choice and then deselecting a candidate. But its intention was to have them make sure they voted for that candidate.

Q. All right. So, in other words, the Harris County Democratic party sent out some kind of communication that said, "For Democrats out there, we would like you to vote by selecting Democratic straight party and then going down and selecting each of our Democratic nominees."

A. No. As I remember this particular mailing, it was for a particular candidate on the ballot.

Q. Okay. Do you remember the candidate?

A. I do not.

Q. Do you remember the race?

A. I do not.

Q. So this communication said, "We would like you to vote straight Democratic party" --

A. Uh-huh.

Q. -- "and then we'd like you to go down to Jane Doe candidate," we don't remember --

A. Right.

Q. -- "and select her. She's a Democratic nominee and select her also individually."

A. Correct. The instructions were such that that was the action the voter would take, and as I had
said, it was incorrect.

Q. Did Hart or the Secretary of State or the county election officials, to your knowledge, do anything in regard to that communication?

A. I do know that the county and Hart provided some voter outreach in the way of television ads or radio ads, or something to that effect, to inform the voters that that was incorrect, and also place something in the election day polling places warning them not to follow those instructions. I do remember that.

Q. Have you looked for any copies of those, either signs or records or television ads or any of that sort?

A. I have and we don't -- we no longer have any of that. As I remember, the main focus of it was a posting in the polling place on election day.

Q. Do you remember the general wording of the posting?

A. No. I know it identified the instruction or the mailing by, you know, description and -- and may have been a facsimile of it, and, you know, provided the correct sequence of events to vote a straight-party ballot.

Q. Do you know if that was the Talmadge
Heflin/Hubert Vo race?

A. I know it was not.

Q. Okay.

A. Because that was not in 2002.

Q. I couldn't remember.

A. Yeah.

Q. I think it was '04, wasn't it?

A. I believe you're correct.

Q. In response to -- or after the election in response to that communication by the Harris County party, was any analysis done by Hart, or anyone else, for that matter, about how to reprogram or redesign the machine to address voters who voted the way the party had suggested?

A. No, there was not.

Q. Any decision-making or meeting had on that?

A. As I remember, yes, there was. I mean, obviously, we were concerned, like everyone else, but it was an isolated case where information went out without any proper review by people who were knowledgeable in the area, so -- and being the only complaint to that point, or since, nothing was done.

Q. Was there any discussion about that with the Secretary of State's office?

A. Not that I remember. That doesn't mean it
didn't happen. I do not remember.

Q. Are you the principal contact between Hart and the Texas Secretary of State?
A. In terms of the voting system and its certification?
Q. That's right.
A. No. We have a certification manager who is the primary contact between the State and Hart.
Q. Who is that person?
A. The lady's name is Cassie Graham.
Q. Do you know who it is that she deals with at the Secretary of State's office?
A. I know of several people that are in that process. I don't know her primary contact.
Q. Who are those people?
A. They would be Katy Morsey and Elizabeth Henshaw Wynn, and there may be others. I'm not aware.
Q. Since learning of this lawsuit or deposition, have you had any conversations with people at the Secretary of State's Office about the allegations here?
A. I have not. I'm trying to think. The only communication I've had about this earlier back in March was with the attorney general's attorney who is here, but other than that, no.
Q. Prior to the deposition today have you reviewed any documents that have not been produced to us this morning?

A. I have reviewed several things that weren't asked for. I mean, I was looking for additional information, but I didn't find anything else germane to this discussion on straight-party voting. No, I couldn't find anything else.

Q. I want to ask you about some of the documents that you produced now today. The first one I'm going to hand you is Bates 1 through 64.

A. Okay.

Q. And just ask you generally what is that document?

A. This is the -- it serves two purposes. It's the early voting desk reference, as it says. This is a document that's handed out to judges who are going to work in election -- or in early voting sites. So the election judge or poll workers are given a copy of this document. And the county, typically, also provides this in the precinct supplies for their reference. It's just a good desk reference to give them. It's frequently asked questions, tasks, that type of thing.

Q. Is this document available to the public?
A. It is not available to the public, but it's also not marked confidential.

Q. We noticed on Page 8 of the document, which is also Bates number 8, that it shows an "I" with a triangle around it and it reads, "Voters may cast blank ballot if they choose to. The eSlate displays a warning page to alert voters if they are about to cast a blank ballot." Do you see that?

A. I do.

Q. Is that the warn -- the information screen that we were talking about earlier that occurs when somebody is casting a vote for no one?

A. It is.

Q. And you're fairly certain, as you sit here today, that that warning screen is displayed when somebody places a straight-party vote and continues down the ballot deselecting every candidate from that party.

A. As I said earlier, I do believe that to be true. I know it's there if they don't select a straight-party race or they deselect it, but for whatever reason, I remember that it's also there if they don't -- if they deselect every candidate. I'll have to verify that.

Q. Is there anything in this manual, and if you
need to thumb through it, go ahead, that talks about straight-party voting or how it needs to be handled or dealt with? We couldn't find it.

A. As far as I know, it's on Page 8, I think is the only reference. Let's see here if I can page to it. Right here, "The availability of the straight-party option" is the last bullet on that page.

Q. Okay. And that -- that's the only mention of it as far as you recall in --

A. In that document, that is correct.

Q. Which was Bates number Hart 1 through 64.

A. Yes.

Q. The next document is Bates number Hart 65 through 128. What is this one?

A. This is the same document, but for use in election day voting. So in the election day polling place, several of the procedures in that are different. I believe that the straight-party reference is the same and in basically the same place, and it is. But that's what this document is for is the election day polling place judges.

Q. Is -- is this document available to the public?

A. No. As I said, this is not marked
confidential. It has been released and information requested in the past.

MR. KENNEDY: Just for the record, and, of course, it's in the document, I do want to -- I do want to make note that there are some notices on the second page about confidentiality about IP and trademarks that there are.

Q. (BY MR. DUNN) At an individual precinct location, there will be a JBC, an MBB, a certain number of eSlates, these two documents, which are Bates numbered one through 128. Anything else from Hart there?

A. Well, that would depend if the precinct supplies came from Hart, the precinct supply kit with all of the forms, you know, the sign-in sheets and all that. It just depends if that came from us or not. But typically there would be, you know, the equipment you mentioned and possibly the caddy that the equipment was delivered in would more than likely come from us, but that may be all.

Q. What about any other documentation, signs, postings, about how to operate the eSlate?

A. Not necessarily. I mean, it is possible and depending on -- and this goes by implementation. Each case is different. If they chose to purchase some
voter education and outreach materials from us, they 
may or may not be in the polling place on election 
day, depending on if it was their first election or a 
subsequent election, and that's really on a 
case-by-case basis.

Q. I guess what I'm getting at is, are there any 
signs either on the wall or on the booth that say, 
"Here's how you vote on an eSlate"?

A. There again, it depends on a case-by-case 
basis. Most of our customers, yes, have some type of 
instruction sheet. Either they generate it or it was, 
as I said, from the beginning of the implementation 
that we generated, but typically there is some type of 
instruction on the wall.

Q. And that's typically found where, on the wall 
or in each voting booth?

A. It's been my experience typically just in the 
polling place.

Q. What about --

A. But let me augment that by saying there is a 
placard with instructions on each of the buttons 
functions in the right -- most leave it in the right 
side sleeve of the voting booth, but it's more 
specific about what each button does.

Q. Does Hart print that sleeve or the paper?
A. We print the original one. You know, some customers, again, as part of the VEO package get the soft copy and then edit it to more specific instructions that they want their voters to have, but typically we were the source of that document, yes.

Q. Does Hart manufacture or print a posting or a poster or a sign that talks about how the machines can be used?

A. Yes. As part of our voting education and outreach materials there are one or more of those types of documents that would be used to hang in the polling place.

Q. All right. I want to ask you about this document here, which is Bates number 137 through 139.

A. Yes.

Q. What were the circumstances of the creation of that document?

A. This document accompanied what is now marked as Exhibit 3 as an explanation. This document was generated -- both these documents were generated in March in conjunction with this lawsuit and that's what this is.

Q. So Exhibit 3 and Bates number Hart 0137 and 01 -- through 0139 were created by Hart InterCivic and forwarded to the attorney general's office in response
to this lawsuit?

A. That is correct.

Q. Who was it that created 0137 to 0139?

A. This document was created by one of my employees, Eddie Perez, who's my manager of training.

Q. All right. You mentioned earlier that there were -- during the certification process of these machines there was a public review?

A. I did -- I did mention that and that is a relatively new phenomenon. If I -- if memory serves, and the Secretary of State's Office could tell you, they implemented that, I want to say, about two years ago. There was a public comment period tied to the certification process at the State. I've been to several of those meetings with -- you know, and found the questions, rather, what do I want to say, unfocused, but interesting nonetheless.

Q. That's a part of the process that occurs after the examinations are done through the examiners with the Secretary of State's Office?

A. Yes. As I understand the process, typically the examiners have completed most of their review.

Q. And during public review have you heard of anybody making a complaint similar to the one in this lawsuit?
A. I have not.

Q. The eSlate machine has been certified, I think you told me, a number of times. You couldn't recall how many times in Texas.

A. Correct.

Q. Each time that that's occurred it's been examined by the examiners appointed by the Attorney General and the Secretary of State?

A. That is correct.

Q. Are you aware of any examiners ever recommending not to certify an eSlate voting machine?

A. I am not. I'm trying --

MR. KENNEDY: Just -- we'll be done earlier.

THE WITNESS: Okay.

MR. KENNEDY: Just answer his question.


MR. KENNEDY: Don't think out loud or speculate.

THE WITNESS: I am not.

Q. (BY MR. DUNN) Are you aware of any examiners coming to Hart before they do their final report and expressing reservations about issues with the machine?

A. I am aware of -- you know, and here again, this goes back into memory of some specific things
that they had commented on which would be part of the
examiner's records, but I don't have any of that
information with me as to any of the details.

Q. Is there any protocol or requirements that
you know of that examiners are to follow in testing
the eSlate?

A. Only anecdotally. I'm sure they have a
process, but that's -- you know, we just provide the
information and answer any questions as they come up.

Q. Hart provides the machines, the
documentation, the equipment with the machine and
they're available to answer questions.

A. That's correct.

Q. It's up to the examiners to test it out if
they want to.

A. That is correct.

Q. And the examiners may not test straight-party
votes, crossover votes, emphasis votes, if they're
possible, you don't know?

A. That is correct.

Q. And nobody else at Hart would know.

A. That is correct.

Q. Has Hart done any testing of the warning
screen -- you mentioned earlier there was some human
factors testing.
A. Correct.

Q. What does that involve?

A. It has taken various shapes during the process that got us to here. Meaning over the last seven, eight years that we have been designing this system, at different points we may have engaged a human factors engineer to come in and look at a specific layout of screens in one of the applications or that type of thing. We've also engaged in a usability study I did a couple of years ago with a local firm just on the eSlate screens, but nothing specific to straight-party voting.

Q. What is a usability study?

A. I'm sorry?

Q. What is a usability study?

A. We engaged a firm specializing in human factors engineering to look at the usability from the end user's perspective of our voting equipment and our software.

Q. It's not -- the usability study is not a situation where the machine is subjected to a number of lay voters to see what their reaction and their response is.

A. Yes, it was. That did involve a portion of it. Specifically to the screen layout, nothing to do
with straight-party voting or that functionality, but it was more -- this usability study was more about the layout of the screens.

Q. As part of the usability study, or any others, was it tested or was conclusions reached about whether or not voters understood information screens?

A. No. I reviewed that document in preparation for this here.

Q. Okay. This last set of documents I have is Bates number 129 through 136. And I note some of the pages are marked confidential. I just want to ask you first about some of the names. These are an exchange of e-mails. You can thumb --

A. Correct.

Q. -- through it, if you would like.

Okay. One of the names there is Barbara White. Who is she? Where is she with?

A. At that time Barbara White was an account manager, project manager for Hart under my direction and she was assigned to Madison County.

Q. Is she with Hart any longer?

A. She is.

Q. Has she been moved to a different division or --

A. Yeah. She just no longer directly reports to
me or into my group, but she is still with the
company.

Q. There is a person here named Charlotte
Barrett. Do you know who that person is?
A. Yes. She is the county clerk of Madison
County.

Q. There is a person named L. Michael Gay.
A. Michael Gay is our administrative services
manager and also responsible for a lot of our legal
documentation.

Q. Is he a lawyer?
A. No, he is not.

Q. He is with Hart though?
A. He is with Hart.

Q. Presently?
A. Currently is.

Q. I see Travis Harrell. Who is that person?
A. Travis Harrell was Barbara White's immediate
supervisor.

Q. Is Mr. Harrell still with Hart?
A. He is.

Q. I'm going to show you the e-mail that's been
marked confidential, which is Bates numbered 133
through 134.
A. Uh-huh.
Q. What is this communication?
A. This is a report on the Madison County re-count which Barbara White, the account manager for Madison County, attended and this is her notes taken during that process.
Q. And her notes were delivered to who?
A. Well, the e-mail was sent to Travis Harrell, her immediate supervisor.
Q. Was this sent to anyone else, to your knowledge?
A. Not that I'm aware of.
Q. Was it sent to anybody at the Secretary of State's office?
A. No. Not that I'm aware of. By practice it would not have been.
Q. Was it separate to anybody at the Attorney General's Office?
A. Not that I'm aware of.
Q. As far as you know, the only recipients of this e-mail was Travis Harrell?
A. That is correct.
Q. A voter who -- who wants to make a crossover vote, in other words, they voted for the Republican party and they get to the United States senator and they want to vote for, in 2006, the Democratic nominee
Barbara Radnofsky.

A. Okay.

Q. Why was it decided to do a warning screen at all?

A. As I remember, the informational screen or acknowledge of the straight-party crossover started with a conversation with Tarrant County back in the '99-2000 time frame. They were an early targeted customer of Hart's that we thought would be a good match for this voting system. And in conversations with the elections administrator at that time, Robert Parton, who was, you know, and still is one of the most recognized people in that field, we took -- he had that concern and made that recommendation. We incorporated it into the system.

Q. Did he make that recommendation orally or by letter or e-mail?

A. To the best of our knowledge -- or to the best my knowledge it was orally because I've asked the people involved and nobody could find any documentation of any written materials that --

Q. You searched for that documentation in response to the document request with your subpoena today?

A. That is correct.
Q. But the request came from Robert Parton, the best you recall, from Tarrant County?

A. That is correct.

Q. Where did the wording for the warning screen come from?

A. I don't remember, to be honest. It was probably -- well, I don't know. I don't remember.

Q. Is it something that would have more likely than not been generated by a Hart employee?

A. Probably. Just don't know.

Q. When was it decided to make the system -- well, let me back up.

A. Okay.

Q. It seems to me that a straight-party vote could have been handled by the eSlate in at least two ways. One, as soon as the person made the straight-party vote, they went to races where there wasn't a candidate of their party, finished their selections and then went to the review screen. Or it could be done the way it's set up now, where they make a straight-party selection and continue down the ballot free to make selections in any of the races.

A. That is correct.

Q. When was it decided to set it up that way as opposed to the other way I suggested?
MS. WILSON: Objection, assumes facts not in evidence.

Q. (BY MR. DUNN) You can answer.

A. Okay. To the best of my memory, that was the way we originally deployed it. We evaluated in the 2000-2001 time frame doing a slowly modified version, I remember, of what you suggested, taking them to the first, and I don't remember the details, but at the time we determined the best way to do it was just leave it as it was. Let the -- make the voters see every page.

Q. A lot of general pronouns in there, so I just want to make sure I understand what you said.

A. I understand.

Q. You said it was first deployed sometime in '99 with which way?

A. As it is today and it has been through its -- through this entire period of time from '99, when we first used it in a general election in a small entity in Colorado, through 2007 the functionality has been the same for that -- for the straight party.

Q. Okay. But you said sometime in -- was it 2000-2001?

A. Yes.

Q. It was considered doing it the other way I
suggested, which is you vote straight party and then you're only permitted to make changes to the ballot where there's not a candidate of your straight-party choice.

A. Okay. That is not what I understood you to say. What I understood was it took you to the first race that was not changed --

Q. I see.

A. -- or is not affected. Either there was no candidate, or whatever, and that's what was evaluated. That it would just leap to that point in the ballot. But we decided against that after reviewing the functionality. We found it more confusing.

Q. How is it that -- why was that review undertaken? Was it because of Mr. Parton's request or someone else's?

A. As I remember, it was feedback from the voters. I was in the -- one of the early voting polling sites where we first deployed this system in a test election for Tarrant County and the feedback we got from the voters was they didn't -- you know, they had to hit cast ballot and then next, next, next, next to see all the pages and then cast ballot and they didn't like that. So we reviewed our options, which were to take them to the first. Decided that wasn't a
good idea and have left it the way it is today where
you have to review each screen.

Q. Did Mr. Parton's concerns or request play any
role at all in that process?

A. Yes, he was, you know, very important to us
as a customer and -- and given his experience we
listen to everything Robert Parton said.

Q. Mr. Parton's concerns in this regard, do you
know if they were ever shared with the Secretary of
State's Office?

A. I am unaware that they were ever. And are we
speaking about the -- seeing every page?

Q. Yes.

A. Okay.

Q. And the warning screen.

A. Okay. Mr. Parton's concern was about the
information screen, not necessarily about seeing each
page. As I remember, he was fine with that, liked
that functionality the way it was but we evaluated it
anyway. But I'm not -- I'm not aware that this was
communicated to the Secretary of State's Office at any
time.

Q. The setup whereby the voter has to go through
each page of the ballot and the decision not to change
that you said was because Hart felt that would confuse
voters.

A. That is correct.

Q. What evidence or investigation was Hart relying on when it reached that conclusion?

A. The review of the engineering team and some of the key managers, as I remember it. I mean I remember sitting at a conference table and we decided that no -- because at that point this functionality had already been reviewed, both at the federal and at several state levels in the certification process, it had already been certified, and we deemed it inappropriate -- or just not worth the change at that point.

Q. Do you recall any of the names of Hart employees that were involved in that process?

A. Yeah, a few. Neil McClure would have been involved in that. He's currently our chief technology officer. Jerry Meadows, who is currently the senior vice president for our printing operation. And other than that, there may or may not have been some other folks.

Q. I think I'm about finished. I just have to --

A. Okay.

Q. -- thumb through some things here.
Have you ever inspected or operated the Diebold or the ES&S machine?

A. I have had an opportunity at a trade show or two to, you know, push the button, or whatever, but as far as the ES&S machine, I vote on it in Comal County where I'm a resident.

Q. Do you know if it operates the same as Hart's machine does in terms of straight-party voting like we've been discussing today?

A. I do not. I have never seen -- you know, I don't vote straight party, so I don't know how the ES&S works.

Q. How many other states are using the same system approved for use in Texas from Hart in terms of the eSlate, whether or not it prints a paper trail or not, but the basic layout of voting is the same?

A. Well, we have customers in 12 states. Now, is that the question?

Q. I guess that's kind of the question, but I assume it's possible, since you can change the firmware in this equipment, that the same hardware works differently in one state than it does another. I'm excluding, of course, the paper trail, which some states have and some don't.

A. Yes. There are some changes that -- you
know, by state to state, but it's all contained within
the same software and firmware.

Q. Is there any state that's using a machine
that works exactly like Texas's system but maybe it
has a paper trail, maybe it doesn't?

A. I'm not sure what you mean by "works exactly
the same." In what regard?

Q. In other words, if it had the same screen --
screen layouts, it would work the same in
straight-party voting, it would operate the same, it
would just have different names for offices, different
candidate names.

A. Well, there are only four states of the 12
that use straight-party functionality. Those are the
types of changes I mean. You know, the functionality
is available, but if the State doesn't utilize it, and
those four -- so there are only four states that use a
straight-party functionality.

Q. And those four states has the straight-party
function the same as we have been discussing it
today for the machines?

A. Exactly. We only have the one straight-party
functionality.

Q. Which states are those?

A. Hawaii, Pennsylvania and Kentucky, in