

18

JONATHAN BRATER

19

MS. BLOOMQUIST: Raise your right hand

20

please? Do you solemnly swear or affirm that the

21

testimony you're about to give will be the truth, the

22

whole truth, and nothing but the truth so help you

23

God?

24

THE WITNESS: I do.

25

MS. BLOOMQUIST: Do you also swear or

1 affirm that you will keep your testimony here today
2 and the proceedings here today secret?

3 **THE WITNESS: I do.**

4 MS. BLOOMQUIST: You may have a seat.

5 EXAMINATION

6 BY MS. BLOOMQUIST:

7 Q. Would you state and spell your name for the record?

8 **A. Sure. My name is Jonathan Brater, J-o-n-a-t-h-a-n,**
9 **B-r-a-t-e-r.**

10 Q. Mr. Brater, this is a grand jury investigation into
11 the undue possession of voting machines and you have
12 just taken an oath to tell the truth.

13 Do you understand if you do not tell the
14 truth you can be prosecuted for perjury?

15 **A. Yes.**

16 Q. You've also just taken an oath to keep these
17 proceedings secret. Do you understand that that means
18 you cannot tell anybody what happens in this room
19 during the course of your testimony?

20 **A. Yes.**

21 Q. If you violate that secrecy provision you could be
22 charged with a crime or imprisoned in jail?

23 **A. I understand.**

24 Q. Do you understand that you have the right to have an
25 attorney present with you while you give testimony and

1 if you cannot afford an attorney the judge, upon your
2 request, will appoint an attorney to represent you at
3 public expense?

4 **A. Yes.**

5 Q. Do you still wish to proceed without an attorney?

6 **A. Yes.**

7 Q. So now that the formalities are out of the way, would
8 you introduce yourself to the jurors, tell them where
9 you're employed, and what your title is?

10 **A. Sure. My name is Jonathan Brater I'm the director of**
11 **the Bureau of Elections, which is part the Michigan**
12 **Department of State, so the Bureau of Elections works**
13 **for the Secretary of State, who is the chief election**
14 **officer of the State of Michigan and the Bureau of**
15 **Elections, which I run, is responsible for other**
16 **things, enforcing and instructing election officials**
17 **on the requirements of the Michigan election law.**

18 Q. With the Secretary of State being the chief election
19 officer, is there a duty imposed on local municipality
20 or county clerks to follow the instructions by the
21 Secretary of State?

22 **A. Yes, as the chief election officer for the state the**
23 **Secretary of State has supervisory control over**
24 **election officials insofar as their duties fall under**
25 **the Michigan election law. In Michigan our elections**

1 are run by locally-appointed or elected city,
2 township, or county clerks, and so those individuals
3 don't report directly to the Secretary of State but
4 when they are enforcing the Michigan election law they
5 do have to follow the instructions of the Secretary of
6 State under the Michigan election law and I am vested
7 with the authority of the Secretary of State as the
8 Bureau of Elections to also provide those
9 instructions.

10 Q. So you give the instructions. Are you active in
11 creating the instructions and making sure they comply
12 with certain standards?

13 A. Yes, we have a very extensive curriculum of training
14 and instruction that we provide to local election
15 officials so folks have to undergo an accreditation
16 training upon taking office, they also have to take
17 continuing educational requirements over the years,
18 including during each election cycle, so the Bureau of
19 Elections develops and provides those training
20 materials, both in person and online, and then we also
21 provide additional materials, such as instruction
22 guides, memoranda, and other items as needed over the
23 course of the year.

24 Q. And as part of that initial training is the physical
25 security of election equipment discussed?

1 **A. Yes.**

2 Q. Okay. So that's something that is specifically
3 trained on for clerks?

4 **A. Yes.**

5 Q. Okay. Now that we have that, I'm going to circle
6 back. How long have you been director of the Michigan
7 Bureau of Elections?

8 **A. Since January of 2020.**

9 Q. What's your background, your education and training,
10 can you explain that to the grand jury?

11 **A. Sure. I have a law degree from Michigan Law School**
12 **and prior to working at the Department of State, prior**
13 **to working at the Bureau of Elections I worked for one**
14 **year in the Michigan Department of State in a**
15 **different role as legal policy director, and prior to**
16 **that I worked at the Brennan Center for Justice, which**
17 **is a nonprofit, it's part of NYU Law School that works**
18 **on election issues.**

19 Q. And so you've been -- you've been intimately working
20 with election law for how many years would you say?

21 **A. I would say for about 12 years in the legal context.**

22 Q. Okay. You mentioned initial training for clerks.
23 What does the continuing education look like, what are
24 the guidelines for how often or how many hours?

25 **A. So every election cycle we'll do what we call election**

1 cycle training and that's basically the continuing
2 education requirement so that is several hours and,
3 again, it can be done in person or online but it
4 reinforces the basics of election administration along
5 with some new and emerging issues so every year or
6 every two years we have things that come up, new laws
7 or technology that we have to train the clerks on and
8 so that process is at least several hours of training
9 that the clerks have to do every election cycle.

10 Q. Are you also involved in the process of how the
11 physical voting systems get from the manufacturer to
12 the municipalities?

13 A. Yes.

14 Q. So let's walk through that and I'll sort of target
15 this, let's specifically talk about ES&S. Those
16 machines are purchased by a municipality from the
17 company, correct?

18 A. That's correct.

19 Q. And I believe there was a question at some point as to
20 who is the holder of the ownership or the title, for
21 lack of a better word, who holds the title to that
22 machine?

23 A. In most cases it would be the city or township.

24 Q. Is that title -- are there sort of conditions on that
25 because of the type of equipment it is?

1 A. Yeah, so the way that voting equipment gets to the
2 city or townships in Michigan goes through a few
3 steps. Each voting system manufacturer, including
4 ES&S, first has to have their equipment reviewed and
5 tested by the federal voting system test laboratory,
6 which is accredited by the National Institute of
7 Standards and Technology to ensure they have the right
8 expertise to review that equipment so after it goes
9 through that process, the Federal Election Assistance
10 Commission, which is a bipartisan body of two
11 democrats and two republicans, will review the
12 equipment and then before it can be used in Michigan
13 it has to be certified by the Board of State
14 Canvassers, which is also a bipartisan body that has
15 two democrats and two republicans, that is totally
16 independent of the Secretary of State and the Bureau
17 of Elections basically provides staffing assistance to
18 that body so before equipment can be used in Michigan
19 we test it as well and then that board has to approve
20 it.

21 Under the election law, once equipment has
22 been certified for use in Michigan, in each county the
23 county clerk consults with the city and township
24 clerks in the county's jurisdiction and they select
25 which equipment will be used or which vendor, in this

1 case ES&S, will be used in their county and then in
2 general the cities and townships will purchase
3 whatever equipment they need, although there are some
4 cases where the county will purchase it and then
5 allows the city or township to use it, but that's not
6 what happens usually, usually it is the city or
7 township, and then there are licensing agreements,
8 there's a contract between the state and the voting
9 system vendors, as well as the counties, and then the
10 cities and townships, that basically govern the way
11 that the cities and townships can use that equipment.

12 Q. So let's just hypothetically say somebody off the
13 street wants to purchase a tabulator from ES&S, is
14 that possible?

15 A. No, not generally, not that I'm aware of anyway. No.

16 Q. I guess to be more specific, if they wanted to
17 purchase a tabulator that was in a certified state, if
18 some citizen, nonelection, non-clerk related, wanted
19 to purchase a tabulator in a certified state, is that
20 possible?

21 A. Not that I know of.

22 Q. Okay. Now, you've talked about the certification at
23 the federal level, at the state level. How many
24 manpower hours go into each machine before they even
25 get to the municipality?

1 **A.** I would estimate the entire process, from testing from
2 federal level and the state level, would probably be
3 dozens or hundreds of hours per machine. Our testing
4 alone usually takes a couple of days when we do the
5 certification of a system. To be clear, we don't test
6 every single machine before it goes out in the field,
7 that's done at the local level but our process will
8 take at least dozens of hours to go through, and then
9 at the local level for each election each machine is
10 tested for use. If you add all those things up it
11 would probably be in the hundreds or at least in the
12 dozens of hours.

13 **Q.** So are you aware what the unit price on average is for
14 a tabulator, just the machine itself?

15 **A.** For a standard tabulator it's usually between \$5,000
16 and \$6,000.

17 **Q.** Is it fair to say that when you factor in all the
18 hours of work, testing and certifying them, that is a
19 much higher value?

20 **A.** Yes.

21 **Q.** Could you put a number at all on how much time is
22 spent and put a value on that at all?

23 **A.** It would be difficult for me to give you a reliable
24 estimate on that. I don't know what the salaries and
25 wages are at the local jurisdictions but if you would

1 just assume it's, say, an average of 20, \$30 an hour
2 for the staff and they're working 100 hours, that
3 would be several thousand, I'm not going to try to do
4 the math, but several thousand dollars more at least.

5 Q. And that's on top of the initial base price?

6 A. Right.

7 Q. To your knowledge, you mentioned licensing agreements
8 and things like that between the vendor and the
9 clerk's office, do you recall saying that?

10 A. Yes.

11 Q. Do you know if there's any provisions in ES&S's
12 standard contract about maintaining the security of
13 the device?

14 A. I believe there is. There is certain language in
15 there that says that the owner of the equipment has to
16 use it under certain restrictions, that they have to
17 maintain it in a certain way, cannot share the
18 equipment or the software.

19 Q. Okay. So it sounds like there's an instruction from
20 the Secretary of State that these are to be maintained
21 securely, correct?

22 A. Correct.

23 Q. There's some -- likely some provision in the user
24 agreement --

25 A. That's right, yes.

1 Q. -- to not -- to keep these secure?

2 A. Yes.

3 Q. Okay. So let's sort of move on to generally how these
4 machines are readied for an election. So they leave
5 ES&S, they go through the federal and state testing,
6 they're distributed to our local clerks.

7 Can you sort of tell us, just to help
8 explain sort of briefly, there's a county Election
9 Management System that's then created, correct?

10 A. Correct.

11 Q. And that's on a computer?

12 A. Correct.

13 Q. And there's the tabulators?

14 A. Correct.

15 Q. And the way that those -- the EMS talks to, for lack
16 of a better term, the tabulators is through USB
17 drives --

18 A. Correct.

19 Q. -- at least initially, correct?

20 A. Yes.

21 Q. There's two separate USB drives for each system, is
22 that fair to say?

23 A. I believe that's correct.

24 Q. Would it be -- is it fair to say that that might be a
25 better question for somebody from ES&S?

1 **A.** I think so. For each -- we have three voting system
2 vendors and they have slightly different
3 configurations so I couldn't say for sure but I think
4 there are generally two drives.

5 Q. Are you aware of something called an EQC stick, have
6 you heard that phrase at all?

7 **A.** **Yes.**

8 Q. And that's -- and then another USB election media?

9 **A.** **Yes.**

10 Q. Those are sort of devices, to your understanding, and
11 we can get into this further with other individuals,
12 that contain the data from the management system?

13 **A.** **Right, generally there's a device, a USB device, that**
14 **is put in the computer, the county Election Management**
15 **System Bureau, and the counties have those, and they**
16 **use those to program each election so basically that**
17 **provides the instructions or the information to the**
18 **scanner, it's basically a tabulator, it's a scanner,**
19 **about how to read the ballots, so that's a program at**
20 **the county level put on a stick and then the stick is**
21 **put in the tabulator to tell the tabulator how to read**
22 **the paper ballot.**

23 Q. Based on the instructions that you give the local
24 clerks, are there requirements that those sticks be
25 maintained securely as well?

1 **A. Yes.**

2 Q. Do those contain quite a bit of data?

3 **A. They contain all the programing that tells the**
4 **tabulator how to read the ballots so I couldn't tell**
5 **you how much data is on there but it includes the**
6 **programing.**

7 Q. It includes data that your bureau has designated as
8 important enough to secure?

9 **A. Yes.**

10 Q. Okay. Now, I want to sort of jump into the seals on
11 these devices. When are seals put on them and what do
12 they -- what do they designate?

13 **A. Well, there's a couple of different situations in**
14 **which seals are used. Generally speaking, the**
15 **equipment, certainly during an election period, so**
16 **periods of time when it is being tested before the**
17 **election, the seals are basically designed so that**
18 **there's a number on them and that you can't open them**
19 **without breaking them so they're called tamper**
20 **evidence seals so those are used just in a period of**
21 **time where we want to make sure that the -- if anybody**
22 **opens or accesses that machine that would be known**
23 **because the seal would be broken.**

24 There are also seals that we recommend they
25 use during the storage of the equipment between

1 election periods but they're most commonly used during
2 the election periods and then there are other seals
3 that are placed on ballot containers, so for basically
4 the same reason before -- or between an election and
5 when the election is canvassed and certified, those
6 seals are put on the ballot containers to make sure if
7 someone opened them we know that.

8 Q. When you're speaking of ballot containers, are you
9 talking about the clamshells that these devices sit
10 in?

11 A. I was actually talking about the containers that the
12 paper ballots go in but those are also sealed.

13 Q. So turn around and look at the screen here. Do you
14 recognize that?

15 A. Yes.

16 Q. Is it fair to say that that is a tabulator inside of a
17 clamshell stand?

18 A. Yes, I believe so.

19 Q. Are there also seals on those as well?

20 A. Yes.

21 Q. Those are done to ensure that if anybody has access it
22 becomes known, correct?

23 A. Correct.

24 Q. But that's not the containers you're talking about for
25 the ballots?

1 **A.** Right, I was talking about the ballot containers,
2 which would typically be inside of this housing here
3 where the ballots actually drop in and then after
4 election day that is sealed up so that no one can get
5 in and access the ballots until the canvasser's
6 certification of the election is complete.

7 Q. So there's actually another level of security within
8 the clamshell --

9 **A.** Right.

10 Q. -- of a box that then gets sealed?

11 **A.** Correct.

12 Q. Is the exterior of the clamshell where that access is
13 to that other ballot box, is that also sealed?

14 **A.** It can be, yes.

15 Q. Would that be the best practices if --

16 **A.** Yes.

17 Q. -- you would recommend that there be a seal on the
18 exterior of the clamshell?

19 **A.** Yes, certainly between election periods. Yes.

20 Q. So I want to -- do you mind just sort of showing the
21 grand jurors on this device here where the state seals
22 would be?

23 **A.** I'm not sure I --

24 Q. Feel free to stand.

25 **A.** Yeah, so there's a couple different ways, and just to

1 clarify, I'm not the voting -- the most expert at the
2 equipment, that's members of my staff would be the
3 ones that would do that, but there's a couple
4 different things that would be done. One is, this
5 device, this port where the USB goes in, you can use
6 what's called a PadJack, which seals that to make sure
7 that no drives can be put in there inappropriately and
8 I don't actually, to be honest, know where on this
9 device the seal would go if you were to seal it
10 directly.

11 Q. That's fair. I don't want you to make a guess if
12 that's someone else's duty in your bureau.

13 A. Sure.

14 Q. Ultimately, why are these seals important?

15 A. Well, in general, the restricting access to the
16 equipment is important because, as I discussed
17 briefly, before these can ever be used they need to go
18 through a specific certification process and when that
19 certification is done they're testing, not only the
20 hardware on the machines, but they're also testing
21 every aspect of the way they work, including the
22 computer programming that's used on the management
23 system that programs them and everything from a
24 printer to a monitor, all of that is certified in a
25 specific configuration, and so once that specific

1 version of the equipment is approved we need to make
2 sure it stays in that exact approved configuration and
3 even to the point where if a computer monitor that is
4 used with the Election Management System goes obsolete
5 and they need to replace it, we need to approve that
6 so it's very detailed so we want to make sure that in
7 between uses that no changes are being made to this
8 equipment.

9 If somebody who's not authorized or if
10 there's some unknown access to the equipment, there's
11 a few different things that can happen that cause can
12 problems, one is you can just damage the equipment,
13 you know, you saw that I was looking for where the
14 ports are, and so these are highly-specialized pieces
15 of equipment, if someone doesn't know what they're
16 doing and is messing around with it they can just
17 damage it.

18 Another thing is that if someone had
19 unauthorized access to it they could potentially
20 install some kind of malicious software or program
21 that can make it malfunction.

22 A third thing that can happen is, you know,
23 as we talked about earlier, you generally can't just
24 buy these off the street, you have to be an authorized
25 election official, and so if someone had unfettered

1 access to this equipment they could use that to design
2 some kind of attack on another piece of equipment and
3 the, you know, again, if we can't be sure that a
4 device is in the same certified configuration that it
5 was approved in, we're not going to allow that piece
6 of equipment to be used because we just can't
7 guarantee that it's going to work properly so
8 basically it would become a piece of junk that they
9 can't use anymore.

10 Q. And so do your recommendations about storing and
11 securing these devices, they apply before an election,
12 correct?

13 A. Yes.

14 Q. There's security measures in place during the
15 election?

16 A. Yes.

17 Q. How about after an election?

18 A. Yes, so there certainly is a heightened state of
19 security during the election period, meaning between
20 when ballots get programed and equipment gets
21 programed about two months before the election and
22 then all the way through the post-election period, Type text here
23 which includes the canvas that's done by the county
24 board of canvassers, any recounts that are requested,
25 and then any post-election audits that are done either

1 by our office or by county clerks. During that period
2 all equipment is secured so that's why there are extra
3 requirements about keeping things sealed, but even
4 after that when we release security, meaning that the
5 seals can come off the ballot containers and other
6 things like that, it's still important to ensure that
7 all the equipment is kept in a secure location and
8 that only authorized personnel can access it. So even
9 when we're not, quote/unquote, under security in an
10 election period, access is still restricted to this
11 type of equipment.

12 Q. So I just want to dive into under security a little
13 bit. So that's a specified or a specific period of
14 time after an election?

15 A. Correct.

16 Q. Is that something that's statutory or that your bureau
17 sets forth?

18 A. It's statutory but our instructions provide further
19 detail on it.

20 Q. That's a time frame where clerks are instructed to do
21 what?

22 A. Well, they're instructed, for one thing, to, you know,
23 as I mentioned the ballot containers, make sure that
24 the ballots are sealed in a container with a tamper
25 evidence seal and also the removable drive, the USB,

1 has to be in a sealed container that also has a tamper
2 evidence seal on it, and other materials used for the
3 programming have to be kept in a sealed place so that
4 everybody knows that no one has access to any of that
5 equipment if needed for -- for example, retabulating
6 something in the canvass if they determine the ballots
7 weren't tabulated correctly or for a hand recount of
8 ballots or if we need to access them during an audit,
9 we want to make sure that no changes have been made
10 since election day so that -- when under security
11 everything is in a very carefully controlled, sealed
12 environment.

13 Q. Okay. You mentioned the release of security, so when
14 does that typically happen following a November
15 election?

16 A. As soon as the audits are complete, so after we have a
17 canvass we then have -- the canvass takes about three
18 weeks, including the county canvass, the state
19 canvass, and then sometimes it takes longer because
20 you might have a recount. For example, in November of
21 2022 we had about a month-long recount period because
22 there was a recount that was requested for some
23 statewide ballot questions so that can extend the
24 process and then once that's done we will release the
25 security of equipment in jurisdictions where there

1 isn't an audit scheduled and then in those other
2 locations it will be released after the audit and the
3 audit period usually takes two or three weeks.

4 So, generally, depending on whether there's
5 a recount it can either happen for a November election
6 in mid to late December or it can also go into January
7 or February, depending what else happens.

8 Q. So when your department, quote/unquote, releases
9 security, does that mean there no longer needs to be
10 any security for the election system and ballots?

11 A. No, it means that they can take the ballots out of the
12 ballot containers, which they need to do because they
13 need to reuse those containers at the next election,
14 and put them into storage containers, it also means
15 that they can take the media drives with the
16 programing out of those sealed containers and put them
17 into storage containers. So they're no longer under
18 that tightly-sealed environment with these tamper
19 evidence seals that have to be preserved for that
20 election process but it still needs to be kept in a
21 secure location that only authorized individuals have
22 access to so release of security means they don't have
23 to have it in these specific preserved sealed
24 environments but they still have to have it secured
25 and locked down.

1 Q. So it's sort of like super-security and then security?

2 A. I think that's a fair summary.

3 Q. Extra secure post-election and then normal levels of
4 security, is that fair?

5 A. Yes.

6 Q. Okay. So I'm going to move specifically into issues
7 surrounding the November 2020 election. At some point
8 in time did you become aware of unauthorized access to
9 voting tabulators around Michigan, specifically in
10 Roscommon County?

11 A. Yes.

12 Q. Okay. When did you become aware of that issue?

13 A. I believe it was sometime in the middle of 2021, I
14 don't remember the exact date.

15 Q. Okay. How is it that you became aware?

16 A. A member of my staff spoke with the Roscommon County
17 clerk and she informed her of -- the Roscommon County
18 clerk informed a member of my staff that there had
19 been unauthorized access given to equipment in the
20 county.

21 Q. How did -- how did that make you feel?

22 A. Well, I was very concerned. The -- for the reasons I
23 mentioned. We spend a lot of time and effort on
24 making sure that this specific equipment used in
25 Michigan is under a certain set of requirements so it

1 has already gone through this federal process and
2 state process and so the idea that that equipment
3 might have been compromised certainly raised concerns
4 that the equipment in that county could no longer be
5 used but also if there were individuals that had
6 unfettered access to this equipment it also made me
7 concerned that they could exploit that access to
8 design ways to attack equipment in other parts of the
9 state or even other parts of the country because these
10 devices are used in other states as well so I was very
11 concerned about what that meant for the security of
12 equipment in that county going forward but also in
13 really the entire state and the entire country.

14 Q. Were you concerned about issues with elections in the
15 future because of this?

16 A. Yes, I mean, for one -- for one, there were questions
17 about what equipment could be used in that county and
18 it's very expensive, and two, this is the equipment
19 that we use statewide so we wanted to make sure that
20 it has as many safeguards as possible against an
21 attack.

22 Q. Do you know or are you aware of what status was
23 assigned to any tabulators that left the possession of
24 the clerks' offices?

25 A. I believe in all cases we determined that those were

1 no longer certified for use in Michigan. So, I mean,
2 I believe that many of them, as a practical matter,
3 were in the possession of law enforcement so they
4 couldn't be used anyway, is my understanding, but I
5 believe in each instance we -- for unauthorized access
6 we determined that that equipment could not be used.

7 Q. So what would the value of that device be once it's
8 decertified by the Secretary of State?

9 A. I think it would generally be worthless.

10 Q. You said -- and I apologize, I might be restating
11 this, you said for each of the devices that you were
12 aware were in unauthorized hands, were all
13 decertified?

14 A. I believe so. We would look at the exact
15 circumstances and so it might depend on if we knew
16 that all that happened was someone had touched the
17 machine, not opened it up, that may be different, but,
18 in general, when we -- when we learned that there's
19 been unauthorized access to the equipment and we don't
20 know what happened we will determine that that cannot
21 be used in Michigan.

22 Q. What about for a tabulator that actually had its
23 exterior removed and the insides looked at or
24 assessed?

25 A. In that situation I would certainly say it can no

1 longer be used in Michigan.

2 Q. Are you aware of the Michigan Bureau of Elections'
3 news updates that go out to local clerks?

4 A. Yes.

5 Q. I want to draw your attention to one that happened on
6 February 12th of 2021. Do you recall that news
7 update?

8 A. Yes.

9 MARKED FOR IDENTIFICATION:

10 PEOPLE'S EXHIBIT 24

11 11:00 a.m.

12 BY MS. BLOOMQUIST:

13 Q. For the record, this is a Michigan Bureau of
14 Elections' update dated February 12, 2021. Okay.
15 Do you recognize that document?

16 A. I do.

17 Q. Okay. What is it?

18 A. So this is a news update that the Bureau of Elections
19 provides to clerks and their staff across the state so
20 this is the primary method that we use to communicate
21 with our clerks. We have 1,520 sitting township
22 clerks and we have 83 county clerks and they have a
23 lot of staff as well so, generally, when we want to
24 get information out we will do that in these news
25 updates that go out every week or so.

1 Q. Does that news update give any specific directives
2 about maintaining security of voting equipment?

3 A. Yes.

4 Q. Could you just read what that statement is in that
5 document?

6 A. Sure. In this article, in this document there's an
7 article that the title is, Release of Security, and it
8 says, security of voting equipment, ballots, and other
9 supplies, from the November 3rd general election is
10 now released. Remember federal election ballots must
11 be retained under seal in a ballot bag or an approved
12 ballot container for 22 months. All jurisdictions
13 should consult the city, township, or county counsel
14 regarding any pending court orders, subpoenas, or
15 records request regarding these materials, please note
16 that only election officials, licensed vendors, or
17 accredited voting system test laboratories should be
18 granted access to voting equipment. Please see the
19 final release of security memo, which was issued to
20 county clerks for additional details related to the
21 release of voting equipment and election materials.

22 Q. So that went out to every Michigan clerk? i

23 A. Yes, as long as they were subscribed to the news
24 updates, they were supposed to be.

25 Q. Thank you. So just overall, under what circumstances

1 is a local clerk authorized to have a tabulator leave
2 their possession?

3 A. Well, if the individual or entity to which they're
4 giving up the device is authorized to have that, that
5 would be okay. So if it is going to ES&S or the
6 voting system vendor for maintenance, that would be
7 fine. If we requested at the Bureau of Elections for
8 some purpose for testing, that would be okay. If a
9 licensed contractor, subcontractor, that works for the
10 vendor was doing some maintenance on it, that would be
11 okay.

12 In other cases there's basically no
13 situation where that would be allowed, unless there
14 was some sort of legal requirement like a court order
15 or a law enforcement subpoena who seized it, that
16 would be the only other reason they could give up
17 possession of the device.

18 Q. To your knowledge, is there any authority for any
19 other governmental entity, absent a court order, to
20 obtain possession of these devices?

21 A. No.

22 MS. BLOOMQUIST: I think that had finished
23 my questions. Do any of the grand jurors have
24 questions?

25 JUROR: You know, the disclosure you read

1 from the February news update, that language that was
2 specified in there about who to release it to, is that
3 common language or was that added to that particular
4 update for specific reasons?

5 **THE WITNESS:** February 2021 was when that
6 update was released. I believe that additional
7 language about where it said, remember, only licensed
8 vendors, et cetera, can have access to that equipment,
9 I don't believe we had previously provided that
10 instruction as part of the normal release of security,
11 it wasn't new information but I believe we provided
12 that specific instruction because of concerns at the
13 time that there would be requests to make unauthorized
14 access to equipment.

15 **JUROR:** So when you included that language
16 had you already been made aware of potential, I guess,
17 incorrect access to the machines?

18 **THE WITNESS:** As I recall, I don't believe
19 we knew of -- as I recall, I don't believe we knew of
20 specific instances where it occurred but we were aware
21 of requests to access the equipment, which is, I
22 believe, why we put that in. I couldn't tell you for
23 sure, it was about two years ago, but I don't believe
24 at that time we were aware of any actual access, just
25 requests.

1 BY MS. BLOOMQUIST:

2 Q. So just to follow up on that, as soon as it gets
3 reported to you that there are requests, that caused
4 you concern just that there was a request?

5 A. Yes. Yes.

6 Q. And that caused you to provide this more of a, I
7 guess, clarification?

8 A. Yeah, I mean, in release of security happens after
9 every election, that's a standard instruction, but the
10 reason we added that, as I recall, is because of
11 concerns that there were individuals or entities going
12 around asking to get access to equipment.

13 JUROR: But that's something that's covered
14 in their training so this was kind of just like a
15 reminder to them, remember don't do this because you
16 already learned you're not supposed to or --

17 THE WITNESS: Right, we hadn't used those
18 exact words so we felt the need to further clarify
19 that as basically a reminder.

20 JUROR: So it didn't rise to the level of,
21 uh-oh, I need to get this out to every -- whoever is
22 subscribed to this news letter, we can just include it
23 in our regularly scheduled news update?

24 THE WITNESS: Yeah, that's the method, when
25 we communicate with all clerks that's the method we

1 typically do it.

2 JUROR: So you don't need to like start or
3 create a news bulletin, emergency kind of like --
4 anything like that, this was still within kind of sort
5 of unusual but still within the realm of what could be
6 considered or we should remind people but it isn't
7 something that needs to be, we don't need to ring the
8 bell on this yet?

9 THE WITNESS: At that time I believe the
10 only way we shared the information was in the news
11 update. After that we had several communications as
12 the issue continued to be a problem so we, I believe,
13 sent an e-mail at some point after that to clerks and
14 there was a memorandum sent to clerks, but at that
15 time the way news was updated was through that --

16 JUROR: And the memo and the various
17 communications that were sent out were specific to
18 this instance, they were not contained within other
19 messaging or there was no other messaging included?

20 THE WITNESS: That's correct.

21 BY MS. BLOOMQUIST:

22 Q. Does Lauri Braid, is she your employee?

23 A. Yes.

24 Q. To your knowledge, did she send out an e-mail
25 following this news update to local clerks?

1 **A. Yes.**

2 Q. Was the topic of that e-mail regarding who and -- who
3 can have access?

4 **A. That's correct.**

5 Q. Do you know when that happened?

6 **A. I think maybe April of 2021, around then.**

7 Q. Is it fair to say that the concern about unauthorized
8 access was growing in the early months of 2021 but you
9 hadn't heard of an actual breach yet?

10 **A. That's correct. Yeah, so I should say, I can't tell**
11 **you when I first heard of a -- I can't remember the**
12 **first time that we were informed of an actual -- an**
13 **actual access, it was sometime in 2021 but I couldn't**
14 **tell you the exact date.**

15 Q. However, from what I can gather from your testimony is
16 you were informed that somebody had requested access
17 in early 2021?

18 **A. Yes.**

19 Q. And was that access rejected?

20 **A. I don't know.**

21 Q. But it was reported to your division?

22 **A. Yes.**

23 Q. As you kept hearing reports of these requests, did
24 your concern grow?

25 **A. Yes.**

1 Q. That caused you to do the additional memos and more
2 targeted e-mails and directives?

3 A. Correct.

4 JUROR: Who authorizes the release of the
5 memos or the communications to the various subscribers
6 of this? Did you have to okay it or does someone have
7 permission to send it on behalf of the bureau?

8 THE WITNESS: I approve those.

9 MS. BLOOMQUIST: Any other questions?

10 JUROR: During your time in your position
11 have any other tabulators been removed unauthorized
12 from any other counties, cities?

13 THE WITNESS: I believe so. I don't know
14 if they've been removed necessarily. I believe there
15 have been other instances of unauthorized access other
16 than in Roscommon County.

17 JUROR: One last question. What happens to
18 a machine when it's decertified?

19 THE WITNESS: It can't be used.

20 JUROR: Right. So what happens to it, does
21 the township retain possession of it, does it get sent
22 back to your bureau, what happens to the actual
23 physical machine?

24 THE WITNESS: The city or township would
25 still own it so they would retain possession of it

1 unless, for example, law enforcement had it or there
2 was some agreement in the contract they have with the
3 voting system company that they have to send it back
4 but otherwise the city or township would just keep it.

5 JUROR: Would a decertified machine still
6 have to remain under lock and key and use the same
7 security or is that since it's essentially been
8 decertified by you not able to be used in an election,
9 is it still something that now all of the security
10 surrounding it has been removed?

11 THE WITNESS: So I don't believe that's a
12 question that we specifically answer but if I got that
13 question I would say you should still keep it secure
14 because there would still be concerns if someone got
15 inappropriate access to that that it could be studied
16 to design attacks against other devices.

17 JUROR: Just because it's decertified
18 doesn't mean it's not working?

19 THE WITNESS: Right.

20 JUROR: The municipality would still be
21 free to do whatever they wanted with that equipment,
22 knowing it could no longer be used for voting
23 purposes, if they wanted to sell it on eBay for \$500
24 they could, it would probably be strongly discouraged
25 but not against the law?

1 THE WITNESS: I believe that that would
2 probably violate their licensing agreement with the
3 voting system vendor to do that and we would -- we
4 would say that that would violate their -- again, we
5 haven't gotten these specific questions but what we
6 would say if we got that question is that that would
7 still violate the need to keep these secured and only
8 accessible for authorized personnel, whether or not
9 it's one that's being used or not.

10 JUROR: You mentioned in one of your news
11 updates that the reason for that is to always give new
12 emerging things because, obviously, the world is
13 changing and the laws don't change unless they're
14 rewritten. Since then have you made any changes or
15 any recommendations to municipalities with respect to,
16 not only storage of certified machines, but
17 decertified machines?

18 THE WITNESS: Well, we have provided
19 additional training and instructions on maintaining
20 physical security devices over the last two years in
21 response to some of these events. Again, we -- I
22 don't believe there's anything specific in there
23 about, also make sure that any equipment that has
24 become decertified is stored but if we got that
25 specific question we would say, yes, you have to keep

1 that under lock and key as well.

2 BY MS. BLOOMQUIST:

3 Q. I guess to follow up on that, have there been
4 additional procedures or programs or initiatives
5 through your bureau to help assist local clerks in the
6 physical security of their devices?

7 A. As I noted, we have provided some additional training
8 materials, including a best practices document for
9 physical security in terms of, you know, locking
10 things up, installing security cameras, providing
11 additional security tools, like the PadJack device
12 that I talked about, and then also we made funding
13 available to enhance, among other things, physical
14 security so we used some funding that's available
15 under the federal Help America Vote Act to allow
16 jurisdictions to be reimbursed for costs associated
17 with security upgrades including locks and cameras and
18 things like that.

19 Q. So let's say a local municipality was keeping their
20 tabulators in an unlocked closet, if they currently, I
21 guess, after all of this 2021 unauthorized access, if
22 they now reached out to you and requested assistance
23 in securing those you'd be able to provide funding for
24 locks and cameras in their location?

25 A. Yes.

1 MS. BLOOMQUIST: Anything else?

2 JUROR: How many vendors are there of these
3 tabulators, Dominion, ES&S?

4 THE WITNESS: In Michigan there are three,
5 there's ES&S, which is used in 7 counties, Hart
6 InterCivic used in 11 counties, and then there is
7 Dominion, which is used in 63 counties. Those are the
8 three biggest vendors in the country, there's a couple
9 others but they're not used in Michigan.

10 MS. BLOOMQUIST: Thank you so much for your
11 time.

12 (Off the record at 11:14 a.m.)