

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO, MARK SAWYER,)
RICARDO DAVIS, AL HERMAN,)
FRIEDA SMITH, KATHRYN WEITZEL,)
ADAM SHAPIRO, and CATHIE)
CALABRO,)

Plaintiffs,)

) CIVIL ACTION FILE

vs.)

) NO. 2006CV119719

CATHY COX, Secretary of State,)
SONNY PERDUE, Governor of the)
State of Georgia, GEORGIA)
STATE ELECTION BOARD,)

Defendants.)

* * *

Deposition of CATHY COX

Tuesday, July 3, 2007
2:07 p.m.

At the Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334

Reported by Deborah H. Weigel, CCR-B-1407

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1 (Pursuant to the Official Code of
2 Georgia Annotated, Section 9-11-28(a) and
3 (d), and Section 15-14-37(a), (b), and (c),
4 the court reporter disclosure statement is
5 tendered at the end of the transcript.)

6 MR. CHANDLER: This is the deposition of
7 Cathy Cox. It is taken with relation to
8 Civil Action No. 2006CV119719 in the Superior
9 Court of Fulton County.

10 It is being taken for the purposes of
11 discovery, use at trial, and any other things
12 permitted by the Civil Practice Act. We will
13 reserve -- I believe you would like to
14 reserve the right to read and sign?

15 MR. RITTER: We would. Thank you.

16 (It was stipulated and agreed by and
17 between counsel for the respective parties
18 and the witness that the signature of the
19 witness to the deposition be reserved.)

20 MR. CHANDLER: And we will reserve all
21 objections except as to the form of the
22 question and responsiveness of the answer.

23 MR. RITTER: Of course that's agreeable.
24 You got it.

25 MR. CHANDLER: It is hard to remember

1 that even after 30 years, all that language.

2 Would you swear the witness, please.

3 CATHY COX,

4 having been first duly sworn, was examined and
5 testified as follows:

6 EXAMINATION

7 BY MR. CHANDLER:

8 Q Would you please state your name for the
9 record.

10 A Cathy Cox.

11 Q And what is your current title as an
12 employee of the education system in the State of
13 Georgia?

14 A I'm the president of Young Harris College.
15 But that's a private college, not part of the
16 University System of Georgia.

17 Q And you are formerly the Secretary of State
18 of the State of Georgia; is that correct?

19 A That's correct.

20 Q And what was the final day of your -- your
21 final official day of being Secretary of State?

22 A I believe it was January the 7th of 2007.
23 It was the Monday when the new constitutional officers
24 were inaugurated.

25 Q And when were you first sworn in as

1 Secretary of State of the State of Georgia?

2 A I was elected Secretary of State for my
3 first term in 1998 and was sworn in in January of
4 1999.

5 Q I believe that you are also a practicing
6 attorney; is that correct?

7 A That's correct.

8 Q Or at least --

9 A I'm an active member of the State Bar of
10 Georgia. I'm not currently practicing.

11 Q And where did you go to law school?

12 A Mercer University.

13 Q You are familiar with the lawsuit that --
14 this lawsuit; are you not?

15 A I am.

16 Q Have you read the actual Complaint?

17 A I have. It's been awhile since I thoroughly
18 read the Complaint.

19 Q I understand. In the year 2001 there was a
20 pilot project to determine the feasibility of the
21 workings of an electronic voting system; is that
22 correct?

23 A That's correct.

24 Q What machines were actually used in that
25 pilot project?

1 A We used a number of different brands of
2 equipment. I don't remember. There were several
3 manufacturers. I think we used at least three, but
4 I'm not sure how many were used.

5 Q Were those used in actual voting situations
6 or more like a laboratory or experimental situation?

7 A No. We selected a number of municipalities
8 who were conducting elections in November of 2001.
9 They applied to be a pilot site. We evaluated the
10 cities who applied. We selected a number of cities.
11 My recollection is at least two different
12 municipalities used each brand of the equipment.

13 Q I believe there was an RFP that was a
14 request for a proposal of some sort?

15 A For the pilot project?

16 Q No. After the pilot project was completed.

17 A Yes.

18 Q Who created that RFP?

19 A As I recall, my election staff. They
20 compiled it with the Georgia Technology Authority.
21 But the Georgia Technology Authority actually issued
22 the RFP.

23 Q Who was the Georgia Technology Authority
24 point person, the main person in charge?

25 A Larry Singer was the executive director. We

1 worked with a number of people on their staff in that
2 process.

3 Q And who in your office oversaw the
4 evaluation process?

5 A The evaluation of the bids that came in?

6 Q First, the evaluation of the pilot project.

7 A There wasn't any one particular person. My
8 election director, a number of members of the election
9 staff, my Assistant Secretary of State, as well as
10 myself were all involved in evaluating the success of
11 the pilot project.

12 Q Who selected the voting machines, the voting
13 machine vendor, and types that were used in the pilot
14 project?

15 A The best of my recollection, it was the
16 Secretary of State election staff and the Georgia
17 Technology Authority.

18 Q Was there a cost to the State of Georgia to
19 acquire those machines for the pilot project?

20 A I honestly don't recall. I think that the
21 legislature appropriated a fairly nominal sum and the
22 vendors were willing to basically let us use their
23 equipment for little, if any, cost just for the sake
24 of being able to demonstrate how it worked.

25 Q I believe in 2006 there was an audit trail

1 pilot project; was there not?

2 A In 2006 there was another pilot project
3 conducted with Diebold equipment that contained the
4 voter verified paper trail system.

5 Q To your knowledge do the Diebold machines
6 that were installed in Georgia, do they have any way
7 of producing a paper audit trail other than their
8 little roll-up system?

9 A The currently used Diebold system does have
10 a paper audit trail in every single unit that is used
11 that contains a lot of information about how the
12 machines are turned on, any kind of activity that goes
13 on during the day, and, of course, the vote totals at
14 the end of the day.

15 Q When the paper -- I believe is a heat
16 sensitive, a thermal paper printer -- prints out of
17 that machine, it merely accumulates the votes that the
18 machine says were voted that day for any given office;
19 is that correct?

20 A The paper trail in each machine today
21 contains a variety of information that gets printed on
22 that roll from the beginning of election day to the
23 end of election day. But it also includes at the end
24 of the day the cumulative vote totals for every
25 candidate for every ballot cast on each and every

1 unit.

2 Q Correct me if I'm wrong, but that thermal
3 tape is produced at the end of the day when the
4 machine is supposed to summarize everything that's
5 happened during the day; is that correct?

6 A No. The tape -- the tape prints
7 simultaneously with any activity. For example, to
8 open up the polls at the beginning of the day, the
9 poll workers have to go through a protocol where they
10 start printing what we call the zero tape to show that
11 there are zero votes recorded on every single machine,
12 and they have to look at that tape before they can put
13 that machine into use.

14 Q Would it be true to say that the machine
15 does not produce a paper ballot recording the votes of
16 each person who voted on that machine independently of
17 what other people voted on that machine?

18 A The machines have the capacity to produce a
19 paper printout of every ballot of every voter.

20 Q However, they don't do that simultaneously
21 with the voter voting; is that correct?

22 A Absolutely.

23 Q Do you know if there is any retrofitting way
24 to do that suggested by Diebold or any authority
25 that's familiar with those machines?

1 A I really don't know. I'm not the computer
2 expert for the Secretary of State's office, whether
3 the capacity they have to print out a paper ballot, a
4 paper reproduction of every ballot, could be done
5 simultaneously by adding some printing mechanism. I
6 just don't know.

7 Q Were there any civic organizations directly
8 or indirectly retained in any way for external voter
9 education during the implementation of the electronic
10 voting machines in '02?

11 A Yes. We contracted with a number of civic
12 and community organizations to help us with voter
13 education.

14 Q When you say contracted, do you mean the
15 State of Georgia gave them money?

16 A Yes.

17 Q Do you remember who they were?

18 A There were a number of them that ranged from
19 the National Association of Chinese Americans to the
20 League of Women Voters. As I recall --

21 Q Georgia Common Cause?

22 A I don't remember. There were a number of
23 them.

24 Q Who decided which groups would get contracts
25 with the State of Georgia to go educate the voters?

1 A My election division staff.

2 Q What was the size of those remunerations; do
3 you remember?

4 A As I recall, they ranged, depending on the
5 sort of outreach potential of the group, whether they
6 had statewide outreachability or regional. I think
7 they ranged from maybe \$5,000 to \$25,000.

8 Q Are you familiar with any place that Diebold
9 AccuVote-TS R6 machines were installed in the United
10 States during the year 2000 or earlier than that?

11 A You will have to forgive me. I don't know
12 that I know all the model numbers of their various
13 machines.

14 Q Well, the machine that we are using now in
15 Georgia, do we not use the same machine universally
16 throughout the state?

17 A Yes.

18 Q The same Diebold machine?

19 A Yes.

20 Q Was that machine in use in another state
21 prior to its being universally adopted by Georgia?

22 A Well, it very easily could have been used in
23 locations around the country. We were the first state
24 to uniformly put that equipment into use on a
25 statewide basis.

1 Q But you are not familiar with any other
2 state -- obviously, we are the first state to do it
3 statewide?

4 A We were the first state to do it uniformly
5 across the state.

6 Q What assurance did you have at the time that
7 we adopted that that any part of the purchase amount
8 would be federally reimbursed?

9 A We had no assurance. I had been very active
10 in working with members of Congress on the Help
11 America Vote Act, which was being debated beginning
12 after the 2000 election process. We had frequent
13 contact with congressmen, senators, and their staffs,
14 and the committees that were debating the various
15 versions of election reform issues.

16 Based on what I truly speculated might
17 happen in Congress looking at the various versions and
18 trying to find the common elements of all the
19 different bills going through Congress, it looked
20 pretty obvious to me that there was a commitment in
21 Congress to appropriate money and to do something on
22 the election reform front that would assist states in
23 upgrading their equipment.

24 But when I was able to persuade Governor
25 Barnes to put money in the budget, it was purely

1 acting on faith that it might happen and it might not.
2 He decided to issue bonds to produce the funding so we
3 would have a period of time to pay it back if the
4 federal funding did not come through.

5 Q Do you recall the date that you signed the
6 first contract with Diebold committing this?

7 A (Shakes negatively.)

8 Q Do you know if it was May 3rd, '02?

9 A No. It was certainly after the legislative
10 session was over in 2002.

11 Q Did you sign that contract before the
12 governor signed Senate Bill 414, or do you recall?

13 A Senate Bill 414 was the Election Reform
14 Bill?

15 Q I don't know what it is. That's just my
16 question.

17 A I don't remember the bill numbers. And I
18 don't have any recollection of the timing.

19 Q Did the FEC, Federal Election Commission,
20 did they publish standards that the machines that were
21 to be installed would have to meet? Do you recall
22 that?

23 A Over the years long before I was Secretary
24 of State, the Federal Election Commission had
25 developed standards for voting equipment. The Help

1 America Vote Act kind of changed the FEC's role and
2 created a new EAC, the Election Assistance Commission,
3 that started dealing much more on the state level with
4 voting equipment.

5 Q Was there any requirement in the Help
6 America Vote Act that required a paper audit trail
7 that would reflect each ballot cast?

8 A As I recall, the Help America Vote Act does
9 call for an audit mechanism, which our machines
10 satisfy. But it doesn't have to be a paper record of
11 every individual vote. That's not contemplated in the
12 Help America Vote Act.

13 Q Who owned the server? Are you familiar with
14 some voting equipment being lost or stolen in Bibb
15 County in '02?

16 A I have a vague recollection.

17 Q Do you know if the server -- they have a
18 general server?

19 A Each county has a server, yes.

20 Q Who owns the server?

21 A The state technically owns all the equipment
22 that we purchased for the counties. We have an
23 intergovernmental agreement with each county for the
24 use the equipment. We also allow the counties to
25 enter into agreements with the municipalities for use

1 of the equipment.

2 Q Do you remember any --

3 A May I add to that.

4 Q Certainly.

5 A Some counties have also purchased additional
6 equipment outside what the State has furnished to
7 them. That would be owned entirely by the county.

8 Q Do you remember any voting equipment that
9 was stolen on Bankhead Highway during '02? Do you
10 remember anything about that?

11 A No, I don't.

12 Q Do you have an idea roughly how much Georgia
13 has spent with Diebold and related contractors for all
14 aspects of the electronic voting between January of
15 '01 and January of '07 when you left office?

16 A Well, it's been a long time since I looked
17 at the numbers. But after our initial purchase of
18 about \$54 million of voting equipment in 2002, in the
19 next year or two we purchased some additional machines
20 for counties that had experienced growth and spent a
21 couple of more million.

22 Then subsequently in 2005 or 2006, we had
23 another significant purchase of what we called the
24 electronic poll books which are adding computer
25 systems to the check-in process to put the voter roll

1 on a computer as opposed to the paper when you check
2 in. So adding all those, I would say it's been over
3 70 million.

4 Q I believe there was a Diebold marketing
5 brochure at some time that had your picture on it. Do
6 you remember that?

7 A I don't know if I saw a brochure. But
8 Diebold asked me if they could use a quote of mine on
9 their website. That was posted for some period of
10 time.

11 Q But you never saw your picture on their
12 website or anywhere else?

13 A I think my picture could have been on their
14 website with the quote that I gave them. But I don't
15 recall it on the brochure.

16 Q Did you receive any remuneration or benefit
17 from Diebold for that?

18 A Absolutely not. I refused to take even any
19 campaign contributions from Diebold or any other
20 equipment vendors from the moment we got into this
21 process of looking at this equipment.

22 Q Do you remember Diebold firing a
23 subcontractor, ACT, in 2002? Do you remember anything
24 about that?

25 A Vaguely, yes.

1 Q Did you take any action relative to their
2 firing? I believe there is somebody named Sam Barber
3 who performed some tests before delivering the
4 machines to the State. Did you take any emergency
5 action?

6 A I don't recall that we took any action. My
7 recollection is that Diebold was entirely dissatisfied
8 with the company, that they were not performing at all
9 up to the standards of their contract and dismissed
10 them.

11 Q I'm not a computer person. But it's my
12 understanding that some of the software that is used
13 in the electoral process is considered proprietary to
14 Diebold. Do you understand that?

15 A Yes, I do.

16 Q And that citizens, if they request ballot
17 software type information, are you familiar with them
18 being denied that request based on the idea that
19 Diebold has a proprietary interest in its software
20 that ought not be shared?

21 A I know there have been some requests for a
22 lot of what I would call the internal workings of the
23 election system software that have been denied both
24 because Diebold felt it was proprietary information
25 and, more importantly, because we felt it would

1 jeopardize the security of the system.

2 Q I would understand from your answer then
3 that the State of Georgia or the Secretary of State's
4 office under your guidance has denied public computer
5 programmers a right or access to all of the aspects of
6 the software that -- in other words, total access to
7 the software -- that backs up the machine's production
8 of election results?

9 A I don't know whether we have had any kind of
10 requests like that. I know we have had requests for
11 certain aspects related to the software system that we
12 have denied because if public programmers or anybody
13 else in our view had access to certain encryption
14 information -- telephone numbers that connect certain
15 polling places to county offices and the like -- that
16 we could jeopardize the security of the system, and we
17 absolutely don't want to go there.

18 Q The 2006 audit trail pilot project, who was
19 the person that actually selected the machines that
20 were used in that pilot project?

21 A I think my office, my election staff,
22 consulted with Diebold as to what options we had for
23 using and demonstrating to the public how this voter
24 verified paper trail would work; and they came up with
25 the system that was used in the pilot project.

1 Q I will call that a roll-up system.

2 A Okay.

3 Q You are familiar with how they produce some
4 sort of thermal paper roll-up that, I believe, to
5 audit one had to unroll it and manually count it up;
6 is that correct?

7 A That's generally the process.

8 Q And I believe there was a report. Are you
9 familiar with a report on the pilot project with the
10 conclusions that were made about it?

11 A The report was made after I left the
12 Secretary of State's office. All I know is what I've
13 read in the newspaper.

14 Q So you have not read that report?

15 A No, I have not.

16 Q Apparently there was some equipment stolen
17 in Bibb County in '02. Do you remember any actions
18 that you or your office took in regard to any theft of
19 the equipment stolen?

20 A I have a vague recollection of some
21 equipment being stolen, but I don't remember what it
22 was. I remember some equipment being stolen from a
23 hotel room where it was being used for training. I
24 don't even know if it was our equipment or the
25 county's equipment or just training equipment. I know

1 there was discussion with the Bibb County law
2 enforcement. That's about as much as I remember about
3 the whole episode.

4 Q I believe there were numerous amendments to
5 the original contract with Diebold; is that correct?

6 A I don't know if there were numerous. I
7 think there have been amendments, yes.

8 Q Who had the authority to sign and bind them
9 on behalf of the State of Georgia? Who had the
10 authority to enter into the original contract?

11 A The original contract, as I recall, was
12 signed by me and the Georgia Technology Authority
13 executive director, Larry Singer.

14 Q Why are the contract and the amendments
15 drawn by Diebold and you as the Secretary of State
16 instead of between Diebold and the State of Georgia?

17 A I can't tell you that. All the amendments
18 were kind of vetted through the State law department.
19 I assume we based it on their recommendation.

20 Q About who signs what and why?

21 A I don't recall their specific advice on that
22 point.

23 Q Is that standard procedure for all State
24 offices, any contracts that are signed have to go
25 through the law department?

1 A I think any State agency that is smart would
2 do that.

3 Q So your agency did that?

4 A Yes. We always tried to do that. Unless it
5 was something very nominal.

6 Q You didn't have in-house attorneys in your
7 office, did you?

8 A I had a lawyer on our elections staff. I
9 had a policy director who was also a lawyer. Both of
10 them were involved in discussing with the law
11 department how we handled the contract and the
12 amendments.

13 Q Who were they?

14 A Ann Pickett was my policy director, and
15 Cliff Tatum was my election division lawyer.

16 Q Do you know whether or not the FEC standards
17 that were published in April of '02 were met by the
18 Diebold machines that were adopted by the State of
19 Georgia?

20 A I couldn't tell you which version of the
21 standards we met because there have been a lot of
22 versions and we bought this equipment in the spring of
23 '02. If there were some standards issues in '02, I
24 can't tell you if they were before or after our
25 purchase.

1 Q If the FEC said we have these standards, who
2 in your office was responsible to make sure that the
3 machines offered by Diebold met those standards?

4 A My election divisions director, Cathy
5 Rogers, would have worked with Dr. Brit Williams from
6 Kennesaw State, who was our voting equipment
7 certification expert.

8 Q Do you remember an amendment, a third
9 amendment or any other amendment, to the contract with
10 Diebold which allowed payment of funds to Diebold
11 prior to the receipt of any NASED certification or
12 certification numbers for the Diebold machines?

13 A I'm not even sure I understand your
14 question.

15 Q I'm not sure if I do either. I will show
16 you something. I guess we will mark it as Exhibit A.
17 And I will ask if you recognize this as being a copy
18 of an amendment.

19 (Thereupon, Exhibit A was marked for
20 identification.)

21 A It looks like the form we used for
22 amendments. But there are these blank pages. It is
23 not a real good copy, I guess, so I don't know if
24 there are portions that have been omitted. But it
25 looks like the form that we used in general for the

1 amendments.

2 Q Do you know if you ever signed any contracts
3 with Diebold prior to having, for example, the
4 governor sign the bill that authorized the purchase?

5 A That's why I say I don't remember the
6 timing. We certainly -- the way the process worked in
7 2002, we obviously were not even sure we could enter
8 into a contract until the legislature passed the
9 appropriations bill.

10 My recollection is we went ahead and put out
11 an RFP knowing we wouldn't have much time after the
12 session in order to get this implemented in 2002, but
13 we obviously could not have entered into a contract
14 until we were certain we had the funds to support it.
15 But I couldn't say that I remember any of the exact
16 timing on that.

17 All of the people in the voting equipment
18 business were aware that we were interested in moving
19 in that direction. They were all following the
20 legislative debate to see what, if any, money our
21 legislature would put up.

22 Q You mentioned Brit Williams. Was he under
23 direct contract with the State?

24 A He has been under direct contract with the
25 state for well over a decade, one of the foremost

1 voting equipment experts in the country.

2 Q Where does he operate out of?

3 A At the time he was part of the faculty and
4 staff at Kennesaw State University.

5 Q Did he receive contractual payments in
6 addition to his salary at Kennesaw State?

7 A Yes. He had a contract with the Secretary
8 of State's office to make sure our equipment was
9 certified and to test all equipment coming into the
10 State to make sure it met national certification
11 standards.

12 Q Did you ever discuss audit trail
13 capabilities of the Diebold machines with him?

14 A Yes. I discussed every detail of the
15 equipment with him.

16 Q Did you ever have concerns about the ability
17 of the dissatisfied politicians to get recounts done
18 using the audit trails of the machines?

19 A Well, we knew the recount procedure. I'm
20 not sure about dissatisfied politicians. You always
21 have a loser who is dissatisfied. But I don't recall
22 any specific discussion with Brit Williams in that
23 regard.

24 Q You knew that the state law and the federal
25 law had some requirements for audit trails; is that

1 correct?

2 A Well, at the time we bought equipment, the
3 Help America Vote Act had not passed. Also at the
4 time we bought the electronic equipment in 2002, there
5 were no forms of electronic voting system that had a
6 voter verified paper trail that had passed national
7 standards at that time. So that wasn't even an option
8 for us.

9 Q When you say a voter verified paper trail,
10 that would be where the machine, I suppose, spits out
11 a piece of paper that the voter could look at and say,
12 yes, that's what I did?

13 A The technical term for what was used in the
14 pilot project this past November in 2006 is a VVPT,
15 voter verified paper trail. That was not available on
16 any certified equipment at the time we purchased our
17 equipment in 2002.

18 Q What was the real push to acquire the
19 equipment if it didn't have VVPT?

20 A Nobody had really heard of VVPT in 2001 and
21 2002 because it was not a part of any certified system
22 in any market in the whole United States of America.
23 The push was the 2000 presidential election, the whole
24 media focus on the national inaccuracy, our study in
25 Georgia in 2000 and 2001 of how grossly inaccurate our

1 election system was.

2 Caltech and MIT subsequently said ours was
3 the second worst voting accuracy rate in the nation in
4 2000, worse proportionally than the state of Florida.
5 So we knew we had to find some better and more
6 accurate way of voting.

7 Q You were familiar with the Twenty-First
8 Century Voting Commission Report; were you not?

9 A Yes.

10 Q And do you remember it had some kind of a
11 thing where it said that the chosen system should have
12 the capability to produce an independent paper audit
13 trail of every ballot cast?

14 A I was a part of that commission. I remember
15 the report in general terms, but I don't know that I
16 remember that specific language.

17 Q Do you remember why the RFP left out a
18 requirement for a paper ballot audit trail?

19 A I can't tell you specifically. I didn't
20 write the RFP. But knowing that there was no
21 certified system available anywhere in the United
22 States that had a voter verified paper trail makes me
23 pretty certain that we would not have put in the RFP
24 something that wasn't even manufactured at the time.

25 Q Did not TrueVote or Avante machines, didn't

1 they have some way to have an independent --

2 A I think there was a company called TrueVote
3 that talked about bidding. I don't know if they
4 submitted a bid. But they were not certified.

5 Q So when you talk about certified, you mean
6 federally certified?

7 A Yes. Under Georgia law at the time, we
8 could not use a system that had not passed national
9 certification standards.

10 Q Those certification standards, had they been
11 adopted, say, five years before or 20 years before or
12 what?

13 A Probably both. The standards through the
14 FEC, through the National Association of State
15 Election Directors, there are various versions that
16 get updated along the way. In 2002 we would have been
17 using and relying on whatever the current voting
18 systems standards were.

19 Q Do you remember Hart InterCivic having
20 machines? Did they make a presentation?

21 A They did. I think they submitted a bid.
22 Their bid, as I recall, was to phase in the project in
23 two years. We liked their equipment, but we wanted to
24 get this in place before the 2002 elections; and they
25 didn't have the manpower to do it except over a

1 two-year period.

2 Q Did you consider the Diebold machines that
3 were finally selected to be consistent with federal
4 certification and the recommendations of the
5 Twenty-First Century Commission?

6 A Yes, I did.

7 Q If a voting machine that we use, a Diebold
8 machine, was inaccurately recording votes during the
9 day when it was in use on election day, would there be
10 any way to detect that inaccuracy during the day when
11 the machine was being used?

12 A There is no reporting of votes during the
13 election day until after the polls close at 7:00
14 o'clock. But there are various mechanisms that are
15 checked during the day.

16 For example, there is a public counter on
17 every machine, and during the day the poll workers
18 have to check all the public counters to see how many
19 votes have been counted on each machine and reconcile
20 that with the numbered list of voters that have gone
21 through the polls. Those sort of things are part of
22 the protocol now.

23 Q If the software inside the machine -- again,
24 I'm not a computer person -- if the software was
25 saying when I vote A it just simply makes a record

1 that I voted for B, there would be no way during the
2 day for anybody to know that that was going on inside
3 the machine? The machine would know that I voted.

4 A But there are two mechanisms for the voter
5 to know how the vote is registering. Number one, when
6 they touch the screen, the name they have chosen
7 lights up. When they get through the entire ballot,
8 they can review the ballot and it goes back through a
9 summary of all the names they have chosen or all the
10 votes they have cast.

11 So the software is programmed to project
12 their choices onto the screen at those two different
13 mechanisms. If the voter touches the name they select
14 and another name lights up, they would know there is a
15 problem.

16 Q Is it not true that the machine could be --
17 we are talking hypothetically here -- but
18 hypothetically a government could use a machine that
19 told people and affirmed to people that they were
20 voting for candidate A but recorded that they were
21 voting for candidate B at the end of the day?

22 A I can't begin to say hypothetically what it
23 would do. But part of the logic and accuracy testing
24 that we do on every machine on election day
25 demonstrates that the selected candidate is recorded

1 and that the votes turn out as chosen. That's part of
2 the logic and accuracy test that's done on every
3 single voting unit before election day to make sure
4 that the unit is recording the voter's choice.

5 Q As I understand, for example, your office's
6 refusal to let people see the software workings in the
7 machines and then what you've just said about how
8 there is a certification process and all, that
9 ultimately the voters have to trust the State of
10 Georgia to protect the integrity of the voting?

11 A Well, the voters have always had to trust
12 the process that the legislature puts in place for how
13 votes are counted and calculated and how machines are
14 tested.

15 That's why we put into process all the
16 protocols for testing these machines, and that process
17 is very much open to the public, to go and watch how,
18 after the software is loaded onto the machines, to
19 verify that all of those tests are done by the public
20 and the count comes out exactly as it should.

21 If there is any problem, that machine is not
22 used on election day. Only if every machine passes
23 that entire battery of tests can it be used on
24 election day.

25 Q Well, for these same reasons, there has

1 always been vote fraud even with paper ballots. I'm
2 aware of that. I'm sure everybody here is aware of
3 that. But in the good old days when a paper ballot
4 was filled out in the booth and then put in the box,
5 there were poll watchers that watched the box and
6 watched the box when it was opened at the end of the
7 day and watched the ballots being taken out and
8 counted. Is this correct?

9 A I know that learned counsel is a great
10 historian and also knows of the lead under the
11 fingernail process for mismarking ballots after all of
12 that chain has been completed to then alter the
13 ballots after the fact in the, quote, good old days of
14 the bedsheet paper ballot.

15 Q And losing the whole box on the way to the
16 counting place, I'm aware of that.

17 A Or finding the box.

18 Q But let's talk about what is a ballot. When
19 a person votes in the voting with the new Diebold
20 machines, his selections, plural, constitute his
21 ballot. Would you agree with that?

22 A All of his selections, yes, in a particular
23 election.

24 Q But those selections all become electronic
25 data?

1 A That's correct.

2 Q And that data is not independently put onto
3 a piece of paper when he enters that; is that correct?

4 A Well, it is put onto the paper system that
5 exists in the machine today that can print out the
6 cumulative vote totals at the end of the day. But it
7 becomes electronically part of the memory card within
8 each part of the voting system that is then
9 transported along with those paper tapes to the county
10 office for the official tabulation on voting night.

11 And that's why obviously our definition of
12 ballot includes electronic mechanisms, paper
13 mechanisms, mechanical mechanisms. That whole
14 instrumentality of casting, recording, and counting
15 the vote becomes the ballot.

16 Q Would it be true to say the ballot is not
17 independent of the voting equipment?

18 A The ballot is all part of what it takes to
19 capture, record, and count your intentions, just as a
20 punch card in the old days of using the horribly
21 inaccurate punch cards. A punch card was nothing
22 until a computer counted that ballot.

23 Q But in that case, whether there were hanging
24 chads or not, one could take the card itself and look
25 for evidences of voter intent; is this correct?

1 A I would doubt whether they ever reflected
2 voter intent because they were so easy to be altered
3 with chads closing or falling out the minute they left
4 the voter's hands. I think that was established in
5 the 2000 presidential election.

6 The lever machines that were used in almost
7 half of the counties in Georgia at the time that we
8 replaced equipment, the ballot was the whole 2-ton
9 lever machine, and the face of the ballot on the front
10 was recorded by a mechanical wheel that turned a
11 little odometer on the back with absolutely no checks
12 and balances, no audit mechanism or anything like
13 that.

14 Q I try to think in terms of simple analogies.
15 If one goes to Kroger and one puts one's food
16 selections out there, the girl tells you how much you
17 owe and you get a paper tape so if it is an outrageous
18 number she comes up with, you can check it against
19 your tape before you pay. Do you see any reason why
20 we couldn't ask for the same from our voting machines?

21 A There are plenty of reasons. Number one, at
22 the local Kroger, the Georgia law does not require any
23 kind of privacy. When you build in privacy to a
24 system, then you have to accommodate in a lot of
25 different ways how that vote is recorded and who can

1 see it and who can have access to it.

2 Q In that analogy, if the adding machine used
3 by Kroger is operated by not a checkout girl but by a
4 voter, the adding machine reports to Kroger what has
5 been bought and so forth. The tape is the assurance
6 to the voter or the buyer of the accuracy of what he
7 has bought, and then that tape could be deposited into
8 a ballot box in case there needed to be an audit, if
9 you are following me, or a recount.

10 Do you see any reason, again, why that would
11 be a problem to expect at least that same degree of
12 accountability in our voting equipment here in
13 Georgia?

14 A Yes. There are a lot of reasons. That's a
15 comparison that a lot of people in the public make.
16 But any time that receipt of a vote like your grocery
17 receipt goes into a person's hand, then it may or may
18 not make it into the ballot box.

19 I have certainly learned about people who
20 would love to cause mischief in elections and would
21 love to stick that receipt in their pocket and walk on
22 out so the vote totals don't reconcile at the end of
23 the day.

24 There are people who would love to pay
25 people for voting. If that voter could walk out the

1 door with a receipt and prove that they voted for or
2 against a candidate in order to get illegal
3 remuneration, you have a problem.

4 So you have to build a voting system with a
5 lot of additional safeguards over and above what you
6 get at an ATM machine or a grocery store or a gas
7 station because of all these other security concerns
8 that go with making sure that you have an absolutely
9 accurate vote count.

10 Q In your opinion does Georgia election data
11 belong to Diebold?

12 A What do you mean by election data?

13 Q The ballots, the things, the electronic
14 ballots.

15 A The ballots are the State's. The software
16 on which the ballots are cast and through which the
17 ballots are tabulated is a proprietary system. But
18 the ballots and the record of how those ballots are
19 cast under Georgia law goes to the county election
20 official, then goes to the clerk of Superior Court and
21 must be maintained for a certain period of time, and
22 then we have the right to dispose of that data.

23 Q When you were in office, did anybody in your
24 office or the technology people discuss the
25 possibility of separating public ballot data from the

1 proprietary security information so that when somebody
2 wanted, basically, for whatever reason, to examine the
3 way things were done, has anybody ever discussed that,
4 so there could be some kind of a wall of separation?

5 A I think we had that discussion in some
6 litigation out of DeKalb County where we were willing
7 to give any of the ballot information, produce the
8 individual paper copies of every individual ballot,
9 but not the security systems that could jeopardize the
10 security of the entire system.

11 Q What did Britain Williams advise you about
12 the audit trail capabilities of the machines being
13 piloted and the ones under evaluation when you were
14 deciding which system to go with?

15 A In what period of time?

16 Q In '02.

17 A After the pilot project when we were
18 considering a permanent purchase of equipment?

19 Q Yes.

20 A That's when we went through the discussion
21 that obviously Georgia law required and we were not
22 interested in purchasing anything that did not meet
23 national certification standards. There was no type
24 of system available to us that had a voter verified
25 paper trail that met standards. That was not going to

1 be anything that we were going to receive in a bid.

2 But we did know that we wanted from the
3 systems a paper audit mechanism which the Diebold has
4 so we could monitor any kind of transactions --
5 anybody turns on the machines, anybody turns off the
6 machines, any tampering with the machines. Any kind
7 of mischief would be recorded on that paper audit log.

8 That's why you have to have a continuous
9 tape from the time you turn on the machine in the
10 morning until the end of the day when you get the
11 voter printouts.

12 Q Do you know what the difference in federal
13 certification status was between Diebold and Avante
14 and TrueVote systems?

15 A No, I don't.

16 Q Have you read the Princeton University
17 Security Analysis of Diebold, AccuVote-TS machines,
18 the study that was done in '06?

19 A I doubt it.

20 Q I believe there was a Johns Hopkins Analysis
21 on electronic voting systems done in '04?

22 A I have seen some of the Johns Hopkins. I
23 don't know if it was '04 or earlier.

24 Q Have you read the California Secretary of
25 State's staff investigation of the Diebold systems?

1 A Only summaries.

2 Q And the California decertification and
3 withdrawal of approval of Diebold?

4 A I haven't read the entire report.

5 Q But you are familiar with it.

6 A I'm familiar with the action.

7 Q The Ohio Secretary of State DRE Technical
8 Security Assessment Report of '03. Are you familiar
9 with that?

10 A I know that it happened. I don't know that
11 I read the entire report. I talked to some of my
12 election staff about it.

13 Q Are you familiar with the Maryland
14 Legislative Service's Trusted Agent Report of '04?

15 A Only in a generally sense.

16 Q And the State of Maryland SAIC Risk
17 Assessment Report?

18 A Actually, I may be more familiar in general
19 terms with the latter report.

20 Q How about the Nevada Electronic Systems
21 Division, Diebold Voting Machines Security Report of
22 '03? Are you familiar with that one?

23 A I'm not sure about Nevada.

24 Q University of California Security Analysis
25 of Diebold AccuBasic Interpreter? Are you familiar

1 with that?

2 A Just generally.

3 Q Do you know that those reports reference the
4 federally certified Diebold systems?

5 A Well, Diebold has a lot of different
6 systems. None of the systems covered in any of those
7 reports, to the best of my knowledge, match exactly
8 the system used in Georgia.

9 Q Do any of them reference the Diebold
10 AccuVote-TS system?

11 A I think some did make reference and
12 investigated a similar hardware as used in Georgia but
13 not the same software that we are using.

14 Q When these reports would come out, would you
15 talk to Britain Williams or any of the technology
16 people?

17 A (Nods affirmatively.)

18 Q What was the feedback that you were getting
19 from them on these reports?

20 A In many of the reports we were very, very
21 troubled by the protocols used in the studies which
22 were not at all connected to reality.

23 A lot of them contemplated somebody going
24 into a polling place and being able to turn over a
25 voting machine, take out a screwdriver or hammer or

1 something and literally open up the machine in the
2 middle of election day like nobody would notice it.

3 And yeah, if you don't have any protocols in
4 place at your polling places to watch what's going on,
5 I would agree just about anything would happen. But
6 that's so not connected to reality. That's so
7 far-fetched that we always would go back and review
8 our security protocols to make sure that our testing
9 mechanisms were as sophisticated and as thorough as
10 possible, to make sure that all our protocols on
11 election day were in place and that we were adequately
12 training counties on what to watch for and how to
13 maintain the checks and balances in place.

14 So we always felt good about our systems.
15 But these reports did give us opportunities to go back
16 and review and look for ways to further strengthen our
17 systems.

18 Q If somebody took a screwdriver and opened
19 the back of one of the machines, would that be on the
20 report at the end of the day?

21 A Yes. If they tried to access the memory
22 card, yes.

23 Q If somebody tried to use a magnetic thing to
24 vandalize the machine, would that be on the printoff
25 at the end of the day?

1 A My understanding is it would if that could
2 happen.

3 Q I don't know if it could happen or not.

4 A I don't know either. But my understanding
5 of national certification is some kind of magnetic
6 test is to make sure that that nice little science
7 fiction hypothetical can't really happen in the real
8 world.

9 Q Can you identify by Code Section or the name
10 of the act any state law that requires that you only
11 use federally certified voting equipment?

12 A I think it's probably in the rules and
13 regulations as opposed to the actual statutes.

14 Q Do you know if there is a federal law that
15 says, for example, in a federal election that you have
16 to use --

17 A I don't think there is.

18 Q Even the Help America Vote Act didn't come
19 up with some requirement?

20 A I don't think it did. It's been an option
21 for states. And Georgia was one of the first states
22 to start using and following the standards and
23 requiring them. But my understanding is even today
24 there are some states that blow off the standards.
25 Very foolish. But my understanding is on the federal

1 standpoint it is not required. I would never, ever,
2 ever recommend that Georgia go there.

3 Q Do you know what the difference is between
4 the terms blank voted and undervote as they are used
5 on voting machine tally tapes?

6 A Not really. Undervote is not really a
7 legally defined term. It is just a matter of knowing,
8 for example, if you know 100 people went into a
9 polling place to vote and the top race on the ballot
10 showed that 98 votes registered, then you had a
11 2 percent undervote.

12 That undervote typically increases as you go
13 down the ballot. Just by experience people are less
14 interested in lower-down ballot races than they are on
15 the top race on the ballot.

16 Q Do you know what the term, residual vote
17 rate, means? Are you familiar with that term?

18 A I have heard the term. But you would need
19 to put it in context for me.

20 Q There was a 2004 Caltech/MIT study that
21 talks about residual vote rate. Would you know what
22 that is?

23 A Not without a context, no.

24 Q Do you remember the Caltech/MIT study at
25 all?

1 A Yes.

2 Q Do you remember what aspects of the voting
3 machines it evaluated?

4 MR. RITTER: You are talking about the
5 earlier Caltech studies?

6 MR. CHANDLER: In '04.

7 THE WITNESS: Caltech and MIT evaluated
8 2000 and 2004. There were two Caltech/MIT
9 studies.

10 BY MR. CHANDLER:

11 Q Do you know what aspects of the machines
12 they evaluated?

13 A I don't know what aspects of the machines
14 they evaluated. They were really focusing a lot on
15 the accuracy rates with this undervote in the
16 presidential election. To what extent they got into
17 the nuts and bolts of the equipment, I really just
18 don't know.

19 Those two studies showed that Georgia went
20 from a 3-1/2 percent undervote rate in 2000, which
21 they ranked to be the second worst in the nation in
22 2000, to 0.2 or 0.3 percent, something like that, in
23 '04, which they ranked to be the second best in the
24 nation.

25 Q Is that because of the top-end vote?

1 A The presidential race only.

2 Q Which we can assume everybody that comes in
3 has an opinion about what they want to do on that.

4 A More so than anything else on the ballot.
5 That's why we have the highest turnout in presidential
6 election years.

7 Q Do you know of any independent studies that
8 uphold the accuracy of vote recording and tabulations
9 of Diebold machines other than the ones that you have
10 done in your office?

11 A I don't know.

12 MR. CHANDLER: I would like to take
13 about a five-minute break to go over things
14 with my clients. We might be just about
15 finished.

16 (A recess was taken from 3:15 to 3:26.)

17 BY MR. CHANDLER:

18 Q First, wasn't the governor required to sign
19 the election reform bill in 2002 prior to the contract
20 being awarded to Diebold?

21 A I don't know that that was required.

22 Q You don't know if the original contract had
23 something like pending government approval we will do
24 this?

25 A I don't remember that language. Obviously

1 we couldn't spend money unless we knew we had money,
2 and I was talking to the governor every single day
3 about where we were on funds.

4 Q I'm going to have to move around, but these
5 will be our final questions.

6 How can election officials verify at the
7 conclusion of each election that the security testing
8 done on each voting machine and the servers was
9 actually successful in protecting the accuracy of the
10 vote recording and tabulations?

11 A Well, you may need to ask my election
12 officials all the details of the checks and balances
13 we have in place. But part of the process of how you
14 know it works is what happens before election day.

15 After you do the logic and accuracy testing,
16 the machines are actually locked up with a numbered
17 seal that must be in place and verified on the morning
18 of election day to know that there was no tampering or
19 any access to the voting machine after the machine
20 passed the logic and accuracy test.

21 So that's a very, very important test. If
22 the seal has been broken, the machine cannot be used
23 on election day.

24 Part of the wrap-up process that the poll
25 workers do at the end of election day, and all of the

1 various steps you have in checking -- the numbered
2 lists of voters, finding your name on the voters'
3 list, all of those kinds of things -- have to be
4 reconciled on the wrap-up kind of paperwork that the
5 poll workers do at the end of the day to verify that
6 the total number of votes cast equals the number of
7 people who came through the door and cast ballots
8 minus any votes that got voided during the day and all
9 of kind of things which is part of the documentation.

10 That whole process, all of which is spelled
11 out in statute and in rules and regulations, go into
12 making sure that everything balances at the end of the
13 day. And I don't mean literally the end of the day.
14 It takes literally a week to do the entire
15 certification process.

16 Q In Georgia we have the right to use paper
17 absentee ballots; is this correct?

18 A That's authorized. The individual voter
19 doesn't have the right to choose a ballot. But
20 counties can use an optical scan absentee ballot, or
21 they can allow absentee ballots to be cast on the
22 electronic machines.

23 Q And also we allow advance voting on paper?

24 A It is the same process. The county has the
25 option. If they want the advance or absentee ballots

1 to be counted on optical scan ballots, they can do
2 that. If they want absentee and advance ballots to be
3 cast on the machines, they can choose that option.

4 Q But the person that's absent can't cast the
5 ballot on the machine?

6 A No. It has to be a person that sent the
7 ballot. But you call absentee voting what happens
8 between 45 days and up to election day under certain
9 circumstances.

10 Q And so those ballots, they can actually
11 provide physical evidence of voter intent, the paper
12 ballots that are produced in that situation?

13 A If the county chooses to allow absentee or
14 advance voting on optical scan ballots, they will have
15 the optical scan record, which the voter marks.

16 Q If there was no paper evidence provided by
17 an independent audit trail, let's say an independent
18 VVPT type audit trail or whatever that thing is, how
19 could the governing authorities move to investigate or
20 prosecute allegations of electronic vote fraud
21 perpetrated by way of software tampering?

22 A Well, you have to have some evidence it
23 occurred first. That's why we have all of this
24 testing in place. That's why we have protocols and
25 laws in place about how the machines are even stored

1 in the years and months between election cycles. All
2 of that has to go into how we can prevent it, which is
3 far better than ever having to prosecute it.

4 Q We mentioned a bunch of studies that you
5 acknowledge you are familiar with. If you haven't
6 read the entire study, you have read most of the
7 study. Why do you believe that the studies would lack
8 validity relative to Georgia systems and machines?
9 Why do you think that those studies require that the
10 Georgia system would have to be configured exactly
11 similar to the system that was being tested?

12 A Well, the biggest problem with a number of
13 the studies was the circumstances under which they
14 were conducted. In other words, they would contend
15 that somebody could hack into a machine in certain
16 circumstances that don't exist in Georgia because we
17 have protocols to prevent those.

18 They would suggest that you could do X, Y,
19 and Z to the machines, and we have testing to detect
20 whether those kind of things had ever occurred. There
21 are so many things about the way our whole structure
22 is set up that make it not an apples-to-apples
23 comparison.

24 MR. CHANDLER: I believe that's all the
25 questions we have. Thank you very much. I

1 appreciate it.

2 (Deposition concluded at 3:45 p.m.)

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ERRATA SHEET

I, the undersigned, CATHY COX, do hereby
certify that I have read the foregoing
deposition and that to the best of my
knowledge, said deposition is true and
accurate (with the exception of the following
corrections listed below).

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CATHY COX

Sworn to and Subscribed before me

_____, Notary Public.

This _____ day of _____, 2007.

My Commission Expires:

DISCLOSURE

STATE OF GEORGIA
COUNTY OF FULTON

DEPONENT: CATHY COX

Pursuant to Article 8.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter.
I am here as an independent contractor.

I was contacted by Walker Chandler/Sharon J. Ruschell to provide court reporting services for this deposition. I will not be taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-37(a) and (b).

I have no contract/agreement to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

Deborah H. Weigel, CCR-B-1407
Certified Court Reporter

1 C E R T I F I C A T E

2

3 G E O R G I A:

4 FULTON COUNTY:

5 I hereby certify that the foregoing

6 transcript was taken down as stated in the caption.

7 The witness was duly sworn to tell the truth, the

8 whole truth, and nothing but the truth. The

9 colloquies, statements, questions and answers

10 thereto were reduced to typewriting under my

11 direction and supervision and the transcript is a

12 true and correct record of the testimony/evidence

13 given by the witness.

14 I further certify that I am not a relative

15 or employee or attorney or counsel of any of the

16 parties, nor am I a relative or employee of such

17 attorney or counsel, nor am I financially interested

18 in the action.

19 This the 11th day of July 2007.

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DEBORAH H. WEIGEL, CCR-B-1407