

**CASE NAME: Indiana Recount
Commission Hearing**

DATE TAKEN: November 10, 2006

**Connor+Associates, Inc.
1650 One American Square
Box 82020
Indianapolis, IN 46282
(800) 554-3376**

November 10, 2006

BEFORE THE STATE RECOUNT COMMISSION
SITTING AT INDIANAPOLIS, INDIANA

Taken On: November 10, 2006

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

Connor +Associates, Inc.
1650 One American Square
Indianapolis, IN 46282
(317)236-6022

Connor+ Associates
(317) 236-6022

5ec75857-2caf-43c3-8baf-5b33a49556c1

1 (The following proceedings were transcribed
2 from an audio tape provided by the office of the
3 Secretary of State.)

4 HONORABLE TODD ROKITA: Pledge of
5 Allegiance.

6 (Thereupon, the Pledge of Allegiance was
7 recited.)

8 HONORABLE TODD ROKITA: Thank you very
9 much. I'll call this meeting to order.

10 I'm joined, as Secretary of State, by
11 Gordon Durnil, our Republican appointed member
12 of the Recount Commission, and also
13 newly-appointed member of the Recount
14 Commission, representing the Democrats, Mr. Ed
15 Delaney.

16 Commission members welcome. Thank you for
17 your service today, as always.

18 I'm also joined up here by Republican
19 attorney to the Commission, Brad King and
20 Democrat attorney to the Commission, Kristi
21 Robertson.

22 First agenda item is to recognize notice of
23 the meeting. I see that it appears to have been
24 properly posted two days in advance. There is
25 no indication on here that it was exactly 48

1 hours.

2 Is there any objection or would you like
3 testimony from the person who posted it?

4 MR. DELANEY: Not necessary.

5 HONORABLE TODD ROKITA: Not necessary.

6 Counsel, do you think it's necessary?

7 MS. ROBERTSON: No.

8 MR. KING: No.

9 HONORABLE TODD ROKITA: Okay. We'll take
10 notice.

11 On introductory remarks, there have been no
12 recounts filed, nor any contests filed. This
13 was a meeting that I put notice out for and
14 wanted to prepare for in a proactive
15 organizational/status-type fashion. I don't
16 know if any recounts or contests will come, but
17 on behalf of the people of Indiana, I wanted to
18 make sure that the state was ready to act, act
19 efficiently, and act responsibly. So that's
20 what you see here in your agenda item.

21 Since we've posted notice for the
22 recount -- or excuse me, for the Recount
23 Commission meeting, there has become an issue
24 for Marion County in the form of a verified
25 petition, and I believe both Republican and

1 Democrat members have that copy, so we will be
2 discussing that, as well.

3 Before we do anything substantively,
4 however, I want to make sure that we have a
5 proper administration of oath. So, Gordon, in
6 your packet there should be -- excuse me, I have
7 that -- an oath of office for you to sign for
8 this term of the Recount Commission. And, Ed,
9 for you as well. If you could execute those for
10 me.

11 Thank you, sir. Thank you.

12 Received properly executed oaths for both
13 the Republican and Democrat members of the
14 Recount Commission.

15 We can either go on with point V of the
16 agenda, this was an agenda that was made before
17 the verified petition, or if this Commission
18 prefers, and it would be my recommendation, to
19 take the Marion County issue first, so that can
20 be resolved and they have some direction.

21 Is there any objection to taking up the
22 Marion County issue first? Okay.

23 Sent in your packet was a verified petition
24 along with a cover letter from the Marion County
25 Election Board. I'll give the members time to

1 look at that.

2 As chair of the Recount Commission, I would
3 like to suggest that we take a little bit of
4 testimony with regard to this. I don't recall
5 any of my time serving as attorney to the
6 Recount Commission, or being on it, that we've
7 had a petition like this. And I would like to
8 suggest that we hear from the Marion County
9 Election Board, who I see here, and any others
10 who will want to testify on this matter.

11 Is there any objection to that?

12 MR. DELANEY: No.

13 HONORABLE TODD ROKITA: Hearing none, we'll
14 go ahead and take that testimony.

15 All of those who intend to testify in the
16 Marion County matter, if you could please rise
17 and raise your right hand.

18 Let me go around the room and get, for the
19 record, the names. I see Cody Kendall.

20 MR. KENDALL: Correct.

21 HONORABLE TODD ROKITA: Dale Simmons.

22 MR. SIMMONS: Here.

23 HONORABLE TODD ROKITA: You, sir?

24 MR. FAHRBACH: Greg Fahrbach.

25 HONORABLE TODD ROKITA: Greg Fahrbach.

1 Lacey Johnson. Say, yes.

2 MR. JOHNSON: Yes.

3 HONORABLE TODD ROKITA: Scott Chin, Doris
4 Anne Sadler, Frank Otte, and --

5 MR. SULLIVAN: Mark Sullivan.

6 HONORABLE TODD ROKITA: Mark Sullivan and
7 Brad King.

8 MR. KING: Mr. Chairman, for the record, to
9 the extent that any testimony involves
10 attorney-client privilege with my co-general
11 counsel, Dale Simmons, I waive that privilege,
12 for the record.

13 HONORABLE TODD ROKITA: Thank you.
14 Could you administer the oath, please.

15 MR. KING: Oh, certainly.

16 HONORABLE TODD ROKITA: Kristi, could you
17 administer the oath, since you're not a witness.

18 (Thereupon, Ms. Robertson administered the
19 oath to all potential witnesses.)

20 HONORABLE TODD ROKITA: For the record, I
21 audibly heard every name mentioned say I do.

22 I recognize the president of the Marion
23 County Election Board, Frank Otte.

24 MR. OTTE: Can I move this microphone
25 (inaudible)?

1 (Laughter.)

2 MR. OTTE: Can we do something different
3 with that? There we go. Thank you.

4 Mr. Chairman, thank you for taking this
5 opportunity to fit us in and move us up on your
6 schedule.

7 As set out in both the federal letter and
8 the petition that we sent to the board earlier
9 today, in Marion County we face a unique
10 circumstance with our Ivotronic machine.

11 By way of background, the Ivotronic
12 machines that are used in Marion County comply
13 with federal law for any kind of acceptable
14 voters. They were used for the first time this
15 past Tuesday in the elections. Unfortunately,
16 based upon a programming error in the machines,
17 at the time of closing these machines at 6:00
18 p.m., they were not able to be effectively
19 closed by our poll workers.

20 It is not an error of our poll workers,
21 maybe the program was based upon Pennsylvania
22 time of 8:00. That's neither here nor there,
23 but our board workers could not
24 effectively -- properly close the machines. Had
25 they done so, they would have been able to print

1 what we call a tally sheet.

2 A tally sheet is a final report of votes
3 that come in at the end of the day. They do
4 that on the other machines that we used in the
5 precincts, called the M-100. They properly
6 closed them out and print out tally sheets, and
7 then when we do a canvass, we can match that up
8 with the canvass sheet and check the votes.

9 Unfortunately, for the IvoTronics, because
10 they were not able to be properly closed out, we
11 have no data from the IvoTronic machines to now
12 proceed with the canvass with.

13 It is necessary to get an IvoTronic
14 machine, PEB -- PEB card and a flash card, and
15 put them all with the machine, open the machine
16 up, attach what's called a communication
17 package, and properly close the machine, at
18 which point it will give us a tally of the votes
19 registered on the machine.

20 Because that is the steps that we have to
21 take as a board to properly canvass and properly
22 collect and evaluate the votes for the IvoTronic
23 machines, in our review, the statutes that were
24 applicable in this situation, the board came
25 across the statute that was cited both, I

1 believe, in our letter and our petition, which
2 is 3-12-4-18, and it deals with the inspection
3 of voting machines and electronic voting system
4 counters entitled "authority in time." And in
5 that statute, there appears to be, based upon
6 our reading of it, at least the probability that
7 we, the board, needed to come to this State
8 Recount Commission to ask them permission to
9 proceed.

10 Now that is the board's -- we've read it
11 and it is our obligation, as a board, much
12 specifically as a chairman, to make sure that I
13 take every step necessary to make sure that the
14 votes are properly calculated, tabulated, and
15 put in a final tally.

16 After reading the statute that I cited to
17 you and discussions with board members, and both
18 local parties, myself and in agreement, we were
19 very uneasy proceeding because we have
20 approximately 520 Ivotronic machines that exist
21 that we need to recover the votes on.

22 We felt that had we proceeded without at
23 least appearing before the board -- the Recount
24 Commission and discussing this matter, that we
25 potentially put a risk to those votes.

1 With the number of tight races that we have
2 in Marion County at this time, we felt it
3 prudent to come before the board with this
4 petition and seek some direction from the board
5 on how to proceed; and that's what brings us
6 here today.

7 HONORABLE TODD ROKITA: Thank you very
8 much.

9 Questions from the members?

10 MR. DELANEY: Yeah. Do you get any kind of
11 paper tally out of this machine?

12 Does it print out like the card reader
13 machine does, the ballot reader machine?

14 MR. OTTE: Yes, sir, it does, when it's
15 properly closed. We will do that -- that's what
16 we hope -- we're asking permission to proceed
17 with.

18 MR. DELANEY: And I happened to have been
19 in a precinct which had trouble with this
20 machine.

21 MR. OTTE: Yes.

22 MR. DELANEY: And we did not have anybody
23 use that machine, but we simply disabled it.
24 Got it out of the way. It was preventing the
25 card reading from working. So we got it out of

1 the way, so we didn't have a problem.

2 But help me understand, if you hook this
3 up, will this spit out a printed total, by
4 itself, as the first thing that happens?

5 MR. OTTE: Yes, sir. What will occur is,
6 if you give us a green light, we have ES&S
7 technicians here with what's called a
8 communication package, they FedEx'd that
9 overnight, they've been charged, and we're ready
10 to proceed.

11 They will attach that communication
12 package -- we will physically take each
13 Ivotronic machine, set it up, put in the PEB,
14 the flash card, attach the communication
15 package, properly close the system out. And
16 when we close the system out, Mr. Delaney, it
17 will print a report just like you received with
18 your M-100 on election day.

19 MR. DELANEY: Okay. And so you have that,
20 even if everything went downhill after that?

21 MR. OTTE: Yes, sir.

22 MR. DELANEY: Any chance that you lose
23 getting that printed total because of this
24 process so that we never get anything?

25 MR. OTTE: No, sir. We -- and I can speak

1 to that. And that's a great question.

2 Besides the fact that we can recreate
3 different components of that process that I just
4 described, and I may mispronounce it, but there
5 is called a V-chip recovery system that ES&S can
6 do, and that is a process that will allow us to
7 actually open the machine up and electronic
8 components and go in and recover that data.

9 Now, obviously, we would not proceed to the
10 next step until we came back before the board.

11 MR. DELANEY: Which is, of course, what we
12 did with the other machine. First we printed
13 the total.

14 MR. OTTE: Yes.

15 MR. DELANEY: Then when we got the chip out
16 and sent it down there.

17 MR. OTTE: That's right.

18 MR. DELANEY: So, in effect, this will now
19 be Tuesday night at 8:00, be either Indiana or
20 Pennsylvania time.

21 MR. OTTE: Yes, sir. That's exactly what
22 we're doing.

23 MR. DELANEY: All right. Thank you.

24 MR. OTTE: Yes.

25 HONORABLE TODD ROKITA: Gordon.

1 Do you have your code book?

2 MR. OTTE: I do, sir.

3 HONORABLE TODD ROKITA: 3-12-3.56.

4 MR. OTTE: 3-12.

5 HONORABLE TODD ROKITA: 3.56. It's about
6 two pages inside of the statute you quoted me.

7 MR. DELANEY: 437.

8 HONORABLE TODD ROKITA: 437, thank you.
9 I'll give you time to digest it.

10 "To minimize the delay in the counting of a
11 vote, canvassing must begin immediately upon the
12 closing of the polls and continue without
13 interruption until all of the votes are
14 canvassed and all certificates of the vote
15 required under section 3 of the chapter are
16 completed and delivered to the persons entitled
17 to receive the certificates."

18 By coming here, are you disrupting that
19 directive under Indiana Law?

20 MR. OTTE: Sir, we do not believe we are
21 for this purpose: If we, as a board, felt that
22 we needed permission under the statute that I've
23 previously cited in my responsibility as
24 chairman of the election board, and I proceeded
25 in a hurry to get these votes off to satisfy

1 everybody, and then we had a close race and a
2 party decided to challenge it, and they
3 challenged it on the basis of not seeking
4 permission before the board earlier, that's a
5 risk with these votes that I didn't want to
6 take.

7 HONORABLE TODD ROKITA: Thank you. If the
8 poll workers had stayed until 8:00, until the
9 machines decided they were going to close down,
10 would all of this have worked out fine?

11 MR. OTTE: Yes, sir, it would have. But
12 our problem is, as you know, many poll workers
13 are there for -- well, we ask them to be there
14 at 5:00 in the morning. By 6:00, they have put
15 in a 13-hour day; and to ask them to stay around
16 for two more hours to wait for a machine to
17 close was just not feasible.

18 HONORABLE TODD ROKITA: When did the Marion
19 County Election Board discover that the machines
20 were programmed to close down at 8:00 p.m.?

21 MR. OTTE: My best guess would be at
22 approximately 6:05 when my phone bank went up.

23 HONORABLE TODD ROKITA: So not until actual
24 close of the polls?

25 MR. OTTE: Yes, sir, that's when I first

1 became aware of it.

2 We were anticipating a pretty smooth
3 close-down period, and that became evident that
4 that was not happening with the volume of calls
5 that we were receiving.

6 HONORABLE TODD ROKITA: Would it also -- as
7 an alternative to this from coming here or this
8 commission having to meddle in what I believe is
9 a local issue, and I have great respect for
10 local election boards and they have tremendous
11 duties under this law, you know, before any
12 issue should even get here.

13 MR. OTTE: Right.

14 HONORABLE TODD ROKITA: Is another
15 alternative to this just -- the precinct boards
16 are also intact, they're still sworn in. And
17 until you get canvass, is my understanding, they
18 are still under oath and doing their duties.

19 Assuming that what you're saying, they
20 couldn't fulfill their duties; they could not
21 get you a count, and that's your testimony,
22 right?

23 MR. OTTE: Correct.

24 HONORABLE TODD ROKITA: It's impossible to
25 get a count at the precinct that night.

1 MR. OTTE: No, we have counts, just haven't
2 been collected and tabulated yet.

3 HONORABLE TODD ROKITA: Like it should have
4 been at the precinct level?

5 MR. OTTE: Yes, sir.

6 HONORABLE TODD ROKITA: Can't you just
7 switch or substitute those inspectors now and
8 give the local election board the authority to
9 make that count right now?

10 MR. OTTE: I'm not sure I understand your
11 question.

12 Are you asking that we assume
13 responsibility for what the precinct workers
14 were supposed to do?

15 HONORABLE TODD ROKITA: Right. You have
16 the ability to remove an inspector.

17 Couldn't you do that, replace those
18 inspectors with deputies of the Marion County
19 Election Board's, or yourselves, and proceed
20 with the count?

21 MR. OTTE: Sir, we probably could have, and
22 that's an alternative that until this question,
23 we hadn't considered. But it puts me in the
24 same position.

25 As chairman of the board and my

1 interpretation of -- my reading of the statute
2 that I've previously cited, and discussions with
3 both other members of the board, both members of
4 the Republican and Democrat party in Marion
5 County and their counsel, we thought it was the
6 wisest choice for me to come here and discuss
7 this matter with the State Recount Commission so
8 that we have directive for some idea of how to
9 proceed so that I don't put any votes at risk.

10 I could have jumped ahead and done that
11 alternative, but down the road if we have a
12 close race, somebody is going to
13 raise -- somebody's going to raise the issue
14 (inaudible) and it would have been my fault.

15 I try to avoid those situations.

16 HONORABLE TODD ROKITA: Can't win for
17 losing, right?

18 MR. OTTE: No. So I'm here today to get
19 some direction.

20 HONORABLE TODD ROKITA: Any other questions
21 based on my questions?

22 MR. DELANEY: Am I safe to assume that this
23 will be a bipartisan effort when this is opened
24 up?

25 MR. OTTE: Sir, this has been a bipartisan

1 effort from Tuesday night at 8:00.

2 MR. DELANEY: I want to congratulate the
3 local election board on voting unanimous,
4 because it is clear we ought to count those
5 votes and congratulate them that that's the
6 right attitude.

7 MR. OTTE: I can tell you that it's gone
8 very smoothly and both parties have worked very
9 well together to get to this point.

10 MR. DELANEY: Thank you. No more questions
11 from me.

12 HONORABLE TODD ROKITA: Does counsel have
13 any questions?

14 Next person to testify, maybe from the
15 Democrat side of the election board.

16 Mr. Sullivan. Thank you, Mr. Otte.

17 MR. OTTE: Sure.

18 MR. SULLIVAN: Mark Sullivan, Democrat
19 member of the election board.

20 I concur with Mr. Otte. We have worked
21 together on this issue and we looked at the
22 statutes. Our reading of them makes us a
23 little -- well, made us really hesitant to move
24 forward unless we had authorization from this
25 board. In the event that there was a close race

1 later on, we didn't want these votes to be at
2 risk.

3 And, again, I would like to reiterate we've
4 all stated that it's important that every vote
5 that's cast be counted because the problems with
6 existence, these votes have not yet been
7 counted, so I think it's important that we get
8 the authorization.

9 HONORABLE TODD ROKITA: Do you not agree
10 that you could remove the inspectors in the
11 respective precincts and substitute yourselves
12 in a bipartisan way and continue on with the
13 count?

14 MR. SULLIVAN: Well, I think there's maybe
15 another issue that once these machines leave
16 precincts, they're now under our custody as the
17 election board. And the statute says there's an
18 issue regarding having to get into these
19 machines -- actually physically get into these
20 machines, we have to ask permission from the
21 Recount Commission.

22 So, I mean, that's possible, but, again, as
23 Mr. Otte said, he said we didn't want that risk
24 of trying to do maybe something maybe easier
25 that way. We thought it was important with this

1 statute -- reading this statute, we thought we
2 should come before you to seek authorization.

3 Basically to allow now to go inside those
4 machines and gather the votes that have been
5 cast.

6 MR. DELANEY: You're going to have somebody
7 there to do it?

8 MR. SULLIVAN: Absolutely.

9 MR. DELANEY: I don't think the Secretary
10 fully understands that. Seems to be suggesting
11 that somebody is given a title as replacement
12 inspector, in fact, and that they then do it.

13 HONORABLE TODD ROKITA: My point is that
14 this has always been a matter of the local
15 election board, and it's always been solved at
16 the local level.

17 There are 26 other counties that use this
18 type of equipment. There's been DRE machines
19 used in this state since 1986, and, you know, I
20 think we have to look for every possible way to
21 let the local election boards solve this.
22 Because the same issue you're bringing up to me,
23 I have, and this Commission has.

24 What if we get ourselves into making a
25 decision and giving a directive that we, in

1 fact, don't have the authority to make because
2 it was really the local elections board's to get
3 that first count?

4 MR. DELANEY: I think there's an easy
5 solution to that.

6 HONORABLE TODD ROKITA: What's that?

7 MR. DELANEY: They've come to us asking
8 that we approve their conduct. And I think we
9 can -- I would suggest a two-headed resolution
10 that says if to the extent that we have
11 authority, we approve that conduct. To the
12 extent that we don't have authority, we will not
13 interfere with the proposal they have made.

14 HONORABLE TODD ROKITA: As to --

15 MR. DELANEY: What they're proposing to do.
16 They just go ahead and do what they're proposing
17 to do.

18 At this point, whether we have jurisdiction
19 or not, we've protected the interest of getting
20 all of the votes counted, and I think that would
21 solve everybody's problem and we don't have to
22 go to court about jurisdiction and all that
23 because I think I've kind of gotten rid of that
24 problem.

25 MR. SULLIVAN: I think that's the purpose.

1 The statute, the way we read it, says we have to
2 come here and seek authorization.

3 MR. DURNIL: The statute says you may come
4 here.

5 MR. SULLIVAN: Yeah, we may come here.

6 MR. DURNIL: You don't have to come here;
7 you may come here.

8 MR. DELANEY: I can vote this -- you know,
9 I love you and I approve you and you guys can
10 vote. We're not going to pick on them. They're
11 happy and I get this done.

12 HONORABLE TODD ROKITA: I agree that we
13 want every vote counted, that's not the issue
14 here. It's just how we go about doing it, and I
15 don't want to be doing this three times or in
16 court either.

17 There were some other people -- is there
18 someone here from ES&S?

19 MR. OTTE: There's nobody here from ES&S.

20 HONORABLE TODD ROKITA: Hold on, Mr. Otte.
21 Mr. McClamroch, are you representing ES&S?

22 MR. OTTE: Mr. Chairman, I would ask for
23 permission real quick before somebody answers to
24 make this clear.

25 Under my directorate, nobody is here from

1 ES&S. I felt this was a counting issue that
2 deals with our responsibility.

3 HONORABLE TODD ROKITA: Well, I have a
4 question for ES&S, so --

5 MR. OTTE: I understand.

6 HONORABLE TODD ROKITA: So I appreciate
7 your directorate.

8 MR. OTTE: I understand. I told our
9 employees that I have at this time are at the
10 warehouse are busy working on our canvass and I
11 didn't want to pull them away.

12 HONORABLE TODD ROKITA: Are you
13 representing, yes or no?

14 Can you make testimony on their behalf?

15 MR. MCLAMROCH: I do represent ES&S, but in
16 terms of the facts of this situation, you would
17 probably want to ask somebody from the company
18 itself.

19 HONORABLE TODD ROKITA: Would you be able
20 to testify as to whether or not they
21 physically -- the Marion County Election Board
22 physically has to get inside the machine or if
23 they can use these flash cards and PEBs in a
24 normal counting capacity?

25 MR. MCLAMROCH: No.

1 HONORABLE TODD ROKITA: Okay. Thank you.

2 MR. MCLAMROCH: Sorry.

3 HONORABLE TODD ROKITA: Frank, would you be
4 able to testify to that?

5 MR. OTTE: Yes, sir.

6 HONORABLE TODD ROKITA: Okay. Go ahead.

7 MR. OTTE: I can assure you that we need
8 the machine, the actual Ivotronic machine, the
9 flash card, and the PEB, and the communication
10 package that we now have to complete this
11 process.

12 If that was your question.

13 HONORABLE TODD ROKITA: You physically have
14 to get inside the machine and do a count that's
15 not normally done -- in a way that's not
16 normally done.

17 MR. OTTE: It's not normally done in a
18 canvass because we would have already had the
19 report.

20 This procedure we're asking to do would
21 have normally been done at each precinct.

22 MR. DELANEY: Let's get the language
23 straight for this.

24 "Canvass" means on election night I print
25 something out and it tells me how many people

1 voted for A and B, right?

2 MR. OTTE: Yes.

3 MR. DELANEY: That was not done on these
4 touch screen machines for technical reasons?

5 MR. OTTE: That's correct.

6 MR. DELANEY: It was done --

7 MR. OTTE: On the M-100s.

8 MR. DELANEY: On the other machines?

9 MR. OTTE: Yes, sir.

10 MR. DELANEY: I assume it was done where
11 there was a paper ballot for some reason?

12 MR. OTTE: Yes, sir.

13 MR. DELANEY: It was done, okay. Now,
14 next, separate, we have a total -- we know how
15 many people used that machine in each precinct,
16 don't we, already?

17 MR. OTTE: No, sir, we don't.

18 MR. DELANEY: Well, we can do the count
19 backwards. You know how many people used the
20 optical reader that reads the handwritten
21 ballot.

22 MR. OTTE: We can get the poll book.

23 MR. DELANEY: But you can do the math.

24 MR. OTTE: We can do the math and tell you,
25 yes.

1 MR. DELANEY: How many people voted on that
2 machine.

3 MR. OTTE: Yes, sir, we could.

4 MR. DELANEY: I guess there may be a stray
5 person who went through all this trouble on
6 another machine and went out and had a beer.

7 MR. OTTE: Yes.

8 MR. DELANEY: But fundamentally, you know
9 how many people voted and didn't vote?

10 MR. OTTE: Sir, we can determine that.

11 MR. DELANEY: In my precinct we
12 (inaudible).

13 MR. OTTE: I don't know the answer right
14 now because we haven't done that groundwork, but
15 we could determine that.

16 And we do know that there are votes on some
17 of these machines.

18 MR. DELANEY: I think you're saying and
19 what you proposing to do constitutes an
20 inspection.

21 MR. OTTE: Yes, sir.

22 MR. DELANEY: Or at least may under this
23 statute.

24 MR. OTTE: That's a risk that I don't want
25 to take without having this conversation.

1 HONORABLE TODD ROKITA: But you can
2 guarantee the tapes will come out first?

3 MR. OTTE: That's the first --

4 HONORABLE TODD ROKITA: Because to make the
5 inspection make sense, you'll have to inspect
6 the back of the machine and then compare it to
7 some kind of tape, right?

8 MR. OTTE: No, no, no. I need to back up.

9 When we open these machines, the first
10 thing we're doing is properly closing them. At
11 this point, we'll have a tape.

12 MR. DELANEY: Let me please ask you to go
13 in my precinct or some other precincts where
14 there were no votes on there and where the
15 canvass shows that and test it there.

16 Do not go to some critical precinct.

17 MR. OTTE: We have that plan in place.

18 MR. DELANEY: And let's run a bunch of
19 these zero vote precincts and be competent that
20 the technology is right.

21 MR. OTTE: Do you remember your precinct,
22 Mr. Delaney?

23 MR. DELANEY: Yes, Ward 20, Precinct 3.

24 MR. OTTE: That plan is in place, and
25 that's a good point that we plan on doing.

1 HONORABLE TODD ROKITA: Thank you,
2 Mr. Otte. I appreciate that.

3 There were other people who raised their
4 hand to testify. We're going to deliberate this
5 now, unless those people who raised their hand
6 absolutely has something new to say to add to
7 this debate.

8 MR. CHIN: Scott Chin, here to represent
9 the Libertarian party along with Lacey Johnson
10 and Greg Fahrbach. Working in a bipartisan way
11 with the Marion County Election Board, we
12 support this petition.

13 The only new thing I have to say, which I
14 know is similar in some ways, it is unstated
15 because it surrounds or is the backbone of why
16 you're doing what you're doing and why the
17 Marion County Election Board has been acting in
18 a bipartisan way today to bring you this
19 question, and that is, let's not forget when we
20 use words like "Ivotronic machines, M-100
21 machines," what we're really talking about --
22 which is the fact that there are people who came
23 out to vote on election day and registered and
24 recorded their votes on this machine, which is a
25 touch screen machine, which we call the

1 Ivotronic machine, some of the people were
2 persons with disabilities. I think that's why,
3 in part, those machines exist. Some of those
4 people were not persons with disabilities, and
5 their votes are sitting recorded on this
6 machine.

7 What we need from this Commission is
8 clarity today that we can go back in a
9 bipartisan way, in a way that we've worked hard
10 in the last few days since election day, and
11 count those votes.

12 And I think that's something that needed to
13 be kind of clear as we talk about tallying the
14 votes.

15 HONORABLE TODD ROKITA: Thank you.

16 Mr. Fahrbach.

17 MR. FAHRBACH: I think the most overlying
18 thing that we must recognize here is that the
19 reason that these machines exist is to
20 enfranchise voters with disabilities in age and
21 population. And whatever decision this board
22 makes, I think it's important that we recognize
23 that as the overlying issue.

24 We have had nothing but bipartisan
25 cooperation from Clerk Sadler all the way

1 through the board and their opportunities.

2 Interestingly enough, how it all got
3 started is that (inaudible) and then the local
4 advisory committee, which I had the opportunity
5 to be counsel for, tried to create and did
6 create what we thought was a very positive and
7 inclusive environment for voting for people with
8 disabilities. And, that, too, is a bipartisan
9 organization that basically put together a
10 program where all our polling places would be
11 accessible. And the catch, though, obviously
12 are these machines.

13 Interestingly enough, though, is that
14 people with disabilities for years have been
15 disenfranchised in this process, yet, today
16 we're still having to discuss the idea that now
17 that we've created accessible polling machines,
18 that their votes still weren't able to
19 count -- be counted in a timely manner with all
20 other votes. And that is probably the most
21 important issue I think we have.

22 We haven't cleared up (inaudible) we have
23 got to give direction to the good people that
24 are trying to accomplish this goal. But in the
25 end, we've got to make sure that when people

1 with disabilities go to the polls, they don't
2 feel that, okay, is this going to count? Did it
3 not count? Are we going to have to have
4 discussion about it later? Are they going to
5 count me two days later?

6 We talk about count and we talk about
7 voting. A lot of folks with disabilities have
8 never had the opportunity to vote privately over
9 the past 200 years. They've always had people
10 come in the polls with us or help out, et
11 cetera. And now we create an opportunity that
12 that is accomplished, but yet here today we're
13 still talking about does everybody's vote count.
14 And I think that that's the petition before us.

15 Technically, I agree with Mr. Delaney, that
16 that's the answer that he's laid out, but we
17 have to always keep in mind we can do nothing
18 that would cause people with disabilities to in
19 any way be suspect that the process has somewhat
20 failed.

21 HONORABLE TODD ROKITA: Thank you.

22 Any other comments?

23 I have one comment. I don't think that
24 that's the issue at all. It's not if these
25 votes will count. No one in this room thinks

1 that those votes shouldn't count; it's the
2 most -- figuring out the most efficient and
3 legal way to make sure that those votes count.
4 And if this Commission didn't care about that,
5 we wouldn't be here today.

6 Any other testimony in this regard that has
7 something new to add that's relevant to the
8 verified petition before us?

9 MR. DURNIL: Does anyone have any
10 disagreement that the board has the authority,
11 and to this statute, to grant this petition?

12 I mean, as I read it, it appears we have
13 the authority to grant the petition if we want
14 to, but is there a counter out there?

15 HONORABLE TODD ROKITA: Seeing none, for
16 the record.

17 Yes, sir.

18 MR. KING: Mr. Chairman, Members of the
19 Commission, no disagreement with regard to the
20 statements made earlier by members of the
21 Commission.

22 One issue that the counsels have discussed
23 is with regard to Section 22 of the chapter,
24 which states that "If this inspection is
25 conducted and a discrepancy between the precinct

1 printout and the totals on the voting machine is
2 discovered, that the information on the voting
3 machine becomes the official count for that
4 precinct for purposes of any recount or
5 contest."

6 The question I would have, that perhaps
7 members of the county election board can
8 address, is noting that there's at least one
9 potential in Marion County for a state
10 representative race to come before this body if
11 a recount is filed, and although the consent of
12 candidates is certainly not required, whether
13 notice either has been given or would be given
14 before the process begins?

15 MR. DELANEY: Are you under 3-12-4-22?

16 MR. KING: Yes, sir.

17 HONORABLE TODD ROKITA: I'll let the
18 election board respond to that.

19 MR. DELANEY: Are you suggesting that there
20 is no precinct election board? Is that what
21 you're saying? So the correct total would be
22 the county -- that comes are the county board?

23 HONORABLE TODD ROKITA: Go ahead, Brad.

24 MR. KING: Mr. Chairman, Mr. Commissioner,
25 as I read the statute previous to that, Section

1 21, it says "If there is a discrepancy between
2 the number of votes registered on the electronic
3 voting system and the returns made by the
4 precinct election board," which I understand to
5 be the print -- the paper printout that would
6 come after the machines were closed, or the
7 tally sheets, "that the electronic version,"
8 under this statute "becomes the prima fascia
9 evidence of the vote."

10 In other words, it has an effect on what's
11 presented at any recount proceeding that comes
12 before this body.

13 HONORABLE TODD ROKITA: Do you have any
14 further question?

15 MR. DELANEY: Well, I think we ought to ask
16 the election board how they construe that
17 paragraph.

18 HONORABLE TODD ROKITA: Thanks, Mr. Otte.

19 MR. OTTE: I'm going to try to respond to
20 that.

21 Unfortunately, given the situation we're
22 in, we -- this statute would probably not apply
23 because we're not going to have a discrepancy.
24 For this statute to apply, my quick reading over
25 here and my understanding of it, is that we've

1 got to match the tabulation from the precinct
2 board, which did not occur, and then discrepancy
3 in the canvassing process.

4 Unfortunately, because the machines were
5 not closed properly, we're only going to have
6 one report, which is the report we'll receive
7 after today's discussions, if so approved.

8 Now, let me go a little further to let you
9 know that this matter has already been addressed
10 in a bipartisan way, a little bit, and we have
11 an understanding as to how we're going to
12 proceed, and that is, we are going to open up
13 and canvass, inspect, and run a count on all
14 Ivotronic machines, all 500 and approximately 20
15 that we have, and the report that comes off that
16 machine for the first time is the report that we
17 are going to use.

18 So this issue has been anticipated by
19 myself, discussed with both sides, and we
20 will -- at the end of the day we will have two
21 canvass reports, one for the M-100 and one for
22 the Ivotronic. But we won't have a discrepancy
23 for the Ivotronic because we don't have anything
24 to match it up to, which is why we're here.

25 HONORABLE TODD ROKITA: Do you have

1 follow-up, Mr. King?

2 MR. KING: Mr. Chairman, I appreciate the
3 additional information Mr. Otte's provided, but
4 my question is really very basic, and that is:
5 There's the potential for proceedings to come
6 before this body, not the Marion County Election
7 Board, that involves two candidates for House
8 District 97.

9 My simple question is: Has the county
10 election board notified both of those candidates
11 regarding their plans to act under this statute?
12 And if not, will the county election board do so
13 before it proceeds?

14 HONORABLE TODD ROKITA: Mr. Otte.

15 MR. OTTE: As chairman of the Marion County
16 Election Board, I have not contacted either
17 candidate. I have been working since Tuesday
18 night hand-in-hand with leaders of both
19 political parties, with both Democrat and
20 Republican parties.

21 I do not know if they have contacted them.
22 If this board would like for me, after your
23 direction, to contact both parties and advise
24 them -- or contact both candidates and let them
25 know this is how we're going to proceed, I can

1 do that.

2 I would like to avoid any further delay
3 because there is a lot of interest on these
4 machines, and that's why we're here today to
5 proceed properly. But if this board somehow
6 feels that I need to get a hold of both of those
7 candidates, I can do that.

8 Now, in response to that question, though,
9 because we're dealing with 520 Ivotronic
10 machines, which covers the entire Marion County,
11 and House District 97 is not my only close race
12 right now, theoretically, I've got to call every
13 candidate and every counsel for every race in
14 Marion County; and I don't have time to do that.

15 HONORABLE TODD ROKITA: Well, to follow-up
16 there, I think, if I understand your question
17 right, not all of those candidates are going to
18 come here. They can't. It's only the
19 legislative ones -- or state ones that would
20 have to come here.

21 MR. KING: That's correct.

22 MR. OTTE: That may be true. As you've
23 indicated with jurisdictional issues, I would
24 have to evaluate whether or not I've got issues
25 at a local level, and I need to notify them for

1 that.

2 MR. DELANEY: Mr. Chairman, I think the
3 Democratic county chairman is here.

4 Is anybody here for the Republican party?
5 Any representative of the Marion County
6 Republican party? Could we ask you that if we
7 pass --

8 HONORABLE TODD ROKITA: I'll ask the
9 question.

10 MR. DELANEY: I would just ask you notify
11 that person, Mr. Murphy. Just let Mr. Murphy
12 know and he can decide. Those are his
13 candidates.

14 HONORABLE TODD ROKITA: Go ahead Mr.
15 (inaudible).

16 UNIDENTIFIED SPEAKER: I can tell you that
17 I've spoken to Mr. Murphy, and he's given me the
18 green light to proceed, which is why I'm here
19 today, and Mr. Tracey's here.

20 HONORABLE TODD ROKITA: And those are
21 potential parties --

22 UNIDENTIFIED SPEAKER: Yes, sir.

23 HONORABLE TODD ROKITA: -- to a future
24 recount, but also we'll have the candidates
25 independent of that.

1 UNIDENTIFIED SPEAKER: Yeah. Mr. Murphy's
2 aware of me being here and is okay with what I'm
3 doing today, and asked me to proceed in the
4 manner I thought best.

5 So, I can tell you from the leadership of
6 the Republican party, we're okay.

7 MR. DELANEY: Mr. Tracey, do you have any
8 objection?

9 HONORABLE TODD ROKITA: And nothing from
10 the candidates themselves.

11 Any other questions?

12 I'm going to ask Mr. Delaney to repeat his
13 motion for the record, and then we'll deliberate
14 quickly and take a vote on it.

15 Before I do, I do want to, for the record,
16 respond to some testimony made -- that was said
17 by my good friend, Mr. Chin, and my former law
18 schoolmate, that you needed us to clarify the
19 law.

20 I just want to say for this record and
21 for -- I have to have a wider view on this.
22 There's going to be recounts and contests in the
23 future that don't have anything to do with
24 Marion County. There's going to be a lot of
25 parties that come before this Commission now and

1 in the future, and I have to look at this
2 Commission in that light.

3 You don't need us to clarify the law, you
4 need lawyers and, unfortunately, maybe a court
5 of law. It's their job to interpret and
6 clarify, and you don't need us to make a
7 decision.

8 I gave you at least one example of how you
9 could replace an inspector and deputies, other
10 folks, and conduct this at the local level,
11 which is the best place to handle, at least at
12 first, all election disputes.

13 Again, I don't say that to disparage
14 anybody. I compliment the bipartisanship, as
15 well, but we are, I think, as a Commission,
16 setting some -- not dangers, but maybe
17 unprecedented precedence here that I hope other
18 counties don't decide to follow; that they work
19 this out at the local election board with duly
20 appointed members of the parties and of the
21 public to solve this themselves because we are
22 not an arbiter until a recount or contest is
23 actually filed.

24 Having said that, I will entertain a motion
25 from Mr. Delaney to resolve this issue.

1 MR. DELANEY: My motion is that the board
2 act on the assumption it has authority to
3 approve the petition, that it do so. But in the
4 same resolution, I asked, that in the
5 alternative, if it were to be determined that we
6 didn't have the authority, that the board also
7 states that it has no intention of interfering
8 with that procedure or obstructing the procedure
9 proposed by the Marion County Board.

10 HONORABLE TODD ROKITA: And I'll second
11 that.

12 Discussion?

13 Hearing none, any comments from counsel on
14 the legality of this or on the wording that
15 needs to be used to issue this order?

16 MR. KING: Mr. Chairman, unless the
17 Commission has concern regarding the requirement
18 of documentation notice to the candidates that
19 was discussed, otherwise, no.

20 HONORABLE TODD ROKITA: Can we include in
21 that --

22 MR. DELANEY: Notice to the county chairman
23 and, to the extent possible, to any potential
24 candidate.

25 Please note, this is a public meeting, we

1 posted the notice. But I would add in that we
2 give notice to the two county chairmen, oral
3 would be adequate, give them a copy of the
4 resolution which you asked us to approve, and to
5 any candidate; ask the chairman to assist you in
6 doing that.

7 So I add that, if the second would agree to
8 that addition to my resolution.

9 HONORABLE TODD ROKITA: I would. And it
10 only has to be the candidate that might
11 eventually appear here, theoretically.

12 Any comments on the addition?

13 Hearing none, all in favor of the motion
14 please signify by saying aye.

15 MR. DELANEY: Aye.

16 MR. DURNIL: Aye.

17 HONORABLE TODD ROKITA: Any opposed?

18 Hearing none, the motion passes. You shall
19 have that in writing.

20 Please continue. Thank you very much.

21 Moving on to agenda item V -- I'll give
22 them a moment. You guys aren't interested in
23 the rest of it?

24 (A discussion was held off the record.)

25 HONORABLE TODD ROKITA: Okay, proceeding on

1 with Roman numeral V in the agenda, the
2 appointment of recount director and designation
3 of authority.

4 Heather Willis was our recount director.
5 She is retired, so she speaks, from state
6 government service. I have asked Brad Skolnik
7 to come forward today for your consideration for
8 appointment as a recount director. I've
9 enclosed a proposed resolution from the
10 Commission in that regard.

11 Brad Skolnik has been recount director
12 before when he was in service at the Secretary
13 of State's Office. He also comes to us as a
14 former securities commissioner for the State of
15 Indiana. He is knowledgeable about recount
16 guidelines, knowledgeable about
17 recount -- Indiana recount law.

18 I'll ask him to step forward and make any
19 remarks he would like to, and then the
20 Commission can ask him questions, if they'd
21 like.

22 Brad. Thank you. Thank you for your
23 proposed service here.

24 MR. SKOLNIK: Thank you, Mr. Chairman.
25 It's a pleasure to be here today. I don't know

1 why everybody lost interest after that, but I
2 thought the best is yet to come.

3 It would be my honor to serve as recount
4 director. As Secretary Rokita indicated, I did
5 that previously back, I believe it was in 2002,
6 when I was also at that time still serving as
7 securities commissioner and I was chief of staff
8 of the Secretary of State's Office.

9 I think I'm obviously reasonably familiar
10 with the procedures and the laws and guidelines
11 governing recounts in Indiana. They have
12 periodically changed since that time.

13 I'd be happy to entertain any questions
14 that the members may have.

15 I can assure the Commission that based on
16 my prior experience and knowledge as recount
17 director, both with election laws, laws, and my
18 tenure in the Secretary of State's Office as
19 securities commissioner, that I certainly
20 understand the importance of maintaining the
21 integrity of the process and the fact that it
22 will -- should be subject to the highest levels
23 of scrutiny.

24 I'd be happy to answer any questions at
25 this time.

1 HONORABLE TODD ROKITA: Thank you,
2 Mr. Skolnik.

3 Mr. Delaney, Mr. Durnil.

4 MR. DELANEY: I'm just glad you found him.
5 He's willing to do it.

6 HONORABLE TODD ROKITA: Thank you.
7 Mr. Durnil.

8 MR. DURNIL: I have no questions.

9 HONORABLE TODD ROKITA: I move that we
10 appoint Mr. Skolnik as recount director pursuant
11 to the written proposal you have before you,
12 2006-01.

13 MR. DELANEY: I'll second that.

14 HONORABLE TODD ROKITA: Any discussion?
15 Hearing none, all in favor signify by saying
16 aye.

17 MR. DURNIL: Aye.

18 MR. DELANEY: Aye.

19 HONORABLE TODD ROKITA: Any opposed?
20 Hearing none, so moved.

21 Thank you for your service, Mr. Skolnik.
22 We're grateful.

23 Item Roman numeral VI, review and amendment
24 of Recount Commission guidelines.

25 I'll turn this over to Brad and Kristi for

1 discussion of the recount guidelines, a brief
2 one.

3 MR. KING: Thank you. Mr. Chairman,
4 Members of the Commission, under the recount
5 statute, the State Recount Commission has
6 adopted recount guidelines. Many of the
7 procedures for notice and Commission proceedings
8 are spelled out in state law, but the nitty
9 gritty details of how recounts are conducted by
10 State Board of Accounts and state police, who I
11 believe may have representatives here today, are
12 spelled out and stated in the guidelines.
13 They've been periodically amended over the years
14 by the Commission as questions come up, or there
15 have been changes in the law. And in the
16 interest of brevity, I'll just give a chapter
17 heading type summary.

18 There are definitions that use some terms
19 that if there is a petition for recount filed,
20 it will become very familiar to Commission
21 members, disputed ballots, no votes, and valid
22 or invalid votes are the language used in the
23 guidelines and in the manuals that the State
24 Board of Accounts uses to classify ballots.

25 Chapter 2, it discusses the procedure

1 generally, mentions, of course, the State Board
2 of Accounts' role in terms of providing staff
3 for conducting the recount, the role of
4 candidates and their watchers, and the
5 processing of ballots.

6 I will skip to page 5. Chapter 3 has
7 specific rules for tallying votes and a ballot
8 card voting system. In Marion County, for
9 example, an optical scan ballot system is the
10 one used by most voters. This is what's meant
11 by a ballot card voting system precinct. I'll
12 mention that at least in past practice,
13 candidates have always requested a manual count
14 of those ballots as opposed to a machine
15 reading.

16 Chapter 4 will not apply since there were
17 no elections conducted this year on hand-counted
18 paper.

19 Chapter 5, electronic voting system
20 precinct, refers to a precinct, again, as in the
21 case of Marion County, where there are direct
22 report electronic voting systems also available,
23 the procedures for the recount of the memory
24 cartridge information and the paper tally sheet
25 to be made.

1 I'll be happy to answer any questions about
2 the guidelines.

3 HONORABLE TODD ROKITA: Kristi, any
4 additions?

5 MS. ROBERTSON: No, except to say that
6 there is an order, there is one amendment in
7 front of the (inaudible), that is order 2006-02.

8 MR. KING: Thank you, Kristi. And,
9 Mr. Chairman, Members of the Commission, in your
10 package you should have order 2006-02. It's
11 very straightforward. One of the changes in law
12 since 2004 has been the elimination of punch
13 card voting systems. There's one reference in
14 the guidelines to Chad, which would be repealed
15 and the remaining definitions renumbered.

16 HONORABLE TODD ROKITA: Okay. Questions
17 from members?

18 Seeing none, hearing none, I'll take a
19 motion to adopt the amendments of the recount
20 guidelines.

21 MR. DURNIL: So moved.

22 MR. DELANEY: I'll second.

23 HONORABLE TODD ROKITA: Any discussion?

24 Hearing none, all in favor signify by
25 saying aye.

1 MR. DURNIL: Aye.

2 MR. DELANEY: Aye.

3 HONORABLE TODD ROKITA: Any opposed?

4 Hearing none, so moved.

5 Thank you very much. We'll sign those as
6 well.

7 Review of matters pending before the
8 Recount Commission. I don't believe we have any
9 other matters. I was going to take that as
10 additional matters, but we can take that now,
11 that's fine. I'll take my copy of it.

12 I've not read this yet. We have before the
13 Commission a filed petition for protection,
14 possession and/or impoundment of election
15 materials for the election of Indiana State
16 Representative for District 31.

17 MS. ROBERTSON: 15.

18 HONORABLE TODD ROKITA: I have 31 before
19 me.

20 MR. DELANEY: Well, you've got a different
21 one.

22 MS. ROBERTSON: There's two.

23 HONORABLE TODD ROKITA: We'll operate off
24 these two documents. Two of them for 31.

25 MS. ROBERTSON: There's two.

1 HONORABLE TODD ROKITA: Let's just put them
2 off. We'll take them off. Let's make sure
3 we're all looking at the same one.

4 Mr. Bock, are these your petitions?

5 MR. BOCK: They are.

6 HONORABLE TODD ROKITA: Is there any one
7 besides 15 and 31?

8 MR. BOCK: No, sir.

9 HONORABLE TODD ROKITA: Just those two. So
10 we have them all?

11 MR. BOCK: Yes.

12 HONORABLE TODD ROKITA: Could you proceed,
13 please, with 31.

14 MR. BOCK: Thank you, Mr. Secretary and
15 Mr. Chairman and Mr. Delaney and Mr. Durnil.

16 House Districts 31 and 15, our present
17 understanding that in House District 31, the
18 canvass is completed and the difference between
19 the candidate votes are only just 25 votes.

20 I am not sure whether the canvass is
21 complete in House District 15. I don't believe
22 that it is, and the vote totals in that
23 district, our understanding is only just 26
24 votes.

25 Given that our experience has been that

1 typically in this range recounts are requested,
2 we felt that it was appropriate to come before
3 the Commission and ask your protection, as is
4 provided in the statute, of the ballots.

5 As the Commission is no doubt aware,
6 without the filing of the recount petition, the
7 Commission can impound, take possession of,
8 transport, or otherwise protect any election
9 records or equipment that the Commission
10 determines may be the subject of a recount
11 proceeding. And we believe that the precincts
12 in these two districts, all of the precincts in
13 these two districts, may be the subject of a
14 recount proceeding.

15 So in anticipation of that, wanting to get
16 the process moving, so that the process is fair,
17 so that there are no questions pertaining to the
18 protection of the materials in those districts,
19 I have filed petitions on behalf of candidates
20 Timothy Harris in the race for House District
21 31, and candidate Don Lehe in the race for House
22 District 15.

23 HONORABLE TODD ROKITA: Thanks, Mr. Bock.
24 Would your arguments for granting this petition
25 be the same for District 15, so we don't have to

1 repeat the same argument?

2 MR. BOCK: Yes, the understanding that I
3 have is that in House District 15, the
4 difference is probably 26 votes and in House
5 District 31 it's 25.

6 HONORABLE TODD ROKITA: I would intend to
7 take these petitions together here, that's why I
8 asked.

9 MR. BOCK: Yes, that's fine.

10 HONORABLE TODD ROKITA: So we don't have to
11 repeat.

12 Any questions for Mr. Bock?

13 MR. DELANEY: Just a technical question. I
14 know we've got -- especially Mr. Skolnik in
15 here.

16 Do we do anything? Do they finish what
17 they're doing there before he impounds? That's
18 really my question.

19 When does the impoundment occur?

20 MR. BOCK: We would anticipate that it
21 would occur immediately. That notice would be
22 given to the state police and that they would,
23 immediately after, protect and secure the
24 records.

25 MR. DELANEY: Are the locals active with

1 any of this now?

2 Have they done what they think they're
3 going to do?

4 MR. BOCK: I do not know. House District
5 15 -- I've been told that in House District 31,
6 which is Blackford and Grant Counties, that the
7 process is complete.

8 And I do not know -- I know that the
9 canvass was completed in Newton County, which is
10 one of the four counties which have precincts in
11 House District 15. They completed their
12 canvass, and I cannot tell you for sure whether
13 the other counties in that district there
14 completed their canvassing process.

15 But our request is that there be immediate
16 protection, security for those records.

17 MR. DELANEY: Would that allow the process
18 to go forward locally or would that stop it?

19 MR. BOCK: I believe that that would be
20 with the discretion of the recount director.
21 But that the records would be secured by the
22 State Board of Accounts.

23 HONORABLE TODD ROKITA: As a follow-up to
24 Mr. Delaney's questions, I would ask counsel,
25 are there provisions in Indiana Law for clerks

1 and administrators to work off copies of the
2 count and material and anything like that so the
3 work can continue?

4 MR. DELANEY: I just wonder if the state
5 can stand there and watch them for security
6 purposes, but let them do their job.

7 Maybe Brad has some experience in this.

8 HONORABLE TODD ROKITA: I'm sure there's
9 something in the law that allows clerks to
10 continue their work.

11 MR. KING: Mr. Chairman, it addresses a
12 similar situation. It's with regard to voter
13 registration records that are impounded subject
14 to a recount, and specifically states that if a
15 voter registration office makes copies under the
16 supervision of the state police, that they can,
17 therefore, use those copies to update their
18 records.

19 I'm not aware of a specific.

20 MR. DURNIL: Is that a new --

21 MR. KING: No, sir.

22 MR. DELANEY: Do we know what kind of
23 voting devices they have in these particular
24 districts?

25 MR. BOCK: We do, because it's a matter of

1 record, but I don't have that information in
2 front of me for each of the different counties
3 in the six counties.

4 I know in Lake County it's Infinity
5 machines. Of course, every county would
6 have -- which are -- my understanding that those
7 were DRE machines.

8 MR. DELANEY: Touch screen.

9 MR. BOCK: Yes. But, of course, every
10 county would have paper ballots in the form of
11 absentee ballots and any emergency ballots that
12 might be.

13 MR. DELANEY: The reason I'm asking is two
14 things, I don't want to actually give this away
15 to the local, A; and B, I wouldn't want to stop
16 them from doing something that might be useful
17 to us by impounding and thereby making us do
18 that which they would have done which would be
19 useful.

20 That's what my concern is.

21 MS. ROBERTSON: There are a couple of
22 deadlines that haven't run yet for a small group
23 of counties, provisional ballots, that's 10 days
24 after the election they can still count
25 provisional ballots, and also military and

1 overseas ballots that were postmarked by the
2 election, if they come in within 10 days after
3 the election, those can be counted.

4 MR. DELANEY: And that's in addition to any
5 ordinary process, which I don't know whether
6 they've finished it or they've stalled or
7 something.

8 So that's my only concern is that we -- as
9 I say, I can count on Mr. Skolnik to use his
10 judgment to use a gentle impoundment if it
11 allows things to move forward.

12 HONORABLE TODD ROKITA: Is there a member
13 of the state police here? I was hoping they
14 would give a report anyway.

15 I wonder if they could stand by and watch
16 while business gets done; that would be my
17 suggestion.

18 Do you have any comments?

19 MR. DELANEY: That's what I would
20 recommend. As counsel's pointed out, there's
21 some deadlines that have yet to run.
22 Provisional ballots 10 days, plus overseas
23 ballots.

24 Certainly, in my mind, would be preferable,
25 I would think, to impound if we have reason to

1 believe there's a (inaudible) based on reports
2 from the media, as well as from counsel there's
3 a strong possibility or the likelihood that
4 there is going to be a recounting process.

5 It certainly gives you -- certainly sets
6 the standards for the highest level of integrity
7 being (inaudible).

8 HONORABLE TODD ROKITA: Okay.

9 MR. BOCK: Mr. Secretary, if I could
10 address one point.

11 Mr. (Inaudible), who is also entering an
12 appearance in this matter on behalf of candidate
13 Harris, pointed out that 3-12-10-5.9 --

14 HONORABLE TODD ROKITA: 3-12-10-5.9.

15 MR. BOCK: Yeah.

16 HONORABLE TODD ROKITA: Thank you.

17 Yes, here we go.

18 MR. BOCK: I think that may address that.

19 HONORABLE TODD ROKITA: That's what I
20 thought. There we go.

21 MR. BOCK: (Inaudible) counting materials
22 so that they can (inaudible).

23 HONORABLE TODD ROKITA: We get the
24 original?

25 MR. BOCK: Yes.

1 HONORABLE TODD ROKITA: So that's actually
2 more work for the clerks, but they have to
3 understand that.

4 MR. DELANEY: In House District, what are
5 we looking at, 5,000 to 10,000 at least;
6 something in that range?

7 MR. BOCK: About 8,000, 9,000 votes.

8 MR. DELANEY: Mr. Xerox is about to get
9 rich again.

10 I'll leave it up to Mr. Skolnik. I'm in
11 favor of these resolutions, I think we should
12 pass these resolutions.

13 HONORABLE TODD ROKITA: Thank you, I take
14 that duly noted.

15 I have another question. You petitioned
16 and asked for certain things, and then we have a
17 standard and common order that we usually use at
18 the Commission.

19 Can we quickly compare those two documents
20 and see if you're satisfied with using ours for
21 impoundment.

22 MR. KING: Yes, Mr. Chairman, just to say
23 that if there is additional material requested
24 for impoundment in the petition that's not
25 already covered in the pre-drafted orders,

1 Mr. Skolnik, as recount director, would have the
2 authority to impound that additional material.

3 HONORABLE TODD ROKITA: He would? Okay.

4 MR. KING: Yes.

5 HONORABLE TODD ROKITA: So we're okay.

6 MR. DELANEY: Between the two resolutions
7 you already passed, you think he can do anything
8 he needs to do; is that what you're saying?

9 MR. KING: Yes, sir.

10 MR. DELANEY: Okay.

11 HONORABLE TODD ROKITA: All right. Then I
12 will take a motion to implement order 2006-03,
13 which is an order of impoundment for District
14 31, and also order 2006-05, which is proposed
15 order for District 15.

16 MR. DELANEY: I assume they're identical?

17 HONORABLE TODD ROKITA: Yeah.

18 MR. DELANEY: Did counsel submit these?

19 (Thereupon, the tape recording ended.)
20
21
22
23
24
25