

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM**

WILLIAM BAILEY

Plaintiff

Case No. 20-9238-CZ

v.

ANTRIM COUNTY

HON. KEVIN A. ELSENHEIMER

Defendant

SECRETARY OF STATE JOCELYN
BENSON

Intervenor-Defendant.

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EXHIBITS 11-18

**PLAINTIFF'S COLLECTIVE RESPONSE TO DEFENDANTS' and NON-PARTY
COUNTIES' MOTIONS TO QUASH AND FOR PROTECTIVE ORDERS**

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: April 9, 2021

/s/ Matthew S. DePerno _____

Matthew S. DePerno (P52622)

Attorney for Plaintiff

Exhibit 11

More Lessons From VW: How Not to Do a Litigation Hold

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More Lessons From VW: How Not to Do a Litigation Hold

By [Casey C. Sullivan, Esq.](#) on January 25, 2017 1:05 PM

There's [plenty in-house attorneys can learn](#) from Volkswagen's emissions fraud scandal: the role of the private organizations in enforcing regulations, the teeth in the Clean Air Act, the [strange overlap](#) between copyright law and defeat devices.

But ever since the automaker's [\\$4.3 billion settlement](#) with the Department of Justice two weeks ago, we've all been fixated on one thing: the role of one VW in-house attorney in bungling a litigation hold, resulting in destroyed documents and implicating the attorney in obstruction of justice. The lawyer, known only as "Attorney A," may still be under investigation.

Attorney A and Deleted Docs

The [statement of facts](#) attached to the VW plea agreement details Attorney A's role in the destruction of thousands of documents during the government's investigation. Attorney A worked out of Volkswagen's headquarters in Wolfsburg, Germany.

In August, as the emissions scandal was unfolding, Attorney A received an email from his U.S. counterparts, notifying him that a litigation hold would be issued in the coming days. Attorney A met with VW engineers to discuss defeat devices and, according to the statement of facts, told them to "check" their documents, "which multiple participants understood to mean that they should delete documents prior to the hold being issued."

A similar meeting soon after also resulted in employees checking, then deleting their docs. The attorney later advised some employees against saving relevant documents to VW's system, telling them to instead keep information on a separate USB drive.

Some VW workers even reached out to colleagues at other companies to make sure that information in third party possession was also destroyed.

Thousands of relevant documents ended up being deleted, though [most were able to be recovered later](#).

Ad

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Does "Check" Mean "Destroy"?

The attorney's actions could make him an unindicted co-conspirator, according to the [National Law Journal's Sue Reisinger](#). Already, six VW employees have been indicted on criminal charges related to the emissions fraud, while federal attorneys have said that investigations into unindicted co-conspirators [are continuing](#).

The key takeaway for in-house counsel: don't instruct employees to destroy information that's about to come under a litigation hold.

Or, giving Attorney A the benefit of the doubt, make sure that employees don't misinterpret your instructions, reading "check" as "destroy." Make sure, too, that such instructions are clear to anyone who might have access to relevant documents. By the end of VW's doc deletion spree, approximately 40 employees had destroyed documents, including several employees who had never met with Attorney A directly, but simply became aware of his "recommendations."

Have an open position at your legal department? [Post the job for free on Indeed](#), or [search local candidate resumes](#).

Related Resources:

- [More VW Executives Could Be Charged, Court Documents Suggest](#) (The New York Times)
- [EPA Accuses Fiat Chrysler of Using Hidden, Polluting Software](#) (FindLaw's In House)
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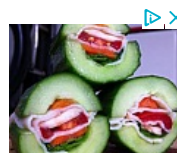
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Exhibit 12

VW's \$4.3BN Plea to Obstruction for Botched Litigation Hold



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VW's \$4.3BN Plea to Obstruction for Botched Litigation Hold

One of three counts in Volkswagen's recent \$4.3 billion guilty-plea was for obstruction of justice arising from a litigation-hold botched by house counsel.

As VW prepared to admit the defeat-device problems to US regulators, VW Group of America ("GOA") informed VW AG of a forthcoming litigation hold. The litigation holds were not issued simultaneously across the enterprise: VW GOA proposed its hold on August 26, 2015 but issued it on August 28. VW AG's corresponding hold was proposed on August 31, and issued September 1.

In the interim, in-house counsel Attorney A communicated with engineers and other custodians who would be subject to the holds. During these meetings, Attorney A: (a) tipped the custodians to the forthcoming holds; (b) "again told the engineers that the hold was imminent and recommended that they check what documents they had"; (c) and told them to keep newly-created, potentially harmful documents on thumb-drives and save final versions on the network "only if necessary."

While "there will be a hold, see what you have" perhaps could be well-meaning, the Plea Agreement's Statement of Facts recites "that several employees understood [the statements] as suggesting the destruction of these materials"; in fact, at least 40 people subsequently destroyed documents.

Although VW discovered and self-reported the document destruction – even forensically recovering some – the obstruction became a material part of the government's case.

If the circumstances sound familiar, they should. It's a variation on the obstruction issue that felled Arthur Andersen during the Enron scandal. *Arthur Andersen LLP v. United States*, 544 U.S. 696 (2005) (reversing obstruction conviction based on document destruction in advance of imminent litigation hold).

The VW case provides these take-aways for litigation holds:

- Issue litigation holds simultaneously across the enterprise, not seriatim among differing entities or custodians.
- The more pre-issue discussion of a hold (even among counsel), the more likely it is to leak.
- Don't "tip" custodians to forthcoming holds, because nothing good can come of it. *Corollary*: If you know enough to "tip" about an impending hold, it's time to just issue the hold.
- When communicating to custodians about a litigation hold, always do so in writing and repeat their duty to preserve.
- Don't alter normal business practices post-hold (save for routine internal-investigation and privilege / work-product protocols).

United States v. Volkswagen AG, No. 16-20394 (USDC EDMI Jan. 11, 2017) (Third Superseding Indictment and Plea Agreement at ¶¶ 73-82). DOJ's Jan. 11, 2007 Release is [here](#).

Thomas K. Potter, III (tpotter@burr.com) is a partner in the Securities Litigation Practice Group at Burr & Forman, LLP. Tom is licensed in Tennessee, Texas and Louisiana. He has over 30 years' experience representing financial institutions in litigation, regulatory and compliance matters. [See attorney profile](#).

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Exhibit 13

Audit Notice, December 15, 2020



SHERYL A. GUY
Antrim County Clerk
P.O. Box 520
Bellaire, Michigan 49615
Phone (231) 533-6353
Fax (231) 533-6935
guys@antrimcounty.org

December 15, 2020

To: Township Clerks and Recount Team members

From: Sheryl Guy, County Clerk
Connie Wing, Election Specialist

The Secretary of State/Bureau of Elections will be performing an

ALL COUNTY AUDIT

CONDUCTED BY THE STATE

COVID PROTOCOL WILL BE FOLLOWED AND MASKS WILL BE PROVIDED

Original Audit scheduled for 2 days State changed to 1 day

Date: December 17, 2020 9:00 a.m. Kearney Township Hall

VOLUNTEERS:

- Please note arrival time 8:45 a.m.
- Lunch will be provided at 12:00 noon

TOWNSHIP CLERKS:

All canisters must be brought to the Kearney Township Hall that morning or make arrangements for authorized transporter to get them to Kearney Township and the Local Clerks are responsible please deliver between 8:00 a.m. – 8:30 a.m.

Recount Team Members:

Carolyn Barnett	Judy Kosloski	Donna Heeres	Deb Hiltz
Cherie Hogan	Taylor Blackmore	Vickie Bishop	Marvin Rubingh
Jan Olach	Greg MacMaster	Martha Hawkins	Irene Shooks
Fred Goldenberg	Martha Davidson	Shelley Boisvert	Don Seman
Jonathan Kelly Sumner	Dale Eschenburg	Dorothy Eschenburg	Bonnie Robbins
Laura Reid Edwards			

Thank you.

Exhibit 14

Audit Email, December 15, 2020

Antrim County Audit by Bureau of Elections

1 message

Meingast, Heather (AG) <MeingastH@michigan.gov>

Tue, Dec 15, 2020 at 10:35 AM

To: Matthew DePerno <matthew@depernolaw.com>, "Haider A. Kazim" <hkazim@cnda-law.com>

Cc: "Grill, Erik (AG)" <GrillE@michigan.gov>, "Albro, Lisa (AG)" <AlbroL@michigan.gov>

Dear Counsel,

For your information, the audit will commence at 9:00 a.m. on Thursday, December 17 at the Kearney Township Hall, 4820 Aero Park Drive, Bellaire, Michigan. All attendees must wear a face covering that covers their nose and mouth and social distance. You are welcome to attend the meeting as members of the public.

Thank you,

Heather

Heather S. Meingast, Division Chief

Civil Litigation, Employment & Elections Division

Michigan Department of Attorney General

meingasth@michigan.gov

(517) 335-7659 (office)

Exhibit 15

"Hand Recount" results, December 17, 2020

HAND COUNT CALCULATION SHEET

OFFICE: President of the United States

COUNTY: Antrim

	Biden			Trump			Jorgenson			Hawkins			Blankenship			De La Fuente		
	Democratic Party			Republican Party			Libertarian Party			Green Party			U.S. Taxpayers Party			Natural Law Party		
	Jurisdiction	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count
TOTAL VOTES	7769	5959	-1810	4509	9759	5250	93	190	97	29	28	-1	22	17	-5	12	9	-3

TOTAL CHANGE		-1810		5250		97		-1		-5		-3
--------------	--	--------------	--	-------------	--	-----------	--	-----------	--	-----------	--	-----------

Banks Township, Precinct 1	349	349	0	756	758	2	11	11	0	2	2	0	1	1	0	1	1	0
Central Lake Township, Precinct 1	549	549	0	908	906	-2	16	16	0	6	6	0	1	1	0	0	0	0
Chestonia Township, Precinct 1	197	93	-104	3	197	194	0	3	3	0	0	0	0	0	0	1	0	-1
Custer Township, Precinct 1	523	240	-283	11	521	510	4	11	7	0	1	1	1	2	1	0	0	0
Echo Township, Precinct 1	392	198	-194	8	392	384	1	8	7	0	2	2	2	1	-1	0	0	0
Elk Rapids Township, Precinct 1	1198	984	-214	625	1029	404	8	17	9	5	9	4	5	4	-1	0	0	0
Forest Home Township, Precinct 1	755	610	-145	19	753	734	1	19	18	1	0	-1	0	1	1	2	1	-1
Helena Township, Precinct 1	432	306	-126	4	430	426	0	4	4	1	1	0	1	0	-1	0	1	1
Jordan Township, Precinct 1	372	182	-190	13	369	356	1	14	13	0	1	1	1	1	0	2	0	-2
Kearney Township, Precinct 1	744	470	-274	16	743	727	0	16	16	0	3	3	3	0	-3	4	0	-4
Mancelona Township, Precinct 1	276	277	1	835	835	0	20	20	0	0	0	0	0	0	0	1	1	0
Mancelona Township, Precinct 2	247	247	0	646	646	0	13	13	0	1	1	0	2	3	1	0	0	0
Milton Township, Precinct 1	686	767	81	484	1023	539	14	18	4	3	0	-3	1	2	1	1	4	3
Star Township, Precinct 1	462	166	-296	10	468	458	0	10	10	0	0	0	0	0	0	0	0	0
Torch Lake Township, Precinct 1	527	461	-66	8	526	518	1	7	6	1	2	1	1	1	0	0	1	1
Warner Township, Precinct 1	60	60	0	163	163	0	3	3	0	9	0	-9	3	0	-3	0	0	0

Exhibit 16

Post-Election Audit Manual

Post-Election Audit Manual



Michigan Department of State
Bureau of Elections

January 2020

Post-Election Audits Manual - Table of Contents

This manual is designed to assist with the conduct of post-election audits.

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Introduction to Post-Election Audits

MCL 168.31a instructs the Secretary of State to develop an election audit program that details the documents to be inspected and the procedures used in preparation for and during an election. The post-election audit process will thoroughly review procedures performed before, during, and after the conduct of an election, including a review of voted ballots with a hand tally of select contests. The review of voted ballots will verify the equipment used to count votes worked properly and yielded the correct result. Information collected as part of the post-election audit process will be used as an educational tool for all levels of election administration. Assignments will be made in the eLearning Center to reinforce deficiencies found of the local and/or county clerks.

Key Points

☆ *Audit Process*

Following the canvass of an election, counties and Bureau of Elections staff will conduct a thorough review of pre-election and election day documents to determine if procedures were properly followed according to state law and established procedure.

☆ *Selection Process*

The Bureau of Elections will randomly select precincts and contests for counties following each election and may select additional precincts and contests to be audited at the state level.

☆ *Focus of the Audit*

Election notices, election inspector appointments and training, ePollbook security, test deck procedures, military and overseas voter applications, and a review of the *Pollbook* and ballot containers used on election day will be the primary focus of the audit. In addition, an audit of the results of up to three contests in a General election and one contest in other elections on the ballot in each precinct will be conducted.

☆ *Audit Findings*

Discrepancies and deficiencies found as a result of the post-election audit will be used as training points for the local clerk who is participating in the audit as well as aid in the determination of future training needs to be provided at both the county and state level. The audit of voted ballots will reinforce accuracy and security of the voting system.

Important Considerations

Those subject to a post-election audit should continue to maintain the security of their election day materials until the post-election audit has been conducted. The goal of the post-election audit process is to enhance election administrators' understanding of required elections procedures and practices and ensure the accuracy of the voting system and tabulation process.

Selection Process

The Bureau of Elections will randomly select precincts and contests for county audits the day after an election. The Bureau of Elections may select additional precincts to be audited at the state level as well. Participants will be contacted by their County Clerk or the State depending on who is conducting the audit. The list of those being audited will also be announced in a News Update following the election.

Participants must maintain security on all of their election day materials until the post-election audit has been conducted. Further, the participants should ensure the ePollbook (EPB) and associated encrypted flash drive for the precinct selected are kept secure and data is ***not*** deleted until the audit is completed. (Note: Per the EPB user agreement, data must be deleted seven days post canvass; this deadline is extended for precincts involved in post-election audits.

Clerk Preparation

County clerks conducting audits will coordinate the scheduling of the audit with the local jurisdiction. The audit should take place in a public location and when possible in a location agreeable to the local clerk. As a subject of the audit, the local clerk and county clerk must provide all materials needed to conduct the audit of the specified precinct **and** associated absent voter counting board.

Materials needed to conduct a Post-Election Audit	
<input type="checkbox"/>	Noticer of Registration (Affidavit of Publication)
<input type="checkbox"/>	Election Notice (Affidavit of Publication)
<input type="checkbox"/>	Public Accuracy Test Notice (Affidavit of Publication)
<input type="checkbox"/>	Election Commission's election inspector appointment record (minutes or signed resolution from meeting)
<input type="checkbox"/>	Listing of appointed election inspectors
<input type="checkbox"/>	Election Inspector applications for all inspectors appointed
<input type="checkbox"/>	Confirmation that election inspectors attended training (dated or signed certificate or sign in sheet)
<input type="checkbox"/>	Confirmation that election inspector appointments were sent to the major political parties (fax or email verification or certified mail receipt) [partisan elections only]
<input type="checkbox"/>	ePollbook laptop used in the precinct and encrypted flash drive
<input type="checkbox"/>	Absent Voter Ballot Posting [partisan elections only]
<input type="checkbox"/>	Sealed container that contains all testing materials; including: <ul style="list-style-type: none"><input type="checkbox"/> Test deck<input type="checkbox"/> Chart of pre-determined results<input type="checkbox"/> Tabulator zero and results tapes
<input type="checkbox"/>	Tabulator Testing and Security Certification Form (may be sealed in the test container)
<input type="checkbox"/>	Election Commission Certification - Public Accuracy Test (if applicable)
<input type="checkbox"/>	Voter Assist Terminal Preparation Checklist and Test Certification Form
<input type="checkbox"/>	<i>Pollbook</i>
<input type="checkbox"/>	Applications to Vote
<input type="checkbox"/>	Affidavits of Voter Not in Possession of Picture Identification
<input type="checkbox"/>	AV apps for Military and Overseas Voters and confirmation of ballot sent (e.g., email or fax receipt, proof of mailing if available)
<input type="checkbox"/>	Sealed ballot container with ballots
<input type="checkbox"/>	Program container certificate (if applicable)
<input type="checkbox"/>	Provisional Ballot Forms
<input type="checkbox"/>	Master card for any voter issued an Affidavit or Envelope ballot
<input type="checkbox"/>	Final Canvass Report
<input type="checkbox"/>	Receiving Board Checklist

Conducting the Post-Election Audit

The post-election audit must be conducted *within 30 days of Canvass completion unless a recount has been ordered*. The post-election audit will require the inspection of election documents and the procedures used prior to the election and on election day. A comprehensive worksheet will be used to uniformly conduct the post-election audit for precincts throughout the state. Detailed instructions on the use of the worksheet follow. All discrepancies should be documented on the back side of the worksheet. **Note:** If the Board of Canvassers corrected any item reviewed during the conduct of the post-election audit at the Canvass, the information provided by the election inspectors should be used to answer the appropriate questions. Corrections made by the Board of Canvassers should be noted on the reverse side of the worksheet.

Pre-Election Requirements

Public Notices

Michigan Election Law requires a number of notices to be published in a local newspaper prior to an upcoming election. The newspaper should supply an Affidavit of Publication to the publisher to confirm publication. Review the following notices:

Notice of Registration (MCL 168.498(3) – Ch. 16. Election Officials' Manual)

- Publication date must be no later than 30 days before the election.

- Must include: name of the jurisdiction, date of the election, listing of the offices to be elected/nominated, a brief description of ballot proposals and where to find the full text, locations where registrations will be accepted, and days and hours when an authorized person will be available to accept the registration.

Notice of Election (MCL 168.653a – Ch. 16. Election Officials’ Manual)

- Publication date must be no later than the seventh calendar day before the election.
- Must include: date of the election and polling place hours, listing of the offices to be elected/nominated, a brief description of ballot proposals and where to find the full text, a listing of polling place locations, a statement regarding accessibility in the polling place, and if a millage increase is on the ballot, a tax rate limitation statement.

Public Logic and Accuracy Test (MCL 168.798(1) Ch. 16 Election Officials’ Manual)

- Publication date must be at least 48 hours prior to the conduct of the test.
- Test date must be conducted no later than the fifth day prior to the election.
- Must include: date of the election, date, time, and location of the test and a statement regarding the purpose of the test.

When reviewing these items, place a checkmark in the Yes box when all of the above criteria are met. If a component is missing, place a checkmark in the No box and explain the discrepancy on the backside of the worksheet.

Weekend Hours in QVF

Using QVF, verify the eight hours the clerk’s office is required to be open the Saturday and/or Sunday prior to the election was entered into the Clerk Contacts tab (MCL 168.761b).

Election Inspectors – Ch. 13 Election Officials’ Manual

The Election Commission of each jurisdiction must appoint precinct and receiving board inspectors at least 21 days but not more than 40 days before each election (MCL 168.674). Review Election Commission minutes and/or resolutions to ensure these appointments took place. Place a checkmark in the appropriate box to indicate if the Election Commission made the appointments. Ensure at least one Republican and one Democrat was appointed to the precinct.

Next, review the Election Inspector applications provided. Ensure there is an application for every inspector appointed (MCL 168.677). Place a checkmark in the appropriate box to indicate if all applications are available. Then verify each election inspector attended a training class (MCL 168.683). Place a checkmark in the appropriate box to indicate if proof was provided for each inspector appointed. Lastly, place a checkmark in the appropriate box to indicate if proof that the election inspector appointments were sent to the local major political parties if evaluating a partisan election (MCL 168.674).

ePollbook Evaluation (if applicable)

Certain security features must be employed in the ePollbook software and on the encrypted flash drive in order to maintain security of sensitive voter information (Reference User Agreement and ePollbook User Manual). Using the laptop and flash drive used in the precinct on election day, evaluate the following:

1. Open the EPB software and verify the encryption password is a strong password and not QVFSecure08. *A strong password contains a combination of at least eight upper and lower case characters with at least one number or symbol.*
2. Login to the software using the ADMIN username. Click on Sys Admin and User Administration. Verify additional usernames were created. Check Yes or No next to “Unique User/Pwd” on the worksheet.
3. Plug the encrypted flash drive in and ensure the V-Safe100 software is listed or Bitlocker is installed (check the BL box and skip to step 4 if the latter). If V-Safe 100 was used, double click on V-Safe 100. If a password is requested, answer Yes to the

File Name	File Type
EPB Back Up	ACCDB file
EPB_History	CSV file
rptBallot Summary	PDF file
rptRemarks	PDF file
rptVoter List	PDF file

“PrivacyZone Active” question on the worksheet. Otherwise answer *No*.

4. Request the Password from the local Clerk and enter into the V-Safe 100 or Bitlocker pop-up box. Verify the five files listed in the image to the right were saved. You may need to open a folder to verify. If all seven files are listed, mark *Yes* on the worksheet for “Docs Saved in PZ.” If some of the files are listed but not all, indicate which files are missing on the back side of the worksheet.
5. Record the date the hostservice.zip file was modified.

Voting System Review – Test Procedure Manual for Tabulators & Voter Assist Terminals

A vital component to a successful election is the conduct of the preliminary and public Logic and Accuracy Testing prior to the election. All Logic and Accuracy Testing materials should have been placed under seal in an approved ballot container (separate from the precinct container) after testing was completed. Verify the container containing the testing material is sealed and indicate *Yes or No* on the worksheet. Verify that the seal number on the container is the seal number that was recorded on the *Tabulator Program Testing and Security Certification Form* (which may be sealed in the container) and record the answer on the worksheet.

A record of the tabulator serial number and the seal number must also be recorded on the *Tabulator Program Testing and Security Certification* form after the preliminary accuracy test. When performing this portion of the audit, verify that the *Tabulator Program Testing and Security Certification Form* lists the seal and serial number for the tabulator. Verify the seal and serial numbers listed on the *Tabulator Program Testing and Security Certification Form* match the seal and serial numbers listed in the corresponding precinct’s Clerk’s Preparation Certificate portion of the *Pollbook*. Place appropriate checkmarks on the worksheet to indicate whether these seals and serial numbers matched. If the jurisdiction used a vendor for testing and that same vendor programmed the memory cards, verify that the *Election Commission Certification* form was also completed and place a checkmark in the appropriate EC Addendum box. If the ballot marks were printed by a vendor using non-precinct ballot stock, ensure at least three ballots were hand marked and place a checkmark in the appropriate Pre-printed TD – HM box.

Next write the dates the Preliminary and Public Tests were conducted on the appropriate line of the worksheet. Public Tests should have been conducted at least five days prior to the election. Preliminary tests should be conducted as soon after receiving ballots as possible and well before the public test.

Test Deck Completion

Next review the Logic and Accuracy Testing “test deck” and chart of pre-determined results. There are initially thirteen ballot creation instructions required to be marked on to test ballots and then additional test ballots must be created to ensure the vote totals are different for each candidate in a race. Place a checkmark in the appropriately numbered box on the checkbox to indicate proper completion of each test ballot. (*MCL 168.798(1), R 168.773 and R 168.776*). See Appendix for other election type charts.

Instruction	Pre-determined result – General Election
1	All positions on the ballot voted.
2	All unused positions on the ballot voted.
3	A blank ballot.
4	One straight party vote cast (no other partisan votes).
5	Two straight party votes cast resulting in an overvote (no other partisan votes).
6	In a different office for each instruction: (a) One straight party vote, plus: (b) In a “vote for 1” partisan office, 1 vote for 1 candidate of the same party used in (a) (c) In a “vote for 1” partisan office, 1 vote for 1 candidate of a different party than used in (a) (d) In a “vote for 2” partisan office, 1 vote for 2 candidates, each from different parties (e) No votes in a partisan office where a candidate appears under the party selected in (a) (f) A vote for 1 write-in candidate in either a partisan or non-partisan office (g) Non-partisan offices and proposals voted
7 (Ballot 1)	No straight party vote and votes correctly voted in the partisan section with overvotes in the non-partisan and proposal sections

7 (Ballot 2)	No straight party vote and votes correctly voted in the non-partisan section with overvotes in the partisan and proposal sections
7 (Ballot 3)	No straight party vote and votes correctly in the proposal section with overvotes in the partisan and non-partisan sections
8	In a different office for each instruction: (a) Two straight party votes cast (b) In two "vote for 1" offices, 1 vote for 1 candidate listed under the first party selected in (a) and a vote for 1 candidate listed under second party selected in (a) (c) In two "vote for 1" offices, 1 vote for 1 candidate of the first party selected (d) In a "vote for 1" office, 1 vote for 1 candidate of the second party selected *Additional ballots may be required to complete (c) and (d).
9	In a different office for each instruction: (a) One straight party vote where 2 candidates of that party are in a "vote for 2" partisan race (b) In the first "vote for 2" office, where there are 2 candidates from the party used in (a), 2 votes for candidates of a different party than used in (a) (c) In a second "vote for 2" office, where there are 2 candidates from the party used in (a), 2 votes for candidates of two different parties than used in (a) *if a ballot contains a "vote for 3" office and there are 3 candidates from that party running, an additional test ballot must be included following this same instruction but subbing 3 for 2.
10	In a different office for each instruction: (a) One straight party vote where 2 candidates of that party are in a "vote for 2" partisan race (b) In the first "vote for 2" office, where there are 2 candidates from the party used in (a), 1 vote for a candidate of a different party than used in (a) (c) In a second "vote for 2" office, where there are 2 candidates from the party used in (a), 1 vote for a candidate of the party used in (a) and 1 vote for a candidate of a different party (d) In a third "vote for 2" office, where there are 2 candidates from the same party used in (a), 1 vote for a candidate of the same party used in (a) *Additional ballots may be required to complete this test
11	(a) One straight party vote where only 1 candidate of the same party is in a "vote for 2" partisan race (b) In a second "vote for 2" office, where there is only 1 candidate from the party used in (a), 1 vote for a candidate of a different party than used in (a) *Additional ballots may be required to complete this test
12	One straight party vote and individual votes for each candidate in that same party. Repeat for each party.
13	A ballot voted from a different precinct (if applicable).
Dif. Totals	Additional ballots voted to ensure at least 2 straight party votes have been cast for each party and a different total number of valid votes are cast for each party in the straight party section, each candidate within an office, and for and against each proposal.

Once each ballot and the chart of pre-determined results have been reviewed, compare the chart of pre-determined results with the tabulator tape. Check *Yes or No* on the worksheet provided to indicate whether the results from the chart of pre-determined results matched the tabulator tape or not. Lastly, indicate on the worksheet whether or not a zero tape for the test was provided.

Voter Assist Terminal

1. Review the *Voter Assist Terminal Preparation Checklist and Test Certification Form* and verify it was properly completed.
2. Locate the VAT Test Deck to verify the VAT was tested before the Election.
3. Locate the blank "test" ballot used to test the VAT on Election Day (if any).
4. Count the number of voters that used the VAT by:
 - a. Reviewing the precinct list for an alternate ballot number (if stubbed stock was used); or by
 - b. Opening the VAT envelope used to invalidate precinct ballots (if regular ballot numbers were used); or by
 - c. Counting the number of VAT ballots found in the ballot container

Application to Vote & Military and Overseas Voter Review

Review the *Applications to Vote*. Physically count the *Applications to Vote* and determine if there is the same number of *Applications to Vote* as voters in the *Pollbook*. Next, spot check the *Applications to Vote* to ensure they were properly completed by voters and election inspectors. Check *Yes or No* on the worksheet provided to indicate the answers to these questions.

Record the number of *Affidavits of Voter Not in Possession of Picture Identification* completed.

If absentee ballots were processed in the precinct, use the *AV Applications to Vote* to determine whether the precinct processed any Military or Overseas voters. Then review the applications to ensure those ballots were sent within 24 hours of receipt of the application or if the application was received more than 45 days prior to the election the ballot was sent by the 45th day prior to the election (e.g., email or fax receipt, proof of mailing if available). Answer the appropriate questions on the worksheet and note any discrepancies on the backside of the worksheet. **NOTE:** In a precinct with no or minimal military and overseas absentee ballots, the local Clerk should bring all military and overseas absent voter ballot applications for the jurisdiction. Conduct a thorough review of those applications using the guidelines above. (*MCL 168.759a and Military and Overseas Voter for Election Administrators Manual*)

Absent Voter Information Posting

If auditing an election with a state or federal office, review the absent voter information posting required to be posted before and on election day. Prior to 8 a.m. on election day the number of AV ballots distributed to absent voters, the number of absent voter ballots returned, and the number of absent voter ballots being delivered must be recorded and posted. Before 9 p.m. the number of absent voter ballots issued to same day registrants on election day, returned on election day, number of absent voter ballots returned and delivered for processing on election day and the grand totals for each must be recorded and posted. Finally, once all returns are complete, the total number of absent voter ballots returned by voters and the total number processed should be recorded and posted. Indicate completion on the worksheet. (*MCL 168.765(5) and Ch. 6 Election Officials' Manual*).

Receiving Board Checklist

Verify the completion of a Receiving Board checklist on election day. Indicate completion of the worksheet. (*MCL 168.679a and Receiving Board Guide*)

Paperwork Assessment

Finally, review the remaining components of the *Pollbook*. The following images are examples of properly completed *Pollbooks*. Please note, there are many styles of *Pollbooks* in use throughout the state and the layout may be different from what is displayed below.

Pollbook

Items 1-4 are generally found on the front and inside cover of the *Pollbook*.

The image shows two examples of completed preparation certificates. The top one is a 'CLERK'S PREPARATION CERTIFICATE' for Tabulator Serial No. 12345 and AutoMARK Serial No. 23456, signed by a Clerk on 10/20/20XX. The bottom one is an 'ELECTION INSPECTORS' PREPARATION CERTIFICATE' for the same tabulator and AutoMARK, signed by an Inspector on 10/20/20XX. Both include oaths and verification steps.

1. Review the Clerk's Preparation Certificate. A completed Clerk's Preparation Certificate includes serial and seal numbers for both the tabulator and the Voter Assist Terminal. In addition, a signature and date prior to the election should be included.
2. Ensure all checkboxes are completed in the Election Inspectors' Preparation Certificate and that the inspectors signed. Many *Pollbooks* combine the signatures with step 3.
3. Ensure all inspectors (including the chairperson) subscribed to the Constitutional Oath of Office.
4. Ensure the oath administrator signed in the appropriate location(s).
5. Compare the signatures of the election inspectors with the Election Commission appointments to ensure all that signed the oath were appointed.
6. If applicable, ensure the write-in portion of the *Pollbook* was completed. Votes should be properly totaled after the tally marks.

6 PRESS FIRMLY
 ONE MACHINE 2 COPIES DETACH ONLY THE WHITE AND INK COPIES AT PERFORATIONS

WRITE-INS ONLY OPTICAL SCAN **STATEMENT OF VOTES**

Precinct # 3 Name of City, Township, Village or School District: ACME Date of Election: 11/7/07

CANDIDATE'S NAME	OFFICE	PARTY	TALLY OF VOTES										TOTAL WRITE-IN VOTES			
			5	10	15	20	25	30	35	40	45	50				
William Smith	Township Clerk	Republican	11													12
W. Smith	Township Clerk	Republican	11													2
Bill Smith	Township Clerk	Republican	11													2
Judith Jones	Township Clerk	Democrat	11													7
Judy Jones	Township Clerk	Democrat	11													3
Judith Jones	Township Clerk	Democrat	1													1
Judy Johns	Township Clerk	Democrat	1													1
Jim Taylor	State Rep- 33rd Ds	Republican	11													6
Jimmy Taylor	State Rep- 33rd Ds	Republican	11													2

7 ATTACH PRECINCT TABULATOR STATEMENT OF VOTES TAPE HERE.

W-05 Mandatory School Funding Levels

YES 0
 NO 0
 Over Votes 0
 Under Votes 0
 Total Votes 0

Grassroots Public Safety Amendment

YES 1
 NO 0
 Over Votes 0
 Under Votes 0
 Total Votes 1

IF THE UNDERSIGNED SO HEREBY CERTIFY THAT THE ABOVE RESULTS ARE A TRUE AND ACCURATE RECORD OF ALL VOTES CAST AND THAT ALL CONSTITUTIONAL REQUIREMENTS WERE MET AND THAT THE POLLS CLOSED AND THAT THE ELECTION WAS HELD TRANSPARENTLY WITHIN THE LAWS OF THE STATE OF MICHIGAN.

Judy Jones
 PRECINCT CHAIRPERSON

Miss Wilkins
 PRECINCT INSPECTOR

John Lee
 PRECINCT INSPECTOR

John Smith
 PRECINCT INSPECTOR

Bob Carrick
 PRECINCT INSPECTOR

Sam Best
 PRECINCT INSPECTOR

PRECINCT INSPECTOR

PRECINCT INSPECTOR

PRECINCT INSPECTOR

7. Ensure the tabulator tape/statement of votes (should be affixed to the Statement of Votes signature page in the back of *Pollbook*) was signed by all election inspectors.
8. Ensure the number of ballots tabulated on the totals tape matches the number of voters listed in the *Pollbook*.

9. Ensure the Ballot Summary (found in the *Pollbook*) is completed, balanced, and totals are accurate. The **Difference** should always be zero. If there is a valid discrepancy, was it remarked? If so, check the Remark box.

BALLOT SUMMARY

WE CERTIFY THE FOLLOWING:

NUMBER OF BALLOTS DELIVERED TO PRECINCT:

A. Number of official ballots delivered to precinct:

Ballot Style	Starting No.	Ending No.	Count
[None]	00000001	00000200	200
			200

B. Number of absent voter return envelopes received by board: 2

C. Total of lines A and B (Must match Line K below): 202

NUMBER OF BALLOTS AT CLOSE OF POLLS:

D. Number of ballots tabulated: 15

E. Number of AV ballot envelopes delivered to precinct which did not contain ballot or were not processed for any reason: 0

F. Number of ballots reissued to voters who spoiled their ballot at the pollin place (spoiled or defective ballots): 2

G. Number of ballots rejected: 0

H. Number of ballots used by election inspectors for ballot duplications: 0

I. Number of PROVISIONAL "envelope" ballots issued: 1

J. Number of UNUSED BALLOTS (excess ballots):

Ballot Style	Starting No.	Ending No.	Count
[None]	00000017	00000200	184
			184

K. Total of Lines D, E, F, G, H, I, and J (Must math Line C above): 202

L. Difference: 0

Items 10-13 are usually found on the last page or two in the *Pollbook*.

10. Ensure all checkboxes are completed in the Election Inspectors' Completion Certificate and that the inspectors signed.
11. Ensure the ballot container seal number is properly recorded. Most containers only require one seal.
12. Ensure the program container seal number is properly recorded (if applicable).
13. Ensure one inspector of each major political party signed the seal certification.

STATEMENT OF VOTES - CERTIFICATE OF ELECTION INSPECTORS	
JURISDICTION: Jurisdiction	WARD/PRECINCT: # # DATE OF ELECTION: Election Date
WE CERTIFY THE FOLLOWING:	
10 AT THE CLOSE OF THE POLLS (Except as noted on the Remarks Page of this Poll Book)	
<input checked="" type="checkbox"/> The number of voters according to this Poll Book is (Include absent voter ballots if processed in precinct and the number of voters in addendum poll book(s) if any). Record on cover of poll book.:	###
<input checked="" type="checkbox"/> The number of ballots tabulated is:	###
<input checked="" type="checkbox"/> Verified that the number of ballots tabulated equals the number of voters according to this Poll Book and that no discrepancies exist between the Poll Book and Applications to Vote. If they do not agree, make a notation in the Remarks Section of this Poll Book.	
<input checked="" type="checkbox"/> Listed the challenged voters, if any, in this Poll Book and properly identified the challenged ballots.	
<input checked="" type="checkbox"/> Verified that all valid absent voter ballots have been tabulated (if absent voter ballots processed in precinct).	
<input checked="" type="checkbox"/> Verified that any ballots requiring duplication have been accurately duplicated and tabulated.	
<input checked="" type="checkbox"/> Verified that all valid write-in votes have been tallied and the totals recorded to the Statements of Votes in this Poll Book.	
<input checked="" type="checkbox"/> Verified that all provisional "envelope" ballots issued, if any, were properly recorded, identified and sealed in provisional ballot security envelopes.	
<input checked="" type="checkbox"/> Verified that the tabulator statement of votes tape and proposal language are attached to the appropriate copies.	
<input checked="" type="checkbox"/> Verified that the number of ballots issued to the precinct, the number of ballots issued to voters, the number of spoiled ballots and the number of unused ballots are accurately reflected in the Ballot Summary Report.	
<input checked="" type="checkbox"/> Verified that if the number of ballots tabulated does not agree with the number of voters according to the List of Voters report, the discrepancy is noted in the Remarks section.	
11 By signing below, we, the undersigned members of the Board of Election Inspectors, certify that all ballots (used and unused) except envelope ballots were properly sealed into an approved BALLOT STORAGE CONTAINER(S) by affixing seal(s):	
Seal No. #####	Seal No. Possible
12 We further certify that if the Tabulator Program (Pron Pack/Memory Card) has been removed from the tabulator it was properly sealed in an approved STORAGE CONTAINER by affixing Seal No. #####	
13 X <u>Inspector Signature Party #1</u> <small>Signature of member who sealed the BALLOT STORAGE CONTAINER and TABULATOR PROGRAM STORAGE CONTAINER.</small>	X <u>Inspector Signature Party #2</u> <small>Signature of member who verified these sealings. (May not represent same political party as member who sealed both storage containers.)</small>
ALL INSPECTORS PRESENT AT THE CLOSE OF THE POLLS MUST SIGN BELOW <small>(Any Inspectors Leaving Prior to the Close of the Polls must make a Notation in the Remarks Section of this Poll Book)</small>	
10 X <u>Signature</u> <small>Chairperson Phone</small>	X _____ <small>Phone</small>
X <u>Signature</u> <small>Phone</small>	X _____ <small>Phone</small>
X <u>Signature</u> <small>Phone</small>	X _____ <small>Phone</small>
X <u>Signature</u> <small>Phone</small>	X _____ <small>Phone</small>
X <u>Signature</u> <small>Phone</small>	X _____ <small>Phone</small>
X <u>Signature</u> <small>Phone</small>	X _____ <small>Phone</small>
DETACH CERTIFICATE OF ELECTION INSPECTORS (RED AND WRITE-IN SECTION (GREEN), AFFIX TOTALS TAPE AND ENTER OR ATTACH PROPOSAL LANGUAGE TO APPROPRIATE COPIES AND SEAL IN DESIGNATED ENVELOPES.	
WHITE - DO NOT DETACH!! THIS PART REMAINS IN POLL BOOK!!	

Program Container Certificate (if applicable)
 Finally, the Program Container Certificate should be reviewed.
 Ensure proper completion by:

1. Verifying the seal number was properly recorded.
2. Verifying one inspector of each major political party signed the seal certification.

NOTE: If the Certificate is not available, the *Pollbook* may be used.

TABULATOR PROGRAM(S) STORAGE CONTAINER CERTIFICATE

We, the undersigned Election Officials, certify that the transfer container for this precinct was properly sealed and the seal number agreed with the seal number recorded on the Precinct Transfer Container Certificate.

We further certify that the Program (Memory Unit) and the original seal(s) were returned to the transfer container **1** which was properly sealed by affixing seal **#####**.

2 Inspector Signature Party #1
Signature of member who sealed the container.

X Inspector Signature Party #2
Signature of member who verified the sealing. (May not represent same political party as member who sealed transfer container.)

Election date

Date of Election

Jurisdiction

#

City, Township, Village or School District

Ward/Precinct No.

Provisional Ballot Form Review

Review the *Provisional Ballot Forms* with the *Pollbook* to ensure the number issued matches the number in the Ballot Summary.

- For a voter issued an Affidavit ballot, review the *Provisional Ballot Form* and verify the election inspector marked Question 3 *Yes*.
- For a voter issued an Envelope ballot, review the *Provisional Ballot Form* and verify the election inspector marked Question 3 *No*.

Without researching the registration of each voter, review the uncouneted Envelope ballot *Provisional Ballot Forms*.

- Determine based on the information provided on the form if the Envelope ballot was appropriately processed by the election inspector and/or the local Clerk.

Ensure a master card is available for each voter issued an Affidavit or Envelope ballot verifying the voter was registered to vote after the election. Finally, if an envelope ballot was counted, verify it was sealed in an approved ballot container.

Answer the appropriate questions on the worksheet after review of all *Provisional Ballot Forms*. Explain any discrepancies on the backside of the worksheet (*MCL 168.523a and Ch. 11 Election Officials' Manual*).

Ballot Container Examination

Locate the ballot container seal number recorded in the *Pollbook* and enter it on to the worksheet. Then examine the ballot container. Record the seal number found on the *Ballot Container Certificate* (below left) and then the seal number on the actual container on to the worksheet. Indicate on the worksheet whether the *Ballot Container Certificate* was signed by one election inspector of each major political party. Now verify the container was properly sealed. A properly sealed container is one in which the seal has been affixed securely and the ballot container is unable to be opened. The last check in this section is to ensure the Board of Canvassers approval certificate (below right) is affixed to the ballot container. Record the answer to these questions on the worksheet by selecting the appropriate *Yes or No* boxes. (*Ch. 12 Election Officials' Manual*).

Ballot Container Certificate	
Date of Election: _____	
City, Township, or Village _____	Ward/Pct # _____
This ballot container contains:	
<input type="checkbox"/> Voted Ballots	
<input type="checkbox"/> Unvoted Ballots	
<input type="checkbox"/> Spoiled Ballot Envelope	
<input type="checkbox"/> Original Ballot Envelope	
We, the undersigned members of the Board of Election Inspectors, certify that the ballot container was properly sealed by affixing seal # _____.	
<input checked="" type="checkbox"/> DEMOCRATIC INSPECTOR	<input checked="" type="checkbox"/> REPUBLICAN INSPECTOR
<small>Signature of member who sealed/verified the ballot container.</small>	<small>Signature of member who sealed/verified the ballot container.</small>

THIS BALLOT CONTAINER HAS BEEN APPROVED UNTIL MAY 31, 2022	
By the _____ County Board of Canvassers for the storage of ballots in accordance with the provisions of Public Act 207 of 2000.	
Date _____	

<small>ED 4 (12/17) Authority Granted By P.A. 116 of 1954</small>	<small>MICHIGAN DEPT. OF STATE</small>

Spoiled & Duplicated Ballots

Open the ballot container and pull out the Spoiled and Original Ballot Envelopes. Does the number of spoiled ballots in the *Spoiled Ballot Envelope* equal the number of spoiled ballots listed in the *Pollbook*? Answer the appropriate question on the worksheet. Next, open the Original Ballot Envelope. If the envelope contains ballots, attempt to locate the matching duplicate with the voted ballots in the ballot container. Verify the ballots were properly duplicated and indicate that verification on the worksheet. Finally, indicate whether any of the duplicated ballots were electronic (MOVE) or FWAB ballots and if they were duplicated properly as well on the worksheet. Do this in a manner which avoids identifying the voter. (*Ch. 12 Election Officials' Manual*).

Voted Ballot Hand Count Audit

The final step in the post-election audit is a review of voted ballots with a hand tally of select contests. As done in a recount, two people should count to ensure the number of ballots matches the number tabulated and/or the number of voters. One person will count the ballots, placing them in a stack while the second person looks on to ensure two ballots aren't stuck together and the count is accurate. Count ballots one at a time and place them in stacks of 25 as you count. Then ballots should be separated into piles based on the vote cast in the contest being audited. This should be done in the same manner as the initial count and the vote cast should be determined based on Michigan Validity Standards. Add up the totals for:

Each Candidate (if applicable)
Yes (if applicable)
No (if applicable)
Write-ins (if applicable)
Overvotes
Undervotes

Record both the hand counted totals and the totals provided in the Board of Canvassers Report on the Worksheet (attach additional pages if necessary). Note any changes from the tabulator tape totals. Repeat these steps for other contests if applicable.

Final Review

Ensure all aspects of the worksheet have been completed and that any discrepancies have been explained on the backside of the worksheet. Once the verification is complete, replace the *Pollbook* and Statement of Votes into the appropriate envelopes and reseal as necessary. Each auditor should sign the backside of the worksheet verifying the completion of the process. After the post-election audit is conducted, the worksheet should be reviewed with the local Clerk.

The worksheet data must then be entered electronically in the eLearning Center using the Post-Election Audit Online Form within two days of audit completion. Auditors should retain the worksheet for 2 years post-election in case clarification is needed. Once the data has been submitted electronically, the Bureau of Elections will make assignments in the eLearning Center to those jurisdictions with deficiencies. The assignments could be a manual, reference document, online course, and/or video tutorial reinforcing proper procedures.

Appendix

Additional Test Deck Charts

Instruction	Pre-determined result – Proposal Only Election
1	All positions on the ballot voted.
2	All unused positions on the ballot voted.
3	A blank ballot.
4	One ballot voted correctly
5	A ballot voted from a different precinct.
Dif. Totals	Additional ballots voted to ensure a different total number of valid votes are cast for and against each proposal.

Exhibit 17

Modem Purchase Order

PROPOSAL



ANTRIM

Total Registered Voters:
19,916

Date: April 17, 2017

Base System Components - State Funded (Years 1-5)

DESCRIPTION	QTY	UNIT PRICE	STATE FUNDED	NET PRICE	EXTENSION
Precinct Hardware (Shared Cost, State-Local)					
<i>ICP Tabulator w/ Ballot Box</i>	17	\$5,295	\$4,337.66	\$957.34	\$16,275
<i>ICX-BMD-A Accessible Ballot Marking Device (Includes Touchscreen terminal and printer)</i>	16	\$3,515	\$2,879.49	\$635.51	\$10,168
Sub-Total:					\$26,443

Election Management System Software (Shared Cost, State-Local)					
<i>Accumulation Only EMS</i>	1	\$18,563	\$15,206.81	\$3,356.19	\$3,356
Sub-Total:					\$3,356

Total Initial Purchase Price	\$29,799				
-------------------------------------	-----------------	--	--	--	--

Discounts					
<i>Trade-in discount (Units must be brought to a central location for pickup)</i>					included
<i>System Discount - Price Match</i>					(\$29,799)
Sub-Total:					(\$29,799)

Total Initial Purchase Price (Shared Cost, State-Local)	\$0				
--	------------	--	--	--	--

Base System Extended Service and Maintenance for Years 6-10

Extended Service and Maintenance					
<i>ICP Tabulator w/ Ballot Box Annual Fee</i>	17	\$375			\$6,375
<i>ICX Accessible Ballot Marking Device Annual Fee</i>	16	\$240			\$3,840
<i>Accumulation Only EMS Annual Fee</i>	1	\$2,500			\$2,500
<i>(Warranty Service and Preventative Maintenance to be completed at local jurisdictions)</i>					
Sub-Total:					\$12,715

Years 6-10 Base System Annual Fees:	\$12,715				
--	-----------------	--	--	--	--

Authorizing Signature, Title

Date

Optional Hardware and Software Components

DESCRIPTION	QTY	UNIT PRICE	EXTENSION
Precinct Hardware			
<i>ICP Tabulator w/ Ballot Box</i>	1	\$5,390	\$5,390
<i>ICP Tabulator (spare w/o ballot box)</i>	0	\$4,395	\$0
<i>Discount if purchased with this order</i>	1	(\$57)	(\$57)
Election Management System Hardware			
<i>EMS Express Server - Desktop</i>	1	\$1,750	\$1,750
<i>Compact Flash Reader/Writer</i>	1	\$60	\$60
<i>I-Button Programmer with USB Adapter</i>	1	\$50	\$50
<i>ICX Activation Card Programmer</i>	1	\$26	\$26
Sub-Total:			\$1,886

Results Transmission (Base - Wireless)			
<i>ImageCast Listener Express Server - Desktop</i>	1	\$2,200	\$2,200
<i>ImageCast Listener Express Firewall</i>	1	\$480	\$480
<i>EMS Express Managed Switch</i>	1	\$200	\$200
<i>ICP External Wireless Modem</i>	17	\$295	\$5,015
<i>ImageCast Communications Manager Software</i>	1	\$10,800	\$10,800
Sub-Total:			\$18,695

Results Transmission (Analog)			
<i>ImageCast Listener Express RAS System</i>	1	\$2,165	\$2,165
<i>ImageCast Listener USB Modems (Receiving)</i>	5	\$225	\$1,125
Sub-Total:			\$3,290

Results Transmission (VPN/SFTP)			
<i>Compact Flash Reader/Writer (per municipality)</i>	1	\$60	\$60

Note: Results Transfer Manager software is included for municipalities that wish to use VPN/FTP method for transmitting results from memory cards to the county.

Optional Hardware and Software Components Annual Maintenance

Extended Service and Maintenance			
<i>ImageCast Communications Manager Annual Fee</i>	1	\$1,200	\$1,200

 Authorizing Signature, Title

 Date

Exhibit 18

Resumes/CVs

BENJAMIN R. COTTON

27427 Montana Hwy 83
Bigfork, MT 59911

Office Phone: (703) 659-9805
Email: bencotton@cytechservices.com

CAREER SUMMARY

A technical and managerial professional with over 20 years of experience in Computer Forensics and Cyber Security, Mr. Cotton has worked in both commercial industry and in the Federal Government. Mr. Cotton has served as a subject matter expert on the forensic software “Encase”, teaching as a part-time instructor for Guidance Software. He holds an active Top Secret/SCI clearance with lifestyle polygraph. His Computer Forensics experience was gained in both the laboratory and the field, and he is trained to the highest Federal law enforcement standards. Mr. Cotton also serves on the advisory board for Cyber Security Advisory Board for Brigham Young University.

EDUCATION

May 2002 *Master of Science Degree, Information Systems Management*
University of Maryland

PROFESSIONAL CERTIFICATIONS

- Drug Enforcement Administration Computer Forensic Examiner
- Certified Information Systems Security Professional (CISSP)
- Networks Plus (Net+)
- Microsoft Certified Professional (MCP)
- CyFIR Certified Examiner

EMPLOYMENT

CyTech/CyFIR, Inc.

Contracted to United States Government and Commercial Clients

July 2007 – Present

Founder/Senior Computer Forensic Examiner

- Serves as the President and CEO of the company.
- Serves as a Subject Matter Expert on CyFIR and cyber security.
- Served as a contract instructor for Guidance Software, teaching EnCase at all levels from entry level to advanced subjects.
- Serve as a senior instructor in the use of the CyTech Forensic and Incident Response (CyFIR) enterprise forensic software.
- Perform computer forensic examinations in support of the United States Government and commercial clients, specializing in incident response, law enforcement, counter-terrorism and information operations cases.
- Testify as required in Federal, State and Local proceedings concerning case findings.
- Expert in multiple forensic software tools including CyFIR, EnCase, FTK, ILook, SMART, WinHEX, Quincy, Cellubrite, XRY, Oxygen Detective, Paraben Device Seizure, R-Studio, Red Hat Linux utilities and over 150 supporting specialty forensics and security programs..
- Prepare reports of findings for dissemination to multi-level audiences.
- Interface with clients in support of cases and examinations.
- Perform research and development in the field of Computer Forensics.
- Design of new hardware and software platforms to improve examiner efficiency and group knowledge sharing.
- Provide formal and informal training on a variety of computer forensic topics, both domestically and internationally.
- Prepare reports of findings and case testimony.

- Perform research and development in the field of Computer Forensics.
- Create training programs and provided training for fellow examiners in aspects of computer forensics and digital evidence. These programs are presented both domestically and internationally.
- Mentor and coach new examiners in both technical and corporate areas.
- Trained and skilled in conducting examinations in accordance with established Department of Justice rules of evidence and chain of custody.
- Designed and implemented advanced systems for processing digital evidence and forensic investigations.
- Developed and implemented Standard Operating Procedures to ensure future ASCLAD certification.
- Create customized scripts and programs to facilitate efficient computer forensic examinations.
- Discovered, investigated and remediated the largest breach in U.S. Government History (OPM).

ETG, Inc.

Contracted to the United States Government and Civilian Clients

Sep 2003 – July 2007

Director / Senior Computer Forensic Examiner

- Served as the Director, Commercial Litigation Support Division
- Managed an on-site team of Computer Forensic Examiners.
- Performed computer forensic examinations in support of the United States Government and commercial clients, specializing in counter-terrorism and information operations cases.
- Utilizes multiple software tools including EnCase, FTK, ILook, SMART, Quincy, and Red Hat Linux utilities.
- Prepared reports of findings for dissemination to multi-level audiences.
- Interfaced with customers in support of cases and examinations.
- Performed research and development in the field of Computer Forensics.
- Assisted in the design of new hardware and software platforms to improve examiner efficiency and group knowledge sharing.
- Provided formal and informal training on a variety of computer forensic topics.

Computer Sciences Corporation

Contracted to the United States Drug Enforcement Administration

April 2003– Sep 2003

Senior Computer Forensic Scientist

- Performed computer forensic acquisitions and examinations in support of Drug Enforcement Administration (DEA) cases on numerous hardware and software platforms.
- Performed in-depth forensic analysis using multiple tools including ILook 7, EnCase 3 & 4, SMART, and Red Hat Linux utilities.
- Performed on-site searches and assists in the seizure of digital evidence related to drug-based investigations.
- Prepared reports of findings and case testimony.
- Interfaced with DEA agents and support staff in support of DEA cases.
- Performed research and development in the field of Computer Forensics.
- Created training programs and provided training for fellow examiners in aspects of computer forensics and digital evidence.
- Mentored and coached new CSC examiners in both technical and corporate areas.
- Skilled with the Encase, Paraben, Forensics Toolkit, Ilook, and Smart forensic tools, as well as over 150 supporting specialty exploitation programs.
- Trained and skilled in conducting examinations in accordance with established Department of Justice rules of evidence and chain of custody.
- Designed and implemented advanced systems for processing digital evidence and forensic investigations.
- Developed and implemented Standard Operating Procedures to ensure ASCLAD certification.
- Served as a subject matter expert to US Attorney's in support of prosecutions.
- Created customized scripts and programs to facilitate efficient computer forensic examinations.

- Served as a part-time Guidance Software instructor for the Encase software.

United States Army
Special Operations Command
May 1997 – April 2003
Special Forces Warrant Officer

- Commanded a 7 man computer forensic detachment.
- Designed and implemented a deployable computer forensics capability for the command, using Encase, Forensic Toolkit, SMART, and Ilook programs for the core forensic examination capability.
- Conducted computer forensic operations in support of the Global War on Terrorism and National Level Directives.
- Prepared reports and follow-on targeting information for dissemination to tactical and strategic units based on findings from computer forensic operations.
- Developed Computer Security Tactics, Techniques and Procedures (TTP) to ensure computer operational security. Used computer forensic techniques to evaluate TTP's and to recommend operational changes in computer usage.
- Interfaced with theater level combatant commands to ensure integration and execution of computer forensic operations.

Guidance Software

April 2003 – April 2014
Contracted Instructor

- Instruct students in all aspects of the Encase Computer Forensic Software.
- Assist in developing and reviewing the program of instruction (POI) for Encase Forensic, Enterprise and e-Discovery software
- Act as an initial tester of new release software

CLEARANCE INFORMATION

- Current TS/SCI clearance with lifestyle polygraph examination

PROFESSIONAL MEMBERSHIPS

- Member, International Association of Computer Investigative Specialists (IACIS)
- Member, High Technology Crime Investigation Association (HTCIA)
- Associate Member of the American Bar Association
- Institute of Computer Forensic Professionals
- Member of Cyber Security Advisory Board, Brigham Young University

NOTABLE FORENSIC AND INCIDENT RESPONSE ACCOMPLISHMENTS

- Lead forensic examiner in the Banco Progreso vs. Pedro Castillo matter. This engagement started with three laptops and turned into the largest individual bank fraud case in the history of the International Monetary Fund. Banco Progreso ultimately was able to recover over \$100M in stolen funds.
- Lead forensic examiner in the Lockheed Martin vs. L-3 Communications lawsuit over the ATARS contract. This investigation led to a \$3.2B settlement for my client.
- Discovered the Office of Personnel Management Breach. This breach was the largest breach in the history of the US Government and had been present in US Government networks for almost three years prior to my involvement and discovery.
- Designated as an on call subject matter expert (SME) to the Department of Homeland Security (DHS) hunting and incident response teams (HIRT).

ADDITIONAL COURSES AND SEMINARS

- Memory Forensics, Volatility 2016
- Techno Security 2015
- Gartner, 2014

- RSA, 2014
- Cyber Security Innovation Forum 2014
- CIO Security Conference, 2013
- PFIC 2009, 2011, 2013
- CEIC 2008
- Techno Forensics 2007, 2009, 2011,2013
- Techno Security, 2007, 2010, 2013
- HTCIA International Conference and Symposium 2006
- HTCIA International Conference and Symposium 2004
- EnCase Advanced Computer Forensics Course, Guidance Software
- MCSE (Windows 2000), 2003
- Unix System Administrator, 1996
- Ultimate Hacking Course, 2001
- Encase Field Intelligence Module (FIM), Guidance Software, 2005, 2006, 2008, 2012 *
- Encase Internet Email Investigations, Guidance Software 2003, 2006, 2009, 2011, 2013 *
- Encase Advanced Course – NTFS, Guidance Software 2004, 2011, 2013 *
- Encase Intermediate Course, Guidance Software 2001, 2007, 2010, 2013*
- Encase Basic Course, Guidance Software 2000, 2010, 2011 *
- ILook Computer Forensic Analysis In-Service Training Course, DEA 2003
- Computer Forensic Examiner Training, DEA Digital Evidence Laboratory, 2003
- CISSP, 2003
- MSP, 2003

* Indicates courses that I taught for Guidance Software

TECHNICAL SKILLS (PARTIAL LIST)

- CyFIR – Expert Level
- Encase – Expert Level
- Enscripting Program Language (Expert Experience)
- Microsoft Windows 10, 7, Vista, XP, 2000, NT, 98, 95, 3.1, Server 2012, Server 2016, Server 2019 and DOS Operating Systems (*Strong Experience*)
- Macintosh OS X (*Strong Experience*), Macintosh System 9 and lower (*Moderate Experience*)
- Linux (*Moderate Experience*)
- UNIX and Be operating systems (*Strong Experience*)
- Ios, Android, Pocket PC (Windows CE) and Palm OS handheld devices (*Strong Experience*)
- Computer forensic software utilities such as CyFIR, X-Ways, Axiom, EnCase, SMART, Red Hat Linux utilities, Oxygen Forensics, , and associated forensic hardware tools (*Expert Experience*)
- Memory Forensics, Volatility, Redline, and CyFIR (Strong Experience)
- Oracle, Microsoft SQL Server, and Microsoft Access databases (*Strong Experience*)
- Expert knowledge of numerous governmental, commercial, and consumer level application software packages in both the Windows and Macintosh environments
- Bilingual in Spanish with a DLPT of 3/3

Speaking Engagements

- Enterprise Forensics
Investor Conference
Virtual, 2020
- Incident Response at Enterprise Scale
CAN Conference
Virtual, 2020
- CISO Conference
Forensic Preparedness
Virtual, 2020
- Enterprise Forensics and IR
Imperial Capital Investors Conference
New York, NY 2019

- Digital Forensics Workshop
Tampa, FL 2019
- When Forensics Gets In the Way
Washington, DC 2019
- NASDAQ Incident Response Panel
New York, NY 2019
- NASDAQ Cyber Security Summit
New York, NY 2018
- US Embassy Cyber Summit
Computer Forensics and Cyber Security
Athens, Greece, 2018
- Block Chain Summit, 2018
Computer Forensics and Cyber Security
Carnegie Mellon University
Pittsburgh, PA
- Information to Intelligence (I2i) Summit, 2018
Endpoint Data Exploitation
Denver, CO
- Net Diligence Cyber Risk Summit, 2018
Endpoint Visibility
Philadelphia, NJ 2018
- CIO Summit, 2017
Austin, TX
Topic: Endpoint Forensics and Visibility
- Pittsburgh Association for Financial Professionals, 2017
Pittsburgh, PA
Topic: Incident Response/Breach Panel
- Cyber Risk Management Conference
Toronto, Canada
Topic: Cyber Security
- BPIC Conference
Palm Beach, FL
Topic: Securing the Internet of Things (IoC)
- Alabama Trial Lawyers Association, 2017
Montgomery, AL
Topic: Digital Forensics
- Wyoming Trial Lawyers, 2016
Cheyenne, Wy
Topic: Digital Forensics
- Techno Security, 2016
Myrtle Beach, SC
Topic: Enterprise Digital Forensics
- 36th Annual Association for Governmental Leasing and Finance (AGLF) Conference, 2016
Las Vegas, NV
Topic: Cyber Security
- ISSA LA May Healthcare Privacy & Security Forum, 2016
Los Angeles, CA
Topic: Detection of Zero Day Malware
- Pittsburgh Association for Financial Professionals, 2016
Pittsburgh, PA
Topic: Incident Response/Breach Panel
- SouthernCal Edison Conference 2016
Los Angeles, CA
Topic: Protecting the Power Grid IoC
- Kasperski Analyst Conference, 2016
Tenerife, Spain
Topic: Incident Response
- North America Cyber Summit, 2015

- Detroit, MI
 - Topic: Advanced Cyber Security and Assessments
- Cyber Security Panel 2015
 - Deer Valley, UT
 - Topic: Cyber Security
- Techno Security Conference 2015
 - Myrtle Beach, SC
 - Topic: Advanced Cyber Security
- MAPI Cyber Security Forum 2014
 - Pittsburgh, PA
 - Subject: Cyber Forensics and Incident Response
- Cyber Security Innovation Forum 2014
 - Baltimore, MD
 - Subject: Incident Response and Network Forensics
- CIO Security Conference, 2013
 - Austin, TX 2013
 - Subject: Digital Forensics and Incident Response in the Enterprise
- PFIC 2013
 - Salt Lake City, UT
 - Subject: Networked Forensics
- International Cyber Security Panel, 2013
 - Washington, DC
 - Responding to Cyber Threats on a Global Scale
- Techno Security Conference, 2011
 - Myrtle Beach, SC
 - Topic: Volatile Memory Forensics
- October 29, 2007
 - Techno Forensics Conference
 - Gaithersburg, MD
 - Topic: E-Discovery and Computer Forensics
- July 16, 2007
 - Annual ACFE Conference and Exhibit
 - Orlando, FL
 - Topic: Cell Phone Forensics
- June 3-6, 2007
 - Ninth Annual Techno Security Conference
 - Myrtle Beach, SC
 - Topics: P2 Enterprise Forensics, Laboratory Practicals and E-Discovery: The New Frontier.

Expert Witness Testimony

- Multiple sworn statements and affidavits 2015-2021
- 18 May 2015, Pope v. Davis, Circuit Court, Gillette, WY
- Multiple Sworn Declarations, Dec 2014 to May 2015, Nike v. Adidas, Portland, OR
- Multiple Sworn Declarations, Feb 2015 to July 2015, Nike v. Under Armour, Portland, OR
- 18 June 2008, Banco Progresso v. Pedro Castillo, 11th Judicial Circuit, Miami, FL
- 31 October 2007, Lockheed Martin v Speed, Fleming, St. Romain et al, Deposition Location: Ford and Harrison Office, Orlando, FL
- July 2006, DAG Petroleum v. BP Petroleum, Deposition Location: Washington, DC
- 19 February, 2009, Tacaronte v. Lesinski, Deposition Location: Virginia Beach, VA
- 9 December 2010, Wyoming v. Mersereau, Location: Douglas, Wyoming

James T Penrose, IV
2550 S. Clark St.
Arlington, VA, 22202
cv@jimpenrose.org

Education

George Washington University, Washington, DC, USA
M.S. in Computer Science **2004**

Drexel University, Philadelphia, PA, USA
B.S. Magna Cum Laude in Computer Science **2001**
Minor in History and Political Science

Experience

Tenacity Cyber, LLC, Maryland, USA **April 2021-Present**
Owner
Cybersecurity consulting and advisory services.

BlueVoyant, LLC, College Park, MD, USA **April 2021-Present**
Senior Advisor
Providing expert advice on cyber security products, operations, and business to BlueVoyant senior leadership and customers.

BlueVoyant, LLC, College Park, MD, USA **2019-April 2021**
Chief Operating Officer
Responsible for all operational aspects of BlueVoyant's business focused on day-to-day cybersecurity delivery and execution. Primary driver responsible for innovating the Cyber Risk Management Services (CRx) offering. Thought leader to engage with prospects, customers, press and industry analysts articulating BlueVoyant's value proposition, offerings, technology, and tradecraft. Cybersecurity expert with deep technical skills devoted to leading a tremendously talented workforce and inspiring overachievement through tenacious pursuit of success. Spearheaded the growth process by building product, engineering, sales, and marketing capabilities to take the CRx offering from concept to full operations with marquee reference customers over an 18-month period. Supported fundraising during the Covid-19 crisis to retain workforce and continued company operations with no degradation in service throughout the pandemic.

Redacted, Inc, Elkridge, MD, USA **2015-2019**
Executive Vice-President, Head of Product, Head of Services
Served multiple leadership roles in various business units. Created a Managed Security Services (MSS) business from the business case, technology stack selection, Security Operations Center (SOC) stand-up to initial customer acquisition and onboarding. Senior advisor to clients on all aspects of cyber risk; providing risk assessment, threat analysis, and strategic counsel to C-level executives across the

financial, energy, and manufacturing sector. Offering innovative tactics to pursue and deter hostile cyber attackers targeting client businesses before a risk becomes a crisis. Created new 3rd party risk data product offerings and brought the new products to market leading to the creation of a new substantial stream of revenue.

Darktrace, Washington, DC, USA

Executive Vice-President of Cyber Intelligence **2014-2015**

Responsible for overall cyber threat intelligence activities of Darktrace in support of customers globally. Served as the primary assessor of cyber threats detected by Darktrace across all clients. Featured in public speaking engagements on behalf of Darktrace as a subject matter expert and thought leader on cyber operations. Performed media interviews with both television and print reporters on cyber issues.

National Security Agency (NSA), Fort George G. Meade, MD, USA

Sub-Panel Member, National Security Agency Advisory Board **2014-2017**

Participates in the National Security Agency's Emerging Technologies Panel creating insight and recommendations for the Director of NSA.

Chief – Operational Discovery Center **2013-2014**

Built and led a large organization with multiple project teams, both civilian and contractor, and managed a multi-million dollar budget to achieve top priority of enabling discovery in signals intelligence (SIGINT).

Technical Director for Counterterrorism (CT) – SIGINT Directorate **2010-2013**

Ensured technical competence in the execution of global CT operations. Drove the creation of new SIGINT capabilities in support of the CT mission. Led engagements with foreign partners in order to build CT capacity with our allies.

Central Intelligence Agency, Langley, VA, USA

2009-2010

Senior NSA Representative – Technical Targeting Department, Counterterrorist Center

Coordinated joint NSA/CIA operational activities in support of Counterterrorism

National Security Agency, Fort George G. Meade, MD, USA

2008

Global Network Exploitation and Vulnerability Analyst – Remote Operations Center, Tailored Access Operations

Provided analytic support to drive computer network operations against high priority targets.

**Global Network Exploitation and Vulnerability Analyst,
NSA Commercial Solutions Center**

2007-2008

Employed and integrated industry best practices and products into NSA analytic practices.

Mission Manager – NSA/CSS Threat Operations Center

2005-2007

Led intelligence production and military planning integration activities for a variety of missions focusing on computer network defense, exploitation, and attack.

Watch Operations Officer – Computer Network Operations Fusion Center 2005

Provided rotational 24-hour support as the focal point for intelligence queries from operational military elements conducting computer network operations.

Technical Director – CNO Division, Office of Information Operations 2004-2005

Led technical SIGINT exploitation activities of foreign CNO actors in support of military and intelligence community requirements.

**Global Network Exploitation and Vulnerability Analyst,
- Office of SIGINT Support to Information Operations 2001-2004**

Performed software development, integration, and testing of SIGINT capabilities to support CNO analysis. Created and integrated new capabilities into the SIGINT system for use by production analysts.

Unix System Administrator – Directorate of Technology 1999-2000

Performed a myriad of Unix system administration activities including full automation of Y2K upgrades for globally deployed, remotely administered systems.

Intrusion Detection Analyst – Information Systems Security Organization 1997-1998

Analyzed intrusion detection logs from various sources, evaluated threats, created incident reports, and made recommendations to remediate vulnerabilities.

Awards

- Presidential Rank Award (Awarded Post Govt Service) 2016
- Director of National Intelligence Medal (Awarded Post Govt Service) 2015
- Elevated to Defense Intelligence Senior Level (DISL) from GS-14 2008
- National Intelligence Meritorious Unit Citation 2001, 2007, 2008
- Joint Meritorious Unit Award 2003, 2007
- Exceptional Performance Bonus 2009, 2010, 2011, 2012
- Spot promotion from GS-12 to GS-13 for Special Achievement 2005
- 13 Special Achievement Awards 1998-2008

Professional Development

- NSA Director's Leadership Program 2013
- Joint Duty Assignment at Central Intelligence Agency 2009-2010
- NSA Senior Technical Development Program 2010
- Graduate Certificate in Computer Security and Information Assurance
George Washington University 2003

Research Experience

- Undergraduate Research Assistant, Drexel University,
Software Engineering Research Group

2000-2001

Fraternal Organizations

- Knights of Columbus

Jeffrey Lenberg

Retired Distinguished Member of the Technical Staff Sandia National Laboratories
Chief Technology Officer World Light Power LLC, World Light Africa Limited

Jeff Lenberg graduated from the University of New Mexico with a Bachelors degree (1978) and Masters degree (1980) in Electrical Engineering. While in college he gained two years experience at the NASA Dryden Flight Research Center at Edwards AFB, CA working on the development of flight simulators.

In 1980 Jeff joined Sandia National Laboratories. He retired in December, 2011 after thirty-one plus years at the labs. He spent several years as a first level supervisor and finished his career as a Distinguished Member of the Technical Staff.



The first twelve years at Sandia, Jeff developed satellite systems involving flight hardware, test software, test systems, project management, and supervisor roles.

For two and a half years, he led the development of secure national and international networks for export control while on assignment at DOE headquarters in Washington DC. While in DC and on his own time, he was involved in the investigation of potential election fraud associated with the 1994 Maryland gubernatorial election. He assisted the FBI with data analysis in their investigation which was initiated in March 1995.

After returning from Washington and for the rest of his career, Jeff performed national vulnerability assessments and led the development of national security related projects. These projects required systems analysis, hardware (including low power microsystems) and software design, team development, project management, and program development. These projects varied from a one person, \$100K project to a one hundred person, \$20M project.

While working on national security projects, Jeff held high level security clearances. He worked on projects with several governmental agencies. He led “black hat” teams whose objective was to expose vulnerabilities by developing ways to break in (if possible) to what were considered to be secure systems and demonstrate that it could be done (physical security, secure hardware, and secure software systems).

In 2012 after Jeff retired from Sandia Labs, he started a renewable energy development company and in 2014 started a company based in Nairobi, Kenya to help create African jobs and bring energy to those who are without it.