

**CASE NAME: Indiana Recount  
Commission Hearing**

**DATE TAKEN: December 22, 2006**

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December 22, 2006

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BEFORE THE STATE RECOUNT COMMISSION  
SITTING AT INDIANAPOLIS, INDIANA

Taken On: December 22, 2006

At: The Indiana Government Center  
402 West Washington Street  
Conference Room C  
Indianapolis, IN 46204

A STENOGRAPHIC RECORD BY:  
Judith E. Bellinger, RPR  
Notary Public  
Stenographic Reporter

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1           (Thereupon, the hearing was called to order  
2 on Friday, December 22, 2006, at 2:10 p.m.)

3           HONORABLE TODD ROKITA: Good afternoon. I  
4 call this meeting to order.

5           As the first order of business, we'll rise  
6 and pledge allegiance to our flag. Seeing no  
7 flag in the room, it's protocol to face our  
8 Capitol, which is our U.S. Capitol, which is  
9 that way (indicating).

10           (Thereupon, the Pledge of Allegiance was  
11 recited.)

12           HONORABLE TODD ROKITA: Thank you and good  
13 afternoon. I'm Todd Rokita, Secretary of State.  
14 I'm joined by Democratic appointed Committee  
15 Member, Ed Delaney, and Republican appointed  
16 Committee Member Gordon Durnil.

17           First item of business is documentation of  
18 meeting notices. Commissioners, you have that  
19 in your packet. Looks like it conforms to the  
20 law.

21           If there's no question, we'll adopt that as  
22 proper meeting notes. No questions? So  
23 adopted.

24           Next consideration matter pending before  
25 our Recount Commission, we have left a meeting

1 and a very heavy docket. There is a petition  
2 for recount in the U.S. Senate Osborn versus  
3 Lugar. At this point, I would like the parties  
4 to take their seats here at the table with the  
5 microphones.

6 And I will turn the proceedings over to  
7 Brad Skolnik, our Recount Director, for a report  
8 on the recount in this matter and the direction  
9 he recommends the Commission go in going forward  
10 with these proceedings.

11 MR. SKOLNIK: Thank you, Mr. Chairman and  
12 Members of the Commission. As you know, the  
13 petitioner had asked that a total of 10  
14 precincts spanning four counties be recounted.  
15 The State Board of Accounts has provided the  
16 tally to the members of this Commission and to  
17 the parties from the results of their tally that  
18 was conducted earlier this week.

19 I should note that the remaining -- the  
20 votes totaled in the remaining 88 counties, as  
21 returned as reported by the counties, were not  
22 the subject of this recount, and those totals,  
23 it is my belief, are not in dispute, and I  
24 assume should be approved by this Commission as  
25 we go forward in these proceedings.

1 I don't know, Counsel, whether that would  
2 be something that would be advisable to do at  
3 the very outset, since those 88 counties are not  
4 the subject of the Recount Commission.

5 MR. KING: Mr. Chairman and Commission  
6 Members, as the recount director indicated,  
7 there are 5,604 precincts in Indiana; 10 were  
8 recounted in this proceeding, which leaves  
9 5,594, including some in each of the four  
10 counties that were the subject of this recount.

11 To my knowledge, there's not been  
12 previously a partial recount proceeding before  
13 this Commission, so I would suggest that the  
14 Commission proceed to adopt, as previously  
15 tallied and canvassed by the co-directors, the  
16 results from those 5,594 precincts.

17 MR. DURNIL: I make a motion.

18 MR. DELANEY: Second.

19 HONORABLE TODD ROKITA: Any discussion?  
20 Hearing none, all in favor.

21 MR. DURNIL: Aye.

22 MR. DELANEY: Aye.

23 HONORABLE TODD ROKITA: Aye.

24 So moved unanimously.

25 Thank you, Counsel. Kristi, anything?

1 MS. ROBERTSON: No, I agree.

2 MR. KING: Mr. Chairman, as we have done  
3 previously in sections with this under Chapter  
4 2, Section 20, the procedure is set forth for  
5 the Commission to conduct the recount required  
6 under Indiana Law. We begin first with the  
7 disposition of all precincts in which there are  
8 no disputed ballots. Pursuant to Section 20,  
9 the Commission shall proceed to count all  
10 ballots in precincts -- shall order the votes  
11 count for the designated candidates in those  
12 precincts.

13 I should note for the record, and we will  
14 see here as I go through the county by county  
15 totals here, that in Howard County, according to  
16 the report from the State Board of Accounts,  
17 there are no disputed ballots in Howard County.  
18 However, because of the fact that the ballots in  
19 Howard County were not segregated by precinct,  
20 it was not possible for the State Board of  
21 Accounts to recount the absentee ballots that  
22 were cast in those three precincts.

23 The reason for that is in Howard County, as  
24 in many other counties throughout the state, a  
25 given ballot form may be used -- is oftentimes

1 used in more than one precinct. For example, a  
2 ballot form in a given precinct may be the same  
3 form as used in several other precincts.

4 Since the ballots were not segregated, the  
5 only way we were able to determine the ballots  
6 that were actually cast in the three precincts  
7 that are the subject of the recount was by  
8 examining the poll clerk's initials on the backs  
9 of those ballots. That worked very well for the  
10 ballots that were cast on election day; however,  
11 as you know, that ballots that are voted  
12 absentee or, I assume, through traveling board  
13 and the like, do not bear the initials of the  
14 poll clerks that are actually in the precincts  
15 or at the polls. I think in most cases, those  
16 are done at a central location.

17 MR. SKOLNIK: Or by travel.

18 MR. KING: Or by the traveling board.

19 Based on those facts, State Board of Accounts  
20 and the recount director was simply unable to  
21 determine which absentee ballots had actually  
22 been voted in those three precincts.

23 HONORABLE TODD ROKITA: Questions by the  
24 Commission members.

25 You're pausing, Mr. Skolnik.

1 MR. SKOLNIK: I was just pausing in case  
2 there are any questions.

3 MR. DELANEY: By matching initials, you  
4 could have conjecture, at least, that the  
5 ballots were counted. You just don't know which  
6 ones they were, is that what you're saying?

7 MR. SKOLNIK: We were able to sort -- by  
8 using the poll clerks' initials, the State Board  
9 of Accounts was able to determined, with  
10 specificity, the ballots that were cast in the  
11 three precincts in Howard County that are the  
12 subject of this recount.

13 MR. DELANEY: Okay.

14 MR. SKOLNIK: And that appeared to work  
15 quite effectively, I might add. The problem,  
16 again, is we encountered there were absentee  
17 ballots cast in those precincts that would not  
18 have born the initials of the poll clerks that  
19 were working on election day. Those were either  
20 the traveling board's or central location would  
21 have initialed.

22 MR. DELANEY: Did I hear you say that those  
23 were identified? Not the ballots themselves,  
24 but the votes? I mean, the envelopes -- when  
25 you're looking at the ballot with the initials



1 and they match up with the traveling board  
2 initials or the walk-in initials.

3 MR. DELANEY: I think because 10 precincts  
4 might have the same form of ballots, which  
5 Mr. Newman took us through the exercise, you'd  
6 get too many. You could never say which were  
7 from a particular precinct.

8 MR. SKOLNIK: Yeah, yeah.

9 MR. DURNIL: So that's the dilemma.

10 MR. SKOLNIK: That's exactly it.

11 MR. DURNIL: Is Mr. Osborn contesting the  
12 recount in Howard County?

13 MR. SKOLNIK: According to the State Board  
14 of Accounts' tally that has been provided to the  
15 members of the Commission, I do not reflect any  
16 disputed votes in those precincts.

17 However, please be advised, as you can see  
18 the book totals in those precincts do not  
19 reflect absentee ballots. Simply stated, the  
20 absentee ballots could not be recounted.

21 MR. DURNIL: I guess I could ask  
22 Mr. Osborn.

23 Are you going to be contesting the count in  
24 Howard County?

25 MR. OSBORN: No.

1 MR. DURNIL: With that, can we adopt the  
2 State Board of Accounts' tally as to Howard  
3 County -- Howard 33, Howard 34, and Taylor 5?

4 HONORABLE TODD ROKITA: I'll second that.  
5 We have another request, but let's take  
6 that motion.

7 Any discussion?

8 Hearing none, all in favor.

9 MR. DELANEY: Aye.

10 HONORABLE TODD ROKITA: Aye.

11 MR. DURNIL: Aye.

12 HONORABLE TODD ROKITA: Hearing no opposed,  
13 so moved unanimously.

14 Can I have a motion, then, to count the  
15 ballots in all 5,594 precincts?

16 MR. DELANEY: We did that.

17 MR. DURNIL: We did that.

18 HONORABLE TODD ROKITA: We did? I'm sorry.

19 MR. DURNIL: We were just down to --

20 MR. SKOLNIK: Mr. Chairman, I would direct  
21 the Commission's attention to Porter County, in  
22 which a recount was conducted in three  
23 precincts, Portage 2, Portage 5, and Portage 7.

24 According to the State Board of Accounts'  
25 report, none of the votes counted by the State

1 Board of Accounts are disputed by the  
2 petitioner.

3 MR. DURNIL: Can we accept all of the  
4 recount as reported to Porter County, Portage 2,  
5 Portage 5, and Portage 7?

6 HONORABLE TODD ROKITA: Second.  
7 Discussion.

8 MR. DELANEY: Is that correct, Mr. Osborn,  
9 you're not contesting those?

10 MR. OSBORN: That is correct.

11 HONORABLE TODD ROKITA: Any other  
12 questions?

13 Hearing none, all in favor.

14 MR. DURNIL: Aye.

15 MR. DELANEY: Aye.

16 HONORABLE TODD ROKITA: Aye.

17 So moved unanimously.

18 MR. SKOLNIK: Mr. Chairman, there are two  
19 precincts in St. Joseph County that do not  
20 contain any disputed votes; that is South Bend  
21 District 1-12 and South Bend District 2-20.

22 My examination of the State Board of  
23 Accounts' tally reflects that none of the  
24 ballots tallied by the State Board of Accounts  
25 have been disputed.

1 HONORABLE TODD ROKITA: Thank you.

2 Questions by Commissioners? Motion.

3 MR. DURNIL: I move that we accept the  
4 report of State Board of Accounts for South Bend  
5 Districts 1-12 and 2-20.

6 MR. DELANEY: Second.

7 HONORABLE TODD ROKITA: Thank you.  
8 Discussion.

9 You're not going to contest that,  
10 Mr. Osborn?

11 MR. OSBORN: No.

12 HONORABLE TODD ROKITA: All in favor.

13 MR. DURNIL: Aye.

14 MR. DELANEY: Aye.

15 HONORABLE TODD ROKITA: Aye.

16 Opposed.

17 Hearing none, so moved unanimously.

18 Mr. Skolnik.

19 MR. SKOLNIK: Thank you, Mr. Chairman.

20 Under the guidelines, now that we have  
21 disposed of all precincts with no disputed  
22 ballots, the Commission is directed to proceed  
23 to count ballots in precincts with 1 or more  
24 disputed ballots.

25 I would direct the Commission's attention

1 to La Porte County, Michigan City 6th Ward 3.  
2 The State Board of Accounts' tally reflects that  
3 the total valid ballots tallied by the State  
4 Board of Accounts, Senator Lugar 167, Osborn 61,  
5 undisputed valid ballots tallied by the State  
6 Board of Accounts, Lugar 2, Osborn 61, disputed  
7 ballots tallied by the State Board of Accounts,  
8 Lugar 165, and 197 no votes have been disputed.

9 There were a total of 208 no votes tallied  
10 by the State Board of Accounts.

11 HONORABLE TODD ROKITA: 26 or 208?

12 MR. SKOLNIK: You're correct, 26.

13 HONORABLE TODD ROKITA: Thank you, Mr.  
14 Skolnik.

15 Pursuant to our procedure, we at this time  
16 turn it over to the petitioner to make his case.

17 MR. DELANEY: I move we accept the  
18 undisputed ballots.

19 MR. DURNIL: Second.

20 HONORABLE TODD ROKITA: Any discussion?  
21 Hearing none, all in favor.

22 MR. DURNIL: Aye.

23 MR. DELANEY: Aye.

24 HONORABLE TODD ROKITA: Aye.

25 Hearing none against, that's so moved

1           unanimously.

2                     Now petitioner, excuse me.

3           MR. OSBORN: Thank you. The reason that I  
4           disputed the ballots in La Porte County, because  
5           they have electronic voting machines and they  
6           could not present to me during the recount a  
7           physical paper ballot that the voter marked as  
8           in the other counties that we did, indicating  
9           that that was the intent of the voter.

10                    The Indiana Constitution says we have a  
11           right to cast our votes by ballot, and the  
12           General Assembly, apparently in keeping with  
13           that, did try to make these machines usable;  
14           however, under the definition of ballot, they  
15           still specify that for definition No. 2, this is  
16           IC 3-5-2-3, Section 3, Paragraph 2, "The ballot  
17           labeled, prepared, printed, and supplied for use  
18           on the front of electronic voting system."

19                    And then further down, "The ballot labeled,  
20           defined as printed strip or sheet of cardboard  
21           or paper, supplied for use on electronic  
22           portion."

23                    There is no such thing in La Porte County,  
24           but it does show that the General Assembly did  
25           try to conform with the constitution, that at

1 the time the language was adopted, the ballot  
2 was cardboard or paper ballot.

3 There is no such paper on the machine, and  
4 I do believe this would be a matter before the  
5 General Assembly, I think, to go back and  
6 address that we need to conform to the  
7 constitution. And this is one of the points  
8 that I vote to bring out in all of this. As we  
9 already established in a prior hearing, I'm not  
10 contesting this race, I know what the outcome  
11 is; however, there are principles, as many have  
12 come forward here, and we can talk about those  
13 deficiencies that have been found that I would  
14 like to see corrected, especially in the  
15 Libertarian, as a citizen of this state, to keep  
16 record.

17 Therefore, I am disputing those ballots as  
18 not valid because of both the state law and the  
19 Indiana Constitution; and, therefore, request  
20 that, according to your Section 20, Section (b)  
21 No. 9, that you make a determination.

22 I'm not asking that those votes be given to  
23 me, I have no proof of that, but I do dispute  
24 them, and I believe that the only other action  
25 that your guidelines permit is for you to not

1 count them for any candidate because the senator  
2 is not a cross-petitioner here, and just the  
3 cross-petitioner is the only other one that can  
4 receive those votes.

5 HONORABLE TODD ROKITA: Before we go to the  
6 respondent for any response he may have, just to  
7 be clear. Mr. Osborn, are you talking about the  
8 165 votes there or 165 and 197?

9 What would your argument apply to?

10 MR. OSBORN: I disputed the no votes just  
11 as a matter of principle.

12 HONORABLE TODD ROKITA: With the same  
13 argument?

14 MR. OSBORN: With the same argument that we  
15 can't prove those people actually intended on  
16 skipping the race.

17 HONORABLE TODD ROKITA: Okay. This  
18 Commission can take the 165 and 197 together as  
19 part of your --

20 MR. OSBORN: They have a common problem  
21 between them, as your guidelines state that you  
22 can do.

23 HONORABLE TODD ROKITA: The Commission  
24 members can ask questions after we hear from the  
25 respondent.



1 MR. RUSTHOVEN: Thank you. Peter  
2 Rusthoven, appearing for Senator Lugar.

3 I'll respond just briefly. Obviously, it  
4 will not affect the outcome. There are 165  
5 individuals that cast their ballots though, and  
6 those ballots should be counted.

7 My recollection of the election laws  
8 follows a couple of the baseline principles, the  
9 ballot access are strictly enforced. You have  
10 to meet the deadlines or you don't get on the  
11 ballot. But when it comes to issues about  
12 counting citizens' votes or by public officials,  
13 assuming even that there were any, are not  
14 supposed to prevent the citizen ballot from  
15 counting.

16 So on behalf of 165 people there who voted  
17 for Senator Lugar, even on the behalf of the  
18 close to 200 that chose not to vote, that was  
19 their right. I'm willing to trust what the  
20 State Board of Accounts was able to determine in  
21 their examination of the ballots and think that  
22 the Commission should honor that.

23 Thank you.

24 HONORABLE TODD ROKITA: Thank you.

25 Questions of the parties by the

1 Commissioners?

2 MR. DELANEY: I move that we deny this.  
3 The reason, I don't think we should engage in  
4 economic attack on the electronic voting  
5 machine. I'm against those machines,  
6 personally. Hope they're going to stop using  
7 them. But it can't change the outcome of this  
8 election, which I think is our overall  
9 responsibility. Cannot be material to this  
10 race.

11 So I move that we deny the request and  
12 leave the ballots as counted by the State Board  
13 of Accounts as -- if I can do the math right,  
14 that would be 169 for Senator Lugar and 61 for  
15 Mr. Osborn, with 197 showing -- 197, I assume,  
16 of the 26 of the no votes? I'm confused on that  
17 point.

18 MR. OSBORN: There were some  
19 absent -- mailed in absentee ballots that were  
20 not disputed. They were clearly marked.

21 MR. DELANEY: So 197 disputed no votes, I  
22 would like them counted as regular no votes.

23 MR. OSBORN: You didn't need to take my  
24 word for it.

25 MR. DELANEY: That counts for all the

1 different times I do not take your word for it.

2 HONORABLE TODD ROKITA: Thank you. I thank  
3 both my fellow Commissioners, jumped at my  
4 invitation to speak. Before we second that  
5 motion, turn the mike over to Gordon.

6 MR. DURNIL: Well, I'll second the motion.

7 HONORABLE TODD ROKITA: Discussion.

8 MR. DURNIL: Your objection is the machine  
9 leaves no evidence of the vote; is that it?

10 MR. OSBORN: That's correct. I think it  
11 violates the constitution, which I realize  
12 you're not here to judge that. But it does seem  
13 to violate state law, because in La Porte County  
14 there are no pieces of paper or cardboard on the  
15 side of the machine. There are multiple pages,  
16 so there is no paper involved at all.

17 State law is very specific. So my argument  
18 is not that these people's votes should not be  
19 counted; that their will should not be made  
20 known, that the whole thing is inappropriate.

21 The second point being that you can't award  
22 them -- according to your own guidelines, you  
23 can't award them to anyone except no votes  
24 because theres no cross-petitioner.

25 HONORABLE TODD ROKITA: The business of the

1 cardboard, Counsel, is that a correct  
2 understanding in the law of the constitution?

3 MR. KING: Mr. Chairman, no. In my  
4 opinion, it's not; for two reasons.

5 One -- and, I'm sorry, I don't have the  
6 citation handy, but I can explain it. If  
7 members are following the adoption of lever  
8 machines, for example, in Indiana in 1900, the  
9 Indiana Supreme Court ruled that a paper ballot  
10 was not necessary under the constitution to  
11 permit the use of lever voting machines. And  
12 the current systems used here are perhaps the  
13 grandson or granddaughter of those machines.

14 HONORABLE TODD ROKITA: The electronic  
15 equivalent.

16 MR. KING: The electronic equivalent.

17 The other -- Indiana Code 3-11-15-37 and  
18 38 -- and I'll just read them in pertinent  
19 part -- "an electronic voting system must also  
20 maintain images of each ballot that is cast so  
21 that records of individual ballots are  
22 maintained by a subsystem independent and  
23 distinct from the main vote detections,  
24 diagnostic, processing, and reporting path."

25 Then 3-11-15-38 says "The stored imaging of

1 each ballot must protect the integrity of the  
2 data and the anonymity of each voter by such  
3 means as storage location, scrambling. The  
4 ballot image records may be either machine  
5 readable or manually transcribed, or both, at  
6 the discretion of the vendor."

7 To briefly summarize that, these are the  
8 electronic voting systems, and under Indiana Law  
9 they must contain that individual image of the  
10 voter's ballot. The machine also must have the  
11 capability of printing that ballot out.

12 To my knowledge, Mr. Osborn did not request  
13 that those individual ballot images be printed  
14 out, but did request that the summary tapes be  
15 printed out instead.

16 So in my opinion, the statute indicated  
17 complies by the particular DRE.

18 HONORABLE TODD ROKITA: Thank you.  
19 Anything Kristi?

20 MS. ROBERTSON: No.

21 MR. SKOLNIK: Mr. Chairman, I apologize for  
22 interrupting. I think there may be a question  
23 regarding the proposed tally here.

24 I think --

25 MR. DELANEY: I think we're trying to

1 basically determine that the 169 disputed  
2 ballots from the 6th Ward.

3 HONORABLE TODD ROKITA: The 6th Ward.

4 MR. DELANEY: The 6th Ward, 3rd precinct be  
5 counted as ballots for Senator Lugar, and 197  
6 disputed no votes be treated as nondisputed.

7 MR. SKOLNIK: I think you mentioned 169 in  
8 the total.

9 MR. DURNIL: I'm sorry.

10 HONORABLE TODD ROKITA: Thank you, Mr.  
11 Skolnik, for helping us with the record.

12 All in favor of the motion.

13 Aye.

14 MR. DELANEY: Aye.

15 MR. DURNIL: Aye.

16 HONORABLE TODD ROKITA: Hearing no opposed,  
17 retally, please.

18 MR. KING: In Michigan City 6th, Ward 3,  
19 the tally shows for Mr. Lugar 167 votes, for  
20 Mr. Osborn 61 votes, 197 no votes, with 26 no  
21 votes tallied by the State Board of Accounts.

22 HONORABLE TODD ROKITA: Parties don't  
23 appear to have questions.

24 MR. FLEMING: There are 26 no votes, 197 of  
25 the 26 were disputed. Now we would be 26.

1 MR. SKOLNIK: Thank you. Stand corrected.

2 HONORABLE TODD ROKITA: Thank you State  
3 Board of Accounts for the record.

4 Mr. Skolnik.

5 MR. SKOLNIK: Thank you, Mr. Chairman.

6 The next precinct that contains disputed  
7 ballots is Warren 2 within St. Joseph County.

8 Total, Lugar 471, Osborn 75, 3 write-ins,  
9 undisputed valid ballots tallied by the State  
10 Board of Accounts, Lugar 30, Osborn 75, disputed  
11 ballots tallied by the State Board of Accounts,  
12 Lugar 441, 3 write-ins, and 217 no votes, and  
13 there were a total of 260 no votes tallied in  
14 that precinct.

15 MR. DURNIL: I'll move we accept the  
16 undisputed ballots.

17 MR. DELANEY: Second.

18 HONORABLE TODD ROKITA: Any discussion?  
19 Hearing none, all in favor.

20 MR. DURNIL: Aye.

21 MR. DELANEY: Aye.

22 HONORABLE TODD ROKITA: Aye.

23 Hearing no opposed, so moved unanimously.  
24 Petitioner.

25 MR. OSBORN: Again, as we pointed out

1 earlier, yes, there are things in the Indiana  
2 Law if there's an error by someone.

3 Actually, these ballots should not have  
4 counted on election night according to Indiana  
5 Law, but they can be counted in a proceeding  
6 such as this, according to Indiana Law. And I  
7 have those citations if you want them.

8 They have been counted and, again, I've  
9 disputed them because of the lack of the  
10 initials.

11 What we discovered through this whole  
12 process is that none of the ballots that we  
13 examined were sealed. I do notice that on two  
14 of the precincts in Porter County the SBA did  
15 not fill in the information on the sealing of  
16 the ballots. None of the ballots have been  
17 sealed.

18 Even the machines in La Porte, according to  
19 their report, did not bear a seal. In Porter  
20 County, they did seal the results of the PCMCIA  
21 card and the data on it. But that is not the  
22 source data of the voter in those ballot counts.

23 If it's been tainted ahead of time, then  
24 what they're sealing is the tainted votes. So  
25 all of this is procedure, and I'm not trying to



1 hang anyone out to dry. In fact, this has  
2 taught me, at least in the counties that I've  
3 visited and people that I've worked with, I  
4 don't think there's any lack of integrity there.  
5 And integrity is 75 percent, I think, of running  
6 government, for the jobs that these people have  
7 to do.

8 But we believe we have shown that there's  
9 either a lot of training needs to be done, lot  
10 of familiarization with Indiana Law, that these  
11 should be sealed -- the ballots should be  
12 separated by precinct and kept under seal except  
13 for in conditions such as this.

14 So I think what I've set out to do is to  
15 find deficiencies like that so we can improve  
16 the voting. I believe that these ballots are  
17 invalid on the night that the election was done.  
18 They should not have been counted, according to  
19 the Indiana Law. They may be counted here. SBA  
20 has done that.

21 Again, I point to your procedure. I notice  
22 that you voted against that anyway on the last  
23 one, but there being no cross-petitioner, again,  
24 I believe those have to be taken as no votes.

25 HONORABLE TODD ROKITA: Thank you.

1 Respondent.

2 MR. RUSTHOVEN: I have nothing to add,  
3 Mr. Chairman.

4 HONORABLE TODD ROKITA: Questions by  
5 Commissioners.

6 MR. DURNIL: Is this an electronic voting  
7 machine?

8 MR. OSBORN: No.

9 MR. DURNIL: No seals on what?

10 MR. OSBORN: No seals on any of the  
11 containers having the ballots in them.

12 MR. DURNIL: Coming back to the precinct.

13 MR. OSBORN: Source material.

14 La Porte County -- I don't know if you want  
15 me to testify to this or rather have SBA, but  
16 they had like suitcases, just zippered shut and  
17 ballot materials in there. No seal. No serial  
18 number. No initials on paperwork showing chain  
19 of evidence like you have with the police  
20 department. There was none of that for the  
21 source material.

22 And that -- yes, the votes came out exactly  
23 the same. In fact, we can congratulate the  
24 machines for being able to count extraneous  
25 marks that were intended by the voter, according

1 to the structure, should not have counted. The  
2 intent of the voter was clear and it came out  
3 exactly. But those ballots were not sealed.

4 In my mind, I have the question what the  
5 integrity is of the system, not the people  
6 administering them. I think we need to take the  
7 lessons learned here and try -- you as Secretary  
8 of State and other government agencies. We need  
9 to encourage people to learn the law, to get the  
10 training they need, to be sure that these  
11 materials are properly protected.

12 MR. DURNIL: Since the --

13 HONORABLE TODD ROKITA: I'm sorry, one  
14 second.

15 Since you're giving a charge, I want to  
16 look at this a little further.

17 You mentioned several different counties.  
18 What are you talking about in terms of machines  
19 that weren't sealed?

20 MR. OSBORN: Not the machines that weren't  
21 sealed.

22 HONORABLE TODD ROKITA: What counties?  
23 Where in St. Joseph County? We are at 2 right  
24 now.

25 MR. OSBORN: All of these counties that we

1 participated in in this recount that had ballot  
2 card voting systems, none of those ballots were  
3 sealed.

4 The closest one was the one where the  
5 biggest mess was, that was Howard County, where  
6 they had tape around the box, no initials, no  
7 serial number, no paper trail, as I know of, as  
8 to who had access, anything like that.

9 I believe that that does not conform with  
10 state law.

11 HONORABLE TODD ROKITA: Questions by  
12 Commissioners.

13 Hearing none, Counsel, do you have a  
14 response to that in terms of what Indiana Law  
15 is?

16 MR. KING: Mr. Chairman, I can address with  
17 regard to Howard County, the ballots involved  
18 were optically scanned. These are covered by  
19 3-12-3-10, which is a long section. I'll just  
20 mention the parts of it that provides that after  
21 the vote totals have been taken and counted,  
22 that the ballots -- material including the  
23 ballot cards, are placed inside a container  
24 which is then sealed in the presence of the  
25 precinct election board, taken to the county,

1 processed at the circuit court clerk's office.  
2 And then in Subsection (f) "Upon the completion  
3 of the counting of the votes, all ballot cards  
4 shall be arranged by precincts and kept by the  
5 circuit court clerk for the period required by  
6 IC 3-10-1-31 or 3-10-1-31.1," which, I believe,  
7 is 22 months or almost two years. And then the  
8 clerk determines the final disposition of the  
9 voting ballot cards after that.

10 HONORABLE TODD ROKITA: Thank you.

11 So that was with regard to one county. But  
12 he is saying three counties.

13 Is there a different standard in the other  
14 counties?

15 MR. DELANEY: How about the absentee?

16 MR. KING: Mr. Chairman, the other counties  
17 have used direct recorded electronic, only the  
18 absentee ballots would be cast on optical scan  
19 ballots and subject to that separation by  
20 precinct standard.

21 But the comparable language would require  
22 the tapes that are printed out of the DRE's also  
23 be kept separate with the poll list and other  
24 material from that precinct.

25 HONORABLE TODD ROKITA: Okay. Any

1 questions for the State Board of Accounts?

2 Did you find that this wasn't the case in  
3 those three counties?

4 MR. ROGINA: As far as being sealed?

5 HONORABLE TODD ROKITA: Yes.

6 MR. ROGINA: Yes, they were.

7 MR. DURNIL: Were they sealed in other  
8 counties? Did you happen to see any other  
9 contests?

10 MR. ROGINA: Yeah, in the other one they  
11 were.

12 MR. DELANEY: My experience, in this  
13 county, we do seal them various ways.

14 HONORABLE TODD ROKITA: Okay.

15 MR. DELANEY: Well, I think in light of the  
16 total coming out the same, we have an unusual  
17 high-degree of confidence because of the math on  
18 election night total done by the workers with  
19 what was done by the clerk's office. By that, I  
20 feel confident and I move that we accept the  
21 totals as confirmed from the election night  
22 totals and confirmed by the State Board of  
23 Accounts as accurate in -- is it Warren 2 in St.  
24 Joseph County? Thereby, showing the total of  
25 ballots to be 471 for Lugar, 75 for Mr. Osborn,

1 3 write-ins, and 259 no votes.

2 HONORABLE TODD ROKITA: Second the motion.

3 Discussion? I note for the record no  
4 evidence of any fraud, or tampering, or anything  
5 on that.

6 I would direct the election division, who  
7 has two co-directors and counsel to this  
8 Commission, to inform the counties -- the county  
9 clerks and the election board of what was  
10 alleged here so that they're aware of what their  
11 duties involve.

12 MR. OSBORN: Mr. Chairman, if I may --

13 HONORABLE TODD ROKITA: No.

14 I would also note that county clerks are  
15 separately elected officials and their county  
16 election board are bipartisan in nature.

17 Any other comments by Commission members?

18 MR. DURNIL: Except that present your  
19 concerns to the legislature.

20 MR. OSBORN: Well, I plan on doing that.  
21 In fact, I'll be working with the committee in  
22 our party to recommend some changes to the law.

23 But the SBA did find that there was one  
24 extra no vote in your motion; that's what you've  
25 got pending here. So it's 260 no votes

1 according to the SBA.

2 MR. DELANEY: That's right. I'll make it  
3 260, thank you, on the no votes.

4 HONORABLE TODD ROKITA: Have the State  
5 Board of Accounts make this larger for all of  
6 us. Thank you.

7 All those in favor.

8 MR. DELANEY: Aye.

9 MR. DURNIL: Aye.

10 HONORABLE TODD ROKITA: Aye.

11 All those opposed.

12 Hearing no opposed, so moved unanimously.

13 Mr. King, retally.

14 MR. KING: In Warren 2, Mr. Lugar received  
15 471 votes, Mr. Osborn received 75 votes, 3  
16 write-in votes, and 260 no votes.

17 HONORABLE TODD ROKITA: Thank you.

18 Parties do not appear to have any  
19 questions. State Board of Accounts agrees.

20 Mr. Skolnik.

21 MR. SKOLNIK: Mr. Chairman, it's my  
22 understanding that this completes the recount in  
23 the U.S. Senate race.

24 I believe today that this Commission has  
25 approved the ballots -- or the vote total in the



1 88 counties that were not the subject of the  
2 recount, and now have addressed the precincts  
3 within these four counties that were the subject  
4 of the recount. So it's my understanding,  
5 therefore, unless counsel has anything, that  
6 this would complete the recount in the U.S.  
7 Senate race.

8 HONORABLE TODD ROKITA: Would you like us  
9 to take a motion then?

10 Do we need a motion to adopt all of the  
11 results or are we okay?

12 MR. SKOLNIK: I believe it would be  
13 advisable. A certificate will be prepared.

14 MR. DURNIL: I move that the chairman be  
15 authorized to sign the certificate confirming  
16 the results as we voted here today.

17 MR. DELANEY: Second.

18 HONORABLE TODD ROKITA: Any discussion?

19 All in favor.

20 MR. DELANEY: Aye.

21 HONORABLE TODD ROKITA: Aye.

22 MR. DURNIL: Aye.

23 Hearing no opposed, so moved unanimously.

24 That concludes that recount.

25 Next on our agenda is scheduling.

1 MR. SKOLNIK: Sometimes there's good news  
2 to report, Mr. Chairman, and it's my  
3 understanding that this Commission has concluded  
4 its work for this cycle.

5 A number of housekeeping notes. I will  
6 note for the record that all of the required  
7 paperwork, including the certification, have  
8 been filed and/or transmitted in connection with  
9 the House District 97 recount. In addition,  
10 there will be a number of claims submitted, I  
11 assume to me in my capacity as director, from  
12 the various entities and parties that have  
13 provided assistance in connection with the  
14 recount, such as State Board of Accounts, the  
15 state police, and others.

16 In addition, the deputy directors that we  
17 employed will also be submitting their  
18 vouchers -- or their statements for services  
19 rendered. And not surprisingly, I, too, will be  
20 submitting my statement for the time that I've  
21 devoted to this.

22 I think the procedure that has been  
23 employed in the past is that the director has  
24 been authorized to approve those submissions for  
25 claims. What I would recommend is that when you

1 obtain that, the claims be obviously forwarded  
2 to me so that I can prepare the report and the  
3 expense reports in connection with the recounts,  
4 and I will obviously circulate those to the  
5 members of the Commission for any comments or  
6 concerns that they may have. Assuming there are  
7 none or that we're able to work those out, I  
8 would then go ahead and approve those.

9 Obviously, I cannot approve my own claim.  
10 I would not feel comfortable approving my own  
11 claim. It would be my recommendation to the  
12 Commission that I be directed to  
13 submit -- obviously, I will circulate my  
14 expenses and my statement to all members of the  
15 Commission, but that the Chair be authorized to  
16 approve my cost as well.

17 HONORABLE TODD ROKITA: I would be happy to  
18 do that. And to the Commission, it's my  
19 understanding if we were to all three want to  
20 okay that, we have to come together for a  
21 meeting.

22 MR. DURNIL: I think you can do that.

23 MR. DELANEY: I'll move.

24 HONORABLE TODD ROKITA: Second.

25 All in favor.

1 MR. DURNIL: Aye.

2 MR. DELANEY: Aye.

3 HONORABLE TODD ROKITA: Aye.

4 Any opposed.

5 Hearing none, so moved unanimously.

6 Mr. Skolnik.

7 MR. SKOLNIK: Mr. Chairman, I am aware of  
8 no further business.

9 HONORABLE TODD ROKITA: Unless there is any  
10 other business, I move we stand in recess.

11 MR. DELANEY: Second.

12 HONORABLE TODD ROKITA: All in favor.

13 MR. DURNIL: Aye.

14 MR. DELANEY: Aye.

15 HONORABLE TODD ROKITA: So moved.

16 (Thereupon, the hearing was adjourned at  
17 2:50 p.m.)

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