records. These are just a report printout, one per page, of the selection set that each voter made in no certain order. These are stored randomly, anyway, and this would just be produced. And that would allow for the hand re-counting, if so desired of, you know, a particular race within the election, which is typically what happens.

Q. So if I understand you right, the person requesting the re-count, if the law so allows, has the -- has the option of saying re-count the vote electronically, which is basically done by starting over with the MBBS and the Tally station and plugging them in, uploading the data, switching to the next MBB, and so on, and then obtaining the final report. That's the electronic re-count.

A. Correct. In a very high level form, but, yes, that is what happens.

Q. And the paper re-count would involve loading the MBBS into some system, printing off all of the vote records therein, and doing that with each MBB, stacking up the ballots and then human beings go through them and re-count. Is that -- is that the process?

A. That is correct.

Q. And the additional cost, I think you alluded
to, to the party requesting the re-count is to pay the expense in printing out all the cast vote records. Is that the additional cost? And the people, of course.

A. I believe it's associated with the labor, but that's -- that's my understanding of the process, yes.

Q. So you think the additional cost is mostly labor because you have to look at each ballot, et cetera, not necessarily the printing.

A. That's my understanding. I'm sure the printing is in that cost as well, but I would imagine it's not very much.

Q. When this cost is -- is -- you know, an estimate is made of the cost, is that done by the county election authority or something done by your firm?

A. No. It is done by the election authority. It is has nothing to do with Hart.

Q. Okay. You said some things that I want to understand a little better. One of them was called a wire case seal when you were describing the MBB. What is the wire case seal?

A. On the JBC. And the wire case seal is the legacy of the ballot box. There is always a seal put on the ballot box with a unique number to make sure that it's not tampered with or anything -- it's
happened to have been opened during the course of the
election day. That has followed the DRE. And because
the MBB contains the election definition and a copy of
all the cast vote records, that is also sealed for the
election day. Prior to the distribution to the
polling locations a wire case seal, it's a simple wire
seal with a unique serial number that's a closed loop
that prevents the door that holds the MBB from
opening. That's put on there and then our JBCs are
distributed. And then when it's brought back, this is
really an audit function, those seals are recorded and
broken to make sure that, you know, there's no tamper
evident -- no evidence of tampering during the course
of the election.

Q. You may have said this, but I didn't follow
it, so let me go back. The wire seals in place around
the MBB, that would not prevent someone from plugging
it into the JBC; is that true?

A. I'm sorry, plugging what into?

Q. The MBB. As I understand, the wire case seal
goes around the MBB; is that true?

A. No.

Q. Okay.

A. The MBB goes into a slot in the JBC. There
is a door that then closes over that and then the loop
is -- the wire seal comes in to prevent that door from
being reopened. So until such time as you want to
remove the MBB, and that would be done by the election
official after the number has been recorded to verify
that it is the same seal that went out with the
equipment.

Q. So in order to get the MBB out at the end of
an election period, the seal has to be broken?
A. That is correct.

Q. At the beginning of an election period when
the MBBs are being loaded, where is that typically
done and where are they typically sealed?
A. And this varies by, you know, county, but
typically it's done in the warehouse where the
equipment is prepped. The election official will
delegate someone. There is a chain of custody
documentation that is associate -- or is accompanying
all of this, but this is typically done in the
distribution center. They'll be loaded, it may or may
not be pre-defined, and then distributed.

Q. And that's something the election personnel
do, not your office.
A. That is correct.

Q. The MBB, you said, plugs into a PCMCIA slot;
is that right?
A. That is correct. That is the form factor of the card.

Q. So the PCMCIA slots, a lot of laptops have those; is that right?

A. That is true.

Q. Okay.

A. Yes.

Q. So if you have like a wireless -- some people buy these wireless modems and they plug it into the side of their laptop. It's the same basic form factor, then, as the MBB; is that -- is that right?

A. If I understand your question right, yes. The PCMCIA slot has dimensions, standard industry dimensions, for a card that is accepted by the reader. Yes, that is correct.

Q. Is the MBB designed to be reused in future elections?

A. Yes, it is.

Q. Are there any counties in Texas that buy new MBBs for each election?

A. No, not to my -- the best of my knowledge there's no customer that, you know, uses a new MBB for each election, no.

Q. If a customer -- if a county or election district in the state wanted to buy new MBBs, do they
have to buy them from Hart?

   A. Yes, they do need to buy them from us.

   Q. Now, turning to the cast vote record, if I understand what you've told me, that's stored in three places. One place is in the actual eSlate voting booth where the vote was cast.

   A. That is correct.

   Q. The other two places are the MBB and the JBC that the MBB was plugged into; is that right?

   A. Yes. The internal memory on both the eSlate and the JBC retain a copy, as well as the MBB.

   Q. In the typical election, how many days, months, years, after election day is the memory in the eSlate voting booth erased, if it ever is?

   A. It's completely up to the entity. Typically what happens is that information will be -- well, it will always be backed up. We will back up -- we have an application called Servo. It's part of the software suite. And Servo allows the customer to back up each device, both eSlates and the JBCs. And this is part of their post-election functions.

   At that time, once it's backed up, they have an option to clear it. But most customers will leave it until the next election. Part of the preparation will be to -- the process is called
resetting. And what resetting does is clears all the internal memory of the devices to prep it for a new election. Until that's done, the equipment will not function for another election.

Q. So if I understand what you've said is, is your software is set up to back up the cast vote record in each election, and it could be kept for posterity.

A. Yes, and it is.

Q. Where is it typically kept, on another piece of hardware or a disk drive or a CD?

A. The procedures that Hart gives to the customers is that once this is done, and these are on county PCs that they use to back up this equipment, we've specified, and most of the time sold them a PC that contains a CD -- a writable CD drive as part of the component, and a copy of all that information is written to multiple CDs for sake of posterity for the customer to store. We don't -- we don't receive or retain any of that data from the customer.

Q. Do you know if any of that data is stored by the Secretary of State?

A. I do not know. Not to the best of my knowledge. They retain the reports, and all of that, but I don't know that they retain the CVRs. I'm not
Q. Based upon your experience, how many counties in Texas, and I know this would be a ballpark, would still have the cast vote records from the 2004 or 2002 general elections?

A. My guess, and I'm --

Q. Sure. I understand.

A. I'm just speculating. I mean, they have a requirement to keep them for at least 22 months. I would -- I would guess that our customers would probably all have them still. There's -- you know, I don't know that there's any reason driving them to throw them away.

Q. And that would be true, also, then, for the 2006 general election?

A. Yes. It is my understanding they'd have to legally still have that. It's within the past 22 months.

Q. And you think in most instances that data, if not still on Hart's equipment, would be on a CD or a set of CDs?

MR. KENNEDY: Object to the form of the question. I don't think he had ever said the data was on Hart's equipment.

MR. DUNN: Okay. I thought he said
sometime they can clear it and sometimes they don't, but I'll come at it at a different angle.

Q. (BY MR. DUNN) With regard to the 2006 general election --

A. Uh-huh.

Q. -- if we went to get copies of that data today, where would we expect to find it?

A. Well, the county election official is the custodian of the records. So I would -- you would have to go to the county. Typically those require, you know, a court order, but they would have the data. And whether or not they've reset their Hart voting equipment since the November election, I don't know. I would -- I would assume that most of it was since I know that in May there was a statewide spring election. So Madison County, like every other customer, would have used the majority, if not all of their equipment, but I don't have the specifics and that would have to come from the county election official.

Q. So if the counties had purged their eSlate equipment from the data, then the only place we would expect to see it would be on these CDs; is that right?

A. Yes. Unless they also kept a copy on the PC in which they backed it up to or stored it on, it
could also be there. I don't know.

Q. In these last few moments we've been talking about the cast vote record. In other words, what people's actual choices were for given offices; is that right?

A. That is correct.

Q. I want to switch from that type of data record to -- if I wanted to operate the machine as it operated in a particular election, in other words, if I wanted to go to an eSlate machine and vote like it was 2004 general election --

A. Okay. I understand that part.

Q. -- is there any way for me to do that?

A. If -- as I stated earlier, our software is released in a system release, which is made up of the components of the software releases and the firmware releases for that particular system release. And let's say specifically Madison County. I'm in Texas in November 2006, use system release five of our software. I know that to be true. Prior to that in 2004 I also know it to be true that they didn't use system five because it wasn't certified in Texas. They would have been on a version of system three. So in order to see the same functionality, the -- that system release would have to be reloaded onto
equipment. Because once it's changed, it's only the current version that is retained on the hardware.

Q. Who is it that retains the older versions that could be reloaded?

A. Well, certainly Hart. We have a copy of all of that. I don't know if the Secretary of State, how long they retain those versions. More than likely they would come to us for a copy of that. But there are versions of that stored both — also at the federal level. Part of the certification process is a version of that is stored so that you could go there as well.

Q. Now, if I understand you right, though, we could go back and get system three, for example, which you think was in use for 2004, loaded into the system.

A. Uh-huh.

Q. But it's not going to have the same names of candidates in it. It would have to be told what -- the candidates names, is that true?

A. Yes. We have a component -- if I understand your question correctly, the election definition happens in a piece of software we call BOSS, the ballot origination software system, and in there the entity defines their election, including, you know, the precincts, candidates races, all of those
components are put into and that generates all of your
ballot styles and all of the election-specific
information is retained -- is created in that process.
Q. And the BOSS would be specific -- would be
different at each county and in many cases in each
precinct.
A. No.
Q. Okay.
A. BOSS is a software component of our election
system and not all of our customers have BOSS, that
software component. Because some of the smaller
entities have us do the ballot definition for them.
They send us the information and we define the ballot
for them. But many of our customers do have BOSS and
they define their ballot. But that's done centrally
in the elections office.
And then the cards are written -- once
it's -- the election has been defined, proofed and
everything has been approved by the election official,
then the cards -- the MBBs are generated out of BOSS.
They are written from BOSS and that's the source of
the election definition for each polling place.
Q. Well, let's take a given MBB on election day.
Could it be used at any precinct in the county just so
long as it's told what precinct it's being used in?
A. Okay. Yes. Our MBBs are written
generically, meaning they have the election definition
for the entire county. And one of the things that I
touched on briefly earlier was in the distribution
process of the equipment, some entities pre-define,
meaning when they plug the MBB into the JBC, they will
power it up and say, "This JBC is going to be for
polling place 101," which is St. Albans Church down
the street. They will define that.

Once that's done, then this JBC can only
be used and record ballots. What that does is it
restricts the ballots that can be brought up on the
eSlates to just that polling place, whether it be just
one precinct or, you know, multiple precincts in a
polling place, but that's all that's available there.

In an early voting mode, then, if you
brought up an early voting, all of the precincts would
be available as -- you know, to meet Texas law you can
go into any early voting site and vote in any
precinct. But that's -- that's what I mean by
pre-define.

Q. Are there some counties that load the MBB and
distribute the equipment to polling locations and once
they get to the polling locations type in the precinct
there and, therefore, lock that MBB to that precinct
once it arrives at the precinct location?

A. I am aware early on some of our customers did
that. I'm not aware if all -- if any of our customers
still do that. I know that most, if not all the
customers, do the pre-defining centrally. It just
helps eliminate error at the polling location.

Q. The other fact you mentioned on the cast vote
record is that the votes are stored randomly. Did I
hear that right?

A. Yes. They are stored randomly in memory on
the device.

Q. So if I'm in a particular polling location
and I look at unit number one, eSlate number one, and
there were a hundred votes cast on election day in
that machine, I can go find those hundred votes, but
not -- and I could print the hundred votes, but
couldn't tell you in any way what order they came in
or who cast the votes; is that true?

A. If you're talking about looking -- if you had
a tool to look at the physical memory and what was
stored in there, that is true. Our software will take
each cast vote record and randomly put it in a place
of memory storage. And then when it's read out, it's
typically read -- or it is read out linearly. So
there's no telling which ballot -- the first one out
which ballot that was cast, and that is by design.

Q. There would be no way to compare, in other words, the sign-in sheet at the polling location, which in many cases records the time that a person is there, compare that information with the votes as they come out of the eSlate machine and get a rough guess of which voters placed which votes?

A. If I understand your question correctly, there is no way to print out the CVRs from the device and line it up to the order in which the voters came in to vote, that is correct. There is no way to do that.

Q. Now, I think you did mention that a cast vote record can be printed and these cast vote records, if I understand them, contain all of the votes of one voter without identifying the voter or the time the voter placed the votes; is that right?

A. That is correct. A CVR printout, a cast vote record printout, will be one or it could be -- on a really long ballot it could be multiple pages, but it's a defined set of one voter's choice. The only identifying marks on there will be the precinct number for which the voter voted in. But other than that, we have no idea which voter or what order or any of that, that's correct.
Q. And if I understand you right, this cast vote record could be printed from the eSlate itself, it could be printed from a computer into which the MBB is plugged or it could be printed from the JBC; is that right?

A. If I understand your question correctly, no. CVRs are generated out of our Servo application. Meaning, you know, once all the data is backed up, you can pick whether you print the CVRs off the JBC or if you want the CVRs as the source to be all of the eSlates, you know, that's -- that's where that data comes from. So the CVRs are actually printed from the Servo machine once all the data has been backed up.

Q. Which is a PC?

A. Yes, it is. That's correct.

Q. So any of the printouts, no matter from what data source it comes from, are going to come out of a PC and then plugged into a printer, is that about right?

A. Yes, that is correct.

Q. But as an operator of that PC, I can tell the PC that I want the printouts to come from the eSlates and not from the JBC or the MBB.

A. That is correct.

Q. And, likewise, I can tell the PC I want the
printout to come from the MBB and not the JBC or the

eSlate.

A. You would tell it either the JBC or the
eSlate.

Q. Okay.

A. The results from the MBBs are what are in the

tabulation reports.

Q. So any printouts that we see from a given
election came either from the data directly on one
eSlate or from the JBC.

A. That's correct.

Q. Turning to Hart for a moment, how long has

Hart been in the election business?

A. I guess I would have to ask you to define the
election business. The company dates back to, you

know, it's roots in 1912 and has been producing
election materials for that entire time. If it's how

long have we been in the election machine business,

that goes back to 1999 and our acquisition of

Worldwide Election Systems.

Q. Okay.

A. Prior to that Hart had resold optical scan
equipment in Texas.

Q. Hart is a --

A. But didn't manufacture it.
Q. Without getting into where it's incorporated, and that sort of thing, Hart was a business born out of Texas; is that true?
   A. That is true.
   Q. Okay. It was founded here.
   A. That is correct.
   Q. It may now be incorporated someplace else.
   A. It is still a Texas corporation.
   Q. It is. Okay. And if I understand -- and from what I just know generally, Hart has been providing ballot printing for -- to the State of Texas or election administrators in the state for a long time.
   A. Most of our history, if not all of it, that is correct.
   Q. And even at the present time Hart produces for some election administrators the printed ballots that are still used with some systems; is that right?
   A. That is correct.
   Q. And Hart bought a company called Worldwide Election Systems in 1999 and that's what got Hart into the DRE business; is that right?
   A. And I'm going from memory. We bought -- the sale of the company may have been in '98 -- it was '98, '99, that time frame. But that brought us into
the DRE business, that is correct.

Q. Had Worldwide Election Systems developed any part of the eSlate at the time they were acquired by your company?

A. In its present form, no. They had developed some of the rudimentary software components, but their only voting device was a full-face tablet targeted to the northeast United States. At the time we acquired them, they had not -- they had some drawings of a precursor to the eSlate, but none -- it did not exist.

Q. Describe for me, then, generally what -- at the present time what services or products Hart provides to election administrators in the state of Texas.

A. Okay. Let me step back and think about this for a minute. I mean, we can provide in printed materials anything from the precinct kits. These are prepackaged kits that contain all of the forms necessary to run a polling place on the election day. All ancillary-type forms used throughout the process. We can provide the ballot definition for the eSlate. We can provide paper ballots for the ballot now system, part of our voting system. We can provide paper ballots for just hand count, which some counties still do. We can also -- we also provide the audio
recording of the ballots for the disabled access units for those customers who have us, you know, provide that service. Let's see. I'm trying to think of what else they could ask us for. We also sell a number of the components, you know, the legacy things like ballot boxes, precinct -- the wire case seals, pencils for marking ballots. You know, pretty much across the board if it's required in an election, we can provide it for you if you were to ask us for it.

Q. Of all those products that you mentioned, which do Hart actually manufacture?

A. Hart manufactures its electronic voting device, including the components thereof, the voting booths, the equipment, through contract manufacturers, but it's all our design and it is our equipment.

Q. I just want to make certain that Hart doesn't have a warehouse someplace that says Hart InterCivic on the outside and people are in there cutting metal and plastic and building eSlate machines.

A. No.

Q. That's something Hart contracts out.

A. Yes. We have a manufacturer who actually produces the device to our design, that is correct.

Q. Has the manufacturer ever changed or has it been one?
A. The manufacturer of the eSlate and the JBC and the DAU has never changed.

Q. What is the name of that manufacturer?

A. Suntron out of -- that facility is in Sugar Land, Texas.

Q. I want to, then, turn to paper ballots for use in election. Do you have --

MR. KENNEDY: Chad, I'm sorry. At this point we have been going about an hour and you--all noticed Hart as a corporate rep deposition notice and you identified 14 topics and that's what we produced the witness to testify about. And I think we have been here an hour and you haven't touched on any of those topics except a little bit about the certification and paper ballots isn't one of the topics on here. And I want you to be able to take your deposition and get background about Hart that's necessary to go over these topics, but paper ballots isn't one of the topics on here and so I'm going to object to it if we keep going down topics that haven't been noticed under the corporate rep deposition.

MR. DUNN: Are you instructing him not to answer?

MR. KENNEDY: Well, I'm asking you, you know, in good faith. You've noticed up 14 topics and
now you're talking about paper ballots and all of the
topics noticed up here deal with eSlate. So I'm
asking where you're going. I want to give you some
room to take a fair deposition, but I'm not bringing
the witness here to testify generally about anything
about Hart or anything you want to ask about. We've
got a corporate rep here for these 14 topics. So if
you keep asking questions that are outside or not
reasonably related, I am going to object to them. His
time is very valuable. We're not party to the case.
And I would like you to cover the topics so we can get
the deposition done and I can send my guy back to
work.

MR. DUNN: I think the questions I've
asked are relevant to both this case and the topics I
mentioned. We disagree on that.

MR. KENNEDY: Just help me out.

MR. DUNN: I also think --

MR. KENNEDY: I've got the list here and
if you point it out --

MR. DUNN: That in terms of efficiency,
we could renotice his deposition and take in all these
topics and we'd just be wasting everybody's time to
come back a second day, but --

MR. KENNEDY: Give me an idea where
you're going now on this because this is -- I read the
lawsuit. I've read the Motion for Summary Judgment.
I've read his affidavit. I don't see them having
anything to do with paper ballots. And I just -- I
want to be efficient as well with my client's time and
so far I don't see how almost any of these questions
have related to anything on topic. And I don't see
how they relate to the lawsuit, so ...

But go ahead and ask the series of
questions and what I want to do is I want to state
that objection and let you know that I would like to
see a little more focus on topics that we designated
him for. And if it keeps going on, I am going to
start instructing him not to answer.

MR. DUNN: I think it would be a good
time to take a break. Is that all right with you?

MR. KENNEDY: That's fine.

THE WITNESS: Great by me.

(REcess from 10:53 to 11:07)

Q. (BY MR. DUNN) I'm going to back up a little
bit before we go into some more of this and ask you,
you were -- or your company received a notice and a
subpoena to appear here today; is that right?

A. That's correct.

Q. Have you looked at the notice and subpoena
that was served on Hart?

A. I have.

Q. It had with it a list of topics to discuss. Do you recall that list?

A. I do.

Q. Are there any topics on the list that you are not knowledgeable or capable of testifying as to Hart InterCivic's knowledge thereon?

A. No. I feel like I can testify on all of the subjects to a point.

Q. If you get to the point over the course of this deposition where there's somebody else in your firm that would be more knowledgeable or could fill in the blanks that you don't have, will you identify that person for me? We get to a topic today and --

A. I can -- I can certainly identify that I may not be the right person to go that far into a topic. I may not know the exact person at this time as to who that is.

Q. Okay. Fair enough. Also with the notice was a subpoena duces tecum which asked you to collect together -- or asked Hart to collect together a number of documents. Do you recall that list?

A. I do.

Q. Did you go through that list, along with
other employees at Hart, and collect all the documents responsive thereto?

A. We did, yes.

Q. And you provided or other folks at Hart provided the documents to your attorneys to produce to us; is that correct?

A. That is correct.

Q. Immediately before this deposition today you provided us a stack of documents, along with the pleadings signed by your lawyer; is that right?

A. That is correct.

Q. That stack of documents, I believe it stops at Bates number -- do you know, Scott, the last number, the Bates. 139, does that sound right?

A. I do not know. I have to defer.

MR. KENNEDY: That's the last document.

Whatever the last page is, that's the last document.

Q. (BY MR. DUNN) The last page here is 139.

A. Okay.

Q. So today you produced 139 documents responsive to the duces tecum served on Hart InterCivic; is that right?

A. That's correct.

Q. To the best of your knowledge, have any documents been retained and not produced that were