

STATE OF MICHIGAN
IN THE 2B DISTRICT COURT FOR HILLSDALE COUNTY

THE PEOPLE OF THE STATE OF MICHIGAN,

24-0498 FY

v.

24-0497 FY

STEPHANIE SCOTT and
STEFANIE LAMBERT JUNTILA,

Defendants.

/

CONTINUED PRELIMINARY EXAMINATION

Hillsdale, Michigan - Tuesday, August 12, 2025

Before Honorable Megan R.M. Stiverson

APPEARANCES:

FOR THE PEOPLE:

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--No action taken on the record

1 Hillsdale, Michigan

2 Tuesday, August 12, 2025 - 9:04 a.m.

3 THE COURT: All right, we will go back on the
4 record on file 24-0497 and 0498, Stefanie Junttila and
5 Stephanie Scott, resent in court with counsel, and the
6 attorney for the prosecution is present as well.

7 I believe we left off in the middle of direct
8 still, Mr. Cunningham with Mr. Dane.

9 Mr. Dane, I'm going to swear you in again just
10 because it's a new day, okay? Can you raise your right
11 hand? Do you swear or affirm that the testimony you are
12 about to give is the truth, the whole truth, and nothing
13 but the truth, so help you God?

14 MR. DANE: I do.

15 ABRAHAM DANE

16 (At 9:04 a.m., previously called as a witness,
17 duly sworn, continues testifying as follows:)

18 THE COURT: You can put your hand down.

19 Mr. Cunningham.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. CUNNINGHAM:

22 Q. Mr. Dane, when we left off yesterday, we were talking
23 about that V-drive that's part of the tabulator. And
24 again, could you tell us what that V-drive is and what
25 it's all about?

1 A. So the V-drive is a USB device that we get directly from
2 the vendor at Hart InterCivic. And at the county, we use
3 that on the election management system workstation to
4 program the election and then put that information on the
5 V-drive so that it can be installed on the devices out in
6 the precincts.

7 Q. And how are those delivered to the individual
8 jurisdictions?

9 A. We seal them at the county into special containers that
10 have been approved by the Board of Canvassers. And then we
11 place tamper-proof State of Michigan seals on them that we
12 get from the Bureau of Elections. And then there's a
13 document that we use for a record of transitioning that
14 possession of those devices to the municipal clerks.

15 Q. Do you receive any type of receipts from the clerks
16 indicating that they received them?

17 A. Just a sign-off on a document that shows that they picked
18 them up.

19 Q. Now, you've indicated to me that another tool is needed to
20 actually install the V-drive?

21 A. Yeah, there's another USB device that we get from Hart
22 InterCivic. It's called a Verity key. And that is also
23 programmed from the election management system at the
24 county. Both of those devices are required to install an
25 election on a tabulator or a voter-assist terminal in the

1 precincts.

2 Q. Now, once they're installed, can they be readily removed?

3 A. The election programming?

4 Q. The V-drive. Once the V-drive --

5 A. The drive itself?

6 Q. -- is put into the tabulator.

7 A. Right. So there's a compartment in the tabulator that has

8 two USB ports. So it's designed so that you can have one

9 for the V-drive and one for the Verity key. The V-drive is

10 of sufficient size to allow the cover of that compartment

11 to be locked with a panel that would take a key, and then

12 another area for a State of Michigan seal. But the Verity

13 key is a taller device that is designed so that you can't

14 leave it in there. Otherwise it would be easier for the

15 clerks to make a mistake and zero out everything after the

16 election. So they have to retain that Verity key in their

17 possession. The clerk does.

18 Q. Okay. And so when the polls open on Election Day, the

19 Verity key should not be in that machine?

20 A. Correct. And the compartment should be locked and sealed.

21 Q. Now, you've indicated that the Verity drive contains

22 information about the election votes cast during the

23 election. Is that right?

24 A. It would after the election has taken place, yes.

25 Q. So as the election is going on, the information is being

1 saved on the V-drive?

2 A. Cast vote records, yes.

3 Q. And that's a specific technical term, cast vote records?

4 A. Yes.

5 Q. And it means what?

6 A. It's a record of each ballot and the votes that were
7 marked on those ballots. So it would be, again, anonymous
8 as to which voter it belonged to, but it contains the
9 votes so that at the end of the night the device can tally
10 those votes.

11 Q. Now, would it have a -- do they actually scan the paper
12 votes, or do they in some other way tabulate them?

13 A. It is a scanning device, so yeah, it scans them. There is
14 programming options that allows for an image of each
15 ballot to be retained. We've never done that in Hillsdale
16 because it slows down the machines, and we were concerned
17 about a line forming in busy precincts because it takes
18 too long. So all ours do is just count the marks in the
19 boxes on the ballot that a voter makes, and if they make a
20 write-in selection, it will capture a small image of just
21 that one section on the ballot.

22 Q. Now, you've indicated, I believe, on your testimony that
23 once it's put in there, it becomes unique to that
24 individual tabulator? Once the V-drive is
25 (unintelligible)?

1 A. Yeah, we tell the clerks that it, and I think we get this
2 term from the vendor, that that V-drive becomes married to
3 that device once the election is installed to it. So
4 because they have multiple devices sometimes in the
5 precincts, we tell them that, because they can't unplug it
6 then and move it over to the other device, it wouldn't
7 work.

8 Q. So it has to stay with that device?

9 A. Correct.

10 Q. Once the polls close, what happens to the V-drive?

11 A. The election inspectors will close the polls on the
12 device. They have to enter in a special unique code to do
13 that. That will tally the votes and print the reports.
14 They need to manually print write-in reports if there were
15 candidates and write-ins made, and then once those reports
16 are generated, at some point in the evening, they will
17 just shut the machine down, power it down, and then they
18 will remove those, the V-drive, the one V-drive that's in
19 there. They have to wait until the end of the night to
20 break the seal on that and unlock that, and then they put
21 it in the container that we use to deliver those to the
22 clerk. They reuse those same containers. They've been
23 inspected and approved by the Board of Canvassers. And
24 then they're sealed up again with another certificate and
25 another seal. That seal number is recorded on the

1 certificate that's within a see-through pocket on the
2 container, and then it's also recorded in the poll book,
3 and then eventually it gets delivered on election night to
4 the county.

5 THE COURT: The hard copy poll book?

6 THE WITNESS: Correct, yes.

7 BY MR. CUNNINGHAM:

8 Q. Now, you indicated that reports are generated prior to the
9 removal of the V-drive. What type of reports?

10 A. The reports from the tabulator would be a tally report,
11 three copies of that. A fourth is optional if the clerk
12 wants to tape a hard copy of that report to the door of
13 the precinct for the public to view. And then they would
14 print, again, three write-in reports if there were write-
15 ins.

16 Q. Now, how does that report differ from the reports
17 generated by the electronic poll book?

18 A. These reports are on thermal tape, and they have signature
19 lines on them. They get paper clipped to the copies of the
20 paper poll book that have statement of votes pages that
21 are carbon copied, and there's three different versions of
22 those. One would go to the local clerk, one would go to
23 the county clerk, and one would go to the Board of
24 Canvassers.

25 Q. Now, that separate report generated by the electronic poll

1 book, that would show the number of people voting?

2 A. Correct. So the electronic poll book itself, the laptop
3 produces a remarks report from the election inspectors,
4 what took place throughout the day. It would produce the
5 list of voters report from the voters that were processed
6 on that laptop. It would produce the ballot summary page,
7 so an accounting of what happened with the number balance
8 and the different styles that they might have had in that
9 precinct. And then it saves the voter history. That's not
10 a paper report, but that's a file that would be saved then
11 on that encrypted flash drive that's used and plugged into
12 the e-poll book all day. And that's what the clerk would
13 use to upload back into QVF to give the voter history.

14 Q. And that's to be done within ten days?

15 A. Yes.

16 Q. Now, the actual information then about the tally of the
17 votes, that's all on the V-drive that's been delivered to
18 the county, is that right?

19 A. Yes, it should be.

20 Q. Once you receive the V-drive, what steps do you take to
21 maintain it or safeguard it?

22 A. So when it comes into the possession of the county, we
23 have another document that shows chain of custody. And we
24 record the seal number that they used before we break that
25 seal. And then we have to break the seal to get that V-

1 drive and plug it into the election management system to
2 produce the reports that we put on the website that show
3 the unofficial results from the election.

4 Q. Now, the information from the V-drive, the data, the, what
5 did you call it?

6 A. Cast vote records?

7 Q. How are those maintained?

8 A. So that, when the V-drive gets uploaded into the election
9 management system, all of that data is stored on that
10 machine. That machine is not connected to the internet. So
11 usually those cast vote records, nothing is really done
12 with those until after the canvas is complete and the
13 canvassers have certified the election. And then I usually
14 will download a copy of the cast vote records and store it
15 on a county server in case anyone wants to FOIA it in the
16 future.

17 Q. Now, if I understand it, you're saying that the data from
18 the V-drive is not really part of that canvassing process?

19 A. Well, it can be. The reports from the election management
20 system are part of the canvas process. The canvassers are
21 looking at the reports generated from the election
22 management system that are coming from those V-drives that
23 get delivered to the county. They're comparing them to the
24 thermal tape tally reports that get generated when the
25 polls close on the devices in the precincts to make sure

1 that they match. So in that way, they are using something
2 that's coming from the election management system in the
3 V-drive.

4 There could have been a situation where
5 something that I've seen happen in the past would be like
6 a clerk accidentally zeros out their tabulator, and then
7 they realize they made a mistake, and so they re-tabulate
8 their ballots that night before they deliver everything to
9 the county. And the machines are very sensitive, so if
10 someone were to have made like a pen rest, they didn't
11 really want to mark a box, but they made a little dot with
12 their pen, the machine might read it the first time but
13 not read it the second time when it's all scanned in. So
14 then that would make a difference from the tally report
15 that's printed originally from the tabulator and what ends
16 up being in the election management system. And then the
17 canvassers would catch something like that and investigate
18 it.

19 Q. Okay, and so that would be up to the canvassers to resolve
20 the discrepancy?

21 A. Correct.

22 Q. And in a situation like the computer reading the dots, or
23 the reading of the dot, that would be found by the
24 canvasser?

25 A. Yes.

1 Q. Okay. But the canvassers rely primarily on the printed
2 books?

3 A. Yes, the paper poll books.

4 Q. And what they do is balance the number of voters shown
5 from the electronic poll book with the number of actual
6 ballots that were received?

7 A. Correct, yes.

8 Q. And all that information is part of the poll book?

9 A. It is.

10 Q. That's a public document?

11 A. It is.

12 Q. So if anybody really had a true interest, an honest
13 interest in determining the number of people who voted,
14 that would be very easy to do?

15 MR. OLSEN: Objection.

16 THE COURT: Basis?

17 MR. CUNNINGHAM: He's got --

18 MR. OLSEN: Leading.

19 THE COURT: I've got it, Mr. Cunningham.
20 What's your objection?

21 MR. OLSEN: Objection, leading.

22 THE COURT: Response?

23 MR. CUNNINGHAM: What does it respond -- what
24 does it imply?

25 MR. OLSEN: And speculation.

1 MR. CUNNINGHAM: I'm asking him does it -- if
2 somebody honestly wants to know, he can answer yes or no.

3 THE COURT: Are you --

4 MR. CUNNINGHAM: It's not leading.

5 MR. OLSEN: It's speculation, too, Your Honor.

6 THE COURT: Okay, I don't think it's leading.

7 You indicated that you believe it to be speculation?

8 Can you ask Mister -- just rephrase the question
9 and ask Mr. Dane if he knows specifically?

10 BY MR. CUNNINGHAM:

11 Q. Well, if you know specifically, if somebody really wanted
12 to know about the number of voters that voted in precinct,
13 could they compare the numbers showing from the electronic
14 poll book with the number of actual ballots in that cast
15 vote report?

16 MR. OLSEN: I'm just going to raise the same
17 objection, Your Honor.

18 THE COURT: Yeah, I'll sustain the objection.

19 Mr. Dane, if I wanted the information, could I
20 simply file a FOIA request for that?

21 THE WITNESS: You could, depending on if the
22 canvass has taken place or not. Some of the documents
23 would be locked and sealed until after the canvass begins.

24 THE COURT: Okay. All right. Okay.

25 BY MR. CUNNINGHAM:

1 Q. But after the canvass?

2 A. They are public documents.

3 Q. Okay. And what we're talking about is the electronic poll
4 book data showing the number of people that voted, right?

5 A. Correct.

6 Q. And the report from the V-drive showing the number of
7 ballots that were counted?


8 A. Yes, the report from the V-drive is going to be on the
9 county's website regardless. So the other part of that
10 would be from the poll book.

11 Q. Now, what steps -- you've indicated that the information
12 in the cast vote records are saved from that Verity drive
13 into a mainframe computer. Do I understand that correctly?

14 A. Right after the canvass, I will make a copy of that and
15 store it on a server for convenience, because that will
16 allow me to fulfill any FOIA requests for that
17 information.

18 Q. How long do you maintain it on the mainframe, the
19 information from the canvass?

20 A. I have no plans to purge that information since I've
21 started, so I plan on keeping that forever.

22 Q. Okay. Now, there are requirements in law about retaining
23 information from an election, data from an election, are
24 there not? 

25 A. There are. It's unique to the type of data or the reports

1 that are existing, but yes, there is a retention schedule
2 from the Bureau of Elections.

3 Q. Okay, and are you familiar with that retention schedule?

4 A. I am.

5 Q. Okay. And is it an obligation of the clerk to follow that
6 retention schedule?

7 A. I believe it is, yes.

8 Q. Now, you've indicated that a lot of this is subject to a
9 FOIA request, right, the information from the election?

10 A. Yes.

11 Q. And one of the things would be the actual number of votes
12 cast?

13 A. Yes.

14 Q. Okay. And the only way you're going to do that is to
15 inspect the ballots themselves, right?

16 A. Well, there's multiple ways. There's the EMS report that's
17 on the website. There's looking at the list of voters,
18 maybe FOIA-ing that information from the poll book.
19 There's requesting the cast vote records.

20 One important distinction I would like to make,
21 though, is if you're wanting to know the canvassed record
22 of votes in a precinct, even the day after an election
23 takes place, you can't rely on a report from a Qualified
24 Voter File. You have to use reports that were from the
25 precinct itself, from the poll book, that were generated



1 from the e-poll book laptop.

2 Q. And why is that?

3 A. Because, as I said yesterday, the Qualified Voter File is
4 a tool that is constantly changing based on voters moving
5 in and out. And so if I generated that report even the day
6 after an election, someone may have moved that
7 participated in that election.

8 Q. Or, is it possible that maybe a clerk hasn't uploaded it
9 yet?

10 A. That's also true. They would need that information.

11 Q. They have 10 days?

12 A. Correct.

13 Q. Were you given instructions about allowing people to view
14 the actual ballots from the Bureau of Elections?

15 A. Yes, there is a memorandum from the Bureau of Elections
16 that gives instruction on that.

17 Q. I'm going to show you what has been marked for purposes of
18 identification as Proposed Exhibit 6.

19 MR. OLSEN: People's Exhibit?

20 MR. CUNNINGHAM: Same 6 I showed you yesterday.

21 MR. OLSEN: Ah, okay. We were just going to
22 renew our objection, Your Honor.

23 THE COURT: Can you remind me what the basis of
24 the objection was?

25 MR. OLSEN: This is prior to his employment with

1 the county. It's 2018. He started in 2020. So he can't
2 authenticate it. He's not an author or a recipient of the
3 -- by virtue of that, and it's not relevant.

4 THE COURT: Okay, let me hear some voir dire
5 regarding the same person, then I will give you the
6 opportunity to voir dire Mr. Dane as well.

7 BY MR. CUNNINGHAM:


8 Q. Does that memorandum set out the policies that should be
9 followed in regard to the freedom of information requests
10 on the ballots?

11 A. It is.

12 Q. And do you follow that instruction?

13 A. I can only recall one time that I had to follow that
14 instruction, but yes.

15 Q. Okay. And why do you follow that instruction?

16 A. Well, because the Bureau of Elections has some supervisory
17 control over things like this, and they're the ones that
18 we look to for policies and procedures regarding
19 misinformation. 

20 THE COURT: All right. Mr. Olsen, would you like
21 to voir dire Mr. Dane briefly?

22 VOIR DIRE EXAMINATION

23 BY MR. OLSEN:

24 Q. Mr. Dane, do you have a certified copy of that document?

25 A. Define certified.

1 Q. A document that has been certified by the county as an
2 authentic copy?

3 A. No.

4 Q. Were you the author of that document?

5 A. No.

6 MR. OLSEN: Thank you.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. CUNNINGHAM:

9 Q. One question. Is that a fair and accurate representation
10 of the policy that was put to you by the Bureau of
11 Elections?

12 A. Yes. And I believe the Bureau has sent this out as
13 reminders multiple times to clerks in the State of
14 Michigan.

15 MR. CUNNINGHAM: I'd move for admission.

16 THE COURT: So have you ever received a copy of
17 this directly since you began working as the clerk, you
18 indicated in January, at the beginning of January of this
19 year?

20 THE WITNESS: I don't --

21 THE COURT: Because you indicated they sent
22 reminders.

23 THE WITNESS: I don't know if it's been this
24 year, but I have seen this document transmitted to the
25 clerks in the state by the Bureau of Elections on multiple

1 occasions since 2021.

2 THE COURT: Sir?

3 MR. OLSEN: Your Honor, we don't know if it's
4 authentic. I don't know if it's a certified. It's not a
5 certified copy.

6 THE COURT: Well, not one of the things I
7 received here are certified copies that I've admitted so
8 far, are they?

9 MR. OLSEN: But as -- it's about personal.

10 THE COURT: I'm going to allow it.

11 MR. OLSEN: But, yeah.

12 THE COURT: I'll keep your objection on the
13 record.

14 MR. OLSEN: Thank you.

15 THE COURT: I think that Mr. Dane has testified
16 that he has knowledge that he's seen it. It's been sent on
17 multiple occasions, and it was through his employment.
18 Thank you. People's Exhibit 6 is admitted.

19 (At 9:26 a.m., People's Exhibit 6 received)

20 BY MR. CUNNINGHAM:

21 Q. All right. I'm going to direct your attention back to the
22 fall of 2021, and I'm going to ask you if you know who the
23 clerk of Adams Township was at that point in time?

24 A. Yes. Stephanie Scott.

25 Q. Okay. Is that somebody present in the courtroom today?

1 A. It is.

2 Q. Would you point her out, please?

3 A. She's sitting right there.

4 MR. CUNNINGHAM: And for the record, he is
5 indicating the Defendant in this case, Ms. Stephanie
6 Scott.

7 THE COURT: For purposes of the preliminary
8 examination only, the record shall reflect same.

9 BY MR. CUNNINGHAM:

10 Q. Now, sir, was there an election coming up in the fall of
11 2021?

12 A. There was. In November of 2021, there was an election for
13 at least one proposal for North Adams School District.

14 Q. And as part of that preparation for that, did you require
15 or need to have any type of certification of the
16 equipment?

17 A. Are you referring to the public accuracy testing that
18 needed to take place?


19 Q. Well, if that's what you need.

20 A. Yes. So there is a document that needs to be signed by the
21 election commission, including the township clerk, after
22 public accuracy test is performed.

23 Q. Okay. And that's signed after the actual public is done,
24 right?

25 A. Correct. Before the election, but immediately following

1 the public accuracy test.

2 Q. Was there a public accuracy test done any time between
3 January 2021 and, say, June of 2021? 

4 A. There should have been one, but I don't know for sure if
5 there was one.

6 Q. And why should there have been one? Was there an election?

7 A. There was a May election that -- actually it might have
8 been a March election, in January -- or in 2021 that the
9 township clerk in Adams Township would have needed to
10 perform.

11 Q. Okay. And was that performed at that time?

12 A. Well, the election took place, but I have no direct
13 knowledge as to whether the public accuracy test was
14 completed and that certificate was signed.

15 Q. Okay. And is there any type of requirement for the signing
16 of that, the acknowledgement of that being done?

17 A. Yes, it is a requirement. The Bureau of Elections
18 indicates that. I'm not certain whether there's a statute,
19 but I presume there is.

20 Q. Okay. And is that routinely filed with you or provided to
21 you, the results of the public accuracy test?

22 A. No, that would be in the custody of the township or city
23 clerk.

24 Q. Okay. Do they have to sign or certify it?

25 A. That document is a certification that the public accuracy

1 test took place and the results of that accuracy test
2 reflected the accurate results of the predetermined chart
3 of results. They matched.

4 Q. Okay. So you don't know, though, whether it was done
5 before that March or May election?

6 A. I do not. The only thing I would know is that I had
7 previously made communication with any clerks that had an
8 election and got the date of their public accuracy test so
9 that we could publish that in the newspaper for them on
10 their behalf.

11 Q. Okay. Now, moving up to this election you're having in
12 November of 2021, was there a need for a public accuracy
13 test in regard to that election?

14 A. There was.

15 Q. Okay. And did you have any role in facilitating that
16 public accuracy test?


17 A. We did.

18 Q. Could you explain that to us, please?

19 A. So leading up to the November election, the clerk, Ms.
20 Stephanie Scott, had scheduled the public accuracy test
21 for the very last date that the statute allowed for that
22 to take place, roughly a week before the election, and we
23 had been communicating leading up to that about different
24 concerns that she had. I think there was at least one
25 township meeting in there where she had been talking about

1 different theories that she had regarding the fraud that
2 she thought existed and might be contained in the device
3 itself. So she had indicated that she didn't want to use
4 the equipment.

5 We had made the Bureau of Elections aware of
6 that, and then they had been communicating to the entire
7 board, including Ms. Stephanie Scott, about the need to
8 complete the public accuracy test, as well as doing the
9 preventative maintenance, which up to that point she had
10 refused to do.

11 So because the public accuracy test was
12 scheduled so soon before the election took place and it
13 hadn't taken place yet, when the Bureau of Elections let
14 us know at the county that Ms. Scott had been removed from
15 the Qualified Voter File from accessing that database,
16 they then communicated to us that we needed to find
17 someone who was willing to run the precinct or run it
18 ourselves. So then we had to immediately begin working on
19 and planning for conducting that public accuracy test
20 ourselves. 

21 Q. Okay. Did you make any attempts to have someone else do it
22 in her stead?

23 A. We did. I can only remember one person that we asked.
24 There may have been others, but we asked one of the
25 previous township clerks in that township if they were

1 interested in stepping in, and they declined to do so.

2 Q. Did you just walk down the street and ask people, "Hey,
3 would you like to be running the election this year?"

4 A. No.

5 Q. Why wouldn't you do that?

6 A. They need some knowledge of how election administration
7 works, how the Qualified Voter File works, and gaining
8 access to that quickly would be a challenge. And
9 understanding the equipment that was new to the county
10 since 2017 would also be a challenge.

11 Q. Okay. So what did you end up doing?

12 A. We ended up running it ourselves. We thought it was the
13 easiest and most economical thing to do for the township.

14 Q. Now when you say we ran it ourselves, you mean the county
15 clerk's office?

16 A. Correct.

17 Q. Okay. And there came a time then when you had learned that
18 the Bureau of Elections had removed Ms. Scott from her
19 election duties?

20 A. Yes. They copied us in on the correspondence that they
21 were sending her, requesting that she confirm that she
22 would follow their directives. And so we were aware of
23 each of those. I believe there were three, maybe four
24 different attempts to do that. And then after a deadline
25 was set for a response, and that deadline passed and there

1 was no response, that's when they contacted us and asked
2 us to find someone or run it ourselves.

3 Q. Now when you learned that you would be running it
4 yourself, was there a need to do the public accuracy test?

5 A. Yes. The public accuracy test had not taken place yet, and
6 the statute dictated that it needed to take place rather
7 quickly. So we had to take charge of that, get the
8 equipment, find the test deck and the predetermined chart
9 of results, gather the correct forms, coordinate things
10 with the other members of the Election Commission and
11 conduct that test.

12 Q. How did you go about getting those materials?

13 A. We --

14 Q. The test deck and the other election devices?

15 A. We contacted members of the township board and requested a
16 couple of them to be at the township hall so that we could
17 have them witness our taking possession of the devices,
18 the test deck, the ballots, any absentee ballots and
19 absentee ballot applications that had been processed up to
20 that point, all those materials.

21 Q. And for what purpose were you doing that?

22 A. We needed all of them to properly run the precinct and
23 conduct that election.

24 Q. And this was, if you recall, approximately when?


25 A. The week before the election sometime. I believe it was

1 like a Monday or a Tuesday. I don't recall the date.

2 Q. Right before the election?

3 A. Yes.

4 Q. Now, when you contacted the township officials, you
5 received their cooperation?

6 A. Yes. The township treasurer and one of the trustees met us
7 at the building, and the township treasurer allowed us
8 access to areas of the building where we could get the
9 things that we needed. 

10 Q. And did you give them any type of receipt for the
11 materials you were taking?

12 A. There was a document where we recorded what we took, and
13 that was signed by both the treasurer and the trustee and
14 the clerk at the time and myself.

15 Q. You were deputy clerk at that time?

16 A. I was the chief deputy clerk at that time.

17 Q. And you were there at the time that the materials were
18 obtained?

19 A. I was.

20 Q. And also the clerk, the elected clerk was there too?

21 A. The county clerk was, yes.

22 Q. Okay. Now, what all did you, if you can recall, what did
23 you do with those materials?

24 A. We brought them back to the county, secured them in our
25 office and in our vault. And I don't believe we did much

1 with them that day. I think it was the following day that
2 we started going through the materials and kind of getting
3 an idea of what we needed to accomplish.

4 Q. Okay. And did you notice anything unusual when that
5 occurred?

6 A. Yes. We noticed that the tablet for the tabulator, the
7 computer part of it, was missing from the device, from the
8 suitcase that it belongs in.

9 Q. Okay. And you didn't discover that until the day after you
10 got those election materials?

11 A. That's how I remember it, yes.

12 Q. And what did you do when you discovered that that was
13 missing, that tabulator and the computer was missing?

14 A. We contacted the Bureau of Elections, and then we also
15 made contact through e-mail, I believe, with Stephanie
16 Scott and requested that she give us that tablet for that
17 device.

18 Q. And how did she respond to your request for that tablet?

19 A. If memory serves me correctly, I believe she referenced an
20 attorney and delayed in getting us that tablet.

21 Q. Now, what would be the harm in just delaying things for a
22 week, a month, whatever, and let things play out?

23 A. Well, up to that point, the county and the township and
24 the school district that was trying to have an election
25 had used up resources attempting to get this election to

1 take place. So there were statutes that we knew of that
2 required the public accuracy test to take place. Absent
3 voters had already turned in ballots. There was a lot that
4 had happened already. And then we needed to follow the
5 rules and the statutes that were in place for elections
6 and conduct that election as it should be.

7 Q. And the election was coming up very shortly?

8 A. Very shortly, yes.

9 Q. What did you do, if anything, when you saw there was
10 resistance from Ms. Scott to turn over that tabulator?

11 A. I don't recall doing anything other than trying to
12 communicate with her that we needed it, and then letting
13 the Bureau of Elections know what was happening. Aside
14 from that, I don't think we did anything.

15 Q. You've indicated that there was a public meeting, a
16 township meeting that you were aware of?

17 A. Yes, a regularly scheduled township meeting.

18 Q. And was that in early October?

19 A. Early to middle October, yes.

20 Q. Okay. And what was unusual about that meeting?

21 A. I don't recall being there personally, but I think it was
22 filmed and put on YouTube. The clerk brought the tabulator
23 out and --

24 MR. OLSEN: Objection, Your Honor. I'm going to
25 object to all of this. He was not there personally. He

1 just testified to it. Everything is hearsay.

2 MR. CUNNINGHAM: He just testified that he
3 watched it on YouTube.

4 THE COURT: Did you watch it on YouTube?

5 I don't think he said he watched it. I think he
6 said he knew it to be on YouTube.

7 Have you watched the public meeting on YouTube?

8 THE WITNESS: I did.

9 THE COURT: Then I'll allow it. Objection
10 overruled.

11 BY MR. CUNNINGHAM:

12 Q. Please continue.

13 A. The clerk had the tabulator out and was talking about
14 different speculation and theories that she had on what
15 was contained in the device and had referenced her
16 unwillingness to use that device in the election and in
17 the public accuracy testing that was required and coming
18 up very soon.

19 Q. Now, did that cause you concern?

20 A. It did.

21 Q. Why was that?

22 A. Because our jobs are to make sure elections are conducted
23 properly. And, so we had already, again, used up a lot of
24 resources getting to this point, and there was a school
25 district that had something on the ballot, and it would be

1 unfair to them if that election was not conducted properly
2 and was somehow invalidated by not following the statutes.

3 MR. CUNNINGHAM: I have nothing further for this
4 witness.

5 THE COURT: Cross-examination.

6 DEFENDANT JUNTILA: Your Honor, it came to our
7 attention that we have a box of documents in the car that
8 we would need for cross-examination.

9 THE COURT: You want to run out and get that?

10 DEFENDANT JUNTILA: Thank you, Ms. Judge.

11 THE COURT: Yeah, we'll just take about five
12 minutes.

13 DEFENDANT JUNTILA: Thank you.

14 THE COURT: I'm going to sit right here.

15 DEFENDANT JUNTILA: Awesome.

16 (At 9:41 a.m., off the record)

17 (At 9:48 a.m., proceedings resume)

18 THE COURT: We'll go back on the record.

19 Cross-examination may begin.

20 CROSS-EXAMINATION

21 BY MR. OLSEN:

22 Q. Good morning, Mr. Dane. You testified a few minutes ago
23 that you were concerned about the election being conducted
24 properly. Do you recall that?

25 A. Yes.

26

1 Q. Okay. Are you more concerned about the election being done
2 properly or that it's done securely?

3 A. Both.

4 Q. Okay. So you wouldn't put process or form over security,
5 correct?

6 A. No.

7 Q. The election in November '21, did that go forward in Adams
8 Township?

9 A. It did.

10 Q. And was there a tabulator used in that election?

11 A. There was.

12 Q. And where did that tabulator come from? Was it the one
13 that Ms. Scott did not want to use or was it another one?

14 A. No, it was another one. It was a spare that the county
15 had.

16 Q. Okay. So a spare was available to conduct the election?

17 A. (No verbal response).

18 Q. Is that yes?

19 A. Yes.

20 Q. So there was no requirement that that specific tabulator
21 that Ms. Scott had concerns about the security of was
22 used, correct?

23 A. The concern was that that was the township's tabulator and
24 it should be used in the township's election, because if
25 there were other precincts open and they might have had a

1 situation where they had a tabulator break down, then our
2 spares should be used for those instances.

3 Q. Okay. But there's no rule that requires that a spare be
4 used in case there's a breakdown. A spare is available in
5 case another tabulator is not available to be used,
6 correct?

7 A. Correct.

8 Q. And was that tabulator that was actually used, did that go
9 through logic and accuracy testing?


10 A. It did.

11 Q. And did it pass?

12 A. Yes.

13 Q. Okay. If that tabulator had not passed the logic and
14 accuracy test, would it have been certified?

15 A. No.

16 Q. So certification is incumbent. It's not just taking the
17 test. The certification is that the tabulator actually
18 successfully completes that logic and accuracy test,
19 correct? 

20 A. Correct.

21 Q. So you wouldn't know that a logic and accuracy test is
22 successfully completed until it's actually performed?

23 A. Right.

24 Q. So there's no way to agree in advance that you're going to
25 certify the logic and accuracy test until the test is

1 performed and the tabulator passes?

2 A. Correct.


3 Q. You mentioned there was some discussion about FOIA
4 requests on data?

5 A. Yes.

6 Q. Should the data that is produced by the state pursuant to
7 a FOIA request be repeatable?


8 A. I'm not sure I understand what you mean.

9 Q. In other words, if I get a FOIA request on -- six months
10 after the election -- say, take the November 2020
11 election. If I do a FOIA request in April of '21, and then
12 I do another FOIA request for that same period that I
13 submit in May of '21, should the two FOIA responses be the
14 same for the election?

15 A. Depends on what you're requesting. 

16 Q. If you're requesting the same data in April of '21 for the
17 November 2020 election that you request in May of '21,
18 shouldn't that be the same response by the state?

19 A. If you're referencing data from the Qualified Voter File,
20 then it would be different potentially.

21 Q. If you're referencing data as the Qualified Voter File
22 existed as of the canvas of the November 2020 election,
23 for that specific time period, you're not suggesting that
24 the data should change from the QVF for that specific
25 period, are you? 

1 A. The QVF data is not canvas. There's no canvas certified
2 results in the Qualified Voter File.

3 Q. What I'm referring to is the date of the canvas of the
4 election. So the date of the canvas is completed a short
5 period after the election, correct?

6 A. Yes.

7 Q. If I seek the data, the QVF, for the date immediately
8 following the canvas on May 1st, and then a month later I
9 seek that same QVF file for the date as it existed after
10 the canvas --

11 A. So what QVF file are you referencing? What report?

12 Q. If you FOIA'd the information from the QVF of who voted on
13 November 3rd, 2020, would that QVF be different if you
14 requested that in April of '21, and then again requested
15 it a month later?

16 A. Yes.

17 Q. What do you base that on?

18 A. Experience.

19 Q. Pardon me?

20 A. My experience.

21 Q. Okay. So who changes that data?

22 A. The voters when they move from precinct to precinct and
23 change the registration in the database.

24 Q. If we're talking about a snapshot of data at a period of
25 time -- do you understand when I say what a snapshot is?

1 A. Yes.

2 Q. So on -- I want to get a snapshot of the voters who voted
3 on November 3rd, 2020, and I request that data on April
4 1st, 2021. Do you understand?

5 A. Yes.

6 Q. And are you saying that I cannot go back and do a later
7 request for that snapshot and get the same data?

8 A. If you're requesting who voted in an election, then my
9 preference and my assumption would be to give you the
10 canvassed data from the canvassers and not from the
11 Qualified Voter File, because the Qualified Voter File is
12 not going to give you the information that you're asking
13 for in that instance, unless you specifically ask for
14 Qualified Voter File data.

15 Q. So you can get it if you specifically ask for it from the
16 state?

17 A. I can usually if it's available in the Qualified Voter
18 File, but again, it's not going to be an accurate picture
19 of who voted.

20 Q. So there's no way to reconcile that information from the
21 township to what the state reports is what you're saying?

22 A. Not from the Qualified Voter File. If you want to
23 reconcile the canvass results locally with the state
24 canvass results, there are other reports that you can look
25 at that are available.

1 Q. But you would need the information from, say, the township
2 to reconcile that with the state reports, correct?

3 A. The township or the county after the canvass.

4 Q. Okay. If there's a difference between what the township
5 reports for who voted in an election and what the state
6 reports for the township, how can you tell which one is
7 correct?

8 A. I'm not aware of any instance where that has happened here
9 in Hillsdale County, so I wouldn't know.

10 Q. Can you point to any state data that would allow you to
11 reconcile that information?

12 A. You can FOIA information from the State Board of
13 Canvassers. You can go on their website and find the
14 certified results from the State Board of Canvassers.

15 Q. So there are results that should be able to match what the
16 township reports for who voted?

17 A. Yes.

18 Q. You assumed the position of chief deputy clerk in
19 Hillsdale County in December 2020, correct?


20 A. January 7, 2021.

21 Q. Ah, good. And that was around the same time that Clerk
22 Scott assumed her position as township clerk, correct?

23 A. Correct. She would have started her position in November
24 of 2021.

25 Q. I'm going to step back to the previous line of questioning

1 about the QVF and FOIA. Is there a state database that
2 records who voted?

3 A. Yes. The Qualified Voter File does record voter history if
4 the township clerks upload that data into the Qualified
5 Voter File. 

6 Q. Okay. Back to your position as then Chief Deputy Clerk of
7 Hillsdale County, were you elected or appointed to that
8 position?

9 A. Appointed.

10 Q. Appointed by who?

11 A. The clerk at the time, Marney Kast.

12 Q. Okay. You took an oath of office, correct?

13 A. I did.

14 Q. Do any other officials at the clerk's office take an oath
15 of office for the county?

16 A. All the deputy clerks take an oath of office.

17 Q. And that's by statute, correct?

18 A. Yes.

19 Q. What about other election officials at the county?

20 A. There are no other election officials at the county,
21 unless you're referencing the election commission, which
22 would be the probate judge who takes an oath of office.

23 Q. Are there other employees at the county elections
24 department?

25 A. Just deputy clerks.

1 Q. There's no other employees?

2 A. Correct.

3 Q. No secretary? No assistants?

4 A. No.

5 THE COURT: We don't have those here.

6 MR. OLSEN: Okay. Well, then, there we go. Thank
7 you.

8 BY MR. OLSEN:

9 Q. Have you previously held positions with the Hillsdale
10 government?

11 A. I was just an election inspector, but that wasn't with
12 Hillsdale County. That was with Moscow Township.

13 Q. Are you an attorney?

14 A. No.

15 Q. Prior to being appointed as Chief Deputy Clerk, did you
16 have any experience with Michigan election statutes?

17 A. Only what I was made aware of in my election inspector
18 training leading up to that point.

19 Q. Okay. How long were you an election inspector?

20 A. I was trained in, I think, July of 2020, and then I was an
21 inspector in Moscow Township in August and November of
22 2020.

23 Q. And what does an election inspector do?

24 A. They are just a poll worker. That would be like the
25 national term for the position. They make sure that voters

1 are processed in a precinct and able to vote if they are
2 qualified, and making sure that the precinct is in balance
3 between number of voters and number of ballots tabulated.

4 Q. When you were appointed as Chief Deputy Clerk of Hillsdale
5 County, what did you do to educate yourself about Michigan
6 election law?

7 A. I had to start taking training to get access to the
8 Qualified Voter File and get my election accreditation
9 through the Bureau of Elections. And then one of my first
10 roles was to audit precincts from the November 2020
11 election.

12 Q. Tell me about auditing a precinct from the 2020 election.
13 What did you do?

14 A. We had the township or city clerk bring in all of their
15 documentation for the election, their ballots. We already
16 had the poll book. We would go through all of the
17 documents and make sure that everything was done properly
18 leading up to the election. And then we would count a race
19 in the ballots and make sure that the results from the
20 tabulator matched the hand count of a particular race in
21 the ballots.

22 Q. So you were looking at the electronic voting system, the
23 tabulators, as part of the audit?

24 A. The tabulators themselves were not part of the audit, but
25 we were looking at the results from the tabulators and

1 comparing them to a hand count.

2 Q. And so when you say the results from the tabulator, are
3 you talking about printed reports from the tabulator?

4 A. The tally report, yes.

5 Q. Do you know -- do you have any IT experience?

6 A. No.

7 Q. Do you have any cybersecurity experience?

8 A. No.

9 Q. Do you have any formal training with computers?

10 A. Just normal public school graduate knowing how to use a
11 computer for my age group. That's about it.

12 Q. Yeah. Which, given my son, I understand that. So do you
13 have any experience in programming?

14 A. I dabbled around with some coding when I was a teenager,
15 but no formal training.

16 Q. So you're relying on these reports that are generated by
17 the tabulator. Do you have any understanding of the
18 electronic data that goes into producing those reports by
19 the tabulator?

20 A. Not the coding. I play a -- at that time I didn't when I
21 first started, but since then I played an integral role in
22 every election since then in programming and setting up
23 each election in the election management system. But that
24 was using their interface to do that. I wasn't using
25 coding.

1 Q. So in terms of the reports that you are using to audit the
2 election from the tabulator, you're just reading what the
3 report says, correct?

4 A. Yes.

5 Q. You don't have any expertise to look at the electronic
6 data that would validate the accuracy of that report,
7 correct?

8 A. I believe that the validation would be the hand count and
9 comparing that to the printed report.

10 Q. If there was a difference in the report and the hand
11 count, because this is part of the audit, do you think an
12 assessment should be done of the tabulator to get to the
13 bottom of why there's a difference?

14 A. I've conducted a number of audits. I can't count how many
15 since I started. And any time there's a difference, we've
16 been able to find the difference just by looking at the
17 ballots.

18 Q. Okay. But you're not saying that there could be a
19 difference that is caused by an error in the report
20 printed by the tabulator -- or put out by the tabulator,
21 right?

22 A. I have not seeing that. The errors that we find are
23 related to stray marks. Sometimes there's occasional
24 printing issues where a fleck of something dark is in the
25 paper in a certain box and that might cause an overvote.

1 Any number of things that would be related to the ballots
2 themselves and how the voters mark those ballots are
3 always the cause for any discrepancy.

4 Q. Are you aware of an incident -- do you know what the EAC
5 stands for? The Electronic -- the Election Assistance
6 Commission?

7 A. Yes.

8 Q. Do you know what the Election Assistance Commission does?


9 A. They certify the equipment that we use.

10 Q. The electronic voting equipment?

11 A. That's correct.

12 Q. Are you aware that on March 31st, 2022, the EAC put out a
13 report about an electronic voting system that did not
14 accurately record the tally due to erroneous code in the
15 machine?

16 A. I'm not aware of that, no.

17 Q. Would you have any basis to disagree that an electronic
18 voting machine may make an error in the reporting of the
19 tally? 

20 A. I have not seen that happen.

21 Q. But would you have any reason to disagree?

22 A. That it could happen?

23 Q. Yeah.

24 A. It could happen.

25 Q. Okay. And if you're performing an audit, is it fair to say

1 that you would want to be able to inspect the data on the
2 electronic voting machine as part of the auditing process
3 to determine the basis of a discrepancy?

4 A. I'm satisfied with the public accuracy test results and
5 the random audits after an election that show that
6 everything's working properly.

7 Q. So you're satisfied with that, but are you saying that you
8 would never want to look at the electronic data that
9 exists on the tabulator to see if there's information
10 there that would relate to any discrepancy in the tally?

11 A. I don't see that there is. I've never seen that there is,
12 and so I wouldn't feel the need to do that. If I may, one
13 of the things that we do at the county and have since I've
14 been working there, is we do hash testing on every device
15 every other year when we perform preventative maintenance.
16 That's one of the reasons that we like to have all of the
17 equipment brought into the county for preventative
18 maintenance because the county clerk staff then can do the
19 hash testing to make sure that the programming is
20 authentic on every device.

21 Q. The hash testing, the hash is the digital code that marks
22 whether a digital file has been changed, correct?

23 A. That's my understanding of how that works, yes.

24 Q. So when you're talking about this hash testing, you're
25 just repeating what somebody told you that it does?

1 A. We get the certified hash values from the EAC for the
2 version of software that we're using on the devices, and
3 then we get the values from the devices themselves, and we
4 compare them and make sure that they match so that we know
5 that they're authentic.

6 Q. Okay. You're talking about the hash value of the software
7 that's used in the election, correct?

8 A. For every device, yes.

9 Q. Do you understand that every digital file has a hash to
10 it, like a ballot image, for example, would have a hash to
11 it?

12 A. I guess I don't understand it to that level of detail, no.

13 Q. So you just don't know?

14 A. Correct.


15 Q. Okay. Do you have any expertise with how a tabulator
16 stores data electronically?

17 A. Just from gathering that data from the V-drives. Other
18 than that, no.

19 Q. Do you have any basis to say that preventative maintenance
20 being performed on a tabulator would not result in the
21 deletion of election records that are stored on a
22 tabulator?

23 A. My understanding of how preventative maintenance worked,
24 in particular in 2021, and my understanding of computers
25 and their components, I did not see any danger of any data

1 being wiped during preventative maintenance in 2021.

2 Q. So you say your understanding. Are you gaining this
3 understanding because somebody told you something, or
4 because you have a particular expertise with respect to
5 electronic voting systems? 

6 A. I'm basing it on my knowledge of how computers work and
7 their components and my early years of building computers
8 from parts and putting them together, and then what I saw
9 and what I knew was happening during the preventative
10 maintenance in 2021, I knew there was no data being wiped.

11 Q. And how do you know that there was no data being wiped?

12 A. Because I watched as it occurred.

13 Q. Can you watch a digital transfer of data? Is that
14 something you can watch, that it actually occurs within a
15 system?

16 A. I would assume there would be clues to something like
17 that.

18 Q. So you would assume there would be clues. So the fact is
19 you don't know. You're watching a computer and somebody is
20 performing some preventative maintenance on it, did you
21 know if there is anything being done internally to the
22 system that would result in the deletion of data?

23 A. What I watched was somebody using their hands to take a
24 compartment cover off of the back of a tablet, remove a
25 watch battery, replace it with a new watch battery, put

1 the cover back on, reseal it, turn on the device, make
2 sure the touchscreen is calibrated correctly, and then
3 shut everything down and move on to the next one. And just
4 repeat that until you do all of the equipment in the
5 county.

6 Q. Do you know that removing the watch battery on a tabulator
7 erases log files and the time stamp?

8 A. I knew it was to allow the device to keep the time.

9 Q. But the battery is allowed to allow the device to --

10 A. That is the purpose of the --

11 Q. -- replace the time stamp?

12 A. -- battery, yes.

13 Q. Yeah. And so did you know that when you remove the
14 battery, that removes that data file?

15 A. I don't know as I would agree with that, but I don't know.


16 Q. Can you see what goes on in a machine?

17 A. No.

18 Q. So you're really -- you're just watching. You don't know
19 what's going on inside the machine, do you?


20 A. No.

21 Q. As of 2021, did you consider yourself an authority on
22 which components of electronic voting systems, such as a
23 tabulator, retain election records?

24 A. No. 

25 Q. As of 2020, do you consider yourself knowledgeable about

1 the types of election records stored on electronic voting
2 systems, such as a tabulator, that are required to be
3 preserved under state and federal law?

4 A. Not as of 2020, like you said. No. 

5 Q. What about as of 2021?


6 A. More so, but I was still learning.

7 Q. Are township clerks employed by the Secretary of State?

8 A. No.

9 Q. Okay. Do you have an understanding that they're
10 constitutional officers under the Michigan Constitution?

11 A. Yes.

12 Q. Do you understand that they have an independent duty to
13 protect elections in their jurisdiction consistent with
14 their oath of office? 

15 A. Yes.

16 Q. What is the relationship of the county clerk to the
17 township clerk?

18 A. We provide them ballots and programming for the elections.
19 Those are the main requirements. In Hillsdale County, we
20 go above and beyond that, and we give them precinct kits,
21 have some voter supplies. We answer a lot of questions and
22 help them with technical issues because it's easier to
23 call us than it is the Bureau of Elections in Lansing to
24 get help.

25 Q. Okay. Do you know who Jonathan Brater is?

1 A. Yes.

2 Q. And he is the Director of the Bureau of Elections,
3 correct?

4 A. Yes.

5 Q. Have you worked with him in any capacity outside of your
6 duties as chief deputy clerk or the clerk of Hillsdale
7 County?

8 A. No.

9 Q. Have you ever traveled with Mr. Brater --

10 A. No.

11 Q. -- outside the state? Never traveled?

12 A. No.


13 Q. Have you ever been in conferences with him or anything
14 like that?

15 A. Yes.

16 Q. Tell me about those.

17 A. The County Clerk's Association has conferences every year,
18 and usually the Bureau of Elections attends those and
19 gives reports and some training sessions.

20 Q. Did you help Mr. Brater with a recount in Marshall,
21 Michigan?

22 A. No. 

23 Q. Did you ever assist Mr. Brater with a recount?

24 A. Not Mr. Brater.

25 Q. Who did you assist?

1 A. I assisted the Eaton County Clerk with a recount that I
2 believe was conducted in Marshall.

3 MR. OLSEN: Your Honor, I'm going to -- may I
4 approach to get People's Exhibit 1?

5 THE COURT: You may.

6 You're welcome.

7 BY MR. OLSEN:

8 Q. Mr. Dane, you've been handed what has been previously
9 admitted as People's Exhibit 1. Take a moment to look at
10 it. It is a memo dated February 12, 2021 to county clerks
11 from the Michigan Bureau of Elections regarding release of
12 voting equipment. Have you seen this document before?

13 A. Yes. This document, or one like it, is sent out after
14 every state and federal election when security is
15 released.

16 Q. And when you say it's -- you're saying that you have
17 personal knowledge of that since 2021, right?

18 A. Yes.

19 Q. When you were the first appointed clerk. So in 2022 they
20 did it, 2023 they did it?

21 A. It's usually only on the even years after a state and
22 federal election is when these come out.

23 MR. OLSEN: Your Honor, I just would like to
24 show Mr. Dane a copy of 52 USC 20701 and MCL 168.811. I'm
25 not going to ask that --

1 THE COURT: Sure.

2 MR. OLSEN: Would you like a copy, Your Honor?

3 THE COURT: Which USC?

4 MR. OLSEN: 52 USC 20701.

5 THE COURT: I have that one.

6 BY MR. OLSEN:

7 Q. Mr. Dane, I've just handed you two documents. One is a
8 copy of Michigan Election Law 168.811. It's the records
9 retention requirements. And the other is federal records
10 retention requirement at 52 USC code 20701. Have you
11 reviewed these two statutes before?

12 A. I've read the MCL from Michigan. I don't know if I've ever
13 seen the 52 USC 20701.

14 Q. So prior to receiving this memorandum --

15 (At 10:20 a.m., loud high-pitched alarm sounding
16 noise occurs)

17 THE COURT: See if she's okay.

18 We can continue.

19 BY MR. OLSEN:

20 Q. Mr. Dane, do you see in People's Exhibit 1 where it states
21 under the bold portion:

22 "E-poll book, laptops, and flash
23 drives. The EPB software and associated
24 files must be deleted unless a post-
25 election audit is planned but has not been

1 completed, or the deletion of the data has
2 been stayed by an order of the court or
3 the Secretary of State."

4 Do you see that?

5 A. Yes.

6 Q. Prior to receiving this memo, were you aware of the
7 election record retention requirement under 168.811?

8 A. I don't know if I knew the statute by reference, but I
9 knew about the 22-month retention.

10 Q. And if you look at MCL 168.811, do you see where it says,
11 it uses the word "all" at the beginning, "all election
12 returns including poll list statements," so forth and so
13 forth?

14 A. Yes.

15 Q. Do you understand what "all" means?

16 A. Yes.

17 Q. And what does it mean to you?

18 A. Everything. All inclusive.

19 Q. When you received this memo -- did you receive this memo
20 on or about February 12th, 2021?

21 A. Yes.

22 Q. Okay. Did you raise any question in your mind about
23 deleting e-poll book, the e-poll book data on the flash
24 cards?


25 A. No.

1 Q. Why not?

2 A. Because the pertinent information from the e-poll book was
3 printed in the reports and retained.

4 Q. Is it your understanding that printed reports is the same
5 as electronic data?

6 A. It's not the same.

7 Q. So if the word "all" is used, how does "all" include,
8 meaning that you can take a copy of something, but not the
9 original electronic data? 

10 A. Well, I suppose if we were to get an unlimited amount of
11 funding to purchase USB flash drives for every election
12 and constantly retain them, then I could maybe do that,
13 but otherwise I can't.

14 Q. You said you had some rudimentary experience with
15 computers and flash drives?

16 A. Yes.

17 Q. Flash drives are not expensive, are they?

18 A. Over time, they would be if you had to keep them for every
19 election in every precinct.

20 Q. How much is a flash drive?

21 A. About ten bucks.

22 Q. Okay. And would it be possible to take a flash drive used
23 in an election, put it in a sealed bag and lock it in a
24 safe and purchase a new one?

25 A. It would be, but it would be expensive over time.

1 Q. Ten bucks over time?

2 A. Times all precincts. Yeah.

3 Q. But ten bucks. How much does it cost to print a ballot?

4 A. About five to eight cents I believe.

5 Q. Okay. So, let's take ten cents. Let's say it costs ten

6 cents. Take five cents. That would be 20 ballots, right,

7 for ten bucks?

8 A. Uh-huh.

9 Q. But you save ballots for 22 months, correct?

10 A. Well, ballots are a record that the voters touched and

11 indicated their votes on. It makes sense to store that.

12 Q. Okay. Are ballots the only election record that are

13 required to be retained by 22 months?

14 A. No.

15 Q. And a ballot doesn't show who voted, correct?

16 A. Correct.

17 Q. I believe you testified at the time of the memorandum,

18 People's Exhibit 1, you were not familiar with 52 USC

19 20701 regarding the federal requirements?

20 A. I knew it existed, but I had never seen it.

21 Q. Do you see, if you pull that out, do you see where it

22 begins:

23 "Each officer of election shall

24 retain and preserve"

25 A. "Every officer," yes.

1 Q. Yeah. Every officer, excuse me. And if you turn to the
2 back, the second page of that document I gave you, I
3 clicked on, there's a link, when it says Officer of
4 Election, I clicked on that and printed out, where it
5 states:

6 "As used in this chapter, the term
7 'Officer of Election' means any person who
8 under the color of law..."

9 And so forth. Is it your understanding that when
10 it says every officer, that would apply to Clerk Scott
11 individually, correct?

12 A. Yes.


13 Q. That would apply to you, correct?

14 A. Yes.

15 Q. That would apply to the Secretary of State of Michigan?

16 A. Yes.

17 Q. So every officer has an obligation under federal law, to
18 preserve the election records that are delineated there?

19 A. Yes. 

20 Q. Mr. Dane, did you speak with an attorney prior to
21 testifying today about this case? Not the contents, just
22 if you spoke with an attorney?

23 A. I did.

24 Q. When did you speak?

25 A. This morning.

1 Q. Is that the only time?

2 A. I had some e-mail correspondence before that.

3 Q. About this case?

4 A. Very generally, I guess.

5 Q. This morning, which attorney? Can you say the name of the

6 attorney that you spoke with?

7 A. Tom Thompson.

8 Q. Is Mr. Thompson present in the room today?

9 A. He is.

10 Q. Is Mr. Thompson your personal attorney or is he the

11 township attorney?

12 A. He represents the county.

13 Q. The county?

14 A. Yes.

15 Q. He's the county attorney. Does he represent you

16 personally?

17 A. No.

18 Q. You mentioned that you understood the retention period

19 under MCL 168.811, that it was 22 months?

20 A. Yes.

21 Q. What is your understanding of why you would have a period

22 of 22 months as a retention period?

23 A. It comes from the federal statute.

24 Q. And the state too, correct?

25 A. Yes, but I believe it comes from the federal statute.

1 Q. Okay. Is it fair to say that the purpose of having a
2 retention period is to allow, for example, an audit of the
3 election records during that time period?

4 A. Yes.

5 Q. Do you see where there's a qualifier in People's Exhibit 1
6 where it says:

7 "The associated files must be deleted
8 unless a post-election audit is planned."

9 Do you see that?

10 A. Yes.

11 Q. And this is as of February 12th, 2021, so roughly four
12 months after the election, correct?

13 A. Yes.

14 Q. But you would agree that there could be an audit that
15 becomes planned in August of 2021, correct?

16 A. No, the audits that they're referencing would be the
17 audits that the Bureau tells us to conduct, or if we
18 choose to conduct our own, which by the time this came out
19 would have already been communicated to us.

20 Q. Right. But you're not suggesting that some other audit of
21 the election could arise after February 12th, 2021, during
22 the 22-month retention period?

23 A. I suppose it could.

24 Q. And in fact, one did, didn't it?

25 A. Not that I'm aware of.

1 Q. Are you familiar with the Office of Auditor General?

2 A. I am.

3 Q. And what is that?

4 A. It's a branch of state government that audits other
5 branches of state government.

6 MR. OLSEN: I'd like to get Defendants'
7 Exhibit 14.

8 THE COURT: Hold on. There you go.

9 MR. OLSEN: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 BY MR. OLSEN:

12 Q. Mr. Dane, I've just handed you what has been previously
13 admitted as Defendants' Exhibit 14. It's an e-mail from
14 Stephanie Scott to you, dated August 2nd, and it's
15 attaching a press release by the Michigan Secretary of
16 State dated July 29th. That's on the back page. The press
17 release is entitled Statement from Secretary of State
18 Spokesperson Tracy Wimmer on Audit Plans from the State
19 Office of the Auditor General. Do you see that?

20 A. Yes, I do.

21 Q. Does this refresh your recollection that an audit of the
22 2020 election arose some months after February 12th, 2021?

23 A. This audit would have been limited to state level, but
24 yes.

25 Q. Do you see where, if you look at the press release, let's


1 go to the second paragraph, it states:

2 "The OAG has said it wants to audit
3 the post-election audits carried out by
4 local, township, city, and county
5 officials."

6 A. I see that.

7 Q. So that's not referencing an audit at the state level.
8 That's referencing an audit at the local, township, city,
9 and county. Correct?

10 A. It appears they desire to do that, yes.

11 Q. So if the data on the EPB flash card was deleted shortly
12 after February 12th, 2021, it would not be available in
13 connection with any audit after that, correct? I mean,
14 that's just self-evident. 

15 A. Right.

16 THE COURT: Thank you.

17 (At 10:33 a.m., Defendant Exhibit 29 marked)

18 BY MR. OLSEN:

19 Q. Mr. Dane, I just handed you a document that's been marked
20 for identification as Defendants' Exhibit 29. It's an e-
21 mail string, and it's in reverse chron order, dated
22 February 23rd, 2021 to February 24th, 2021, between you
23 and Stephanie Scott. If you just take a moment to look at
24 it. And let me know when you're done.

25 A. I'm finished.

1 Q. Does this appear to be a true and accurate copy of the e-
2 mail exchange between you and Ms. Scott?

3 A. Yes.

4 MR. OLSEN: Your Honor, at this point, we would
5 move to admit.

6 THE COURT: Any objection?

7 MR. CUNNINGHAM: No objection.

8 THE COURT: Defense Exhibit 29 is admitted.

9 (At 10:34 a.m., Defendant Exhibit 29 received)

10 BY MR. OLSEN:

11 Q. Do you see on the second page, again, it's in reverse
12 chron order, where you're writing an e-mail to clerks, and
13 you're talking about:

14 "We received word from the state's
15 Bureau of Elections, attached, that the
16 security of the ballots and the election
17 equipment is released, so you are free to
18 remove seals, store the ballots somewhere
19 more convenient if you want to..."

20 And it continues on. You also state:


21 "The state also wants you to
22 uninstall the EPB software from your
23 laptops, not just delete the icon from the
24 desktop, and remove the election folder
25 from your EPB flash drive."

1 Do you see that?

2 A. Yes.

3 Q. Are you referring to People's Exhibit 1, the February
4 12th, 2021 memorandum?

5 A. I believe so, yes.

6 Q. And so when you say to remove the election folder from
7 your EPB flash drive, when you say remove, do you mean
8 delete? 

9 A. Yes.

10 Q. Do you see where Ms. Clerk Scott raises a concern with
11 you?

12 A. Yes.

13 Q. And then you respond to her, moving to the bottom of the
14 first page. You say:

15 "Good morning, Stephanie. From what
16 Marney has said, it sounds like this is
17 common practice."

18 Then you talk about the 22-month retention
19 period?

20 A. Yes.

21 Q. Then Ms. Scott responds, saying:

22 "Yes, I'm sure this is common
23 practice, but this year appears quite
24 different than past years. With all the
25 accusations of voting irregularities and

1 the Secretary of State that has certified
2 despite of this, it seems premature for
3 the Bureau of Elections to have us destroy
4 potential evidence by breaking seals."

5 Do you see that?

6 A. Yes.

7 Q. And you respond to that, correct?

8 A. Yes.

9 Q. You say:

10 "You have a point there. I won't
11 disagree."

12 A. Yes.

13 Q. So you didn't disagree with Clerk Scott's concerns about
14 deleting election records, correct, and destroying seals?

15 A. I didn't disagree that there was a lot of turmoil after
16 the 2020 election.

17 Q. But you also said she has a point.

18 A. I did.

19 Q. Mr. Dane, is there anything on the EPB flash drive that is
20 not an election record under MCL 168.811 or 52 USC 20701?

21 A. Again, I would point to the fact that the permanent record
22 would have been printed and included in the poll book,
23 mainly the list of voters.

24 Q. So that's not exactly responsive to my question. You're
25 talking about a copy. What I'm asking is, is there any

1 data that you're aware of on the EPB flash drive that is
2 not an election record under 168.811 or 52 USC 20701?

3 A. I will agree that they are election records, but I don't
4 know if they are tied to the statutes that you're saying.

5 Q. But you would agree that there are election records on the
6 EPB flash drive?

7 A. Yes.

8 Q. And Stephanie Scott raised concerns about deleting that
9 data, correct? Back in February.

10 A. She was raising concerns about that and also breaking the
11 seals on the ballot storage containers.

12 Q. On what basis do you believe that the order to delete the
13 data on the EPB flash card complied with state or federal
14 records retention laws?

15 A. Could you repeat the question?

16 Q. Yeah. On what basis -- so you have an obligation to
17 preserve data under the law, correct?

18 A. Yes.


19 Q. Election records, excuse me. And that's specifically, we
20 just talked about each, every officer has that?

21 A. Yes.

22 Q. On what basis do you believe that Mr. Brater's order to
23 delete the data on the EPB flash card complied with state
24 and federal election records retention requirements?

25 A. As I've stated before, I believe that the records which

1 were produced on election night after the polls closed
2 under the supervision of election inspectors representing
3 both parties were the records that needed to be retained.
4 And the data on the EPB was not needed after security was
5 released on the election.

6 Q. And what are you basing that on? Has somebody told you
7 that or do you have knowledge of the data that's on the
8 EPB flash card? 

9 A. I can't imagine what would be needed from those, other
10 than a list of voters and what ballots people receive.

11 Q. All right, so, but you're not an expert in this areas?

12 A. Correct.


13 Q. So did you ever yourself delete any data from EPB flash
14 cards since 2020?

15 A. Many times. 

16 Q. Have you been given immunity to testify here today from
17 any state or federal official?

18 A. No.

19 Q. Have you ever personally viewed the data that is on the
20 EPB flash drive?

21 A. The reports? 

22 Q. Not the reports. The actual data on the EPB flash drive.

23 A. PDF reports would be data on the flash drive.

24 Q. But that's not all the data that's on the EPB flash drive,
25 correct?


1 A. Right.

2 Q. Have you ever viewed all of the data that's on the EPB
3 flash drive?

4 A. I've seen the files. I haven't looked at the coding behind
5 them.


6 Q. So you mentioned that there are printouts from the EPB
7 flash drive, correct?

8 A. Yes.

9 Q. And you're assuming that those match the electronic data
10 on the EPB flash drive, correct? 

11 A. I verify that they do. They have been verified.

12 Q. Well, are you going -- when you say they've been verified,
13 are you looking at the data on the EPB flash drive like on
14 a computer screen and matching it to the paper printout?


15 A. You can do that. Also, when you assist township clerks,
16 when I have assisted township clerks in uploading voter
17 history to the Qualified Voter File, one of the ways that
18 you can verify that that has been  done properly is to
19 immediately generate a report from the EPB voter history
20 so that you can see that those voters have been given
21 their voter history in the Qualified Voter File.

22 Q. Okay. And so you actually want to see the data that's
23 actually on the EPB flash drive to compare it to the
24 report to verify it, correct?

25 A. You can have that intention, yes.

1 Q. Yeah. And so if somebody later on, say in August of '21,
2 wants to do the same thing, and that data has been deleted
3 from the EPB flash drive, you wouldn't be able to compare
4 it to the printed report to see if it matches, would you?

5 A. At that time, you would have the list of voters print out
6 from the paper poll book, and you would also have all of
7 the applications to vote that the voters filled out when
8 they came into the precinct.

9 Q. Uh-huh. But you would not be able to compare the data on
10 the EPB flash drive because it's been deleted to the
11 printed reports, would you? 

12 A. I wouldn't feel the need to do that at that point.

13 Q. Okay. But you wouldn't be able to do it?

14 A. Right.

15 Q. And so somebody else coming in to independently audit
16 wouldn't be able to do, to audit the election, wouldn't be
17 able to do it either.

18 A. Not that particular thing, no.

19 MR. OLSEN: Your Honor, could I get Defendants'
20 Exhibit 12? I'm going to give you this one because this
21 was a previous exhibit as well.

22 Is that the one you were looking for?

23 MR. OLSEN: Yes, ma'am.

24 BY MR. OLSEN:

25 Q. Mr. Dane, you've just been handed a document that's been

1 previously admitted as Defendants' Exhibit 12. It's a news
2 update dated September 8, 2020, from the Michigan
3 Department of State Voter Registration Mailings is the
4 subject. Have you seen this document before?

5 A. I'm not sure that I have.

6 Q. Okay. I just would like to direct your attention to the
7 second paragraph on the first page beginning with "Based
8 on." Do you see that?


9 A. Yeah.

10 Q. So it says:

11 "Based on data received from ERIC,
12 the Bureau of Elections will be sending
13 voter registration mailers to
14 approximately 700,000 individuals. These
15 mailers will notify Michigan residents of
16 their voter registration eligibility and
17 offer options to register online or to
18 return the inserted card to the Secretary
19 of State to be registered. Registration
20 will occur through the driver database.
21 Clerks will not be mailed forms."

22 Do you see that?

23 A. I do.

24 Q. There were problems with duplicate registrations in the
25 QVF, correct, in Michigan? 

1 A. There's always going to be problems.

2 Q. Yeah. And so because there's always going to be problems,
3 you want to have the data that can reconcile any
4 discrepancies in that information, correct?

5 A. Yes.

6 Q. Do you know whether Mr. Brater was the Director of Bureau
7 of Elections at the time of this news update was sent out
8 where they were sending out 700,000 mailers?

9 A. I do not have direct knowledge of that. That was before --

10 Q. Do you have any reason to doubt that?

11 A. I just don't know. It was before I was employed at the
12 county.

13 Q. Do you know do you know what ERIC is?

14 A. Yes.

15 Q. What is it?

16 A. I think it stands for the Electronic Registration
17 Information Center, and it's a database that multiple
18 states use to cross-check different databases such as
19 DHHS, voter registration, automobile registration, Social
20 Security Administration to make voter rolls more accurate
21 and identify voters that move between state lines.

22 Q. Are you aware that multiple states have canceled their
23 affiliation with ERIC?

24 A. Unfortunately, yes.

25 Q. And why do you say unfortunately?

1 A. Because I think it is a useful tool to help keep our voter
2 registration more accurate and identify those situations
3 when people move out of state and don't surrender their
4 licenses in person.

5 Q. Do you know that Mr. Brater is an officer of ERIC?

6 A. I knew he was at one point. I don't know if he still is.

7 Q. Are you aware that those states canceled their affiliation
8 with ERIC over concerns about fraudulent registrations?

9 A. Yes.

10 MR. OLSEN: Your Honor?

11 THE COURT: Yes.

12 MR. OLSEN: I'm at an okay spot to stop, but
13 I've just been informed by my colleague, can we take a
14 restroom break?

15 THE COURT: Oh, yeah. So my intention is I do
16 need to break at a normal time today at noon at the lunch
17 hour. And it's 10:49 right now. Why don't we just take a
18 10-minute recess and then come back at 11:00 to go for
19 another hour before lunch?

20 MR. OLSEN: Thank you, Your Honor.

21 THE COURT: Court is in recess.

22 THE BAILIFF: All rise.

23 (At 10:49 a.m., off the record)

24 (At 11:01 a.m., proceedings resume)

25 THE COURT: You may be seated.

1 MR. OLSEN: Your Honor, I just want to let you
2 know that we did locate the exhibits that Mr. Nichols had
3 there. He's bringing them back.

4 THE COURT: Excellent.

5 DEFENDANT JUNTILA: They're right here.

6 THE COURT: Do you have them?

7 MR. OLSEN: Oh, do you have --

8 DEFENDANT JUNTILA: He said they were given to
9 me.

10 THE COURT: They were, in fact. I watched you
11 hand them to him, but I do need to keep those.

12 We're good. I'm just going to verify those based
13 off my courtesy copies really quickly, so. And they are
14 exactly the same. So 26, 27, and 28 are back here on the
15 bench.

16 We can continue then with cross-examination, Mr.
17 Olsen.

18 MR. OLSEN: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (At 11:02 a.m., Defendant Exhibit 30 marked)

21 BY MR. OLSEN:

22 Q. Mr. Dane, you've just been handed a document marked for
23 identification as Exhibit 30. It is an e-mail chain dated
24 March 3rd, 2021 that includes you as a recipient, and
25 Stephanie Scott, as well as Marney Kast. Does this appear

1 to be a true and accurate copy?

2 A. Yes.

3 MR. OLSEN: Your Honor, we would move to admit.

4 THE COURT: Any objection?

5 MR. CUNNINGHAM: No. What number, please?

6 MR. OLSEN: Thirty.

7 THE COURT: Thirty. Defense Exhibit 30 is
8 admitted without objection.

9 (At 11:03 a.m., Defendant Exhibit 30 received)

10 BY MR. OLSEN:

11 Q. You see, again, these are in reverse chron order, Mr.
12 Dane?

13 A. Yes.

14 Q. Stephanie Scott writes Marney Kast and you, the subject is
15 EPB Flash Drive for Adams Township. You see that?

16 A. I do.

17 Q. And she has, she says:

18 "I need to number the issues as I've
19 just thought of another couple."

20 Do you see that?

21 A. I do.

22 Q. And then, Marney responds to those issues in red. Correct?

23 A. Yes.

24 Q. Okay. In this item number two, do you see where Ms. Clerk
25 Scott writes:

1 "Who-slash-how do we confirm what's
2 going on in the QVF? Do you guys see the
3 same when you hover over an eligible
4 voter?"

5 A. Yes.

6 Q. Do you understand what Ms. Clerk Scott is referring to
7 there?

8 A. Yes.

9 Q. What is that?

10 A. So, when she's processing, or any clerk is processing
11 absentee voters in the Qualified Voter File, there's a
12 setting for what election you are working under that you
13 can change in the settings for each user. And then, as
14 you're processing voters, it's going to automatically
15 default to that election. And, as you are in a voter
16 detail screen within the Qualified Voter File for a
17 specific voter, and you're doing absentee, like assigning
18 a ballot, issuing a ballot, receiving an application,
19 there's a button that you click for that on the voter
20 detail screen. And that button, when you hover your mouse
21 over it, will tell you information such as date received
22 application, date issued ballot, what ballot number, and
23 so on.

24 Q. At this time, was Clerk Scott expressing concerns to you
25 about the accuracy of the QVF?

1 A. I believe at this time she was, yes.

2 Q. Fair to say that Clerk Scott was trying to get to the
3 bottom of concerns about the accuracy of the QVF?

4 A. Yeah. Clerk Scott and I were corresponding quite
5 frequently at this time about different questions we both
6 had about the Qualified Voter File.

7 Q. And what kind of questions did you have about the -- did
8 you both have about the QVF?

9 A. Just where the information's coming from, why there's
10 sometimes duplicate voters, things like that.

11 (At 11:06 a.m., Defendant Exhibit 31 marked)

12 MR. OLSEN:

13 Q. Mr. Dane, you've just been handed a document marked for
14 identification as Exhibit 31. It is an e-mail chain dated
15 March 19th between 1:01 p.m. and 2:34 p.m. It includes you
16 as a recipient from Stephanie Scott regarding the subject
17 Notice of Election. Do you see that?

18 A. Yeah.

19 Q. Does this appear to be a true and accurate copy?

20 A. Yes.

21 MR. OLSEN: Your Honor, we'd move to admit this
22 exhibit.

23 THE COURT: Any objection?

24 MR. CUNNINGHAM: No objection.

25 BY MR. OLSEN:

1 Q. Now, do you see where on the first --

2 THE COURT: It's admitted.

3 MR. OLSEN: Oh, sorry.

4 THE COURT: It's okay.

5 (At 11:07 a.m., Defendant Exhibit 31 received)

6 BY MR. OLSEN:

7 Q. On the first page, Clerk Scott says:

8 "Hi, Marney and Abe. Question. Got a
9 call from Cloe..."

10 And then she has an open paren:

11 "(Chloe spelled C-H-L-O-E)..."

12 Closed paren:

13 "...Smith."

14 And that's different than Chloe spelled before,
15 right, C-L-O-E?

16 A. Yes.

17 Q. And she continues:

18 "Her name is in the system wrong, and
19 she is wondering if her vote can count.

20 The interesting thing is that her
21 signature matches the spelling. The actual
22 spelling is Chloe. Who do I refer to fix
23 that?"

24 And she has SOS. That stands for Secretary of
25 State, correct?

1 A. Yes.

2 Q. "And can she stop in and do a name
3 change? Thanks."

4 And continue on with the next page, where Marney
5 responds:

6 "Hi, is her name on the DL spelled
7 Chloe?"

8 What does DL stand for?

9 A. Driver's license.

10 Q. Okay.

11 "The signature matches. Sounds like
12 it was put into the QVF wrong. You can
13 change it as Clerk. No, that won't her
14 vote..."

15 I guess affect:

16 "The inspector should have caught it.
17 Hope you're having a good day."

18 That's Marney's response.

19 And look at the third page. This is Clerk Scott's
20 response. She states:

21 "I can go into the QVF and change it?
22 Look it up, though. The signature is
23 clearly Chloe spelled C-H-L-O-E."

24 Correct?

25 A. Correct.

1 Q. And what Ms. Scott is raising here is that the actual
2 spelling of Cloe is C-L-O-E, correct?

3 A. Correct.

4 Q. But that the signature that's on file is misspelled, as is
5 the QVF, correct?

6 A. Seems like that's what's being discussed here, yes.


7 Q. So that certainly that would be an incorrect registration
8 record, correct?

9 A. Correct.

10 Q. And it might be indicative of an illegal or fraudulent
11 registration record, correct?

12 A. I doubt that.

13 Q. Well, do you think somebody would misspell their own name?

14 A. I think people could potentially spell  their names
15 different ways at different times as they age and think
16 something might be more interesting to spell it a --

17 Q. Well, you're speculating about that, right?

18 A. I think you're speculating about that.

19 Q. Okay. Well, so is it fair to say that it's possible if
20 there's a voter registration where the signature of the
21 registered voter is misspelled, that that could be
22 possibly an illegal or fraudulent registration?

23 A. More likely it is an error in the Qualified Voter File
24 based on how many different people from Secretary of State
25 branch offices to local clerks are entering data into the

1 Qualified Voter File.

2 Q. Well, we're talking about the voter signature, their own
3 signature. How likely is it that somebody is going to
4 misspell their name?

5 It's certainly possible that the misspelling of
6 the name in the signature could be because somebody was
7 illegally or fraudulently registering that person's name
8 to vote, correct?

9 A. So then a simple fix would be to merge the two records
10 together so that they're one within the Qualified Voter
11 File and they can only vote once.

12 Q. Understood. And a simple fix, I get that. But it would be
13 certainly something you would want to investigate,
14 correct?

15 A. Yeah.

16 Q. Like why did somebody misspell their name and they're
17 raising a question like, "Hey, can I change this? Why did
18 this happen? How is this in the QVF or on the registration
19 record?"

20 A. To properly investigate it, you'd need to contact the
21 voter. The first step would be to merge the two records
22 into one so that there's only one record in the Qualified
23 Voter File.

24 Q. Well, and here the voter did contact the clerk. She says
25 on the first page: "Got a call from Cloe"?

1 A. Yep. I see that.

2 Q. Do you recall a case at the Michigan Court of Claims
3 called, with a -- named Genetski v. Benson?

4 A. No.

5 Q. Do you recall the Secretary of State gave an order in the
6 2020 election to basically assume a signature was valid
7 when checking?

8 A. I think there was some memorandum that was included
9 possibly in training regarding processing absentee voters
10 where that was mentioned, yes.

11 Q. And it's fair to say, looking at this e-mail exchange
12 regarding Cloe, that Clerk Scott is trying to get to the
13 bottom of this?

14 A. Yes.

15 Q. And that there were also general concerns that you were
16 talking with her about, about the accuracy of the QVF?

17 A. Yes. We were both learning different aspects of how the
18 system worked at that time.

19 Q. Not just learning about how the system worked but you had
20 concerns about the accuracy of the QVF, correct?

21 A. I had some concerns at that time as well, yes.

22 Q. And so did Clerk Scott?

23 A. Yes.

24 MR. OLSEN: Your Honor, can I get Defense
25 Exhibit 3?

1 THE COURT: Yes. That should be right there, I
2 think. Right there.

3 MR. OLSEN: Thank you. Do you have a copy?

4 THE COURT: Yes.

5 BY MR. OLSEN:

6 Q. Mr. Dane, I've just handed you what has been previously
7 admitted as Defense Exhibit 3. It's an affidavit of
8 Benjamin Cotton dated 11 July 2022. Have you ever seen
9 this document before?

10 A. I have.

11 Q. When is the last time that you saw it?

12 A. It's probably been a couple years at this point.

13 Q. Can you describe to me how it came to your attention?

14 A. I think it was part of an exhibit in a lawsuit that
15 Stephanie Scott filed at the Court of Claims.

16 Q. Were you a Defendant in that lawsuit?

17 A. I was.

18 Q. Okay. I'd like to direct your attention to paragraph --
19 well strike that.

20 What is your understanding that Mr. Cotton's
21 declaration applied to in that lawsuit?

22 A. I believe he's trying to allude to the fact that there is
23 evidence of fraud, he believes, in the EPB and the USB.

24 Q. Did Mr. Cotton use the word fraud in this declaration that
25 you know of?

1 A. I don't know that for sure without rereading it.

2 Q. If you go to paragraph 25, he points out discrepancies in
3 the data between the EPB USB data and FOIA produced data
4 by the state for the township. Correct?

5 A. Yes. And I believe I've already talked about why there
6 would be discrepancies and how it's perfectly explainable.

7 Q. Okay. So you have an explanation about those
8 discrepancies. Did you ever compare the EPB flash card
9 data to the FOIA data that Mr. Cotton references?

10 A. I did not.

11 Q. And you may have an explanation, but you don't dispute
12 that there is a discrepancy in the comparison of the two
13 data sets. Correct?

14 A. Right. I just know that there is an explanation that
15 satisfies me as to why there's a discrepancy.

16 Q. Okay. But you don't dispute that there's a discrepancy
17 that the data shows?

18 A. Correct.

19 Q. And you don't dispute that in assessing or determining
20 these discrepancies -- strike that.

21 The explanation that you think satisfies you,
22 did that come from the state or was it your own
23 investigation?

24 A. My own investigation.

25 Q. Okay. But you said you did not review the data on the EPB


1 flash card, correct?

2 A. Not that specific flash drive.

3 Q. And you did not review, -- did you review the FOIA data
4 that Mr. Cotton referenced?

5 A. No.


6 Q. Does the state, to your knowledge, maintain official
7 records as to who voted in an election?

8 A. The Board of State Canvassers does. Oh, not who voted. No.
9 It would just be the official vote count. 

10 Q. Okay.

11 A. The Qualified Voter File would contain who voted if the
12 local clerk uploaded the history.

13 Q. But if you're saying that that data is constantly
14 changing, there's no permanent record?

15 A. Well, you could, in theory, look at the records and see
16 where people moved and get the records  from those
17 jurisdictions and try and put the puzzle together as to
18 where they lived at the time of an election and be able to
19 get the count that way. But if they moved out of state and
20 their registration is canceled, eventually that record
21 disappears from Qualified Voter File, and it would be a
22 difficult task.

23 Q. And that's just one scenario of voters moving. There are
24 many reasons why a discrepancy could arise between the
25 reported QVF file as it exists on the EPB flash card, and

1 the QVF as it exists at the state level, correct?

2 A. I wouldn't say many, but there are various ways. Someone
3 dying and their registration becoming canceled; that would
4 be another common instance of that happening.

5 Q. And there could also be alterations at the state level to
6 the QVF files, correct?


7 A. That would be speculation, but I suppose that's possible.

8 Q. And in fact there were problems with the QVF at the state
9 level regarding duplicate registered voters, correct?

10 A. There's always problems with that because, as I said
11 before, so many people from local clerks to Secretary of
12 State branch offices are inputting data into the system.
13 Interestingly, all those people having trained, and the
14 qualified access to the system is also an area of
15 oversight that provides accountability.

16 Q. So the fact that so many people are accessing the QVF,
17 would you say, and being able to alter data, is that, do
18 you think, one of the explanations why all these duplicate
19 registrations exist?

20 A. Yes.

21 Q. And so the integrity of the Qualified Voter File is easily
22 manipulated because of all these people that have access
23 to the Qualified Voter File, correct? 

24 A. Which is why we have trained election inspectors from both
25 political parties vetting every voter when they come to

1 precinct.

2 Q. And so if somebody is doing an audit of the Qualified
3 Voter File, to be able to track changes, it would be
4 important to have the original source entry for the
5 Qualified Voter File, correct?

6 A. I believe you're referencing what's called a voter change
7 report that shows when a voter was registered and where
8 they moved throughout their lifetime of being registered
9 in the system.

10 Q. I'm not referencing that. I'm merely asking, you've talked
11 about there's all these people have access to the QVF and
12 can make changes. You've already said that there is a
13 problem with duplicate voters in the QVF. If somebody
14 wants to come in and figure out where changes were made in
15 the QVF for say a particular voter, you would want to
16 start at the beginning of where that voter's information
17 was recorded and then go down in a sequence of time to see
18 where the change was, correct?

19 A. Yes.

20 Q. And that original data for the voter in the QVF for the
21 township for example, that would exist on the EPB flash
22 card, correct?

23 A. That would be one source, yes.

24 Q. Thank you.

25 Mr. Dane, in Michigan, clerks can't do a full

1 hand count prior to certification of an election, correct?

2 A. Correct.

3 Q. And in Michigan, they certify elections based on the
4 electronic results, not paper, correct?

5 A. Correct.

6 MR. OLSEN: Your Honor, can I get Defense
7 Exhibit 15?

8 THE COURT: Document retention?

9 MR. OLSEN: Here it is. Thank you.

10 THE COURT: Yes.

11 MR. OLSEN: Should I move these off? I'm just
12 worried about a --

13 THE COURT: I'll take them back.

14 MR. OLSEN: I don't think we're going to need
15 these, so.

16 THE COURT: Thank you.

17 BY MR. OLSEN:

18 Q. Mr. Dane, you've just been handed what has been previously
19 admitted as Exhibit 15. It's an e-mail with a subject
20 Election Document Retention, Attaching a Document
21 Retention Schedule. And it's from you to Clerk Scott and
22 others dated June 4th, 2021.

23 A. Yes.

24 MR. OLSEN: Actually, I think the only thing we
25 admitted yesterday was the document retention schedule.

1 MR. CUNNINGHAM: No, I believe we did --

2 MR. OLSEN: Did we do the whole thing?

3 THE COURT: He didn't object to the e-mail.

4 MR. OLSEN: Oh, okay.

5 BY MR. OLSEN:

6 Q. Well, just to -- does this e-mail appear to be a true and
7 accurate copy of the e-mail you sent to Clerk Scott and
8 others attaching the document retention schedule?

9 A. Yes.

10 Q. Okay. Did you review this document retention schedule
11 prior to February 12th, 2021?

12 A. I believe so.

13 Q. And why did you review it?

14 A. Because it was probably referenced regarding
15 correspondence from the Bureau of Elections on that
16 subject. It would have also been part of my training as I
17 was getting my election accreditation through the Bureau
18 of Elections E-learning Center.

19 Q. Mr. Dane, if you would turn to the page of the retention
20 schedule that has item number 225. There's a number of
21 items in the left-hand column. Do you see where it says
22 Precinct Tabulation Data?

23 A. Yes.

24 Q. And then that has the retention period. It says until the
25 election is held, plus two years, correct?

1 A. Yes.

2 Q. And do you know whether precinct tabulation data is
3 contained on the EPB flash card?

4 A. It would not be contained on that flash card.

5 Q. You do not believe that there's any precinct tabulation
6 data on the EPB flash card?

7 A. Correct.

8 Q. And what's the basis of that?

9 A. That flash drive is not connected in any way to the
10 tabulator.

11 Q. So you're basing your statement that there's no tabulation
12 data on it because the EPB flash drive is not connected to
13 the tabulator?

14 A. Correct.

15 Q. Have you done an inspection of the data retained on an EPB
16 flash card to see if there's tabulation data on it?

17 A. Not in its entirety, no.

18 Q. Please turn to item number 324, where it says the category
19 is QVF Precinct List?

20 A. Yes.

21 Q. And do you see until the -- the retention period is until
22 the election is held, plus two years?

23 A. Yes.

24 Q. Do you know whether QVF precinct lists are included on the
25 EPB flash drive?

1 A. That should be part of that flash drive. Clerks are
2 instructed to print a precinct list the night before.
3 Typically it's done the night before at the same time that
4 they prepare the EPB flash drive. But that report would
5 come straight from QVF, not from the EPB flash drive.

6 Q. Okay. But the EPB flash drive contains the precinct list?

7 A. I believe so, yes. Essentially the same information. It
8 would contain the list of voters for that precinct.

9 Q. Okay. Item 314, Electronic Voting Systems. Do you see
10 that?

11 A. Yes.

12 Q. In the retention period there, there are three bullet
13 points, and I want to direct your attention to the third
14 bullet point. And the retention period on the third bullet
15 point states:

16 "Until an investigation into
17 defective ballots or voting equipment is
18 completed."

19 Correct?

20 A. Yes.

21 Q. So that's more open-ended in terms of the retention
22 period.

23 A. Right, but I would assume that would be alluding to an
24 official investigation, not something that could happen
25 that we don't know about at the time.


1 Q. Okay, so, but you're assuming?

2 A. Yes.


3 Q. And who owns the tabulator, the township, the county, or
4 the Secretary of State?

5 A. In Hillsdale County it is the townships that own their own
6 tabulators.

7 Q. Okay, so Clerk Scott is the official under Michigan law
8 that has custody and control of the tabulators, correct?

9 A. Correct. 

10 Q. Are you aware of any Michigan statute that would prohibit
11 her from conducting an investigation of the tabulator?

12 A. I am not. 

13 If I may, though, if you follow your -- if I'm
14 following your logic correctly --

15 THE COURT: No, you have to be --

16 MR. OLSEN: Your Honor, that's outside of --

17 THE COURT: Yep. That can be on redirect, Mr.
18 Dane. This is cross-examination.

19 THE WITNESS: Yes, Your Honor.

20 BY MR. OLSEN: 

21 Q. Are you familiar with Michigan statute MCL 168.515
22 regarding a clerk's, township clerk's authority and
23 obligation to investigate the correctness of the
24 registration record?

25 A. I believe I am. I don't know if I've ever seen the entire

1 statute, but I think so.

2 Q. Are you familiar with Michigan statute MCL 168.520
3 regarding a clerk's obligation and authority to conduct an
4 investigation of suspected illegal or fraudulent
5 registration records?

6 A. I'm not. I don't know if I've ever seen that one.

7 Q. Would you have any reason to doubt that a township clerk
8 duly elected has the obligation and authority to
9 investigate either the correctness of the registration
10 records, or if she or he suspects illegal or fraudulent
11 registration records?

12 A. I think that that would be assumed that a township clerk
13 would be able to do that within reason --

14 Q. Not only be able to. They would -- don't you think in
15 fulfilling their oath that they would have the obligation,
16 the duty to ensure the accuracy of the registration
17 records for the township?

18 A. Yes.

19 (At 11:33 a.m., Defendant Exhibit 32 marked)

20 BY MR. OLSEN:

21 Q. Mr. Dane, you've just been handed a document marked for
22 identification as Defendants' Exhibit 32. It's an e-mail
23 dated July 15, 2021, from you to a number of clerks
24 regarding the Hart InterCivic biannual preventative
25 maintenance.

1 A. Yes.

2 Q. Does this appear to be a true and accurate copy?

3 A. Yes.

4 MR. OLSEN: Your Honor, at this time we would
5 move to admit.

6 MR. CUNNINGHAM: No objection.

7 THE COURT: 32 is admitted.

8 (At 11:34 a.m., Defendant Exhibit 32 received)

9 BY MR. OLSEN:

10 Q. Who is responsible for -- we already established that the
11 township clerk is responsible and has custody of the
12 tabulator, correct?

13 A. Yes.

14 Q. And, so you in this e-mail are talking about are
15 contracted by annual preventative maintenance with Hart
16 InterCivic is due before the end of the calendar year?

17 A. Yes.

18 Q. So, are you just facilitating with Hart -- I think you
19 gave some testimony yesterday where basically to try and
20 make things go easier on the clerks to have a central
21 point of focus for dealing with the data, correct?

22 A. Yes, in addition to the hash testing that the county
23 conducts when everything is brought together like that.

24 Q. So the preventative maintenance that was at issue in the
25 summer of 2021, that did not need to be performed under



1 the contractor until the end of the calendar year by your
2 own statement, correct?

3 A. Yes.

4 Q. Did not need to be done before the logic and accuracy
5 testing that was ultimately scheduled on October 27, '21,
6 did it?

7 A. Correct.

8 Q. Okay. Didn't need to be done before the November election,
9 November '21, correct?

10 A. Correct.

11 Q. Okay. You mentioned hash testing. Do you remember talking
12 about that before?

13 A. Yes.

14 Q. Is that something that could be done at the township?

15 A. Yes.

16 Q. Does it need to be done at the county level?

17 A. No.

18 THE COURT: Thank you.

19 (At 11:35 a.m., Defendant Exhibit 33 marked)

20 BY MR. OLSEN:

21 Q. Mr. Dane, you've just been handed a document marked for
22 identification as Defendants' Exhibit 33. It's an e-mail
23 chain that is between you and Clerk Scott dated July 27th.
24 But there's also, it looks like you forwarded it to the
25 Michigan Department of State, a Laurie Bourbonis

1 (phonetic)?

2 A. Bourbonnet (phonetic).

3 Q. Bourbonnet. Does this appear to be a true and accurate

4 copy?

5 A. Yes.

6 Q. And the subject is Preventative Maintenance at Adams

7 Township, correct?


8 A. Yes.

9 Q. And Stephanie Scott at this time is expressing concerns

10 about the performance of preventative maintenance?

11 A. Yes.

12 Q. And why did you forward these e-mails to the Michigan

13 Department of State? 

14 A. It was becoming increasingly clear throughout the summer

15 of 2021 that Ms. Scott was not going to comply with the

16 preventative maintenance, as well as other things related

17 to the November election that year.

18 Q. Well, you were trying to get her to do the preventative

19 maintenance before the November election, correct?

20 A. Yes.

21 Q. But that was not required under the contract, correct?

22 A. Correct.

23 Q. You see in your note to Ms. Bourbonnet?

24 A. Bourbonnet.

25 Q. Bourbonnet. You state:

1 "You can see from the below e-mail
2 she thinks her equipment will be
3 compromised somehow even though I have
4 made many assurances to the contrary."
5 A. Yes.
6 Q. And when you say compromised, you mean that the equipment
7 may be compromised by the preventative maintenance that's
8 performed?
9 A. I think I was getting those words from Ms. Scott.
10 Q. Okay, but that --
11 A. Yes.
12 Q. I'm just going by what is being referred to here. And
13 you've made many assurances to the contrary?
14 A. Yes.
15 Q. But I think as we testified earlier, you have no
16 particular expertise in electronic voting systems,
17 correct?
18 A. Correct.
19 Q. And you have no particular expertise in the performance of
20 preventative maintenance procedures on electronic voting
21 systems?
22 A. Correct.
23 Q. So when you're giving her assurances that nothing would
24 be, for example, deleted in the data that's on the
25 election system, you're doing that based on what somebody

1 else told you?

2 A. I'm doing that based on what other people have told me and
3 what I've learned myself as I handle the equipment and
4 program elections.

5 Q. Would you have any basis to disagree with a qualified
6 cybersecurity expert with experience on voting systems who
7 testifies that preventative maintenance can result in the
8 deletion of election records?

9 A. My definition of qualified might be different than yours,
10 but yes.

11 Q. You would have a basis to disagree with that?

12 A. I --

13 MR. CUNNINGHAM: Objection, Your Honor. I don't
14 think it's proper to ask a witness to comment on another
15 witness's testimony.

16 THE COURT: Response?

17 MR. OLSEN: Your Honor, I'm not asking him to
18 comment on another witness's testimony. I'm asking him to
19 comment on his ability to disagree with a qualified
20 expert's testimony.

21 THE COURT: I'll allow it.

22 THE WITNESS: Could you rephrase the question,
23 please?


24 BY MR. OLSEN:

25 Q. With respect to whether preventative maintenance performed

1 on a tabulator can result in the deletion of election
2 records stored on the tabulator, any election records,
3 would you have any basis to disagree with a qualified
4 cyber expert's opinion on that issue?

5 A. It would hinge on the definition of qualified.

6 Q. Assume that the expert is qualified.

7 A. If I believe that they were qualified, I would follow
8 along with that logic. 

9 Q. Okay. And if the Court determined that the expert was
10 qualified, would you have any reason to disagree with the
11 Court? Would that satisfy your belief of qualification?

12 A. I'm not -- are you referencing something that I'm not
13 aware of? Because I -- is -- are we talking about Benjamin
14 Scott?

15 Q. No, we're talking about Benjamin Cotton --

16 A. Or Benjamin Cotton, sorry.

17 Q. -- if you want to be specific.

18 A. I don't believe he would be qualified.

19 Q. And you yourself are not a qualified cyber expert,
20 correct?


21 A. Correct.

22 Q. You've never testified in court as a qualified cyber
23 expert, correct?

24 A. Correct.

25 Q. And what qualifications do you have that would call into

1 question the qualifications of Mr. Cotten?

2 A. I would just fall back on my firsthand knowledge of
3 handling equipment, programming elections, and seeing the
4 preventative maintenance done on multiple occasions up to
5 this point. 

6 Q. Okay. But not as an expert?

7 A. Correct.

8 THE COURT: Thank you.

9 (At 11:43 a.m., Defendant Exhibit 34 marked)

10 BY MR. OLSEN:

11 Q. Mr. Dane, you've just been handed a document marked for
12 identification as Exhibit 34. It's an e-mail chain,
13 subject, Preventative Maintenance, Adams Township, dated,
14 it's a string, between July 27th and July 29th. Does this
15 appear to be a true and accurate copy?

16 A. Yes.

17 Q. Okay, so it's in reverse chron order. So I'd like to start
18 at the bottom of the first page, and that's the e-mail
19 from Stephanie Scott to you on July 27th, do you see that?

20 A. Yes.

21 Q. And do you see where Ms. Scott is talking to you about the
22 preventative maintenance, correct? That's being
23 contemplated?

24 A. It looks like she's wanting a copy of the contract.

25 Q. Yeah, well, also, let's look at the first paragraph, and

1 where she says, "Hi Abe."

2 A. Yes.

3 Q. And she states in the second sentence, or third sentence:

4 "At this point, I am not willing to
5 take any more time off work. I am also not
6 an IT person, and watching someone insert
7 USBs won't quell my objections to having
8 anything done on the machine at this
9 juncture."

10 You're not an IT person either, right?

11 A. Correct.

12 Q. And was inserting a USB part of the preventative
13 maintenance procedure?

14 A. Not that I recall.

15 Q. Did you ever tell Clerk Scott that inserting a USB was not
16 part of the preventative maintenance procedure?

17 A. Not that I recall.

18 Q. And then you're correct, she said she'd be more interested
19 in reading the contract:

20 "...to determine my options, and
21 would you have the ability -- would you be
22 able to forward that contract to me?"

23 Did you forward the contract to her?

24 A. I believe so.

25 Q. Okay, and have you read that contract?

1 A. I have reviewed it. I haven't read every word of it.

2 MR. OLSEN: Do you have a binder clip?

3 THE COURT: Well, we might have one.

4 MR. OLSEN: I don't think I have one.

5 THE COURT: Tara, do you have a binder clip?

6 There you are.

7 While you're showing him that, did you want to
8 move for the admission of 33 and 34? I never officially
9 admitted those.

10 MR. OLSEN: Yes, Your Honor.

11 THE COURT: Was there any objection?

12 MR. CUNNINGHAM: No, objection.

13 THE COURT: Defense Exhibits 33 and 34 are
14 admitted.

15 (At 11:46 a.m., Defendant Exhibits 33 and 34
16 received)

17 BY MR. OLSEN:

18 Q. Mr. Dana, I've just handed you a copy of the contract that
19 was previously admitted as Exhibit 7. Does this appear to
20 be the document that you said you believe you read?

21 A. Reviewed, yes.

22 Q. Reviewed. And if you would turn to page 31 of this
23 document, do you see the chart under Preventative
24 Maintenance, Tabulators, Accessible Voting System
25 Components Only?

1 A. Yes.

2 Q. Okay, so the preventative maintenance that was being
3 scheduled by Hart, was it just for the tabulators, or was
4 it for the system?

5 A. It was for tabulators and voter assist terminals.

6 Q. Okay, was it for anything else?

7 A. Not that I recall.

8 Q. Okay, if you look at the chart in Exhibit 7, under where
9 it says Maintenance for Verity Scan, Both Routine and
10 Preventative. Do you see that?

11 A. Yes.

12 Q. And the Verity Scan is the tabulator?

13 A. Yes.

14 Q. And do you see it has a listing of maintenance types, and
15 then it continues on to the next page in that chart?

16 A. Yes.

17 Q. Okay. Do you see who the maintenance is performed by?

18 A. It indicates that the maintenance is performed by a user,
19 with the exception of the last item, replacing the coin
20 battery in the tablet, which is what happened in 2021.

21 Q. Well, the last item replacing the coin battery, it says it
22 can be the user with contractor assistance as needed,
23 correct?

24 A. Correct.

25 Q. So there's no requirement that the contractor perform that



1 function, correct?

2 A. From just looking at 31 and 32, you're correct.

3 Q. Back to Exhibit 34, which is the e-mail chain dated July
4 29th, 2021 -- from 27th to the 29th, do you see that?

5 A. Yes.

6 Q. Okay. Do you see where on July, at the top of that first
7 page, at 10:09 a.m., you write to -- you say:


8 "Good morning, Stephanie, we are
9 getting ready to order new modems for
10 tabulators. And after the discussion we
11 had, I wanted to ask if we ordered an
12 upgraded 4G modem for Adams Township,
13 would you even use it? If not, I will not
14 order one. Please let me know."

15 Is it your understanding that the tabulator that
16 existed at the time for Adams Township had a modem
17 installed on it?

18 A. It was a USB device that was plugged in during each
19 election after the public accuracy test was performed.

20 Q. Okay.

21 A. And only programmed to turn on and transmit data after the
22 polls close on election night.

23 Q. So, how do you know it was only programmed to turn on
24 after the polls closed? 

25 A. From watching it operate during public accuracy tests,

1 when you close the polls after public accuracy test, it
2 would turn on and attempt to transmit data. And then also
3 from being at the county where we had a specific
4 workstation that received those transmissions from the
5 modems.

6 Q. Well, a modem doesn't necessarily have to transmit data to
7 a specific entity, right? When you're saying you received,
8 there's an IP address that the modem is sending that
9 information to?

10 A. Correct.

11 Q. So it could send it to other IP -- information to other IP
12 addresses, correct?

13 A. Correct.

14 Q. And you said you were watching the modem. Did it light up
15 or something like that when it turned on?

16 A. It lit up and there were indications on the touch screen
17 of the tablet for the device that it was attempting to
18 transmit.

19 Q. And are, do you know, are you watching that tabulator or
20 tablet 24-7 every second of the day?

21 A. No.

22 Q. And are you able to see what goes on inside a modem?

23 A. No.


24 Q. So you would have no way of knowing whether or not that
25 modem was either receiving or transmitting data.



1 A. I would be able to see if there was anything that got
2 altered after the fact by an audit or perhaps during the
3 canvas of the election.

4 Q. And what audit are you referring to?

5 A. The procedural audits that we do after each election.

6 Q. Is there more data on a tabulator than just the ballot?
7 Do you understand that the QVF is stored on the
8 tabulator? 

9 A. That is incorrect.

10 Q. You do not believe that the QVF is stored on the
11 tabulator?

12 A. I do not believe that.

13 Q. And what do you base that on?

14 A. Personal experience.

15 Q. Do you believe that any QVF data is ever on the tabulator
16 either through a connected device or stored?

17 A. No, I do not.

18 Q. Does the -- what devices connect to the tabulator?

19 A. Right now, just the Verity drive USB device and the Verity
20 key. That's it.

21 Q. Okay. The -- you said the tabulator transmits data. It
22 transmits data to what?

23 A. Back in 2021, when we utilized 3G modems, the modem would
24 transmit data to a workstation at the county so that we
25 could get early results faster and publish them on our

1 website.

2 Q. So there's a connection, an internet connection, between
3 the tabulator and the county workstation?

4 A. There was at that time. When the modems, and this is part
5 of the reason why this is a correspondence, is that when
6 we were nationwide switching to 5G, the county was still
7 using 3G modems and they were going to become obsolete. So
8 we needed to purchase 4G modems because those were the
9 next ones that were available and I believe certified by
10 the EAC at the time. In the end, we decided not to do
11 that. And as of today, we only rely on hand-delivered
12 results from the V-drives delivered to the county from --

13 Q. Okay, so the workstation at the county, what data is
14 stored on the workstation? Either on the workstation or
15 connected through electronic media?

16 A. I'm not sure I understand the question.

17 Q. You said that the tabulator transmits data to the
18 workstation.

19 A. Okay, so there's a separate workstation that was, at the
20 time, its only purpose was to receive that data. And then
21 that was air-gapped between, we would take V-drives at the
22 county to receive the data and then air-gap that and the
23 V-drives would then, after the transmission was complete,
24 we would take the results and upload them into the
25 election management system, which is not connected to the

1 internet, to publish the results on our website.

2 Q. Okay, so you say it's air-gapped. So are you saying that

3 from the workstation, you would take like a removal device

4 and take it and put it in?

5 A. We would use a V-drive USB device --

6 Q. Yeah.

7 A. -- to move the data from the workstation that received the

8 data to the workstation that is not connected to the

9 internet, that we program and then also count the votes

10 and publish the reports on our website.

11 Q. But when you're saying air-gapped, you're taking a

12 removable storage device?

13 A. Yes.

14 Q. The V-drive, from that workstation and bringing it over to

15 the EMS?

16 A. Yes.

17 Q. But that workstation was connected to the tabulator via a

18 modem and transmitting data, correct?

19 A. Yes.

20 Q. And so there would be nothing, if there was a malicious

21 actor, to transmit data to the workstation, which then

22 gets onto the V-drive and then you air-gap it, and then

23 you're taking that V-drive and plugging it into the EMS,

24 correct?

25 A. Correct. And then afterwards we're verifying that further

1 when we get the hand-delivered results.

2 Q. So does the EMS have QVF data on it?

3 A. No, it does not.

4 Q. Does any system that's connected to the EMS have QVF data?


5 A. No.

6 Q. Or is a poll book connected to -- is the electronic poll
7 book connected, ever connected in any way to the EMS?

8 A. No.

9 Q. Is it ever connected to a router?

10 A. (No verbal response).

11 Q. The electronic poll book has an internet connection,
12 correct? 

13 A. It is capable of that, yes.

14 Q. And you understand that internet connections data is
15 transmitted through a router?

16 A. Yes.

17 Q. Do you understand that any system that at any point in
18 time connects to that router can be compromised by a
19 malicious actor?

20 A. In theory, yes.

21 Q. Earlier we talked about the Office of Auditor General's
22 intended audit in the August timeframe.

23 A. Yes.

24 Q. And that arose after the EPB flash card data was deleted,
25 correct? Or at least directed to be deleted?

1 A. Directed to be, yes.

2 Q. But that audit was announced before the preventative
3 maintenance would be performed on the tabulators, correct?
4 August 2nd --

5 A. Okay.

6 Q. -- is the day of that prep one -- I think it's July 29th.
7 But you received notice of that on or about August 2nd,
8 2021, of the planned audit, correct?

9 A. I don't recall that, but I'm willing to agree to that.

10 Q. Okay, I mean, we could pull it out if you want.

11 A. Yeah, yeah.

12 Q. And the Office of Auditor General is an official body?

13 A. Yes.

14 Q. And at this time, Clerk Scott was expressing concerns that
15 the preventative maintenance could possibly delete
16 relevant election records from the tabulator, correct?

17 A. Yes.

18 THE COURT: Mr. Olsen, I think we're going to
19 take a break.

20 MR. OLSEN: Oh, yes, Your Honor.

21 THE COURT: If I could just have you bring me
22 the exhibits so they can be stored properly. We'll resume
23 promptly at 1:00 p.m. Thank you. Your stuff will be safe
24 in here. We'll lock the doors again.

25 Court stands in recess.

1 THE BAILIFF: All rise.

2 (At 12:00 p.m., off the record)

3 (At 1:00 p.m., proceedings resume)

4 THE COURT: All right, we will go back on the

5 record. Before we begin again with cross-examination, Mr.

6 Olsen, do you want Mr. Dane to have back --

7 MR. OLSEN: Yes.

8 THE COURT: -- Defendants' Exhibit 7, 15, 32,

9 33, and 34? I had just taken them back into custody during

10 the break. Okay.

11 MR. OLSEN: Thank you, Your Honor.

12 THE COURT: All right, you may begin.

13 BY MR. OLSEN:

14 Q. Mr. Dane, I just handed back to you Defendants' Exhibit 7,

15 which is the contract. Remember we were talking about

16 whether the QVF was stored on the tabulator?

17 A. Yes.

18 Q. Could you pull Exhibit 7, please, and go to page, I

19 believe it's 60. Yeah. Let me know when you're there.

20 A. I am.

21 Q. And so page 60 is a flowchart, correct?

22 A. Yes.

23 Q. And do you see where it delineates on the left-hand side,

24 county level, local level?

25 A. Yes.

1 Q. And back to the county level?

2 A. Yes.

3 Q. And so at the top, there's a diagram and it says Program
4 Your Own and Vendor Programming?

5 A. Yes.

6 Q. And under the Program Your Own, it includes the Michigan
7 QVF, correct?

8 A. It does.

9 Q. And then, at least according to the flowchart, that flows
10 down to election data on the USB media, correct?

11 A. Yes.

12 Q. And is that the USB media -- that's not the Verity drive
13 that you were talking about, or is it?

14 A. Yes, that is the Verity drive.

15 Q. That is. Okay, so that is the Verity drive. And then from
16 there, the flowchart going to the left goes down to
17 precinct voting, correct?

18 A. Yes.

19 Q. And then it goes to the precinct tabulator Verity scan?


20 A. Yes.

21 Q. Doesn't that indicate that the QVF goes to the V-drive,
22 which then goes to the precinct tabulator?

23 A. Not entirely. So what this is referring to is when the
24 county is beginning to program an election, we have to put
25 all of the candidates and the proposals into the Qualified

1 Voter File. They then use that information to update the
2 Michigan Voter Information Center so that the public can
3 see previews of their ballot and so on.

4 Then they provide or have provided in the past a
5 very poorly made tool where a county level user could
6 generate a, I'm assuming it's like a CSV file, that would
7 contain all of the proposals and the candidates and the
8 parties that they belong to, that you could then take, put
9 on a flash drive and take to the EMS and upload into the
10 EMS. It's a very faulty system. It hasn't ever worked
11 right, and we've never used it in Hillsdale County.

12 Q. Are you saying that the flowchart is wrong? 

13 A. No, I think it's just referencing the fact that you put
14 ballot programming information into QVF, and then you
15 could take the information from QVF and then put it into
16 the EMS, but it's not a requirement, and even if it was
17 used, there would be an air gap in all the, the only data
18 that's being moved from the QVF to the EMS would be
19 proposals, candidates, the parties they belong to and
20 things that are used to build the ballot.

21 Q. Okay, you mentioned air gap again. Do you understand that
22 air gapping, are you referring to that as like a security
23 feature?

24 A. Yes, because the EMS is not connected to the internet.

25 Q. Okay, and we discussed earlier how transmitting or

1 transferring portable media onto an air gap system can
2 introduce, could introduce, for example, malicious code,
3 correct?

4 A. In theory, yes, but I also said that we don't do that in
5 Hillsdale County and have never, but I'm aware of it.

6 Q. You've never transferred any disposable media? Does the
7 EMS have a USB port?


8 A. Yes.

9 Q. So it's possible for somebody, a malicious actor to insert
10 a thumb drive, for example?

11 A. If they knew the secure password to start the operating
12 system and log into it, yes.

13 Q. Okay, well, you don't need a, do you need a password to
14 insert, to physically insert a flash card?

15 A. No, but you would need it to gain entry into the operating
16 system to manipulate anything in the computer.

17 Q. Do you have the expertise to determine, for example, if
18 somebody inserted a USB stick that it would not
19 automatically transfer into the system? 

20 A. I'm not that advanced in my --

21 Q. I mean, I'm just curious. Have you ever heard of the
22 Stuxnet virus that was planted on the Iranian nuclear
23 facilities?

24 A. Yes.

25 Q. Through a USB? And is your understanding that the entire

1 Iranian nuclear program was taken down by a thumb drive
2 inserted by a malicious actor onto their system?

3 A. I suppose that that is an accurate description of what
4 happened.

5 Q. It's a fascinating event, by the way.

6 A. It is.

7 Q. You had earlier referenced some audits that were done. And
8 are you -- to reconcile the votes. Are you referring to
9 risk limiting audits?

10 A. I could be. So after every election, the Bureau of
11 Elections randomly picks precincts in each county that are
12 part of a procedural audit that the county clerk's office
13 oversees. And in addition to that, there are some
14 precincts the state picks statewide where Bureau of
15 Elections staff also conduct those. And in addition,
16 there's the risk limiting audits.

17 Q. Got it. The procedural audit, what does that -- does that
18 compare the, is that a hand count of the ballots and the
19 selections to what the recorded results show?

20 A. There is a portion of it that looks at one race on the
21 ballot and does a hand count of that one race.

22 Q. Okay, so just one race. Is that like a local race or a
23 federal race?

24 A. No, it's normally one of the top races on the ballot. So
25 the governor or the presidential.

1 Q. So, and that's done at every township or every precinct?

2 A. Just the ones that are randomly drawn for an audit.

3 Q. So it's -- so the audit isn't checking the overall
4 results. Is that what it's called? That's what I know to
5 be a risk limiting audit is what we refer to it as. Is
6 that your understanding?

7 A. The risk limiting audit is, the Bureau's done that
8 differently over the past four years, five years now. In
9 2021, the risk limiting audit involved, I can't recall if
10 it was every precinct or not, but it was a lot of
11 precincts had to bring in their ballots for the risk
12 limiting audit to be performed by county staff. We
13 utilized the help of some of the township clerks as well
14 to conduct it. And there was some random draw at the
15 Bureau of Elections that dictated which precincts. And
16 then they somehow, I'm not an expert on risk limiting
17 audits, but they somehow gave us information as to which
18 ballots to look at and count in the risk limiting audit.
19 And it was a random drawing there, too. We would just
20 thumb through the ballots that as they came to us in the
21 ballot storage container.

22 Q. So it's a very small percentage of the overall total
23 ballots that are checked?

24 A. Statewide, yes, I believe that would be.

25 Q. Very small percentage. So it's not, they're not auditing

1 the whole election --


2 A. Right.

3 Q. -- and comparing results?

4 A. Yes.

5 Q. Okay. When we left off, we were talking a little bit about
6 modems. Just a quick question about that. You said that
7 you could verify that the modem was functioning if the
8 light was on?

9 A. If I recall, and again, we haven't had these modems in a
10 few years now, but I recall a light on the device that
11 would light up and then the screen on the tablet itself
12 would indicate that it's attempting to transmit after and
13 only after the polls have closed and the votes have been
14 counted.

15 Q. And do you have any reason to disagree that a modem could
16 be programmed, for example, to not turn on a light if it's
17 functioning? 

18 A. No, that could happen.

19 Q. And are you aware that tabulators maintain log files that
20 record when, for example, transmission activity and
21 connectivity to the tabulator?

22 A. Yes, and those log files are part of the V-drive upload
23 into the EMS when we read those on election night.

24 Q. Okay. Do you recall any audit of the log files of the
25 tabulator from the 2020 election to determine whether or

1 not there was any connectivity?

2 A. No.

3 (At 1:11 p.m., Defendant Exhibit 35 marked)

4 BY MR. OLSEN:

5 Q. Mr. Dane, you've just been handed a document marked for
6 identification as Exhibit 35. It's an e-mail from you to
7 the clerks dated September 1st, 2021. Does this appear to
8 be a true and accurate copy?

9 A. Yes.

10 MR. OLSEN: Okay. Your Honor, we've moved to
11 admit Exhibit 35.

12 THE COURT: Any objection?

13 MR. CUNNINGHAM: No objection.

14 THE COURT: Defense Exhibit 35 is admitted.

15 (At 1:12 p.m., Defendant Exhibit 35 received)

16 BY MR. OLSEN:

17 Q. Mr. Dane, I want to direct your attention to the substance
18 of this e-mail, where you state:

19 "Good afternoon, everyone. Recently,
20 one of the local clerks within our county
21 discovered multiple duplicate voter
22 registrations that were entered into the
23 QVF by the Secretary of State branch
24 offices."

25 So the Secretary of State branch offices, that's

1 not obviously the local clerks or township clerks and
2 others that are making mistakes, correct?

3 A. Correct.

4 Q. You state:

5 "There were three of them that
6 occurred within a three month period in a
7 single jurisdiction."

8 Were those duplicate voter registrations, did
9 they apply to like a particular township that somebody at
10 the branch office of the Secretary of State changed the
11 QVF for?

12 A. I don't recall the specifics of where that happened. I
13 just know, as I stated previously, that both Clerk Scott
14 and myself, being new to the position, we did have
15 questions about QVF and these duplicate registrations. And
16 as I was investigating how they occurred, I found out that
17 the branch office, Secretary of State locations, where
18 business is conducted for renewing your license or getting
19 a boat tag in the State of Michigan, anytime that happens,
20 because the State of Michigan automatically registers
21 people to vote unless they tell them otherwise, the clerks
22 of the Secretary of State branch offices are inputting
23 data into a system that's connected to QVF. They don't
24 have direct QVF access, but that's where those data entry
25 errors occur. If they put someone's name incorrectly by

1 one character, or if they're hand keying a driver's
2 license number, it will create that duplicate record.

3 Q. And you say they don't have direct access to the QVF, but
4 the data does get onto the QVF, correct?

5 A. That's my understanding.

6 Q. And you state further:

7 "The duplicated voter registrations
8 were very similar with only slight
9 differences in the driver's license voter
10 identification numbers, where in one case,
11 the year of birth was off by a couple of
12 years."

13 If a malicious actor wanted to make it difficult
14 or more difficult to determine if a duplicate
15 registration was recorded on the voter roll, would making
16 a slight difference in the record make that more
17 difficult to detect than if the record was identical?

18 A. The way the driver's license numbers are generated is
19 based on the name and possibly information such as the
20 date of birth. So it would be conceivable that in a hand
21 key error by a clerk, the system would generate another
22 driver's license number that is very similar to the
23 original one.

24 Q. Would also be a way to make it more difficult to detect,
25 wouldn't it?

1 A. If that was the intent.

2 Q. Okay. And in fact, are you aware that the Department of
3 Justice recently sent a letter requesting information from
4 the Michigan Secretary of State, and also CC'ing Mr.
5 Brater, about duplicate registrations on Michigan's voter
6 rolls?


7 A. I am, and I'm in support of that letter.

8 Q. When you say you're in support of that letter, what do you
9 mean?

10 A. I mean, I think we should take every precaution to make
11 sure our voter rolls are accurate.

12 Q. And in fact, as an election official for Hillsdale County,
13 you feel it's not only your authority to make sure they're
14 accurate, but you have the obligation to do so?

15 A. Yes.

16 Q. And that authority and obligation also resides with a
17 township clerk, correct? 

18 A. Yes.

19 Q. And so, in fulfilling your duties and Clerk Scott
20 fulfilling her duties, investigating these issues and
21 getting to the bottom of what is not hypothetical, there
22 is a problem with Michigan's voter rolls on duplicate
23 registration that's risen to the level of the attention of
24 the Department of Justice, correct?

25 A. I'm not convinced there's fraud involved, but I

1 acknowledge that there are these duplicate records in the
2 copy of our file.

3 MR. OLSEN: Your Honor, I don't have the exhibit
4 number, but it was introduced yesterday. It's the
5 Department of Justice letter dated July 21st.

6 DEFENDANT JUNTILA: Seventeen.

7 MR. OLSEN: Seventeen.

8 THE COURT: Here it is.

9 MR. OLSEN: Thank you.

10 BY MR. OLSEN:

11 Q. Mr. Dane, I've just handed you what was previously
12 admitted as Defendant Exhibit 17. It's the Department of
13 Justice letter that we were just discussing. Have you seen
14 this letter before?

15 A. Yes.

16 Q. And I want to direct your attention to the second page,
17 para -- numbered item five. And do you see where it says:

18 "The EAVS data for question 3, A3D
19 reflects that Michigan recorded 1.869 plus
20 million duplicate registrations, which was
21 45.7 percent of all the registration
22 transactions received by Michigan. Please
23 explain why the duplicate registrations
24 compromised such a high number of all
25 registration transactions in Michigan."

1 Do you see that?

2 A. Yes.

3 Q. You're not suggesting that this number of duplicate
4 registrations arose just in 2022, correct?

5 A. There's hand keying of data that goes into the quantified
6 voter file all the time.

7 Q. So would you agree that as of 2021, Michigan had a
8 significant problem with duplicate registrations in the
9 QVF?


10 A. I think at any time there is room for improvement in that
11 regard.

12 Q. Would you -- I mean, looking at this letter and the
13 identification of these figures, would you agree that in
14 2021 there was a significant problem with duplicate
15 registrations on Michigan's QVF?

16 A. I would agree that there is a problem.

17 Q. Do you think that having 1.869 plus million duplicate
18 registrations, 45.7 percent of all the registration
19 transactions, is a significant problem or just a problem?

20 A. I would want to know where that information comes from
21 before I would decide if it's significant or not.

22 Q. Well, it says it comes from the Election Assistance
23 Commissions, Election Administration and Voting Survey,
24 EAVS. You see that? 

25 A. I did see that.

1 Q. Do you have any reason to doubt the accuracy of that
2 information?

3 A. I haven't seen that original information myself, so I
4 don't know.

5 Q. Okay. But you would think it's incumbent at least to
6 investigate this matter?

7 A. Absolutely.

8 Q. And again, at this time, the OAG, this time being
9 September 2021, the Office of Auditor General's audit was
10 still pending, correct?

11 A. I believe so, yeah.

12 MR. OLSEN: Your Honor, can I get Defendants'
13 Exhibit 6, please?

14 THE COURT: Okay.

15 MR. OLSEN: Thank you.

16 BY MR. OLSEN:

17 Q. Mr. Dane, I've just handed you what has been previously
18 admitted as Defendants' Exhibit 6. It's an e-mail from you
19 to Jonathan Brater, dated September 20th, 2021. Now, this
20 has previously been admitted, but do you recall sending
21 this e-mail?



22 A. I do.


23 Q. You state:

24 "I wanted to let you know that I was
25 able to get a public accuracy date out of

1 the Adams Township clerk today for October
2 27th."

3 You see that?

4 A. Yes.

5 Q. So, there's no doubt that Clerk Scott complied with
6 Michigan law and timely scheduled the logic and accuracy
7 test, correct? 

8 A. Correct.

9 Q. You state:

10 "She wanted to put it off until the
11 very last minute to give her more time to
12 seek her attorney's opinion on how to get
13 around using the equipment. No word on the
14 preventative maintenance taking place at
15 this point. She is absolutely convinced
16 the equipment is not secure. I'll keep you
17 up to date as time goes by, but I suspect
18 there will be more issues to follow. For
19 instance, what would you have us do if she
20 refuses to perform the public accuracy
21 test or sign the testing and security
22 certificate?"


23 You see that?

24 A. Yes.

25 Q. Why are you communicating with Mr. Brater at this point?

1 A. Because I'm concerned at this point that the election is
2 going to be invalidated by the current Adams Township
3 clerk not doing what she's supposed to be doing.

4 Q. Well, is it one of the things that the Adams Township
5 clerk's supposed to be doing is to make sure her equipment
6 is secure and also the accuracy of the Qualified Voter
7 File?

8 A. Yes. However, as elections continue to happen, you have to
9 continue recycling the equipment and reusing it. So if she
10 had perhaps sought to get permission from her board to
11 purchase another tabulator and let this one continue to
12 look into auditing it, as you say, then I probably
13 wouldn't have sent that e-mail. 

14 Q. Oh, okay. So your concern was not that Clerk Scott --
15 well, first of all, you don't doubt the legitimacy of
16 Clerk Scott's concerns about the security of the
17 electronic voting machines at Adams Township, correct?

18 A. I didn't agree with you -- you said the word validity of
19 her concerns. I didn't agree with that.

20 Q. I think I said sincerity.

21 A. Sincerity, okay.

22 Q. But let me rephrase the question just a little bit. You
23 don't have any reason to doubt the sincerity of Clerk
24 Scott's belief that there was an issue with the security
25 of the Adams Township county tabulator?

1 A. I knew that she believed that wholeheartedly at the time.

2 Q. And you also, obviously, as you stayed here, knew that she

3 was seeking her attorney's opinion about this?

4 A. Yes.

5 Q. Do you know the name of the attorney she was seeking an

6 opinion from?

7 A. I don't believe I did at the time.

8 Q. Do you know now?

9 A. I assume it was Ms. Lambert.

10 Q. Okay. But you have no basis to -- you're just assuming

11 that?

12 A. Yes.

13 Q. Were you aware that Clerk Scott was in discussions during

14 this time in the fall of 2021 with James Fink?

15 A. As the township attorney, I may have been, but I don't

16 recall specifically.

17 Q. Okay. Have you ever sought the advice of an attorney in

18 connection with your duties as chief deputy or deputy

19 clerk?

20 A. Yes.

21 Q. And you do that, why?

22 A. To make sure that I am following the law.

23 Q. It's the prudent thing to do, correct?

24 A. Yes.

25 Q. And you would agree that Clerk Scott consulting with an

1 attorney regarding her concerns about what to do about the
2 security of the voting machines is a reasonable thing to
3 do as a township clerk?

4 A. Yeah.

5 Q. And that actually would be consistent with performing your
6 official duties as a township clerk to follow up on those
7 issues, correct?

8 A. Yes.

9 THE COURT: Thank you.

10 (At 1:27 p.m., Defendant Exhibit 36 marked)

11 BY MR. OLSEN:

12 Q. Mr. Dane, you've just been handed a document marked for
13 identification as Defendants' Exhibit 36. It's an e-mail
14 string between you and Stephanie Scott dated September
15 27th, 2021. Does this appear to be a true and accurate
16 copy?

17 A. It does.

18 Q. Do you see in the center at the e-mail that's timestamped
19 9:14 a.m.?

20 A. Yes.

21 Q. And do you see there's a reference by Ms. Scott to the AB
22 report duplicates?

23 "Interestingly, the AB reports
24 changed in a matter of a few days."

25 A. Yes.

1 Q. Is this referring to the duplicate ballot issue that we've
2 been discussing -- or excuse me -- duplicate registration
3 record that we've been discussing?

4 A. I'm not certain if it's registration or just duplicate
5 notices in the inbox of her QVF.

6 Q. Okay. But it's duplicate entries into the QVF?

7 A. I --



8 Q. Possibly?

9 A. Possibly, yes.

10 Q. Okay. Yeah. And so that would affect the accuracy or the
11 correctness of the registration record, correct?

12 A. Yes.

13 Q. Okay. And you state at the top:

14 "I couldn't get a clear answer (or
15 any at all) from the state on this issue.
16 So I've reached out to Shirkey's office to
17 see if they can get a response from their
18 liaison to the Bureau of Elections. I want
19 to know what procedures the SOS branch
20 office workers are supposed to use to
21 check for active voter registration before
22 they automatically register a new voter. I
23 also want to know what the procedure the
24 QVF workers use to verify the correct
25 information before they merge two

1 duplicates into one. If or when I get a
2 response, I would share it with everyone."

3 And by everyone, do you mean like all the clerks
4 in Hillsdale?

5 A. Probably, yes.

6 Q. And is that because all the clerks in Hillsdale were at
7 least aware of an issue with duplicate registrations in
8 Michigan's registration system?

9 A. Aware because they may have been aware directly
10 themselves, but more probably from my previous e-mail of
11 these other exhibits that I sent out alerting them to that
12 fact.

13 Q. Yeah. So this was a sufficient enough problem, duplicate
14 registrations, that it deserved the attention of all the
15 clerks within Hillsdale County, correct?

16 A. I felt so at the time as I was learning more about the
17 Qualified Voter File. Yes.

18 Q. Who is Shirkey?

19 A. That was the senator at the time.

20 Q. And what did you -- you said you reached out to Shirkey's
21 office. Is he a state Senator?

22 A. He was a state Senator.

23 Q. And what did you -- did you have any discussions with him?

24 A. I had a contact in his office and sometimes, so me being a
25 new county employee, I didn't have much name recognition

1 to get for contacts, so I could contact directly at the
2 state level to get my questions answered. So at the time I
3 wasn't getting sufficient answers and I utilized someone
4 in Shirkey's office to help me get a response from the
5 Bureau of Elections.

6 Q. So this was a significant enough problem that you reached
7 out to your state senator, correct?

8 A. At the time, yes.

9 THE COURT: Would you like 36 admitted?

10 MR. OLSEN: Yes, Your Honor.

11 THE COURT: Any objection?

12 MR. CUNNINGHAM: No objection.

13 THE COURT: Defense Exhibit 36 is admitted.

14 (At 1:31 p.m., Defendant Exhibit 36 received;
15 Defendant Exhibit 37 marked)

16 THE COURT: This is 37.

17 BY MR. OLSEN:

18 Q. Mr. Dane, you've just been handed the document marked for
19 identification as Exhibit 37. It's an e-mail dated
20 September 29th between you and, I assume, are all the
21 clerks in Hillsdale County?

22 A. I believe so, yeah.

23 Q. Does this appear to be a true and accurate copy?

24 A. Yes.

25 MR. OLSEN: Your Honor, we would move to admit.

1 THE COURT: Any objection?

2 MR. CUNNINGHAM: No objection.

3 THE COURT: Defense Exhibit 37 is admitted.

4 (At 1:32 p.m., Defendant Exhibit 37 received)

5 BY MR. OLSEN:

6 Q. And as you read this, do you see that there's a reference
7 to reaching out to both Representative Fink and Senator
8 Shirkey's office?

9 A. Yes.

10 Q. And is the issue that's being discussed here the same
11 issue that was raised in Defense Exhibit 36 that we just
12 discussed?

13 A. Yes.

14 Q. Okay. And Representative Fink, is that James Fink, the
15 Township Attorney, or is that a different Mr. Fink?

16 A. No, that's the State Representative, Andrew Fink.

17 Q. Okay. Do you see in the second paragraph where you state:

18 "Our own attempts to get a
19 satisfactory answer from the Bureau of
20 Elections on our questions have come up
21 empty thus far"?

22 A. Yes.

23 Q. And then in the last sentence of that paragraph, you
24 state:

25 "Our working theory at the moment is

1 these duplicates are coming from the SOS
2 branch office workers making mistakes."

3 A. Yes.

4 Q. So we had talked about the branch offices in an earlier
5 exhibit. So that was just a theory that that's where the
6 duplicates were coming from, correct? I mean, that's how
7 you call it.

8 A. Yeah. Yeah, I remember that.

9 Q. So you really didn't know at this time as to where all
10 these duplicates were coming from?

11 A. Correct.

12 THE COURT: That's okay. It's a very touchy
13 microphone. There you go.

14 MR. OLSEN: Let's go with that.

15 (At 1:34 p.m., Defendant Exhibit 38 marked)

16 BY MR. OLSEN:

17 Q. Mr. Dane, you've just been handed a document for
18 identification as Exhibit 38. It's an e-mail dated October
19 11th, 2021 from Stephanie Scott to you and the other
20 clerks. Does this appear to be a true and accurate copy of
21 an e-mail you received?

22 A. Yes.

23 MR. OLSEN: Your Honor, we would move to admit.

24 MR. CUNNINGHAM: No objection.

25 THE COURT: 38 is admitted.

1 (At 1:35 p.m., Defendant Exhibit 38 received)

2 BY MR. OLSEN:

3 Q. You see where Ms. Scott writes:

4 "Good morning Abe and fellow clerks.

5 Is there any update on the fact that QVF
6 has duplicate entries for AB applications?
7 The issue is of immediate concern as my AB
8 list for the November 2nd election has
9 changed three times since sending out AB
10 applications (and diminishing in
11 quantity), and I am now up to five
12 duplicates in the inbox requesting AB
13 ballots. This constitutes 1.2 percent
14 duplication rate in which names appear to
15 be exactly the same as already in the QVF.
16 It makes no sense that the database should
17 change at all after the AB list is
18 printed, let alone go down. And it is very
19 concerning that the inbox duplicate
20 entries of people, two of which I can
21 confirm went into the Secretary of State
22 site and registered, though they were
23 already -- they were apparently already
24 registered. I've sent my notification to
25 the Secretary of State."

1 You would understand that Clerk Scott is
2 fulfilling one of her obligations to investigate duplicate
3 entries in the registration record, correct?

4 A. Yes.

5 Q. And her investigating that issue, you would agree was
6 reasonable?

7 A. Yes.

8 Q. And you would agree at this point, nobody had determined
9 what the source of these duplicate entries were?

10 A. Correct.

11 (At 1:37 p.m., Defendant Exhibit 39 marked)

12 BY MR. OLSEN:

13 Q. Mr. Dane, you've just been handed a copy of Defendants'
14 Exhibit 39. It's an e-mail chain that includes you and
15 Stephanie Scott dated between October 17th and October
16 18th. Does this appear to be a true and accurate copy?

17 A. Yes.

18 MR. OLSEN: Do you see on the first page -- oh,
19 Your Honor, we move to admit Exhibit 39.

20 THE COURT: Any objection?

21 MR. CUNNINGHAM: No.

22 THE COURT: Defendants' Exhibit 39 is admitted.

23 (At 1:37 p.m., Defendant Exhibit 39 received)

24 BY MR. OLSEN:

25 Q. Do you see on the first page at the bottom, you're

1 attaching a copy of the affidavit of publication, the ad
2 that was placed for the public accuracy test?

3 A. Yes.

4 Q. And that's referring to the L&A test for Adams Township
5 that was scheduled for October 27th at the time of the
6 initiation of Clerk Scott, correct?

7 A. Yes.

8 Q. And she was complying with her statutory duties to do
9 that?

10 A. Yes.

11 Q. You see where right above that, Clerk Scott asked you and
12 Marney:

13 "Would you please address paragraph
14 three of the letter dated October 15th
15 received from Jonathan Brater on which he
16 received a copy? I would appreciate the
17 county clerk's office addressing this
18 false accusation and working with Mr.
19 Brater to correct the information and
20 retract the false accusation."

21 Do you see that?

22 A. I see that.

23 Q. So you were aware of the, I believe it's Defendants'
24 Exhibit 4, the October 15th letter from Mr. Brater to
25 Stephanie Scott in which, among other things, he stated

1 that she had not scheduled the logic and accuracy tests
2 when in fact she had.

3 All right. She's asking you here to -- you've
4 already been talking with Mr. Brater at this time,
5 correct?

6 A. E-mail correspondence with Director Brater and Laurie
7 Bourbonet, yes.

8 Q. And so that had been, and you had been doing that for the
9 past couple months because you had had some concerns?

10 A. Yes.

11 Q. And in fact, you had kind of forwarded e-mail
12 correspondence from Stephanie Scott to Mr. Brater or Miss?

13 A. Laurie Bourbonet.

14 Q. Bourbonet.

15 A. Yes.

16 Q. During the preceding couple months. Given that Clerk Scott
17 -- I mean, she's correct. She did schedule the L&A test.
18 How come you did not -- did you ever call up or write to
19 Mr. Brater, or say, "Hey, the logic and accuracy test,
20 you're wrong. She has scheduled that"?

21 A. I don't recall if I did or not.

22 Q. There came a point in time on October 25th, 2021 that Mr.
23 Brater prohibited Clerk Scott from participating in the
24 upcoming election, correct? You recall that?

25 A. I'm not sure if that was the date or not, but yes, that

1 was really close to the 27th.

2 MR. OLSEN: Your Honor, can I get People's
3 Exhibit 5?

4 THE COURT: Does he have that one?

5 MR. OLSEN: I don't think we've used that yet.

6 THE WITNESS: I don't think so.

7 BY MR. OLSEN:

8 Q. Mr. Brater (sic), you've just been handed what has been
9 previously admitted as People's Exhibit 5. It's a letter
10 from Mr. Brater to Clerk Scott dated October 25th, 2021.
11 Are you familiar with this letter?

12 A. Yes.

13 Q. Does this refresh your recollection that on the October
14 25th, Mr. Brater prohibited Clerk Scott from performing
15 any duties with respect to the upcoming election?

16 A. Yes.

17 Q. Now, the L&A test was scheduled for October 27th, correct?


18 A. Correct.

19 Q. And were you telling other clerks that if Clerk Scott
20 sought to use a spare tabulator not to provide that
21 tabulator to her?

22 A. Yes.

23 Q. Why would you try to block Clerk Scott from using a spare
24 tabulator to conduct the election so that she could
25 preserve her current tabulator for possibly future

1 inspection?

2 A. Because I felt that her concerns were unwarranted, and she
3 had not sought to purchase an additional tabulator of her
4 own for that township. 

5 Q. Well, aren't the spare tabulators there in case one of the
6 other tabulators, for whatever reason, doesn't function?

7 A. Yes.

8 Q. And is there anything in Michigan law that says you can
9 only use a spare tabulator if the other tabulator is not
10 functioning properly?

11 A. No.

12 Q. So you don't have to give a reason to use a spare
13 tabulator, correct, in Michigan?

14 A. Correct.

15 Q. So you took it upon yourself to go to the other clerks to
16 tell them, "Hey, don't cooperate with Clerk Scott if she
17 comes to you asking for a spare tabulator"?

18 A. Correct.

19 Q. Do you have any reason to believe that -- well, strike
20 that.

21 (At 1:45 p.m., brief pause as Defendants confer
22 with counsel)

23 BY MR. OLSEN:

24 Q. Do you recall that there was a search warrant executed on
25 the Adams Township clerk's office?

1 A. Yes.

2 Q. And in there, they found the tabulator under lock and key
3 and sealed, correct?

4 A. The tablet for the tabulator device was in the filing
5 cabinet in her office, yes.

6 Q. The tablet's a separate piece. So both components of the
7 tabulator were locked in the Township clerk's office?

8 A. Separately at one time until we came to possess the
9 equipment.

10 Q. But both are in the clerk's office locked, correct?

11 A. Yes.

12 Q. And there's no doubt that that's the proper way to store
13 voting equipment, correct?

14 A. The proper way to store the tablet is inside the
15 protective case of the tabulator.

16 Q. Okay. Is that in any Michigan law?

17 A. No, that's just a common practice.

18 Q. Okay. It's just a county (sic) practice. Is there an
19 administrative rule that says you have to store it that
20 way?

21 A. There's a, I'm sure there's some documentation from Hart
22 InterCivic on best practice for storage and how many
23 pieces of equipment you can stack on top of each other and
24 so on.

25 Q. Okay. So that's a best practice. That's not a law from

1 Hart -- Hart InterCivic doesn't make Michigan law, right?

2 A. Correct.

3 Q. And in terms of the security of the device, keeping the
4 tablet and the other tabulator under lock in the clerk's
5 office is secure.

6 A. The way it was done was secure, although irregular.

7 Q. Okay. Now, the election went forward in November 2020 with
8 ultimately a spare tabulator, correct?

9 A. Yes.

10 Q. And the Clerk Scott did purchase another tabulator
11 ultimately, correct?

12 A. Not Clerk Scott. The Township Board did.

13 Q. The Township Board did. And was that the basis that -- was
14 that the factual basis that was used to recall Clerk
15 Scott, the fact that they had to go purchase another
16 tabulator?

17 A. I don't recall what the language was that started the
18 recall. It's likely that you're correct, but I don't
19 recall it specifically.

20 Q. And, well, the reason why the Township had to purchase
21 another tabulator is because the police had seized the
22 township tabulator, correct?

23 A. That was the end result. I believe the cause was before
24 that.

25 Q. But there was no tabulator because the police had seized

1 it, right?

2 A. Because she had refused to give it up when they asked for
3 it.

4 Q. Well, she had been removed from her duties as of October
5 25th, correct?

6 A. Correct.

7 Q. And the tabulator was properly stored, including the
8 tablet, in the clerk's office under lock and key, correct?

9 A. Correct.

10 Q. She didn't take the tabulator home. She didn't -- or hide
11 it somewhere in a cave. It was sitting there in the
12 clerk's office, the official location for the township
13 clerk, correct?

14 A. After the People's Exhibit 5 was issued, we had searched
15 for it and assumed we had it, and then discovered we
16 didn't, and had corresponded with her to ask for it, and
17 it was not given to us.

18 Q. Yeah, but two days before, Mr. Brater had relieved her
19 from all duties. He essentially kicked her out, right?

20 A. Kicked her out of the Qualified Voter File, yes.

21 Q. Kicked her out of having any election responsibilities,
22 correct?

23 A. Correct.

24 Q. You said that you were in the clerk's office looking for
25 the tabulator?

1 A. After this People's Exhibit 5 was issued, we did make
2 contact with the township treasurer and one of the
3 trustees to gain access to the clerk's office and get the
4 records and the equipment that we needed to conduct the
5 election.

6 MR. OLSEN: Your Honor, can I have Defendants'
7 Exhibit 20, please?

8 THE COURT: Defendants' Exhibit 20?

9 BY MR. OLSEN:

10 Q. Mr. Dane, you've just been handed a document that has been
11 admitted as Defendants' Exhibit 20. It's an e-mail from
12 you to Stephanie Scott, CC Bourbonet and Brater and Marney
13 Kast, dated October 26, 2021. Do you recognize this
14 document?

15 A. I do.

16 Q. You state:

17 "At approximately 3:45 p.m. yesterday
18 afternoon, the County Clerk and I were
19 able to arrange with the township
20 treasurer and one of your trustees to meet
21 at Adams Township Hall for acquisition of
22 the voting equipment, AB applications and
23 ballots, et cetera."

24 Actually, I think we've looked at this. Okay,
25 just disregard it.

1 MR. OLSEN: Your Honor, can I get Defendants'
2 Exhibit 25? Thank you.

3 BY MR. OLSEN:

4 Q. Mr. Dane, I've handed you what has previously been
5 admitted as Defendants' Exhibit 25. It's an e-mail string
6 between -- that includes yourself as a recipient, Mr.
7 Brater and Stephanie Scott, between October 26th and the
8 27th. Do you recall receiving this e-mail?

9 A. I do.

10 Q. Okay. And do you see where, at the top of the first page,
11 Ms. Scott writes to Mr. Brater, in which you're CC'd:

12 "Dear Mr. Brater, I am in receipt of
13 your e-mail from this morning requesting
14 the scan unit tablet, serial number,
15 here's the serial number. I have been
16 advised by a forensic expert specialized
17 in election security and data retention
18 that logic and accuracy testing update in
19 any and all changes to election equipment
20 could intentionally erase or delete
21 election data from the November 3rd, 2020
22 election. As you know, I am required to
23 maintain and preserve all election data
24 for 22 months pursuant to law. To date, I
25 have maintained all election data securely

1 as required by law."

2 At this time, the OAG audit was still pending.

3 Correct?

4 A. I believe so.

5 Q. And the OAG audit was in connection with the 2020
6 election, correct?

7 A. I believe so.

8 Q. And certainly 22 months from the 2020 election had not
9 expired, correct?

10 A. Correct.

11 Q. And you and Clerk Scott and other clerks at this time were
12 investigating issues relating to duplicate registrations
13 on the QVF, correct?

14 A. Correct.

15 Q. If you would turn to the last paragraph of the note to Mr.
16 Brater, where she begins, Ms. Scott:

17 "As per the Hart InterCivic master
18 contract above, the above mentioned scan
19 unit tablet and..."

20 I think it's a mistake, a typo:

21 "...and the already collected
22 tabulator and VAT Touch Writer screen are
23 owned by Adams Township. As such, it would
24 be my position that the county utilize
25 their own equipment to perform the

1 election in order to allow me to comply
2 with current election retention law."

3 Do you see that?

4 A. I do.

5 Q. And ultimately, the county did use their own tabulator in
6 the election, correct?

7 A. Yes.

8 Q. And I think as you testified earlier, you had sent out
9 word to other clerks not to provide a tabulator to Clerk
10 Scott if she requested?

11 A. Yes.

12 Q. So Clerk Scott didn't try to prevent the election from
13 occurring. She simply didn't want the Adams Township
14 tabulator to be used in that November '21 election,
15 correct?

16 A. I don't --


17 Q. And she suggested, she said the county should use their
18 own voting equipment. She didn't try to stop the county.

19 A. She also suggested in a public meeting that was put out on
20 YouTube that she wanted to hand count ballots and not use
21 the tabulator at all.

22 Q. Okay. Do we have a First Amendment right in this country
23 to be able to express an opinion and a desire?

24 A. Yes.

25 Q. So there is no evidence that Clerk Scott said -- and tried

1 to block the election from occurring in November '21 with
2 a tabulator? 

3 A. Correct.

4 MR. OLSEN: Your Honor, can I get Defense
5 Exhibit 26?

6 Thank you.

7 BY MR. OLSEN:

8 Q. Mr. Dane, you've just been handed a document marked -- or
9 excuse me -- admitted as Exhibit 26. It's an e-mail string
10 that does not include you as a recipient, but it recounts
11 some facts that I want to go over with you, okay?

12 A. Okay.

13 Q. So at the bottom of the first page, November 3rd, 2021,
14 4:14 p.m., you see that?

15 A. Yes.


16 Q. Do you see where Stephanie Scott writes:

17 "Good afternoon, Jim, I'm reaching
18 out again. The county has now stolen Adams
19 Township's November 2020 ballots, AB
20 envelopes, and AB applications from the
21 township possession when they granted
22 unsupervised access to the town hall
23 basement all day yesterday for the
24 election.

25 Additionally, Abe Dane left the

1 basement door of the township unlocked the
2 entire day. During open polling hours, all
3 previous election records are housed in
4 the basement and should not be accessible
5 to the public. November 2020's election
6 records are clearly not included in the
7 Michigan Bureau of Elections directive
8 letter dated October 25th."

9 Did you take the Adams Township November 2020
10 ballots?


11 A. Yes, I did. 

12 Q. And by what authority -- it has nothing to do with the
13 November '21 election, does it?

14 A. No.

15 Q. Okay, why did you take the November 2020 ballots?

16 A. Because during the closing of the election precinct on the
17 evening of November, was that 2nd? There were some poll
18 watchers, including Ms. Scott, who seemed to be fixated on
19 the basement to the township. And so I had maintained
20 supervision of that. I'd never left the whole entire day.
21 So it was open to me. I did not possess a key. But because
22 of the constant comments by the poll watchers that
23 evening, and knowing that Ms. Scott had access to the
24 basement, but also knowing that Jonathan Brater had
25 removed her access from elections, I decided it was in the

1 best interest to possess those records at the county so
2 that they could not be manipulated and then I could be
3 blamed for that. 

4 Q. Well, first of all, the township clerk under Michigan law
5 has custody of the township's ballots, correct?

6 A. Correct.

7 Q. There's no Michigan law that gives you the authority to
8 take Adams Township ballots, is there?

9 A. Not specifically.

10 Q. There's not even generally any law that would give you
11 custody over the township's ballots, is there?

12 A. I am an election administrator. So as long as they are
13 under seal, which at that time I believe the security was
14 released on those ballots, but they maintained their
15 original seal while they were in my possession until there
16 was a FOIA request to have the ballots examined later on.

17 Q. Can you point to a single law that would allow you to take
18 the township's ballots from the preceding year's election,
19 November 2020?

20 A. No.

21 MR. OLSEN: Can I get Exhibit 21, Your Honor?

22 THE COURT: It's a letter? Or the e-mail, I
23 mean?


24 DEFENDANT JUNTILA: No, it should a statute.
25 Should be an MCL.

1 THE COURT: I have the MCL. For some reason
2 there's two 21s. I believe that you had marked that, but
3 it wasn't admitted as it was the law. So we admitted
4 Defense Exhibit 21, which was a township, is that township
5 clerk custodian of records?

6 MR. OLSEN: Yes.

7 THE COURT: Okay, yes, that one was admitted. So
8 I'm not quite sure what the other one is. We'll have to go
9 through that.

10 BY MR. OLSEN:

11 Q. Mr. Dane, you've just been handed a copy of the statute,
12 MCL 41.65, Exhibit 21. In fact, Michigan law states that
13 only the township clerk has custody of the township's
14 ballots, correct? 

15 A. Correct.

16 Q. Mr. Dane, did Ms. Scott submit a FOIA request to get the
17 2020 ballots?

18 A. No, she did not.

19 Q. Did the deputy clerk do that?

20 A. Yes, she did.

21 Q. And did you respond to that FOIA request?

22 A. I did.

23 Q. And did you transmit copies of the ballots in response to
24 that request?

25 A. Ultimately, yes. I believe I arranged for the deputy clerk

1 to come to the county and observe me scanning the ballots
2 using just a general scanner, copier scanner machine at
3 the county clerk's office. And then after the work was
4 complete, we billed for our time and then released the
5 PDFs, I believe they were, from that scan job and e-mailed
6 them to the deputy clerk.

7 Q. Now, the ballots, they have two sides, right?

8 A. Correct.

9 Q. You didn't produce the ballots on two-sided paper, did
10 you?

11 A. No, it was communicated that scanning them and getting
12 digital records would be sufficient.

13 Q. Communicated by who?

14 A. I believe by the deputy clerk.

15 Q. Was the deputy clerk present while you were scanning the
16 ballots the whole time?

17 A. Not the whole time.

18 Q. And you scanned them as a single page, not as a ballot,
19 correct?

20 A. I, due to the limitation of the technology we had in the
21 clerk's office, yes, I had to scan each ballot one-sided
22 and then re-scan them the other side.

23 Q. So there's no way to reconcile the ballots that you
24 produced?

25 A. I believe in the communication I had with the deputy

1 clerk, she desired to observe the process because of the
2 focus and concentration that I needed to be able to scan
3 without missing pages or getting mixed up whether I was
4 scanning one side or the other. I wanted it to be quiet,
5 so we arranged for some times before the office opened. I
6 didn't want to be alone with the deputy clerk for Adams
7 Township, so I had another employee there paying overtime,
8 so that there was two of us. And it was worked out with
9 the deputy clerk that rather than be billed extra for that
10 additional employee to receive the FOIA, she would be okay
11 with just a couple of days' worth of observing that for an
12 hour or two and not having that whole process done like
13 that.

14 Q. So what you're scanning is a digital file, correct? I mean
15 you're -- that's what you're doing?

16 A. It was creating a PDF.

17 Q. So how come you didn't scan the ballot as a single file so
18 that one file for each complete ballot?

19 A. Because that would have required an additional expense of
20 renting special equipment that would allow for a 22-inch
21 ballot to be scanned double-sided in one file.

22 Q. And as a consequence of producing it as a single page,
23 there was no way to reconcile those ballots, correct?

24 A. Correct, but if the deputy clerk that submitted the FOIA
25 request desired the special equipment that they had,

1 knowing that there would be added cost, we would have done
2 that.

3 MR. OLSEN: Your Honor, we're finished with this
4 witness for now.

5 THE COURT: Okay, redirect?

6 MR. CUNNINGHAM: No redirect. No further
7 witnesses. People will rest.

8 THE COURT: Thank you, Mr. Dane.

9 THE WITNESS: Thank you.

10 (At 2:09 p.m., witness excused)

11 THE COURT: Would you like a quick five-minute
12 break before you begin

13 MR. OLSEN: That would be terrific, Your Honor.

14 THE COURT: Okay. You can arrange your witnesses
15 that way. Let's do a five-minute recess.

16 THE BAILIFF: All rise.

17 (At 2:09 p.m., off the record)

18 (At 2:17 p.m., proceedings resume)

19 THE COURT: All right, we can go back on the
20 record. Just as a matter of housekeeping first. I
21 discovered the issue with that second, there were two
22 labeled 21. Defense exhibits, just simply one got
23 mislabeled. There wasn't a 22. So I took the liberty of
24 placing 22, which was the second 21 that was in here. This
25 is the letter that was to Clerk Scott from Jonathan Brater

1 indicating pursuant to his authority and supervisory
2 control, he was directing her to immediately provide the
3 equipment described, or immediately disclose the location
4 of the equipment.

5 MR. OLSEN: Apologies, Your Honor.

6 THE COURT: No problem. I just wanted to make
7 sure that everyone was aware what had happened for
8 purposes of transparency.

9 With that being said, it would appear that you
10 are going to call as a part of your case in chief then,
11 recall Mr. Cotton, who has testified previously. Is that
12 accurate?

13 MR. OLSEN: Yes, Your Honor.

14 THE COURT: Mr. Cotton, I'm going to swear you
15 in again.

16 MR. COTTON: Yes, ma'am.

17 THE COURT: Can you raise your right hand? Do
18 you swear or affirm that the testimony you're about to
19 give is the truth, the whole truth, and nothing but the
20 truth, so help you God?

21 MR. COTTON: I do.

22 BENJAMIN COTTON

23 (At 2:20 p.m., called as a witness, duly sworn,
24 testified as follows:)

25 THE COURT: All right, you can put your hand

1 down.

2 Sir?

3 MR. OLSEN: I have a request before we begin. I
4 believe Mr. Cotton was admitted as an expert at the
5 December hearing that I was not part of. I just wanted to
6 make sure, because if not, then I want to voir dire and
7 establish his credentials.

8 THE COURT: He was. There was a long
9 conversation and a lot of voir dire that occurred, and I
10 believe Mr. Cunningham at one point, he was your witness
11 and there was a concession that for purposes of today for
12 the exam --

13 MR. CUNNINGHAM: We've beaten enough dead
14 horses.

15 THE COURT: Well, I just wanted to verify that
16 you agree, as my reading of the transcript is as well,
17 that he was qualified.

18 MR. OLSEN: Very good.

19 DIRECT EXAMINATION

20 BY MR. OLSEN:

21 Q. Good afternoon, Mr. Cotton.

22 A. Good afternoon.

23 Q. What was the scope of your initial representation in this
24 matter?

25 A. So initially I was asked to perform essentially two

1 functions. The first function was in support of a criminal
2 case on the protection side in which Ms. Lambert was
3 representing Ms. Scott as part of the situation in Adams
4 Township. And the second was I was to advise them also on
5 a civil litigation effort that was possibly ongoing.

6 Q. So with respect to the criminal matter, is it your
7 understanding that Ms. Scott, Clerk Scott had been
8 threatened with criminal penalties prior to the logic and
9 accuracy test of October 27, 2021?

10 A. It was.

11 Q. And so when you're referring to the scope of your
12 involvement as the expert for Attorney Lambert, it's in
13 connection to that threat of a criminal penalty, correct?

14 A. Yes, as a matter of fact, my first trip to Adams Township
15 was actually to examine and validate that a election
16 device was properly stored and located in a secure storage
17 facility and that the seals were intact.

18 Q. And why were you asked to do that?

19 A. There was some concern that if they didn't have an
20 independent expert testify or validate that that was
21 properly stored with seals intact, that there could be
22 some charges against Ms. Scott.

23 Q. And did you also understand that Ms. Scott had concerns
24 about preventative maintenance being performed on the
25 tabulator?

1 A. Yes.

2 Q. Did you access the tabulator at all?

3 A. No, I visually inspected the tabulator. I did not access
4 it.

5 Q. You did not access it at all. And did you render an
6 opinion on whether preventative maintenance could result
7 in the deletion of electronic records?

8 A. I did.

9 Q. Now you've done a couple of declarations. Which
10 declaration did you do that in?

11 A. I would have to review those. I believe it was the second
12 declaration dated or signed on the 14th of July.

13 MR. OLSEN: Your Honor, may I get Defense
14 Exhibit 3?

15 THE COURT: That's the one?

16 MR. OLSEN: Yes.

17 BY MR. OLSEN:

18 Q. Mr. Cotton, I've just handed you what has been previously
19 admitted as Defendant Exhibit 3. Is this the declaration
20 that you're referring to?

21 A. This is one of them. I'll need to review and make sure
22 that that statement on the updates is included in this
23 declaration.

24 Q. This declaration is more than three years old now. Has
25 anything in this declaration, any of your opinions

1 changed? Or is there any incorrect information that's been
2 brought to your attention?

3 A. No, I stand by the declaration.

4 MR. CUNNINGHAM: I believe this is already in
5 evidence, isn't it? Or is this a new one?

6 MR. OLSEN: This is a new one. I don't believe
7 it's in evidence.

8 THE COURT: I only have one affidavit from Mr.
9 Cotton in evidence. The one that he's currently holding,
10 which I think is labeled as 3. So I would need to compare
11 to see.

12 MR. CUNNINGHAM: Your Honor, could --

13 MR. OLSEN: This is a different date.

14 MR. CUNNINGHAM: This is something different --

15 MR. OLSEN: Yes.

16 MR. CUNNINGHAM: -- than Number 3?

17 MR. OLSEN: Yes.

18 MR. CUNNINGHAM: Okay.

19 THE COURT: Thank you.

20 (At 2:26 p.m., Defendant Exhibit 40 marked)

21 BY MR. OLSEN:

22 Q. Mr. Cotton, you've just been handed a document for
23 identification as Exhibit 40. It's entitled Affidavit of
24 Benjamin R. Cotton, 23 February, 2022. If you would take a
25 moment and look at it.

1 A. I have.

2 Q. Does this appear to be a true and accurate copy of your
3 affidavit?

4 A. It is. And I stand corrected. The analysis of change,
5 impact, or update impact on a voting system is actually
6 included in this affidavit dated 23 February, 2022.

7 MR. OLSEN: Your Honor, we would move to admit
8 Defendants' Exhibit 40.

9 THE COURT: Do you have any questions or voir
10 dire?

11 MR. CUNNINGHAM: I'd like to do a little voir
12 dire.

13 VOIR DIRE EXAMINATION

14 BY MR. CUNNINGHAM:

15 Q. What was this affidavit prepared for?

16 A. This was prepared in direct response to a question from
17 Ms. Lambert as to what the effects of a maintenance could
18 be upon a voting system.

19 Q. I notice the document, it says document received by the
20 Michigan Court of Claims. So was this prepared for any
21 type of legal filing?

22 A. I'm not sure on that. That would be a question for Ms.
23 Lambert.

24 Q. I see.

25 A. Yeah.

1 Q. So all you do, you don't know what you're doing the
2 affidavit for, but if it gets filed with the case, you
3 don't know?

4 A. It was certainly in response to some legal filing, but she
5 needed an expert opinion to determine whether or not
6 maintenance changes to a system could affect the contents
7 of that system.

8 MR. CUNNINGHAM: No further voir dire. I'll
9 handle everything else on cross.

10 THE COURT: So you have no objection at this
11 point?

12 MR. CUNNINGHAM: No objection.

13 THE COURT: All right, so Defense Exhibit 40 is
14 admitted.

15 (At 2:28 p.m., Defendant Exhibit 40 received)

16 THE COURT: Back to you, Mr. Olsen.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. OLSEN:

19 Q. Now, in the course of your retention, you received certain
20 data from I believe a zip drive of the EPB flash drive,
21 correct?

22 A. I received a zip file containing the contents of the EPB
23 flash drive.

24 Q. As part of your retention in the representation of Clerk
25 Scott, were you under an NDA?

1 A. Yes, I was actually under two NDAs, one from the
2 engagement letter and one from a separate NDA that I
3 signed with Ms. Lambert.

4 (At 2:29 p.m., Defendant Exhibit 41 marked)

5 BY MR. OLSEN:

6 Q. Mr. Cotton, I'm just here to do what has been marked for
7 identification as Defense Exhibit 41. It's an agreement
8 regarding services with CyFIR. Just take a moment and look
9 at it.

10 MR. CUNNINGHAM: I'm sorry. It's 41 you said?

11 THE COURT: Yes.

12 MR. OLSEN: Yes.

13 BY MR. OLSEN:

14 Q. Does this appear to be a true and accurate copy?

15 A. It does.

16 Q. And CyFIR is your company, correct?

17 A. CyFIR was my company at that point in time. It was sold in
18 June of '21.

19 Q. So you were under -- and NDA stands for non-disclosure
20 agreement, correct?

21 A. Correct.

22 Q. And at the time you received the data from the EPB flash
23 card, you were under the NDA, correct?

24 A. That is correct.

25 Q. And so what did being under that NDA -- sorry. How did you

1 treat that data given that you were under an NDA?

2 A. Well, I'm a former military individual. I hold a security
3 clearance. And I treated the material that I received from
4 Ms. Lambert as it was classified government information;
5 that it was not to be disseminated. It was not to be
6 discussed. I accepted the direction of Ms. Lambert.

7 Q. And did you ever disseminate any information you received
8 from that EPB flash card?

9 A. No.

10 Q. To anyone outside?

11 A. No.

12 Q. The exact representation?

13 A. No.

14 Q. And in fact, if you turn to Defendants' Exhibit 3, which
15 is your declaration of 11 July, 2022, and go to paragraph
16 25, which is over on page nine.

17 A. Yes.

18 Q. Do you see that?

19 A. I do.

20 Q. And do you see that there's a chart there, Ballots Cast,
21 Hillsdale County, Adams Township?

22 A. Yes.

23 Q. And in that chart, there's a blacked out spot underneath
24 the chart with columns number, voter identification
25 number, last name and first name?

1 A. Correct.

2 Q. And why did you redact that information from this
3 document?

4 A. Because that would violate the voter confidentiality of
5 the persons who were a part of this report.

6 Q. So you followed one of the precepts of your NDA. You've
7 made sure that data was not publicly disclosed that
8 shouldn't be disclosed?

9 A. Yes.

10 Q. Now, this chart that's in paragraph 25 of your affidavit,
11 that's just a snapshot, correct? Or a snippet of some of
12 the data I think you referred to it?

13 A. Yes, that was a screenshot that I used for illustrative
14 purposes to support the comments within the affidavit.

15 Q. So there was more data then that was not even put into
16 this declaration that existed?

17 A. Correct.

18 Q. Looking at Defendants' Exhibit 40, your affidavit of '23
19 February, 2022, has anything changed the opinions that you
20 have in this exhibit?

21 A. No.

22 Q. Is it your belief that preventative maintenance, your
23 expert -- is it your expert opinion that preventative
24 maintenance performed on the Adams Township tabulator
25 could have resulted in the deletion of election records

1 from 2020?

2 A. Definitely. What was not delineated in the definition of
3 their maintenance was what was actually going to be
4 performed. So in that particular case, you have to assume
5 you have two types of maintenance, hardware maintenance,
6 which wouldn't necessarily change the machines that you're
7 lubricating different parts and pieces of the tabulators.

8 But when it comes to updating the firmware,
9 providing -- putting maintenance on the actual device
10 itself from the firmware, from the operating system, and
11 those types of things, to include changing the battery,
12 that definitely would have deleted or modified data that
13 was currently contained on the tabulators, the poll books,
14 and other devices.

15 Q. You talked about changing the battery. Would one of the
16 batteries be the coin battery that you're referring to?

17 A. Yes, I tend to refer to that as a CMOS battery, and that
18 maintains power to the system to maintain the settings and
19 the date and time settings and other bio settings within
20 that device.

21 Q. Now, were you aware at the time in the fall of 2021 that
22 Michigan's Office of the Attorney General had announced
23 that it intended to perform an audit of the 2020 election?

24 A. I had read an e-mail provided to me by Ms. Lambert, too,
25 of the fact.

1 Q. At paragraph 25 of your -- Defendant Exhibit 3, you
2 reference reviewing FOIA documents produced by the
3 Secretary of State's office.

4 A. Which paragraph number was that again?

5 Q. 25, sir.

6 A. 25.

7 Q. It's at the beginning.

8 A. Yes, I see that.

9 Q. There's been some testimony about changing QVF files and
10 whether the FOIA data that you reviewed was authentic. You
11 received that FOIA data from, I think you identified,
12 produced to Scott Aughney?

13 A. Yes, I received it from Ms. Lambert.

14 Q. What did you do to verify the authenticity of that FOIA
15 data that you used to compare to the EPB flash card data?

16 A. So the first thing that I did was I looked at the file
17 metadata itself, and that involves the date and
18 timestamps. In some cases, depending on the document, that
19 also involves author information and those types of
20 things. And I looked at that data to determine whether or
21 not those dates were consistent with my understanding of
22 when that file was produced.

23 Q. And were they?

24 A. They were consistent, yes.

25 Q. Did you do anything else?

1 A. Well, as I examined the systems, I'm obviously looking for
2 discrepancies in data formatting. So for example, if
3 there's a different font type, that could indicate that
4 something was changed, but I did not find any
5 discrepancies in the course of my analysis.

6 Q. And you still stand by the discrepancies, the accuracy of
7 the discrepancies that you identified between the FOIA-
8 produced data and the data that exists on the EPB flash
9 card?

10 A. Yes, and if there's ever any question about the
11 authenticity of the FOIA documents, it's my understanding
12 that the state keeps a record of all FOIA releases, and
13 that could easily be retrieved to validate that what I
14 looked at was the proper data.

15 Q. Do you believe that deleting the EPB flash card data
16 violates federal records retention law?

17 A. I do.

18 Q. And why is that?

19 A. Because the EPB thumb drive, or flash drive as some people
20 call it, but it's really a thumb drive, that drive is
21 unique to that system, because the moment you plug it in
22 and you start exercising a vote process, that contains
23 unique data to that voting process, to that election, and
24 to that system. And that data is contained on that EPB
25 drive.

1 It also contains all of the instruction sets
2 that are generally used to operate the poll book within
3 that election, and in most cases, derivatives of that
4 information are loaded onto the tabulators.

5 Q. There's been some testimony of a printout report done from
6 the EPB flash card data. Are you familiar with that?

7 A. Yes, I am.

8 Q. And is that called a night-end report?

9 A. That is one of the names.

10 Q. Does that night-end -- what -- how -- are there -- what
11 are the differences between the data contained on the
12 night-end report and the data that is stored on the EPB
13 flash card?

14 A. May I refer to my affidavit?

15 Q. Yes, please point it out.

16 A. Exhibit 3. So I addressed that within this affidavit.

17 Q. I believe it's in paragraph 22.

18 A. Yes. And so there are some significant differences with
19 what the night-end report produces and what is contained
20 on the EPB. Namely, same-day voting data is not contained
21 on that night-end report. So that would include the
22 quantity of the same-day in-person voting. That would
23 include the data associated with the validation of that
24 voter. So identification numbers and those types of
25 things.

1 It doesn't -- the night-end doesn't delineate
2 between the number of votes that were cast by previously
3 registered voters, and the number of votes that were cast
4 by same-day voters. And then there is also no way to
5 really sort out the same-day registers without the
6 original EPB USB stick.

7 Q. Would that data be necessary if a clerk was investigating
8 the correctness of the registration records?

9 A. Absolutely.

10 Q. Why is that?

11 A. It provides the basis of permitting someone to register
12 the same-day to vote. And it would also provide that
13 record that they did vote in that election.

14 Q. And do you have an understanding that there has been
15 admittedly an issue with Michigan's registration record
16 with duplicate QVF entries?

17 A. I understand they exist. I don't have the knowledge of the
18 full scope of how many duplicate registries there are.

19 Q. If a clerk is investigating duplicate QVF entries, would
20 you want to analyze the data from the EPB flash card?

21 A. Absolutely.

22 Q. For the same reasons?

23 A. Same reasons. With the additional reason that at that
24 point you would need to have the identification
25 information to determine if that is truly a duplicate or

1 just somebody with the same name. So that identification
2 information that is connected to that, that's contained on
3 the EPB as part of the same-day registration would become
4 critical to determine whether or not there was actually a
5 voter fraud occurred.

6 (At 2:41 p.m., pause as Defendants confer with
7 counsel)

8 THE COURT: I have the transcript.

9 MR. OLSEN: From the July hearing?

10 THE COURT: You had given me a courtesy copy.

11 MR. OLSEN: Okay.

12 BY MR. OLSEN:

13 Q. Mr. Cotton, I've handed you what is a transcript of the
14 hearing on July 11th, 2025. It includes the testimony of
15 Mr. Brater. Do you know who Mr. Brater is?

16 A. I believe he's the Director of Elections for Michigan.

17 MR. CUNNINGHAM: Your Honor, I'm going to
18 object. Asking the witness to testify in regard to their
19 opinion as to another witness is improper.

20 THE COURT: Response?

21 MR. OLSEN: Your Honor, Mr. Brater makes certain
22 factual statements about data on the EPB flash card and
23 the use of it, and I'm just going to ask Mr. Cotton his
24 expert opinion of Mr. Brater's --

25 THE COURT: Overruled.

1 BY MR. OLSEN:

2 Q. Mr. Cotton, would you please turn to page 111 of the
3 transcript? And going to line item 6, it's me asking the
4 question.

5 A. Okay.

6 Q. So I asked:

7 "Q. Is it your contention that the
8 paper record that is printed out from the
9 EPB flash card contains every single
10 election record that's on the Qualified
11 Voter File that was uploaded?"

12 Mr. Brater responds:

13 "A. No. I'm saying -- I mean, your
14 question was -- your question was would it
15 be possible to tell if anything had been
16 changed, and it would be because you could
17 compare it to the paper record. There may
18 be electronic elements of the record that
19 are retained at the state level in
20 addition to the paper copy poll book
21 that's retained at the local level. But in
22 any case, it would be possible to tell if
23 any changes have been made."

24 What is your opinion about Mr. Brater's
25 testimony that it would be possible to tell if any

1 changes have been made?

2 A. That's a misleading statement, because it would depend on
3 what data was actually changed that you were looking at.
4 There are a significant number of fields within the access
5 database contained on the poll book stick that are not
6 included in any printout report. And that would also
7 include the sequencing and the date timestamps of when a
8 ballot was cast. So you may be able to determine some
9 rudimentary changes, but if you're really into an audit
10 and you're trying to determine what the root cause
11 analysis is of any of those changes, you would need to go
12 back to the original source data, which is that EPB data
13 on that thumb drive.

14 Q. Mr. Cotton, is it possible to program a poll book to print
15 out a report that is inconsistent with the data that is
16 retained?

17 A. It'd be possible. It's -- need to understand that any
18 reported printout from that EPB stick is set with a
19 certain number of parameters that are within a template.
20 And so if the template had been changed, then you would
21 have different data than what you were expecting or what
22 could actually be there, depending on what the contents of
23 changes of that template would have been.

24 Q. And therefore, how important is it to retain the source
25 data, the original data that underpins that report?

1 A. It's extremely important, and it's my understanding that
2 that's the basis for the federal retention laws, is to
3 ensure that the data is retained at all levels, and as
4 close as you can get to the original data is the best data
5 or best evidence.

6 Q. If data from the EPB flash card was uploaded to the state,
7 and then the EPB flash card was deleted, how would you
8 know that there was no subsequent alteration of that data?

9 A. You would have no -- you might have some suspicions that
10 data had been changed, maybe from a printout or something
11 of that nature. However, you could not definitively prove
12 that unless you could go back to the best evidence or the
13 original data off of that EPB's data state.

14 Q. Mr. Cotton, please turn to page 146 of the transcript of
15 the July 11th hearing. Let me know when you're there.

16 A. I'm there.

17 Q. I'm going to read you a few back and forth that I had with
18 Mr. Brater, beginning at line seven. I asked:

19 "Q. Do you have any basis to
20 disagree that the data on the EPB flash
21 card that you ordered deleted would be
22 relevant to checking the correctness of
23 the registration records?"

24 Mr. Brater responds:

25 "A. I am not sure how it would be

1 relevant.

2 Q. Does the EPB flash card contain
3 the QVF?

4 A. It contains a snapshot of the
5 individuals who are registered in that
6 jurisdiction on election day.

7 Q. So those are registration
8 records, right?

9 A. They -- there are their poll
10 book records that are derived from
11 registration records. The actual
12 registration record is in the Qualified
13 Voter File.

14 Q. So do you have any basis to
15 disagree that if you're checking the
16 correctness of the registration records,
17 you might want to look at the data that's
18 on the EPB flash card?

19 A. I am not sure why you would. I
20 mean, you can determine the registration
21 record, the correctness of it, by looking
22 at the voter's record on the Qualified
23 Voter File."

24 What is your expert opinion on Mr. Brater's
25 statement that you can check the voter's record on the

1 Qualified Voter File, and that's sufficient to check the
2 correctness of the registration record?

3 A. Well, I'm a little concerned that Mr. Brater might be
4 conflating what is in the database of the state with the
5 Qualified Voter File that's actually contained in three
6 places during an election, and that's on the tabulator,
7 it's on the records of the county, and it's also on the
8 EPB flash drive. So those three places contain a copy of
9 the quarter -- or the Qualified Voter File for that
10 precinct, for that jurisdiction for the course of that
11 vote. And so I'm not sure why he would draw the opinion
12 you would not want to look at that, because once again,
13 that's the original best evidence of who registered during
14 the course of that election as it pertains to same-day
15 registrations.

16 Q. Mr. Cotton, what is the basis of your belief that a
17 portion of the Qualified Voter File is on the tabulator?

18 A. I've seen it. I've seen it inside of the access database
19 that's contained on the EPB thumb drive. And --

20 Q. Because you have inspected the --

21 A. -- and, if you let me continue, in addition, I reviewed
22 the contract for the Michigan state with the vendor, and I
23 believe it's on page 59. Can I refer to my --

24 Q. It's Exhibit 7.

25 A. Well, Exhibit 3, I outlined those as part of where

1 specific items are located.

2 Q. It's page 60.

3 A. Also, I believe 59 and 60 delineate that the QVF is stored
4 and uploaded to the tabulator in other locations.

5 Q. Are you referring --

6 A. Page 60 is actually a diagram, if I recall correctly.

7 Q. You're referring to the flow chart?

8 A. That's page 60. Page 59 textualizes that same concept.

9 Q. Now, you did not access the tabulator?

10 A. No.

11 Q. So, is there something on the EPB flash card data that
12 leads you to believe the QVF is on the tabulator? Did I
13 understand that correctly, or did I --

14 A. Well, so, I relied primarily on the vendor supplied user's
15 manuals and documentation to arrive at that conclusion.
16 Because it clearly states that the QVF is uploaded to the
17 tabulators. And I have physically seen evidence that the
18 QVF is located within the database contained on the EPB.

19 Q. What is the significance of the QVF being uploaded to the
20 database on the EPB, electronic poll book, to your belief
21 that the QVF is also on the tabulator?

22 A. Well, I see entries. So, within the database, you have
23 multiple columns. And so, in one particular table, there's
24 a subset of the QVF data. And then, there are additions to
25 that data indicating that the person voted. There's a file

1 for, or a column for political affiliation. And then,
2 there's some other data there that could only have been
3 derived from the tabulator.

4 Q. So, when you say it could only have been derived from the
5 tabulator, that indicates to you that the tabulator had
6 the QVF --

7 A. Yes.

8 Q. -- contained on it?

9 A. Yes. In other words, relational databases, you have to
10 have a certain set of data that the database knows where
11 to put the other data so you --

12 Q. Can you explain what a relational database is? Because I
13 think that's an important point to what you're saying.

14 A. So, a relational database is simply that you have one
15 entry. And within that database, you have multiple
16 additional entries that are related back to that index or
17 that primary entry. That's called the relationship. So, a
18 relational database.

19 Q. And so, that relational aspect of it is what informs you
20 as a expert in cyber matters, and you've seen other
21 tabulators, that the QVF data is on the tabulator as well
22 as on the EPB?

23 A. Yes.

24 Q. I believe I read in your, in the transcript of the
25 December '24 -- December 18th, 2024, where you talked how

1 you discovered, I think at the time, was the largest hack
2 in US government history.

3 MR. CUNNINGHAM: Objection, relevance, Your
4 Honor. He's already been qualified. What difference does
5 it make?

6 THE COURT: Response.

7 MR. OLSEN: Your Honor, it's just a simple
8 question to set up the next question. I'm not going to
9 dwell on it.

10 MR. CUNNINGHAM: It's irrelevant.

11 MR. OLSEN: It's not irrelevant, Your Honor.

12 THE COURT: What is relevant about it?

13 MR. OLSEN: It goes to the security concerns
14 that Clerk Scott had --

15 THE COURT: So, jump right to that.

16 MR. OLSEN: -- at the same time. Okay.

17 BY MR. OLSEN:

18 Q. Would it be possible, Mr. Cotton, for a malicious actor to
19 -- well, strike that.

20 First of all, this is, the tabulator has a
21 modem, correct?

22 A. Yes, it does.

23 Q. Okay.

24 A. It actually has two modems.

25 Q. Two modems. And a modem means internet connectivity,

1 correct?

2 A. A modem leads to internet connectivity or outside
3 connectivity via transmission through that device.

4 Q. How can a malicious actor use the existence of a modem on
5 a system to gain unauthorized access?

6 A. So, in the case of the tabulators, there's actually two
7 modems contained within the tabulator. One is a Wi-Fi
8 modem, which we're all familiar with from if you connect
9 it to a Wi-Fi hotspot. Okay. The second modem is a USB
10 modem that is plugged into a USB port on the tabulator at
11 the time that the tabulator's set up inside of a precinct
12 preparatory to conduct an election.

13 THE COURT: Would that, for example, be one that
14 was used to send information to the county system during
15 an active invest- -- election?

16 THE WITNESS: Yes, ma'am. So, with those two
17 devices, there's something called the basic input and
18 output system, or BIOS, for a device. Every device has
19 one. And that contains the instruction set for loading
20 devices, for the protocols for those devices, and how a
21 device interacts with a modem, for example. Okay. There
22 are well-known vulnerabilities that if you can get access
23 to the BIOS, that you can enable or turn on these devices
24 without any input from the operating system. So, in other
25 words, you can bypass user input and turn on a modem and

1 exfiltrate or infiltrate data.

2 BY MR. OLSEN:

3 Q. Would it be possible --how possible would it be for a
4 malicious actor to enter into a Hart InterCivic tabulator,
5 such as that used by Adams Township, to manipulate ballot
6 record data or even a ballot image, such that the only way
7 to tell if that had occurred would be to conduct a full
8 comparison of every single paper ballot to the image?

9 A. So, there's some variables in there. So the first one is,
10 what is the skill set of the person attempting to gain
11 access? And two, what is the configuration of the device
12 at rest? Okay. Unfortunately, I have not had the ability
13 to physically examine the tabulator in question to make
14 the determination on the second one. It is certainly
15 possible under the right conditions.

16 THE COURT: Mr. Cotton?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Are you referring, as that question
19 was asked regarding the skill set and then what the
20 configuration of the device would be. To somebody,
21 basically just to put this in layman's terms, attempting
22 to hack Hart InterCivic?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Okay.

25 THE WITNESS: Yes, ma'am.

1 BY MR. OLSEN:

2 Q. And it's well known within cybersecurity, you've heard of
3 what is called an insider threat, correct?

4 A. Yes.

5 Q. What is an insider threat?

6 A. An insider threat is where a trusted person, i.e. an
7 employee or a janitor or some other worker who has
8 physical access and the ability to access a device, would
9 do something either physically or through input into the
10 keyboard that would provide access to that system.

11 Q. And an insider threat would entail a malicious act,
12 correct?

13 A. Yes.

14 Q. And so the insider threat, how would that apply in the
15 context of a voting system?

16 A. Well, an insider threat, if someone has a malicious intent
17 that has physical access to the systems, then they could
18 provide that vector conduit, if you will, into that system
19 to provide remote access.

20 MR. OLSEN: We rest, Your Honor, subject to --

21 MR. CUNNINGHAM: Cross-examination.

22 THE COURT: Cross, it is. Mr. Cunningham.

23 CROSS-EXAMINATION

24 BY MR. CUNNINGHAM:

25 Q. You've told us that you received from Ms. Lambert a zip

1 file containing the electronic mobile flash drive, is that
2 right?

3 A. That's correct.

4 Q. When was that, sir?

5 A. It would have been probably, and I'm guessing here because
6 I don't have access to my calendars and things like that,
7 but that would have been probably in the end of May '22
8 timeframe.

9 Q. All right. And she sent you this -- oh, you had the
10 contract with her and Mr. DePerno in March, right?

11 A. Correct.

12 Q. That was in March. So it's May, and you indicated, I
13 thought you said something about, you indicated there was
14 a criminal action threatening, that's why she wanted you
15 to look at this data file, is that right?

16 A. That is correct. By way of explanation, I first -- I
17 entered into that engagement, which was designed to be a
18 kind of an open-ended engagement in support of the Antrim
19 County lawsuit.

20 Q. Okay.

21 A. And that's the reason those dates are there. That was
22 still in effect at the time I was asked to support Ms.
23 Scott.

24 Q. But you support Ms. Scott? Okay.

25 A. Well, Ms. Lambert who was, Ms. Scott was her client.

1 Q. Okay. But was there any indication of a threat of criminal
2 prosecution against Ms. Scott at the time of May that she
3 sent over on these materials?

4 A. No, I did not begin working on the, on the Scott case
5 until the third week of October.

6 Q. Third week of October. So --

7 MR. OLSEN: Your Honor, could we clarify just
8 for the record what year he's talking about?

9 BY MR. CUNNINGHAM:

10 Q. Fine, 2001, wasn't it?

11 A. 2021, sir.

12 Q. 2021. Sorry. So you're retained in March of 2021. You get
13 these electronic poll book files, these confidential files
14 with voter information on them sent to you over a computer
15 or through a computer system from Ms. Lambert in May of
16 2021. Is that right?

17 A. No.

18 Q. No, okay, when?

19 A. In May of 2022.

20 Q. 2022.

21 A. Before I wrote these affidavits that were submitted as
22 exhibits, I received that EPB, you know, approximately
23 less than two months prior to that.

24 Q. When did you make your trip to Adam's Township?

25 A. I was asked to make a trip to examine the, or to witness

1 the logic and accuracy test on the 27th of October. And I
2 traveled in that day --

3 Q. In what year, please?

4 A. Of '21.

5 Q. '21. So you're coming here and looking at it before you
6 even get the information from Ms. Lambert, is that right?

7 A. That's correct.

8 Q. Okay. So you are retained -- when's the first time you
9 hear the name Stephanie Scott?

10 A. It would have been approximately the 20th of October,
11 2021.

12 Q. And in what context?

13 A. I received a phone call from Ms. Lambert saying that she
14 had a client who was concerned that she was either going
15 to be investigated or face criminal matters due to
16 retaining a poll book and a tabulator from the 2020
17 election.

18 Q. Okay. So in October of '21, she says she's facing charges
19 for giving you access to the poll book.

20 MR. OLSEN: Objection, Your Honor. Misstates his
21 testimony.

22 MR. CUNNINGHAM: Well, I'm asking him.

23 THE COURT: Yeah, I believe --

24 MR. CUNNINGHAM: This is cross-examination.

25 THE COURT: He testified possible charges, Mr.

1 Cunningham.

2 BY MR. CUNNINGHAM:

3 Q. So you're told about possible charges relating to the
4 electronic poll book.

5 A. She was concerned about a possible investigation or
6 criminal case being brought against her. And it was based
7 on e-mails that she had received from various parties.

8 Q. Okay. You mean from the Bureau of Elections?

9 A. From the Bureau of Elections and from some local
10 officials, if I recall correctly.

11 Q. Okay. So at that time, that's the first you hear. Does --
12 you enter in any kind of an employment agreement with Ms.
13 Scott?

14 A. No. I'm engaged directly by the attorney.

15 Q. Okay, that's Ms. Lambert?

16 A. Yes.

17 Q. Okay. Did you ever take an oath to be a deputy clerk in
18 the township out there (unintelligible)?

19 A. I did not.

20 Q. Okay. So everything you've done here, you've done by
21 directions of Ms. Lambert?

22 A. Correct.

23 Q. And Ms. Lambert actually sent you these electronic poll
24 book flash drive files via zip file. What was it -- how
25 did she send it to you?

1 A. So there's a secure application called Signal.

2 Q. Uh-huh.

3 A. And so it was sent through that secure application to me.
4 And it was password protected.

5 Q. And I'm really confused on this because Ms. Scott's
6 removed from office in October of 2021, isn't that --

7 MR. OLSEN: Objection, Your Honor. That, again,
8 misstates Brater's testimony because he actually made the
9 exact distinction that she had not been removed, which is
10 only pursuant to Michigan law.

11 MR. CUNNINGHAM: Okay. She was recalled.

12 MR. OLSEN: No, she -- not recalled then either.

13 THE COURT: I think she had just had her
14 election duties stripped from her by the Elections
15 Commission at that point. Is that what you're referring
16 to?

17 MR. CUNNINGHAM: No, she was recalled --

18 THE COURT: Or are you referring to after?

19 MR. CUNNINGHAM: -- during the recall election.

20 THE COURT: Okay, so you're asking about when
21 the recall had actually occurred?

22 MR. CUNNINGHAM: When the recall election was.

23 BY MR. CUNNINGHAM:

24 Q. She was actually still clerk in October of '21, right?

25 A. That's my understanding, yes.

1 Q. Okay, but you're saying that she was not clerk at the time
2 that those electronic files were sent to you?

3 A. I'm not saying that.

4 Q. Well, you said it was May of 2022 that you got the files
5 from Ms. Lambert.

6 A. That is correct, but I don't know when she was removed
7 from office, so I'm not --

8 Q. Okay.

9 A. -- testifying to that.

10 Q. But you do know, and you're testifying, that if, in fact,
11 she had been recalled in October '21, she's no longer the
12 clerk. She can't hire you to do anything. Is that a fair
13 statement?

14 A. I was retained by Ms. Lambert to support the case.

15 THE COURT: Do you have an objection, sir?

16 MR. OLSEN: Your Honor, I'm going to object that
17 that calls for a legal analysis. Mr. Cotton is not a
18 lawyer.

19 THE COURT: Response?

20 MR. CUNNINGHAM: Well, he's got an agreement.

21 BY MR. CUNNINGHAM:

22 Q. What was your understanding your agreement with Ms.
23 Lambert?

24 A. That I was an expert witness in the case involving Ms.
25 Scott.

1 Q. Okay, and when did you learn about Ms. Scott? It was in
2 October, right?

3 A. October of 2021.

4 Q. Okay, and you've been employed by Ms. Lambert receiving
5 regular payments from March of 2021?

6 A. That's correct.

7 Q. So you were involved in a lot of these different lawsuits
8 that Ms. Lambert is bringing?

9 A. That is correct.

10 Q. And the first time you are aware of Ms. Scott is like in
11 October of 2021?

12 A. Correct.

13 Q. And then the following time, the following May, you get
14 these files from her, the electronic poll book files, is
15 that right?

16 A. Yes.

17 Q. Okay, now your job really, you want to make sure that
18 things are accurate as they can be, right?

19 A. Correct.

20 Q. Okay, you're told that these are FOIA requested records
21 and that they are records of who actually voted, is that
22 right?

23 A. I was told that a subset of the data that I received were
24 the response of FOIA records.

25 Q. Okay, but were you led to believe that those were people

1 who were voting in Adams Township?

2 A. Yes.

3 Q. Okay, and you actually analyzed the confidential
4 information from the electronic poll book and you found a
5 different number, is that right?

6 A. That's correct.

7 Q. You found people that appeared in that electronic poll
8 book that weren't in that report that was given to you,
9 right?

10 A. And they were not on the EPB database either.

11 Q. Okay. Now, you've used that term best evidence a lot,
12 right? You know what that means?

13 A. Yes.

14 Q. You've used it many times. Don't you think the best
15 evidence of who actually voted would be that little
16 application that people come in and fill out and sign
17 their name on the election that's saved and part of the
18 poll book? Don't you think that's pretty good evidence?

19 A. That would be very good evidence --

20 Q. Yeah, very good evidence --

21 A. -- and it may be relevant.

22 Q. -- of who voted, right?

23 A. Yes.

24 Q. So naturally, you want to be as accurate as you can. You
25 want to show in your report that you're accurate when

1 you're making these statements about these people showing
2 up here. You compared what you found from that electronic
3 poll book with those applications, the actual documents,
4 right?

5 A. I compared them with the record of those voters that was
6 on the EPB voter stick and with a report that was produced
7 by the county.

8 Q. Did you compare them with the actual applications
9 themselves?

10 A. I did not have access to the applications.

11 Q. Clerk has access to the applications. Who told you that
12 you didn't have a -- that subject to FOIA those, that's
13 personal information, public information. Those
14 applications can be reviewed anytime. You just didn't
15 think it was important to check that out?

16 A. I analyzed with the evidence that I had.

17 Q. I see.

18 A. At hand.

19 Q. So you've come up with a result that would be favorable to
20 Ms. Lambert, right?

21 A. No, I came up with a result that was a comparison of the
22 actual documents that were produced by the state and by
23 the county and were contained on the EPB thumb drive.

24 Q. But you didn't bother to look at the actual applications,
25 did you?

1 A. Mr. Cunningham, if --

2 Q. That was a question. Did you?

3 A. Well, it requires a little bit of explanation.

4 MR. CUNNINGHAM: No, it doesn't.

5 THE COURT: Mister --

6 MR. CUNNINGHAM: Yes or no. We've gone through
7 this.

8 THE COURT: Did you have the opportunity to
9 review the actual applications, sir?

10 THE WITNESS: I did not, ma'am.

11 THE COURT: Thank you.

12 He answered he did not.

13 BY MR. CUNNINGHAM:

14 Q. Now, it was available if you so chose, wasn't it?

15 A. Given the timeframes and the time that it requires certain
16 jurisdictions to respond to a FOIA, I'm not sure that that
17 would have been feasible within the timelines of the
18 examination.

19 Q. So it's easier just to rely on somebody else's hearsay
20 statement that says, this is what the state records tell
21 us?

22 A. Mr. Cunningham, once again, if you doubt the data that was
23 provided to me, the state has a complete record of what
24 was provided, and you will find those to be the same.

25 Q. And the state has compared the number of applications with

1 the number of votes.

2 A. Then I would wonder why there's not an investigation into
3 the discrepancy.

4 Q. The discrepancy --

5 (At 3:12 p.m., some members of gallery applaud)

6 THE COURT: No. You guys want to leave?

7 UNIDENTIFIED SPEAKER: No. Sorry.

8 THE COURT: This is not a show. So if you can't
9 behave yourself, get the hell out of this courtroom.

10 BY MR. CUNNINGHAM:

11 Q. The discrepancy comes from you, right? You're the one that
12 reports that, alleged that there was a discrepancy?

13 A. The discrepancy actually comes from the data, Mr.
14 Cunningham. So the fact that I analyzed that and I
15 highlighted discrepancy is only determinative in the fact
16 that there is a discrepancy.

17 Q. But you did that without looking at the original records,
18 without looking at the original applications and the
19 original ballots, right?

20 A. So --

21 Q. Right or wrong?

22 A. Well, it is correct --

23 Q. All right.

24 A. -- however, if we are to assume that the system is
25 accurate, and that the same day voter registrations are

1 accurate, then there should be a direct alignment between
2 those voter registration applications and the contents of
3 the Qualified Voter File that are contained both on the
4 tabulator and on the EPB thumb drive. And they're not.

5 Q. One of the things you found on the electronic poll book
6 that you couldn't find anywhere else or you used to
7 indicate in your affidavit is party identification, right?

8 A. That's correct. There's a --

9 Q. So you --

10 A. There's a column for party identification for all of the
11 voters that are listed in the database.

12 Q. So you were able to identify their party affiliation.

13 A. There is a value associated with that column. The
14 determination of the meaning of that value would have to
15 be determined by further investigation at the county
16 level.

17 Q. Well, in your opinion, is that an election information,
18 election record?

19 A. Yes.

20 Q. Okay, so that's something that has to be maintained?

21 A. Yes.

22 Q. Okay. And so you withdrew it so that it could be
23 maintained and you would know, you haven't disclosed it,
24 but you know who the party affiliation of each voter would
25 be?

1 A. No, I know what the value is in the database. It does not
2 say a big R for Republican. It doesn't say a big D for
3 Democrat or an I for independent. There's a value
4 associated with that.

5 Q. And you consider that value to be an election record?

6 A. It's part of an election record, yes.

7 THE COURT: You would have to go in and do
8 additional research to that value specifically to be able
9 to derive the confidential information regarding party
10 affiliation. Is that accurate?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: And did you go so far as to do that
13 in this particular incident, or did you -- incidents, or
14 did you just leave this with the value being what it was?

15 THE WITNESS: I left it with the value being
16 what it was.

17 THE COURT: Thank you for the clarification.
18 Go ahead, sir.

19 BY MR. CUNNINGHAM:

20 Q. Could you be more precise, or do you have any documents
21 that would be more precise as to when you received the zip
22 file, EPB flash drive from Ms. Lambert?

23 A. I would have to go back and check my message history on
24 that, but it might be possible to get that down to the
25 exact date.

1 Q. And you believe that it was about May of 2022?

2 A. Correct.

3 MR. CUNNINGHAM: I have nothing further, Your
4 Honor.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MR. OLSEN:

8 Q. Mr. Cotton, do you have an understanding as to -- you
9 testified earlier that you were originally brought in in
10 October of '21 under, that included representation because
11 of Clerk Scott's concerns about being subject to criminal
12 penalty. Do you recall that?

13 A. I do.

14 Q. Did the threat of criminal penalty against Ms. Scott still
15 exist as of May 2022?

16 A. Yes.

17 Q. Did it still exist as of September 2022?

18 A. Yes.

19 Q. And in fact, we're sitting here in 2025, and she's facing
20 criminal charges, correct?

21 A. Yes.

22 Q. So the threat of criminal penalty against Ms. Scott never
23 lifted since October '21, correct?

24 A. Correct.

25 Q. You testified that you received the EPB flash card data

1 sometime in May of 2022, correct?

2 A. Correct.

3 Q. Would it surprise you that that date was, that the date
4 you received it was either before or during the recall
5 period for Ms. Scott?

6 A. I don't know that --

7 Q. And litigation?

8 A. I don't know that anything would surprise me, but that
9 certainly would be feasible.

10 Q. Would the EPB flash card data be -- how was the -- do you
11 have any idea of how the EPB flash card data was related
12 to the recall litigation?

13 A. It is my understanding that as a protected election
14 source, that the state feels that that should not have
15 been shared with an independent expert.

16 Q. Do you understand what the purpose of the litigation was
17 that -- with respect to Clerk Scott's recall?

18 A. I don't understand the full scope of that litigation, no.

19 Q. Did it have any relation -- what relationship did it have
20 to the recall, if you know?

21 A. It was my understanding that the recall was an effort by
22 the state to remove --

23 MR. CUNNINGHAM: Objection, Your Honor. How does
24 he know what the, unless he's reading the recall petition,
25 and he's telling us he doesn't even know what it was, and

1 he's speculating now, what's the reasons for it?

2 THE COURT: Do you have direct knowledge?

3 THE WITNESS: I only have direct knowledge from
4 the news articles and what my attorney, who I was engaged
5 with, told me.

6 THE COURT: Did you read the news article?

7 THE WITNESS: I did.

8 THE COURT: Well, you can't testify as to what
9 your attorney told you, just because of clearly hearsay.

10 THE WITNESS: Correct.

11 THE COURT: But if you recall what the newspaper
12 article said that you read with your own eyes, that's out
13 there, open, and in the media, you can recall that.

14 THE WITNESS: Okay. It's my understanding, based
15 on those news articles, that the state was attempting to
16 remove -- well, the state had originally attempted to
17 remove Ms. Scott from her office by decree, and then
18 discovered that there was a constitutional process to
19 remove an elected official from office, and the recall
20 effort was in response to following that constitutional
21 procedure to remove her from office.

22 BY MR. OLSEN:

23 Q. Do you recall the date that you came to Adams Township in
24 connection with the logic and accuracy test of October
25 27th?

1 A. The logic and accuracy test was held, I believe, on 27
2 October, 2021. I flew in that day.

3 MR. OLSEN: We rest, Your Honor.

4 THE COURT: Okay. Thank you, Mr. Cotton.

5 MR. CUNNINGHAM: Nothing further.

6 THE COURT: Thank you, Mr. Cotton.

7 (At 3:20 p.m., witness excused)

8 THE COURT: Do you have any rebuttal witnesses,
9 Mr. Cunningham, for the prosecution?

10 MR. CUNNINGHAM: No, for the prosecution, Your
11 Honor.

12 THE COURT: All right.

13 MR. CUNNINGHAM: I've already rested.

14 THE COURT: Can you bring me those?

15 MR. OLSEN: Oh.

16 THE COURT: All right. We are going to recess
17 very briefly. If I could have a communication with all
18 three of the attorneys back in chambers. This is just
19 specifically to address timeframes, and I will come back
20 in the interest of transparency, place all of that on the
21 record. So if I could see you in my chambers, please.

22 THE BAILIFF: All rise.

23 (At 3:21 p.m., off the record)

24 (At 3:29 p.m., proceedings resume)

25 THE BAILIFF: All rise.

1 THE COURT: You may be seated.

2 All right, we will go back on the record. What
3 was established in the meeting in chambers was that there
4 will be transcripts necessary for both attorneys, all
5 three attorneys, actually, to review. So we decided, in
6 agreement, all of us, that 21 days from the receipt of the
7 transcripts, the prosecution will have their closing
8 argument in writing and served on both the Court and the
9 parties.

10 And then 14 days from receipt of the prosecuting
11 attorney in this case's closing argument, the defense will
12 turn in their closing argument.

13 After that 14 days, the prosecution, as would be
14 typical, has seven days to file their rebuttal.

15 The Court will make its decision in writing
16 within 14 days from the receipt of the final argument in
17 this case.

18 The length of the closing argument should not
19 exceed 40 pages, and the rebuttal should not exceed 20
20 pages. I'm not giving myself a limit.

21 Anything else need to be placed on the record?

22 MR. OLSEN: Your Honor, just one quick kind of a
23 housekeeping measure. Is it possible to get copies of the
24 admitted exhibits to use?

25 THE COURT: Do you not have a copy?

1 MR. OLSEN: Well, I have marked up copies with
2 my notes, but not clean copies with stickers on them,
3 obviously.

4 THE COURT: We will figure out a way to make
5 that happen, yes, so that each of you have the exhibits
6 accessible to you.

7 MR. OLSEN: Thank you, Your Honor.

8 THE COURT: Mr. Cunningham, anything else?
9 Anything from you, sir?

10 MR. CUNNINGHAM: No.

11 THE COURT: All right, in this matter, court
12 stands in recess.

13 (At 3:31 p.m., proceedings concluded; off the
14 record)

15

16

17

1 STATE OF MICHIGAN

2 COUNTY OF WASHTENAW) ss.

3 I certify that this transcript is a complete, true, and
4 correct transcript to the best of my ability of the digital
5 proceedings in the case of People v. Stephanie Scott and
6 Stefanie Juntilla Lambert on August 12, 2025.

7 Digital proceedings were recorded and provided to this
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10 the above proceedings, for any unintelligible, inaudible,
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12 in the proceeding or for the content of the digital media
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14 I also certify that I am not a relative or employee of the
15 parties involved and have no financial interest in this case.

16 DATED: August 26, 2025

17 *s/ Amy Shankleton-Novess*

18

19

20

21 Transcription provided by:

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