

1 MR. CHAIRMAN: -- in your
2 experience as a recount attorney?

3 MR. BROOKS: I recall -- I recall
4 when I was first working with Rex Early. He
5 was on the recount commission and he had an
6 explanation for that, but I'm not sure it's
7 appropriate for --

8 MR. CHAIRMAN: Nevermind.

9 MR. KUZMAN: I'd like to hear
10 more.

11 MR. BROOKS: Paraphrasing --

12 MR. KUZMAN: I'm kidding.

13 MR. BROOKS: Paraphrasing, it was
14 something like things happen and you just
15 don't know, and a lot of people are involved
16 and there's always little mistakes and they
17 don't always fit together.

18 MR. CHAIRMAN: Questions from
19 Commissioners?

20 Discussion?

21 Motions?

22 MR. DURNIL: Well, again, we
23 can't -- we just don't know what we don't
24 know. I would move that we deny the request.

25 MR. CHAIRMAN: Second.

1 Discussion?

2 Hearing none.

3 All in favor?

4 MR. DURNIL: Aye.

5 MR. CHAIRMAN: Aye.

6 All opposed?

7 MR. KUZMAN: Aye.

8 MR. CHAIRMAN: Motion carries two
9 to one.

10 Mr. Skolnik.

11 MR. SKOLNIK: Mr. Brown, do you
12 have any further challenges or disputes in
13 this precinct?

14 MR. BROWN: In Lynn East? No.

15 MR. SKOLNIK: Mr. Brooks, I do --
16 the tally does reflect that there was one
17 valid -- disputed valid ballot.

18 MR. BROOKS: We withdraw our
19 challenge.

20 MR. SKOLNIK: Mr. Chairman, the
21 tally in Lynn East reflects 124 votes for
22 Mr. Deig, 111 votes for Ms. McNamara, six no
23 votes.

24 MR. DURNIL: I move we accept
25 that tally as final.

1 MR. CHAIRMAN: Second.

2 All in favor?

3 MR. DURNIL: Aye.

4 MR. CHAIRMAN: Aye.

5 All opposed?

6 MR. KUZMAN: Aye.

7 MR. CHAIRMAN: Motions carries
8 two to one.

9 Mr. Skolnik.

10 MR. SKOLNIK: The next precinct,
11 Mr. Chairman, is Marrs Center. The present
12 tally by the State Board of Accounts reflects
13 397 votes for Mr. Deig, 409 for Ms. McNamara.
14 Disputed valid ballots tallied, Mr. Deig,
15 one, disputed valid ballots tallied for
16 Ms. McNamara, 11. Invalid ballots tallied
17 for Mr. Deig, four, for Ms. McNamara, two.
18 There were eight no votes and one disputed no
19 vote.

20 MR. CHAIRMAN: Counsel.

21 MR. BROWN: Again, this fact
22 pattern appears. Two voters. I won't -- I
23 won't ask for exhibits; I'll just tell you,
24 from examining the exhibits we had -- and so
25 did opposing counsel -- there were two voters

1 who signed into the back of the poll book and
2 we think were allowed to vote and were not
3 registered in Marrs Center. So, again, two
4 voters in this county that invalidly executed
5 an electronic ballot and we would urge at
6 some point the Commission consider the
7 totality of the circumstances, but if they're
8 not willing at this time, we will again
9 withdraw this objection unless they're
10 willing to make a motion to grant what we
11 feel is an appropriate remedy of a special
12 election.

13 MR. CHAIRMAN: Okay.

14 Motions?

15 Hearing --

16 MR. KUZMAN: Oh. I think I'll
17 make a motion for a special election in this
18 precinct.

19 MR. CHAIRMAN: Okay.

20 MR. DURNIL: Didn't he withdraw?

21 MR. CHAIRMAN: No. He wants --
22 he didn't withdraw. We've got a motion on.
23 I'll second for discussion.

24 Hearing none.

25 All in favor of the motion signify by

1 saying, "Aye."

2 MR. KUZMAN: Aye.

3 MR. CHAIRMAN: Opposed?

4 MR. DURNIL: Aye.

5 MR. CHAIRMAN: Aye.

6 Motion is defeated.

7 Any other objections? None?

8 MR. BROWN: Not for Marrs.

9 MR. CHAIRMAN: Mr. Skolnik.

10 MR. SKOLNIK: Mr. Brooks, do you

11 have any --

12 MR. BROOKS: Ours are withdrawn.

13 MR. SKOLNIK: Mr. Chairman, the
14 final tally in Marrs Center would reflect 397
15 votes for Mr. Deig, 409 for Ms. McNamara,
16 four invalid ballots tallied for Mr. Deig,
17 two invalid ballots tallied for Ms. McNamara,
18 eight no votes.

19 MR. DURNIL: I move we accept the
20 tally as final.

21 MR. CHAIRMAN: Second.

22 All in favor?

23 Aye.

24 MR. DURNIL: Aye.

25 MR. CHAIRMAN: All opposed?

1 MR. KUZMAN: Aye.

2 MR. CHAIRMAN: Motion carries two
3 to one.

4 MR. BROOKS: Mr. Chairman, before
5 we start the next precinct, could we take a
6 very short break?

7 MR. CHAIRMAN: Already? We just
8 had one.

9 MR. BROOKS: You apparently have
10 not had as many Diet Pepsi's and Diet Dr.
11 Pepper's as I've had. I can be right back in
12 like two minutes if nobody else wants a
13 break.

14 MR. DURNIL: I do.

15 MR. CHAIRMAN: Any objection?

16 MR. BROWN: I'm sorry. What --

17 MR. CHAIRMAN: A five-minute
18 break and I'm serious.

19 MR. BROWN: Five-minute break
20 right now?

21 MR. CHAIRMAN: Yeah.

22 MR. BROWN: No objection.

23 MR. CHAIRMAN: All right. Five
24 minutes. Thank you.

25 (Off the record - Break)

1 MR. CHAIRMAN: Okay. The Recount
2 Commission is coming back to order.

3 Mr. Skolnik, where were you at?

4 MR. SKOLNIK: We were on Lynn
5 West. Actually, I believe we finished Lynn
6 West and I believe we're on Marrs North.

7 MR. CHAIRMAN: Marrs North --
8 excuse me -- is that correct?

9 MR. SKOLNIK: That is correct.

10 MR. CHAIRMAN: Do you have any
11 exhibits you want us to look at?

12 MR. BROWN: Yes. Marrs North,
13 Exhibit 16. I actually believe that's the --
14 and there's also Exhibit 5. I'm sorry.

15 MR. CHAIRMAN: So you have
16 Exhibit 5 and 6?

17 MR. BROWN: Marrs North,
18 Exhibit 5 and -- actually, it's Exhibit 5 and
19 16.

20 MR. CHAIRMAN: 5 and 16, Marrs
21 North. 5 and 16. Okay.

22 MR. BROWN: Exhibit 16 in the
23 poll book shows Samuel Hall noted as voting
24 absentee, and then the absentee report --
25 it's actually on page 96 of Exhibit 5 --

1 shows he voted by mail. But despite the poll
2 book printout, through a request to the
3 clerk, which we think she's actually trying
4 to be verified again, we were unable to find
5 any registration on file for Mr. Hall. And
6 we also don't have any absentee application
7 or envelope with the affidavit attached. It
8 was not part of the audit, and so we do not
9 -- we don't know what happened, but this
10 voter, we don't believe -- we're verifying --
11 we don't believe he's registered in the -- in
12 the -- at all, and we also don't have any
13 proof that this voter signed an affidavit or
14 even an application for the absentee ballot,
15 and, therefore, we again would say, you know,
16 that this would be an invalid ballot and all
17 -- since that ballot cannot be identified, we
18 would ask for -- and this voter is not
19 registered. And -- and the difference here
20 is, this is no mistake. And I know -- we're
21 having the clerk verify, but this is -- as
22 this was a couple -- couple precincts ago
23 where we had a voter that was not registered
24 and it was disposed of fairly quickly, the
25 Commission has been consistent where the

1 voter is entitled to vote, yet because of a
2 mistake of the voter -- or not on behalf of
3 the voter that they're entitled to vote. So
4 they voted in the wrong precinct, went to the
5 wrong location, but they were entitled to
6 vote and we let it go. It was -- I'm sorry.
7 The Commission voted to count those ballots.
8 In this case this voter we don't believe was
9 entitled to vote and somehow was issued an
10 application to vote, and because that voter
11 is not entitled to vote, we would request a
12 special election in this precinct. Thank
13 you.

14 MR. CHAIRMAN: Counsel.

15 MR. BROOKS: Well, Mr. Hall is in
16 the poll book. There is -- it says there's a
17 voter ID on file, and there for the exemplar
18 is his signature from his voter registration.
19 So whether Mr. Brown can or cannot find his
20 registration card, he's in the poll book;
21 there's a picture of his signature from the
22 voter registration and it says his voter ID
23 is on file. I don't think that is, aside
24 from being very hopeful, that's much evidence
25 that he's not registered when you've got his

1 -- he's in the poll book and you've got his
2 signature from a voter registration card.

3 MR. BROWN: We've now found the
4 electronic version of the registration, even
5 though the registration card was not located,
6 so we will withdraw this dispute, and I
7 apologize for wasting the Commission's time.

8 MR. CHAIRMAN: Thank you.

9 Mr. Skolnik.

10 MR. SKOLNIK: Are there any
11 additional disputes or challenged ballots in
12 Marrs North by Petitioner, Mr. Brown?

13 MR. BROWN: No, sir.

14 MR. SKOLNIK: Mr. Brooks, do you
15 have any?

16 MR. BROOKS: We withdraw ours.

17 MR. SKOLNIK: Mr. Chairman, the
18 tally in Marrs North, 284 votes for Mr. Deig,
19 259 votes for Ms. McNamara, two invalid
20 ballots cast for Ms. McNamara, 13 no votes.

21 MR. DURNIL: I move we accept the
22 tally as final.

23 MR. KUZMAN: Second.

24 MR. CHAIRMAN: Motion and a
25 second.

1 All in favor?

2 Aye.

3 MR. KUZMAN: Aye.

4 MR. DURNIL: Aye.

5 MR. CHAIRMAN: Motion carries
6 unanimately.

7 Mr. Skolnik.

8 MR. SKOLNIK: Mr. Chairman, the
9 next precinct is Marrs South. The current
10 tally for that precinct reflects 248 votes
11 for Mr. Deig, 219 for Ms. McNamara. There
12 were one disputed valid ballot for
13 Mr. Deig, one disputed valid ballot tallied
14 for Ms. McNamara, seven no votes.

15 MR. CHAIRMAN: Mr. Brown.

16 MR. BROWN: Again, I won't
17 request the exhibit be distributed, but
18 there's another voter in the back of the poll
19 book that signed and we believe voted in the
20 wrong precinct. This is Robb 1. Their
21 registration says they're registered in Black
22 5. And this time I will note the objection
23 for the record, but withdraw it --

24 MR. CHAIRMAN: Okay.

25 MR. BROWN: -- based on the

1 Commission's previous decisions.

2 MR. CHAIRMAN: And here again for
3 the record, you don't dispute that he is
4 registered and that registration is somewhere
5 in Posey County?

6 MR. BROWN: Correct.

7 MR. CHAIRMAN: It's a precinct
8 issue.

9 MR. BROWN: Correct.

10 MR. CHAIRMAN: Okay. Withdrawn.

11 Mr. Brooks, do you withdraw any
12 objections you might have? I don't know.

13 MR. BROOKS: You done?

14 MR. CHAIRMAN: He's withdrawn.

15 MR. BROOKS: Yeah. We withdraw
16 ours if Mr. Brown is done.

17 MR. SKOLNIK: Mr. Chairman, the
18 tally in -- in Marrs South precinct in Posey
19 County, 248 votes for Mr. Deig, 219 for
20 Ms. McNamara, seven no votes.

21 MR. DURNIL: I move we accept the
22 tally as final.

23 MR. CHAIRMAN: Second.

24 All in favor?

25 Aye.

1 MR. DURNIL: Aye.

2 MR. CHAIRMAN: All opposed?

3 MR. KUZMAN: Aye.

4 MR. CHAIRMAN: Motion carries two
5 to one.

6 Mr. Skolnik.

7 MR. SKOLNIK: Mr. Chairman, the
8 next precinct is Point P-O-I-N-T. The
9 current tally reflects 95 votes for Mr. Deig,
10 77 for Ms. McNamara, one disputed valid
11 ballot tallied for Mr. Deig.

12 MR. CHAIRMAN: Mr. Brown.

13 MR. BROWN: We have no issues
14 with this -- we have no disputes in this
15 precinct.

16 MR. BROOKS: We withdraw.

17 MR. CHAIRMAN: Withdrawn.

18 Mr. Skolnik.

19 MR. SKOLNIK: MR. Chairman, the
20 final tally then in Point would reflect 95
21 votes for Mr. Deig, 77 for Ms. McNamara.

22 MR. CHAIRMAN: Motions?

23 MR. DURNIL: I move we accept the
24 tally as final.

25 MR. KUZMAN: Second.

1 MR. CHAIRMAN: All in favor?

2 Aye.

3 MR. KUZMAN: Aye.

4 MR. DURNIL: Aye.

5 MR. CHAIRMAN: All opposed -- or
6 ayes. Motion carries unanimously.

7 Mr. Skolnik.

8 MR. SKOLNIK: Mr. Chairman, the
9 next precinct is Robb R-O-B-B Number 1 and
10 the record should reflect that entire
11 precinct is disputed. The tally by the State
12 Board of Accounts at the present time
13 reflects 121 votes for Mr. Deig, 179 for
14 McNamara. All votes -- all ballots, as I
15 indicated, are disputed. There were three
16 invalid ballots tallied by the State Board of
17 Accounts, all three of which are disputed,
18 five no votes, all of which again are
19 disputed.

20 MR. CHAIRMAN: Mr. Brown.

21 MR. BROWN: Thank you,
22 Mr. Chairman and members of the Commission.

23 I have to make a correction. Marrs
24 South, we actually did not have another one
25 of those sign-ins in the back of the poll

1 book. I actually referenced Robb 1 during my
2 comments and we were on Marrs South. That's
3 my mistake. I want to correct that now.

4 We have a voter who voted in Robb 1,
5 signed the back of the poll book, registered
6 in Black 5, we believe legally registered
7 within the county of Posey, but we object.
8 It was an invalid execution of -- of an
9 electronic ballot, but concerning the
10 previous decisions of the Commission, we will
11 withdraw if it's noted for the record, and I
12 appreciate that. Thank you.

13 MR. CHAIRMAN: Thank you. Robb 1
14 then.

15 MR. SKOLNIK: Mr. Brooks, do you
16 have any objections in Robb 1?

17 MR. BROOKS: (Nods head).

18 MR. SKOLNIK: Are you
19 withdrawing?

20 MR. BROOKS: We do.

21 MR. SKOLNIK: You do?

22 MR. BROOKS: And I don't know if
23 based on procedure you want just me to
24 preserve that or you want me to argue it now.

25 MR. SKOLNIK: You would just wait

1 until your --

2 MR. BROOKS: Okay.

3 MR. SKOLNIK: -- Respondent
4 presents its case.

5 MR. BROOKS: Okay. We have --
6 except -- okay.

7 MR. SKOLNIK: Mr. Chairman, I
8 think since there are still outstanding
9 disputed ballots in that precinct, we would
10 just move to the next.

11 MR. CHAIRMAN: Okay. So that
12 precinct will stay open.

13 MR. SKOLNIK: Yes.

14 MR. CHAIRMAN: Robb 2 then.

15 MR. SKOLNIK: Robb Number 2,
16 Mr. Chairman, again the entire precinct is
17 disputed. The -- the current tally by the
18 State Board of Accounts is 106 for Mr. Deig,
19 123 for Ms. McNamara, five no votes, and,
20 again, the entire precinct is disputed.

21 MR. CHAIRMAN: Mr. Brown.

22 MR. BROWN: We withdraw all
23 disputes related to that precinct.

24 MR. CHAIRMAN: Mr. Brooks.

25 MR. BROOKS: We don't have any

1 disputes in that precinct, Mr. Chairman.

2 MR. CHAIRMAN: Thank you.

3 Mr. Skolnik.

4 MR. SKOLNIK: Mr. Chairman,
5 therefore, the -- the final tally in Robb 2
6 would reflect 106 votes for Mr. Deig, 123 for
7 Mr. (Sic) McNamara, five no votes.

8 MR. DURNIL: I move we accept the
9 tally as final.

10 MR. CHAIRMAN: Second.

11 All in favor?

12 Aye.

13 MR. KUZMAN: Aye.

14 MR. DURNIL: Aye.

15 MR. CHAIRMAN: Motion -- aye.

16 Motions carries unanimously.

17 Mr. Skolnik.

18 MR. SKOLNIK: Mr. Chairman, the
19 next precinct would be Smith East and the
20 entire precinct is disputed. The tally by
21 the State Board of Accounts reflected 90
22 votes for Mr. Deig, 91 for Ms. McNamara, one
23 invalid ballot tallied for Mr. Deig, two no
24 votes, and, again, the entire precinct is
25 disputed.

1 MR. CHAIRMAN: Mr. Brown.

2 MR. BROWN: I'm sorry. Could you
3 repeat. Which precinct is this again? I'm
4 sorry.

5 MR. CHAIRMAN: Smith East.

6 MR. SKOLNIK: Smith East.

7 MR. BROWN: We withdraw all
8 disputes related to that precinct.

9 MR. CHAIRMAN: Mr. Brooks, did
10 you have any there?

11 MR. BROOKS: Likewise because
12 we're so agreeable.

13 MR. CHAIRMAN: Great. I love it
14 when things move along.

15 MR. SKOLNIK: Mr. Chairman, if
16 there are no disputes in Smith East, the
17 final tally would reflect 90 votes for
18 Mr. Deig, 91 for Ms. McNamara, one invalid
19 ballot tallied for Mr. Deig, two no votes.

20 MR. DURNIL: I move we accept the
21 tally as final.

22 MR. CHAIRMAN: Second.

23 All in favor?

24 MR. KUZMAN: Aye.

25 MR. DURNIL: Aye.

1 MR. CHAIRMAN: Aye.

2 Motion carries unanimously.

3 Mr. Skolnik.

4 MR. SKOLNIK: The next precinct,
5 Mr. Chairman, is Smith West. One hundred --
6 the present tally reflects 112 votes for
7 Mr. Deig, 104 for Ms. McNamara, seven
8 disputed valid ballots tallied for Mr. Deig,
9 two disputed valid ballots tallied for
10 Ms. McNamara, one no note.

11 MR. CHAIRMAN: Mr. Brown.

12 MR. BROWN: Thank you,
13 Mr. Chairman and members of the Commission.

14 This -- the exhibit I will be referring
15 to is Smith West, Exhibit 1.

16 MR. CHAIRMAN: Smith West, 1.

17 Okay. I think we're there.

18 MR. BROWN: I would draw your
19 attention to -- it's the last voter on that
20 exhibit, Ruth Luper. She's noted as voting
21 absentee. We checked and have a -- and I
22 will present -- she does have a valid
23 registration; she is listed on the absentee
24 ballot activity report, but there was no --
25 during the audit there was no absentee

1 affidavit or application for this voter. And
2 so I'll bring up these two exhibits we have
3 from listing the voter's registration and
4 Absentee Activity Report.

5 MR. SKOLNIK: Adam, these are two
6 separate exhibits?

7 MR. BROWN: Yes.

8 And, I'm sorry, Mr. Chairman. Due to
9 the discrepancy here that we do not know -- -
10 this was actually a confined voter, so the
11 documentation should have been assisted;
12 there should have been someone there to
13 document it, so you would have thought there
14 was more documentation rather than less, and
15 because of this, again, we would ask for
16 consideration of a special election in this
17 precinct due to not knowing that this was a
18 validly executed absentee ballot. Thank you.

19 MR. SKOLNIK: Mr. Chairman, for
20 the record I would note that Mr. Brown has
21 submitted Exhibits P5 and P6.

22 MR. CHAIRMAN: Thank you.

23 Counsel. Mr. Brooks.

24 MR. BROOKS: Am I understanding
25 the argument correctly that -- that this

1 voter, this confined voter mailed her
2 absentee -- it says on the -- the -- the
3 exhibit that Mr. Brown has provided that she
4 mailed in the ballot -- the report -- the
5 report indicates that she requested a ballot
6 by mail, but if you look in the received
7 column, it does not indicate that it was
8 received, so I don't know why we're talking
9 about it.

10 MR. CHAIRMAN: Okay.

11 Questions from Commission members?

12 Motions?

13 MR. DURNIL: Let me -- well, I
14 move we deny the request.

15 MR. CHAIRMAN: Second.

16 Discussion?

17 MR. DURNIL: We don't know
18 whether this is a confined voter or a
19 mail-in?

20 MR. BROWN: The clerk's Absentee
21 Activity Report says it's a confined voter.
22 We -- we don't -- that's the problem. We
23 don't know if this -- if this voter filled
24 out any paperwork. We don't know who filled
25 out the ballot. There's no affidavit of

1 penalties of perjury. I don't want to go on,
2 but you know the issues.

3 MR. CHAIRMAN: But -- but do you
4 have proof that they even voted? Do you know
5 if, in fact, the vote was cast?

6 MR. BROWN: We have a discrepancy
7 between the number of absentee ballots
8 received in the precinct total in the tally
9 by the State Board of Accounts and the number
10 of applications and affidavits that they
11 counted during that tally.

12 MR. CHAIRMAN: But what does that
13 say specifically? What is that telling you
14 or us?

15 MR. BROWN: It tells us that
16 there were 11 ballots and, actually, I think
17 there's only nine. According to their tally,
18 there was 11 ballots and only ten
19 applications and, actually, in this precinct
20 only eight affidavits.

21 MR. CHAIRMAN: That were received
22 back -- 11 ballots that were received back
23 and counted?

24 MR. BROWN: Right. Absentee
25 ballots being both -- that count of 11 is

1 absentee ballots both mailed and early
2 voting, walk-in, absentees. But, yes, there
3 was only -- the 11 absentee ballots
4 corresponded to ten voter applications and
5 only eight voter affidavits.

6 MR. CHAIRMAN: Questions?

7 MR. KUZMAN: If I may.

8 MR. CHAIRMAN: Please.

9 MR. KUZMAN: Can you go through
10 that. There were ten --

11 MR. BROWN: There were -- the
12 State Board of Accounts tally -- and I think
13 you all have this documentation -- they can
14 verify as well. I mean, on the first page,
15 you'll see number five, and counting the
16 precinct tally certificate, there were seven
17 -- I'm sorry -- nine absentee ballot votes,
18 and then they count early voting, even though
19 the Chairman doesn't like that distinction,
20 they count early voting separately, too, so
21 in total 11 absentee votes in this precinct.
22 Then they count -- and it's the progression
23 we all went through in the audit -- the
24 number of absentee and early voter
25 applications. They actually count those

1 together. And there was only ten
2 applications. The number of absentee voter
3 affidavits only numbered eight.

4 MR. KUZMAN: How do we -- I'm a
5 little confused. How do you have 11 votes
6 and only eight applications?

7 MR. CHAIRMAN: Possible
8 explanations from Counsel? None?

9 Mr. Brooks?

10 MR. BROOKS: Pardon?

11 MR. CHAIRMAN: The -- the
12 question or allegation is that there were 11
13 votes but only eight applications.

14 MR. KUZMAN: Am I -- am I reading
15 that form right?

16 MR. CHAIRMAN: Is that how we're
17 to understand that?

18 MR. BROOKS: Obviously, the
19 collection and processing of all of this
20 paperwork is the responsibility of the Posey
21 County Election Board. I will tell you that
22 in this particular recount, the impound order
23 was requested and received very quickly after
24 the election as opposed to when the recount
25 itself was filed; hence, in this county and

1 Vanderburgh County, election materials were
2 all impounded before they were separated by
3 precinct. Mr. Skolnik, your Recount
4 Director, can testify that we spent the
5 better part of a day-a-and-half maybe total
6 just sorting through ballots, applications
7 and paperwork that -- that were all together.
8 They had to be sorted by precinct.
9 Vanderburgh County, for example, not every
10 precinct in -- in Vanderburgh County is in
11 House District 76. So all I can say is that
12 because of the chaos in the sorting, it
13 certainly is not surprising to me if some of
14 the paperwork is put in the wrong precinct or
15 -- you know, they were all here, so maybe
16 you're going to have some -- an extra one or
17 two in one precinct and you might be short in
18 another. It's very difficult to say, because
19 none of us, including Mr. Brown or I, were
20 sitting there matching every -- while the
21 counting was going on, studying if this
22 particular envelope was really from this
23 precinct or whatever.

24 So -- so I -- I can't -- I mean, my
25 assumption is that the clerk's office

1 wouldn't send out ballots without an
2 application, generally, and that they came
3 back.

4 In this particular instance that
5 Mr. Brown is talking about, this one
6 indicates it didn't come back at all but
7 somehow the ABS got on there. So it's --
8 it's -- these are just the kinds of things --
9 I think it was magnified by the fact that the
10 impound order was ordered before -- I mean
11 very quickly before some of the things that
12 would ordinarily be done were done. But, I
13 mean, I just don't know the answer to that
14 question and I don't know that we'll ever
15 know the answers to those questions. I've
16 done -- Mr. Rokita has done plenty; I've done
17 plenty. There are always -- these kinds of
18 mismatched numbers always happen and I always
19 come back to the point that this Recount
20 Commission's duty is to count ballots. And
21 if you've got ballots, you count them, and
22 unless there's an egregious, egregious bad
23 problem, that's -- you count what you've got.

24 MR. CHAIRMAN: Okay. Any other
25 questions from Commissioners to the parties?

1 Motions?

2 MR. DURNIL: I motion to deny the
3 request.

4 MR. CHAIRMAN: Motion to deny the
5 request.

6 Second.

7 Discussion?

8 I'm not -- there are discrepancies
9 here, but I am not getting from the -- from
10 the Petitioner the evidence that I need to --
11 to say that there's been some kind of fault
12 that causes to change the recount numbers, so
13 I will be voting for Mr. Durnil's motion.

14 Any other discussion?

15 Hearing none.

16 All in favor of the motion, signify by
17 saying, "Aye."

18 MR. DURNIL: Aye.

19 MR. CHAIRMAN: Aye.

20 Opposed?

21 MR. KUZMAN: Aye.

22 MR. CHAIRMAN: Motion carries two
23 to one.

24 Mr. Skolnik.

25 MR. SKOLNIK: Mr. Chairman, there

1 remain several disputed valid ballots tallied
2 for Mr. Deig in this precinct.

3 MR. BROOKS: We -- we withdraw
4 all of our challenges in that precinct.

5 MR. SKOLNIK: Mr. Chairman and
6 members of the Commission, the tally in Smith
7 West, therefore, is 112 votes for Deig, 104
8 votes for McNamara, one no vote.

9 MR. DURNIL: I move we accept the
10 tally as final.

11 MR. CHAIRMAN: Second.

12 All in favor, "Aye."

13 MR. KUZMAN: Aye.

14 MR. DURNIL: Aye.

15 MR. CHAIRMAN: Aye. Motion
16 carries unanimously.

17 Mr. Skolnik.

18 MR. SKOLNIK: Mr. Chairman, we
19 have now completed the tally and the recount
20 portion in Posey County and according to the
21 order that the parties have and the
22 Commission have ascended to, we now move
23 to --

24 MR. CHAIRMAN: Mr. --

25 MR. SKOLNIK: -- Vanderburgh

1 County.

2 MR. CHAIRMAN: Mr. Skolnik, do we
3 need to go back to --

4 MR. DURNIL: Black 6.

5 MR. CHAIRMAN: -- Black 6.

6 MR. SKOLNIK: I'm sorry. You are
7 -- I stand corrected. Yes.

8 MR. CHAIRMAN: Third time is a
9 charm.

10 MR. SKOLNIK: Yes, it is. We
11 still have -- we still have Black Number 6 in
12 Posey County. And I do have that was handed
13 to me -- I think there's some additional
14 logs, voting logs that will be marked as
15 Exhibit P7.

16 MR. CHAIRMAN: If I remember
17 correctly, where we left off on Black 6 was
18 that there were two absentee ballot
19 applications that at least caused me concern
20 because they were not signed, and we noted --
21 noted that even though it was voting in
22 person, quote/unquote, early at the
23 courthouse, it really is an absentee ballot
24 process, which in Indiana is a special
25 dispensation because General Assembly, in

1 this state at least, provides for in-person
2 voting on the day of the election as the --
3 not the only but the primary way to vote in
4 this state.

5 Mr. Brooks at the time was making an
6 argument that there was some kind of log that
7 was being kept that, in fact, had a signature
8 and that that could be used to hopefully cure
9 some of the defects.

10 Feel free to correct me if I say
11 anything wrong, but please continue.

12 MR. BROOKS: Mr. Chairman, if you
13 -- I think you guys got these (indicating)?

14 MR. CHAIRMAN: Yep. We have the
15 log.

16 MR. BROOKS: There are two. And
17 if you look on the two exhibits that
18 Mr. Brown has offered, one is numbered EO386.
19 The codes are along the side and so you just
20 have to find that code.

21 MR. SKOLNIK: For the record, the
22 logs are Exhibit P4 and P7.

23 MR. BROOKS: Have you all found
24 them?

25 MR. SKOLNIK: Where are you?

1 MR. BROOKS: Along the left-hand
2 side are numbers, and the first one we're
3 going to look at is 386.

4 MR. SKOLNIK: May I make a
5 correction for the record, and Counsel can
6 possibly help me out here. I think the
7 log --

8 MR. BROOKS: Robb 1 is still open
9 too.

10 MR. SKOLNIK: I think the log may
11 have been marked -- was that a Commission
12 exhibit, the first log? We now have two
13 logs.

14 (Off the record - Discussion
15 regarding exhibits)

16 MR. SKOLNIK: I believe this is
17 -- let me make a correction for the record,
18 and I apologize for the confusion.

19 This exhibit that I just handed you,
20 the log, should be remarked, I believe, as
21 Exhibit C3, because I believe the logs were
22 going to be a Commission exhibit, if I'm not
23 mistaken.

24 MR. CHAIRMAN: I -- I have some
25 -- some marks here.

1 The first log that we were given was
2 C2; the second one was P7.

3 MR. SKOLNIK: Then it should be
4 corrected to reflect C3.

5 MR. CHAIRMAN: Okay. I'll make
6 that correction.

7 MR. SKOLNIK: For the record, the
8 log beginning with code number EO487 that I
9 just handed to the Commissioners is now
10 Exhibit C3.

11 MR. CHAIRMAN: Thank you, Brad.
12 Okay. Mr. Brooks.

13 MR. BROOKS: If you'll -- if
14 you'll look to 386, which is one of the
15 voters that Mr. Brown has challenged, you'll
16 see that the process that I was describing is
17 sort of -- is -- is reflected on this
18 exhibit; that is, this particular voter came
19 in, signed her name. They got the precinct,
20 which nobody is disputing. She was photo
21 ID'd because her -- her driver's license is
22 listed. Then at that point, knowing that
23 it's the precinct, the name is read to
24 someone in the clerk's office sitting at a
25 computer, obviously, away from the counter

1 where the voter is, and they generate this
2 application for an absentee ballot. Once
3 that is generated, before the person votes,
4 the clerk's staff should hand this back to
5 the voter and have them sign it, and in this
6 case, if you voted without signing this, it
7 was because the clerk didn't give it to you.

8 Now, we had -- these are voters, and
9 Mr. Brown has the voter registration cards.
10 We just looked at them. The -- the vote --
11 the names and the signatures for both match
12 the signatures on the cards. They were photo
13 ID'd, and the only reason there isn't an
14 affidavit signed in our opinion is because
15 the clerk didn't give it back to them and
16 have them sign it before they let them vote,
17 and that is not a reason to disenfranchise
18 someone.

19 MR. CHAIRMAN: And -- and how do
20 you know they were photo ID'd?

21 MR. BROOKS: Well, their driver's
22 license number is --

23 MR. CHAIRMAN: Oh, Excuse me.

24 Okay.

25 MR. BROOKS: -- listed in the

1 right column.

2 MR. CHAIRMAN: Well, we can get
3 that from -- I wonder if that -- is that --
4 is that in the statewide voter file, all
5 driver's license numbers? What if someone
6 appeared without a driver's license but still
7 had a photo ID?

8 MR. BROOKS: Pardon?

9 MR. CHAIRMAN: I appreciate your
10 referencing the driver's license numbers, but
11 we have this information in the statewide
12 voter file as well and what if a voter came
13 that didn't have a driver's license but had
14 some other photo ID?

15 MR. BROOKS: Well, I mean,
16 there's other -- other ways to present photo
17 ID. There's no question about that, if
18 that's your question. It doesn't have to be
19 a driver's license. But in this case, when
20 you're listing under driver's license number
21 and they're the right number of digits, I'm
22 assuming that that is -- I mean, we can ask
23 the clerk, but, I mean, they're supposed to
24 be photo ID'd, and my assumption is that
25 these numbers were obtained --

1 MR. CHAIRMAN: Yeah. I just --
2 we're -- we're already out a little bit on a
3 limb here --

4 MR. BROOKS: Uh-huh.

5 MR. CHAIRMAN: -- because we have
6 absentee applications that don't have a
7 signature under oath. And I'm not convinced
8 -- you know, we're allowing this to go
9 forward under this -- so far this discussion
10 going on the fact -- based on the fact that
11 there's been a log, an extracurricular log
12 created, and my question now is, because you
13 -- you say, well, they've been photo ID'd.
14 And I want you to link this all up to me --
15 evidentiary, in evidentiary fashion that
16 shows --

17 MR. BROOKS: In that case we call
18 -- call the clerk.

19 MR. CHAIRMAN: -- that they've
20 been photo ID'd.

21 Okay.

22 Call the clerk of the Posey Circuit
23 Court, Donna Butler.

24 DONNA BUTLER

25 being first duly sworn upon her oath, testified
as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. CHAIRMAN: Mr. Brooks.

MR. BROOKS:

Q Madam Clerk, is there -- I assume you were here --

MR. CHAIRMAN: I need you to state your name for the record, please.

THE WITNESS: Donna Butler.

Q Ms. Butler, you were in the room when I described the procedure, correct?

A Was I in the room?

Q In the room to listen to my description of the procedure.

A Yes.

Q And is there any place that I misstated what happens when someone goes into the clerk's office to do in-person absentee voting?

A Will you state -- would you restate again what you're -- you're -- what you said to --

Q Well, the -- if -- if I come in to want to vote in person by absentee in the clerk's office, the first thing I would do is, I would be required to show photo ID, correct?

A Correct.

Q Then I would sign this log, correct?

1 A Yes.

2 Q I'd be assigned a precinct and then that's
3 entered in the log that it's my precinct
4 where I'm registered, correct?

5 A Yes.

6 Q And in the right-hand column, if you photo
7 ID'd somebody, does your clerk write the
8 number off of the driver's license where it
9 says driver's license number?

10 A It's either a driver's license, a passport or
11 some valid ID.

12 Q So the indication -- if there's a number in
13 this right-hand column, they've been photo
14 ID'd, whether it's a driver's license or some
15 other valid --

16 A Correct.

17 Q -- photo ID.

18 A Yes.

19 Q And then the application for absentee ballot
20 itself would be generated on a computer
21 terminal away from the counter where the
22 voter is, correct?

23 A Yes.

24 Q And what should happen before I get to go
25 vote is your clerk staff should hand me back

1 this printed application and tell me I have
2 to sign, right?

3 A Yes.

4 Q And if I don't sign, I shouldn't be voting,
5 right? I mean, your -- your clerk is
6 instructed not to let somebody vote without
7 signing it.

8 A Yes, they are.

9 Q Okay. So if something isn't signed and
10 somebody voted, it would be because,
11 presumably, in the hectic nature of what's
12 going on in your office during the election
13 cycle, they printed one off and set it down
14 and didn't ask it -- ask the person to sign?

15 A Yes.

16 Q Okay.

17 MR. BROOKS: I -- I don't have
18 any more questions, Mr. Chairman.

19 MR. CHAIRMAN: Counsel.

20 MR. BROWN: No questions.

21 MR. CHAIRMAN: Okay.

22 Does the Commission have any questions
23 of the witness?

24 Donna, I have some questions.

25 MR. CHAIRMAN:

1 Q With regard to this issue, is it -- is it the
2 normal practice when people appear at the
3 courthouse to vote absentee in person and not
4 have them sign the ABS1, the application?

5 A No. It was an apparent oversight of the
6 election -- or the people in the election
7 office working.

8 Q Okay. Is there anything you can tell us to
9 ensure us that even though these oversights
10 did occur that there were or weren't any
11 oversights with regard to the requirement to
12 show a photo ID?

13 A No. Our procedure in the office when someone
14 appears in the office to do early voting on
15 the machines, we ask for their driver's
16 license or their passport or their valid ID
17 that they're going to present. That is given
18 to one person who sits at the computer and
19 types in, prints out the ABS1. The other
20 election worker at that time then, they sign
21 the sheet that we prepare. Then that sheet
22 is taken with the voter. They take that
23 sheet over. As the voter then approaches --

24 Q When you say "sheet", do you mean the ABS1?

25 A The ABS1. They take that -- the two election

1 workers take that with the voter over to the
2 machine. At that time then the voter then
3 can watch the workers do their procedure to
4 get to their ballot and verify that they're
5 in their proper precinct.

6 Q There was some -- there were some statements
7 made by Counsel regarding the fact that this
8 form was pre-completed to a certain extent.
9 Do you want to --

10 A No, it is not.

11 Q Well, I thought you just said your system
12 generates this.

13 A It does, but they're not -- when I -- when I
14 think of somebody saying pre-done, they're
15 not -- we have to have the voter there
16 present, give us their ID, then it gets
17 generated.

18 MR. BROOKS: Mr. Chairman, just
19 to clarify, I'm not suggesting that they were
20 done before the voter was there. I'm just
21 saying it's --

22 MR. CHAIRMAN: I'm not -- I'm not
23 suggesting it was you.

24 MR. BROOKS: Okay. Okay.

25 MR. CHAIRMAN: I wasn't