in evidence.

25 THE COURT: Overruled. You can answer the  
26 question.

27 THE WITNESS: Honestly, I don't know what would  
28 have satisfied Mr. Lutz. There has been so many

1 different complaints from Mr. Lutz associated with the  
2 1 percent manual tally, associated with our overall  
3 process, so I really don't know what would have  
4 satisfied him.

5 I just know that we were going back to a tried  
6 and true process where it was -- been on the books that  
7 we could move towards, and so that was the reason why I  
8 made the decision that I did.

9 BY MR. GERACI:

10 Q. Well, you were also aware that your procedural  
11 manual didn't even contain the procedure for processing  
12 your 1 percent manual tally for the vote-by-mail ballots  
13 by batch, correct?

14 A. I believe that was my prior testimony, that's  
15 correct.

16 Q. So was it that Mr. Lutz was complaining about  
17 insufficient number of batches or was it that your  
18 procedures didn't include a procedure for the 1 percent  
19 manual tally vote-by-mail by batch that prompted your  
20 decision?

21 A. Again, are you talking about -- again, if I'm  
22 correct, the decision was based off of the lawsuit and  
23 understanding the complaint filed, not the original  
24 request, if you will, that Mr. Lutz had e-mailed myself.

25 Q. Okay. Draw your attention to Exhibit 13, which  
26 would be in the black binder, Volume I.

27 A. Yes, got it.

28 Q. Thank you.

1           It contains an e-mail thread one date of  
2   June 10.

3           THE COURT: Now, Counsel, let me stop you. I  
4   show that Exhibit 13 was admitted. I can go back in my  
5   notes.

6           Have you already examined Mr. Vu on this? I  
7   don't need you to go -- I'm not being critical, but I  
8   don't need you to go over the same thing twice. I can  
9   assure you I'm making notes.

10          MR. GERACI: I see that, your Honor.

11          THE COURT: Do you need to go over it again if  
12   you've already done so once?

13          MR. GERACI: Well, only because he said, "I  
14   wasn't sure what prompted my decision."

15          THE COURT: I'll figure it out.

16          MR. GERACI: I understand, your Honor.

17          THE COURT: Anything else?

18          MR. GERACI: One of my questions was, your  
19   Honor, was Exhibit 13 admitted. So you've answered that  
20   one.

21          THE COURT: It's in.

22          All right. Is that it or do you got some more?

23          MR. GERACI: That's all.

24          THE COURT: All right. Anything else on  
25   recross? How much time do you need?

26          MR. BARRY: Two minutes.

27          THE COURT: All right. That's fine. Just give  
28   me one moment to make a note here.

1 All right. Redirect examination, Counsel.  
2 Whenever you're ready.

3 MR. BARRY: Thank you, your Honor.  
4

5 REDIRECT EXAMINATION

6 BY MR. BARRY:

7 Q. Mr. Vu, earlier you testified that for election  
8 day you hire over 7,000 poll workers, correct?

9 A. That's correct. Over 7,000. For this  
10 upcoming, it will be close to 8,000.

11 Q. So for at least one or two weeks, you are one  
12 of the largest employers in San Diego County?

13 A. We are.

14 Q. And do poll workers make mistakes?

15 A. Poll workers definitely make mistakes. They  
16 are individuals that are volunteering their time during  
17 an election to promote democracy and serve their  
18 citizens. So, yes, they do sometimes make mistakes.  
19 It's a human process.

20 Q. And if a poll worker made a mistake and put an  
21 otherwise valid ballot into a provisional envelope,  
22 would that ballot still be counted during the canvass?

23 A. It would be counted.

24 Q. So every vote gets counted?

25 A. Every vote gets counted.

26 MR. BARRY: Thank you. No further questions.

27 THE COURT: Anything else?

28 MR. GERACI: Nothing further.

1 THE COURT: May Mr. Vu be excused?

2 MR. BARRY: Yes.

3 MR. GERACI: Yes, your Honor.

4 THE COURT: Thank you very much, Mr. Vu.

5 THE WITNESS: Thank you.

6 THE COURT: Okay. Other than the, I'm sorry,  
7 the admission of any additional exhibits, does the  
8 defense rest?

9 MS. KARNAVAS: I think subject to the testimony  
10 of Dr. Stark.

11 THE COURT: Oh, that's fair. Okay.

12 Okay. So the plaintiff will have -- or  
13 plaintiffs will have Dr. Stark first thing Tuesday  
14 morning?

15 MR. GERACI: Yes, sir.

16 THE COURT: What do you estimate to take on  
17 direct?

18 MR. GERACI: Hour and a half.

19 THE COURT: Cross?

20 MS. KARNAVAS: I'm sorry. Did he say an hour  
21 and a half?

22 THE COURT: Yeah.

23 MS. KARNAVAS: Well, I guess we'll see what he  
24 says. I don't know. I can't imagine him going on for  
25 an hour and a half, but --

26 THE COURT: All right. And then after  
27 Dr. Stark, it's your intention to recall Mr. Lutz?

28 MR. GERACI: Yes, your Honor.

1 THE COURT: And how much time do you estimate?

2 MR. GERACI: Twenty minutes.

3 THE COURT: All right. Well, it's possible  
4 that we will not finish with the evidence by then, and  
5 that assumes that the defense will be in position to say  
6 whether they would like to arrange to bring in their own  
7 expert to respond to Dr. Stark's testimony, which we'll  
8 decide that before we adjourn on Tuesday.

9 Now, Counsel, here is something else that I  
10 want you to start reflecting on over the weekend. In  
11 bench trials, particularly ones involving issues that  
12 are as dense, if not as complex, as this case, I give  
13 counsel a number of options of how to present closing  
14 arguments.

15 One is to present oral closing arguments as we  
16 normally do at the end of the case, which would take  
17 place promptly after the presentation of the evidence.

18 Now, that may be a bit challenging if it  
19 appears as if the defense is going to want to call their  
20 own expert in response to Dr. Stark's -- Stark after  
21 Tuesday.

22 But one option is to give an oral closing.

23 A second is to present the Court with written  
24 closing briefs.

25 A third option is to give oral closings at the  
26 end of the evidence while everything is fresh in my mind  
27 and submit written closing briefs, recognizing that the  
28 matter will not be deemed submitted until after the last



1 of the closing briefs will have been submitted.

2 Now, be forewarned, I don't tend to sit on this  
3 stuff for very long. So by the time I will have  
4 received the last of the closing -- the written closing  
5 briefs, and I don't look at any of the briefs until I  
6 got the last one, based upon my own notes and review of  
7 the authorities, I will have substantially completed my  
8 written memorandum.

9 So you will be in a much better position to  
10 influence my view of your case if you're prepared to  
11 give oral closings at the close of the evidence. You  
12 can choose not to do so. It's up to you.

13 So you don't have to make any decisions now.  
14 I'm going to give you wide latitude to tell me what  
15 you'd like to do, and we'll make that decision probably  
16 first thing Tuesday morning, though. That will dictate  
17 just how much time we are going to be spending in trial  
18 on Tuesday.

19 But if you do choose to give oral closings, it  
20 will take place fairly quickly after the conclusion of  
21 the evidence.

22 All right. Now, we are going to have -- we'll  
23 circle back. I'll give each of you a chance to bring up  
24 any additional issues, but we are going to have a whole  
25 bunch of people coming through this department tomorrow,  
26 so please make sure you rearrange your belongings to be  
27 as secure as possible. You can leave them in the  
28 department.

1           Let me go to plaintiffs' side. Is there any  
2 other issues that you would like to bring to my  
3 attention today?

4           MR. GERACI: No, your Honor. Thank you.

5           THE COURT: Counsel?

6           MR. BARRY: The only question I had is when you  
7 say fairly shortly after --

8           THE COURT: We'll take a break and then --

9           MR. BARRY: Oh, same day.

10          THE COURT: Oh, absolutely. No. We'll take  
11 maybe a 15-minute break and then you come in. And  
12 really, it's akin to almost law and motion argument, you  
13 know. I may have a few questions here and there for  
14 you. But -- and there may be some reasonable  
15 limitations how much time you are out. But whatever the  
16 Court gives plaintiff gives equal amount to defendant.  
17 That's kind of what I was thinking.

18          MR. BARRY: Thank you.

19          THE COURT: All right. Anything else?

20          MR. BARRY: I don't think so.

21          THE COURT: All right. So we are in recess  
22 until Tuesday morning, emphasize Tuesday morning, at  
23 9:00 o'clock.

24          Let me ask counsel to try to get here a few  
25 minutes early so we can start as promptly as possible at  
26 9:00 o'clock. So we are in recess.

27                   (Proceedings adjourned at 4:21 p.m.)

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REPORTER'S CERTIFICATE

COUNTY OF SAN DIEGO, )  
STATE OF CALIFORNIA, )

I, Kristy A. Montalban, Certified Shorthand Reporter licensed in the State of California, License No. 13551, hereby certify that the foregoing proceeding was reported by me and was thereafter transcribed with Computer-Aided Transcription; that the foregoing is a full, complete, and true record of said proceeding.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named or in any way interested in the outcome of the cause in said caption.

In witness whereof, I have hereunto set my hand this day: August 11, 2017



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Kristy A. Montalban  
CSR No. 13551