

1 the original mail-in ballot to present at the poll
2 is that voter still permitted to vote in some way?

3 A. Yes, they are then given a provisional
4 ballot.

5 Q. And with a provisional ballot would you
6 then determine whether that vote would count based
7 on the whether the mail-in ballot had been received?

8 A. Correct. We do the - yes. We would do
9 the research on it.

10 ATTORNEY NEWCOMER: Okay.

11 I have no further questions of Mrs.
12 Miller.

13 HEARING EXAMINER: Okay, Mr. Miller.
14 You need a minute?

15 MR. MILLER: Yes. I need a minute,
16 please. Thank you.

17 ---

18 CROSS EXAMINATION

19 ---

20 BY MR. MILLER:

21 Q. Christa, you said in your testimony and
22 this happened fast so this may not be a direct quote
23 but I think you said in the very first group of
24 ballots - I'm talking Election Day now. You said
25 the very first group of ballots you saw that there

1 was a problem with the scanning and actually the
2 same thing is noted in the media statement. I
3 believe it's the one actually I submitted where it
4 said immediately we saw that there was a problem.
5 I'm just curious what you mean by immediately.
6 Could you be more specific about that?

7 A. When we scanned the very first group of
8 ballots to be tabulated.

9 Q. Yes, how many ballots are in a group?

10 A. Honestly it depends. I could not tell
11 you how many were in that first group. I just know
12 it was the first group of ballots is when it was
13 determined.

14 Q. Okay.

15 So I mean what time of day? I think you
16 said you started to open these ballots at 7:00 in
17 the morning.

18 A. Uh-huh (yes).

19 Q. Immediately as in what timeframe?

20 A. It was no later than 7:30.

21 Q. Okay.

22 A. Between 7:15 and 7:30 is when it was
23 discovered.

24 Q. So of these in total now, round numbers
25 here, we got 22,000 ballots that need to be scanned.

1 The very first group of ballots you started to scan
2 when you see there's a problem. In the end how many
3 of those 22,000 ballots did scan of the original
4 22,000?

5 A. I believe it was about 8,000.

6 Q. Okay.

7 So I guess my question is how did that
8 process - I mean you immediately saw some of them
9 weren't working but some were working. Is that what
10 you meant by immediately you saw that some were not
11 working but -?

12 A. Yes, our scanners rejected ones that did
13 not have the correct election number.

14 Q. Okay.

15 So did you - I mean did you try to scan
16 all 22,000?

17 A. Yes, we did.

18 Q. And how long did that process take of
19 just running 22,000 through?

20 A. We were done that day. I don't remember
21 exactly what time but we were done that day.

22 Q. So it was kind of like in the end after
23 you scanned for, I don't know, a period of hours you
24 ran 22,000 through and it just so happened that
25 about 8,000 - you know, 14,000 didn't work, 8,000 I

1 guess did?

2 A. Correct.

3 Q. So you just - what was the decision -
4 what the reason on that?

5 ATTORNEY NEWCOMER: I think that's
6 been asked and answered. It was the incorrect
7 election code.

8 MR. MILLER: Well I'm just asking
9 really -.

10 HEARING EXAMINER: Well I think he's
11 just asking her to confirm.

12 MR. MILLER: I'm just trying to -.

13 HEARING EXAMINER: Is that correct?

14 MR. MILLER: I'm confirming in my own
15 way.

16 THE WITNESS: Yes, it was determined
17 that this first batch of ballots that were sent out
18 which was approximately about 20,000 - or I think it
19 was about 22,000 of those of which we received about
20 16,000 back of that very first batch and these are
21 ones that we had been processing since the beginning
22 of January through the beginning of April -
23 applications that it was that first original batch
24 is where the error occurred. The error did not
25 occur in batches that we sent to be printed after

1 that.

2 BY MR. MILLER:

3 Q. Okay.

4 Is - do you understand, Christa, that
5 with relation to HAVA, Help America Vote Act, are
6 you familiar with the Help America Vote Act and its
7 provisions?

8 A. Yes.

9 Q. Okay.

10 Do you - did those provisions in HAVA
11 specifically have a Title III, did those provisions
12 factor into your decision making on that day?

13 A. Not sure I -.

14 Q. Compliance with the Help America Vote
15 Act. When you decided what to do with relation to
16 this problem did the Help America Vote Act factor
17 into what you were going to do as a solution?

18 A. I mean in my knowledge of it, yes. I
19 don't know that I directly quoted the HAVA Act that
20 day as we were talking about what the remedy was.

21 Q. Okay.

22 Would you say that the creation of
23 ballots which is the responsibility of the county -
24 I understand you use a vendor but it's the
25 responsibility of the county to create ballots. Do

1 you consider that to be a component of what HAVA
2 refers to as the voting system?

3 ATTORNEY NEWCOMER: I'm going to
4 object. I think that calls for a legal conclusion.

5 HEARING EXAMINER: I think that's
6 exactly what it is and that's really the question
7 the secretary has to answer.

8 MR. MILLER: Okay.

9 BY MR. MILLER:

10 Q. Christa, who in this process of what
11 we're calling remarking, who in the end here who
12 completed these ballots, the remarked ballots? Who
13 completed those ballots?

14 A. It was a combination of county employees
15 as well as volunteers that we had already had
16 working on the process beforehand that we knew what
17 they were doing and were familiar with the ballots
18 and what we needed to get done.

19 Q. Okay.

20 Are those - how are those people - how
21 was it determined that it would be those people to
22 deal with this problem?

23 A. It was honestly what we could procure
24 should I say to get people. We - once we knew what
25 was happening the people that we had already had as

1 our pre-canvassers that day that were already under
2 oath we asked them if they would be available going
3 forward to help with the situation as they
4 understood what the situation was and what they were
5 looking for. Then the commissioners asked county
6 departments to then also supply county workers to
7 come down and help trying to remedy the process as
8 efficiently as possible and not making it take days
9 and days and days.

10 Q. Okay.

11 Did you ever make known who publicly like
12 with these media releases, was it ever really made
13 known who those people were like by name? Who
14 completed the 14,000 ballots?

15 A. I don't know that by name, no.

16 Q. Okay.

17 The county to your knowledge didn't make
18 that known?

19 A. Not that I'm aware of.

20 Q. Okay.

21 Who then ultimately - so these ballots
22 moved through. They were completed by these county
23 employees, volunteers, and then who scanned them
24 when those folks were finished marking them? Who
25 ultimately ran them through the scanners?

1 A. Myself and my staff.

2 Q. Okay.

3 And who would that be on your staff?

4 A. As in names of those people?

5 Q. Yes, as in the Board of Election. Yes,
6 who were those - how many people?

7 A. Thinking back to that day I would - it
8 was my deputy chief - my deputy clerk Natalie Cinta,
9 Courtney Cogle, J.J. Everly, Norma Meldinado, Rachel
10 Ciplin, myself. I - honestly I don't remember if
11 anybody else at the moment came down.

12 Q. How many different scanners were those
13 run through?

14 A. Three.

15 Q. Three different scanners?

16 A. Yes.

17 Q. Were you there the whole time all of
18 those were being done?

19 A. Yes.

20 Q. Okay.

21 This process referred to as remarking, is
22 that a legal term? Are you referring to a
23 particular statute with respect to that term? The
24 term remarking. Who came up with that term?

25 A. It is simply what it's called. I don't

1 know that it's a statute necessarily that calls it
2 remarking but it's what it was was remarking a
3 ballot. Making a direct copy of the original
4 ballot.

5 Q. Okay.

6 So that's - you're not referring to a
7 term that's a legally defined term that I could look
8 up in a statute that says remarking is defined as
9 this? It's just somebody came up - so the idea of
10 taking a ballot that a voter had completed and then
11 printing out a new ballot and taking the information
12 from that ballot and putting it onto a new ballot
13 you're calling that - you chose - somebody chose to
14 call that a remarking because the new ballot has
15 never been marked.

16 Correct? So we're not remarking a new
17 ballot and we're not remarking a ballot that's
18 already been marked. We're marking a new ballot.
19 Is that right? Am I understanding the process?

20 A. What we do is we copy the exact markings
21 of the person's ballot and this is if they cross
22 something out, if they wrote because people write
23 things next to it. If they write things next to it
24 we make exactly what they put on that ballot was put
25 onto the new ballot so that a ballot that could

1 actually be scanned through our system.

2 Q. Okay.

3 But in this case this was not voter
4 error. This was the ballot itself as a result of
5 the voting system's error could not be scanned.

6 Correct?

7 ATTORNEY NEWCOMER: Well I think that
8 calls again for legal conclusion. Mr. Miller is
9 trying to go about this a different way. She's
10 already asked and answered - the question has been
11 asked and answered what was done. She's described
12 what has been done. I think it's up to you, Mrs.
13 Rand, to make a decision and the secretary to make a
14 decision. It's a legal conclusion.

15 MR. MILLER: Well I'm just concluding
16 the fact - I'm just confirming through Mrs. Miller
17 that the reason this was done, this remarking, is
18 not because of something the voter did. It's
19 because of the misprinted ballots.

20 HEARING EXAMINER: And I think the
21 record shows that.

22 MR. MILLER: Okay.

23 HEARING EXAMINER: I think the record
24 shows that.

25 MR. MILLER: I just wanted to make

1 sure that we're - because she started to talk about
2 how the voter may have done this or the voter may
3 have done that. That's not what's applicable here.

4 HEARING EXAMINER: Right. No, we're
5 strictly -.

6 ATTORNEY NEWCOMER: Well she responded
7 to Mr. Miller's question so -.

8 HEARING EXAMINER: We're strictly
9 focusing I think on the fact that they wouldn't scan
10 and so what did we do about it.

11 BY MR. MILLER:

12 Q. The - this process of remarking, the
13 decision to do this remarking process, I believe it
14 was - in Exhibit 5. Do you have those?

15 A. I do. I'm just trying to find it.

16 Q. Yes, I'll give you a second to -. I just
17 wanted to go through the timeline on these e-mails.
18 So it looks like it goes actually from back to front
19 if I'm understanding the thread here so that the
20 final page at the bottom is actually the first e-
21 mail in the chain. So it's Trisha Robinson here
22 saying to you were there any ballot content changes
23 that were missed in the printed ballots and your
24 answer there is no.

25 A. At that time that was the answer that I

1 believed. I did not remember in the process of
2 everything happening that day what had happened with
3 5711.

4 Q. Okay.

5 So you had forgotten?

6 A. Yes, I was trying to go through as you
7 had also testified was a very crazy day and trying
8 to go through everything and think of everything.
9 Yes, I did not remember at that exact moment when
10 that e-mail was sent that that had happened.

11 Q. Okay.

12 So that e-mail is at 12:03 so you're
13 saying at that point in the day you now realize you
14 were aware of those eight ballots -.

15 A. No, I'm saying at 12:03 I was not aware.
16 I did not know about them at 12:03.

17 Q. Okay.

18 A. We did not find those until Wednesday.
19 This was on Tuesday.

20 Q. Okay.

21 We'll check the record on that. Then on
22 May 17 at 12:20 down at the bottom - this is the
23 next page over. You wrote to - I won't try that
24 last name, Cindu? Am I right?

25 A. Correct.

1 Q. I'll stick with the first name. You
2 wrote to Cindu and said the solution is a remark of
3 the affected ballots. It seems like you have at
4 that point come to the conclusion of what to do. So
5 I'm just curious now. You're corresponding with
6 Cindu and Trisha who are at the Department of State,
7 Jonathan Marks is on here, Jessica Mathis is on here
8 as cc. How did you - is that your conclusion at
9 that point? Did you make that decision? That's how
10 we're going to handle these 14,000 ballots?

11 A. The decision was made by myself, the
12 Board of Elections, and the democratic and
13 republican chairs.

14 Q. Okay.

15 And were - how did that discussion - how
16 did that decision get made? Was there a group
17 meeting? Can you just describe how that decision
18 was made?

19 A. Yes. So this is a discussion that we had
20 and we had done a remark before, not that that's a
21 fortunate thing but it is something that we had done
22 before. We knew how to do it. We knew how quickly
23 we could get it done and that way all the ballots -
24 then we would be able to scan all the ballots to
25 tabulate them correctly and we found that that was

1 the best move to make with the number of ballots
2 that it was.

3 Q. Right now I would assume that that was -
4 you had legal considerations to think about for that
5 decision so I'm just curious how you navigated the
6 legal - I mean that's -. You've been here two
7 years. You're making decision about 14,000 ballots.
8 How did -?

9 A. The solicitors were involved in that
10 discussion.

11 Q. They were involved in that too and did
12 they - did the discussion of HAVA violations or HAVA
13 requirements come up in that discussion that you
14 recall?

15 A. Not that I can recall.

16 Q. Okay.

17 Do you recall what statutes were
18 referenced?

19 A. Off the top of my head, no.

20 Q. Okay.

21 So you don't recall the legal
22 implications of that discussion at all?

23 A. I'm - it was a discussion honestly that
24 was many months ago. No, I do not remember the ins
25 and outs of that discussion.

1 Q. Okay.

2 Which counsel would have been involved
3 there? Would that have been - which legal counsel
4 was involved in those discussions?

5 A. It would have been our county solicitor,
6 I believe Mel Newcomer was involved as well.

7 Q. Okay.

8 Anyone else?

9 A. Not off the top of my head.

10 Q. Okay.

11 And you mentioned the democrat party was
12 involved in that as well?

13 A. Correct.

14 Q. Who would that have been?

15 A. Diane Chipakin who was a chairperson at
16 the democratic committee at that point.

17 Q. Okay.

18 And how about the republican side?

19 A. Kirk Redonovick.

20 Q. Okay.

21 A. Who was also the chairperson at the
22 republican committee.

23 Q. So that means it was you, counsel, and
24 the head of the two parties and the commissioners
25 decided that's how we're going to do it?

1 A. Correct.

2 Q. And you don't recall what the legal -?

3 A. Off the top of my head I cannot.

4 Q. Okay.

5 Just wanted to confirm that. I believe
6 that was all the questions I had on the e-mails.
7 Christa, related to the ballots you had said that
8 related to these eight ballots - how did you become
9 - I'm sorry, how did you become aware of those
10 ballots in the first place? You said it was after
11 12:00 noon. How did that occur?

12 A. I believe it was Wednesday night.
13 Honestly I don't remember if it was afternoon or
14 night. I just remember it was later on Wednesday,
15 the day after the election that it happened and the
16 volunteers that were working on that precinct found
17 it and simply called me over to talk to me about it.

18 Q. Okay.

19 Now what - I mean specifically what did
20 they say about it?

21 A. They showed me that the ballots were
22 missing the race and asked me what they should do at
23 that time.

24 Q. Okay.

25 And what did you do next?

1 A. Well honestly at that point there is no
2 way to tie those ballots back to exactly who those
3 people were. Kirk Redonovick from the republican
4 party I did consult with him as he was the head of
5 the party that it affected. I explained the
6 situation to him and told him that at that point
7 there was no way for me to identify exactly what
8 voter could go to each ballot. That due to it being
9 eight there just simply was not a verification of
10 what we could do at that point without being able to
11 identify exactly whose ballot could go to each
12 person so the decision was made to just simply leave
13 that blank for either candidate. Neither candidate
14 would get a vote on those eight ballots.

15 Q. And how was that decision made?

16 A. The decision was made when we realized we
17 could not match up a ballot to a voter and that
18 there was no way we could then contact a specific
19 voter and say this is your ballot to pick.

20 Q. Well I'm just - I'm asking who is part of
21 that decision?

22 A. Myself and I believe Kirk. I don't - I
23 honestly at this point I don't remember if -.

24 Q. No legal counsel on that?

25 A. I believe I may have talked to one of our

1 solicitors about it but honestly at the top of my
2 head I cannot testify that I for sure did.

3 Q. So you may have made that decision to
4 pull those other votes without any legal counsel
5 possibly?

6 A. Potentially but I cannot - I can't
7 testify that I did or did not.

8 Q. Okay.

9 And so then after you became aware that
10 there was eight - it was at that point the county
11 employees who were working that precinct told you
12 that they told you there was eight or did you
13 actually see them at that point?

14 A. No, I went through them and we found - we
15 counted that there was only eight.

16 Q. Okay.

17 So do you recall approximately I think I
18 saw that precinct 5711 at least from - I think I'm
19 getting that right. From my race alone I think was
20 somewhere around 100 ballots total. A fairly small
21 precinct.

22 A. Correct.

23 Q. So you're saying that you counted - you
24 determined to go through and not really counted but
25 just went through every one of those ballots for

1 that precinct. Maybe not even - maybe beyond my
2 race however many ballots there were. You went
3 through and checked every ballot in that precinct to
4 make sure there were no other ballots missing?

5 A. In 5711, yes.

6 Q. In 5711, okay.

7 A. It was at that moment that we realized
8 that I remembered that that was the specific
9 precinct that it was affected which is why we had to
10 change the election database in the first place.

11 Q. Okay.

12 And you may have testified to this on the
13 technicals. You get busy when you're looking at
14 this stuff for the first time. What's your
15 explanation for how there could have been eight out
16 of a total of 100? I understand not all those are
17 mail ballots. Do you recall how many ballots that
18 would have been that you would have looked at that
19 you were concerned with in that precinct?

20 A. I do not.

21 Q. Okay.

22 You had -.

23 A. At that night. I mean we looked at the
24 actual physical voted ballots that night that were
25 all for the precinct and there were eight.

1 Q. Okay.

2 Was there a discussion at any point
3 related to all of the - basically these two main
4 problems with some of the ballots missing a race and
5 the issue of the 14,000. Was there ever a
6 discussion of did the - why not give these voters a
7 chance to vote their own ballot? In other words I
8 guess what I'm saying is the decision was made early
9 on here's how we're going to handle this. We're
10 going to order new ballots. We're going to
11 transcribe these ballots onto new ballots and then
12 cast those new ballots. Was there any other
13 alternative considered for how to handle the issue?

14 A. I believe at one point there - the only
15 other decision - the only other thought was a hand
16 count out of all of those ballots but it was
17 determined that the time it would take, the amount
18 of people it would take, and the human error
19 involved in a hand count would not - it would not
20 make sense to do it that way and that remarking the
21 ballots again we had done that. It was a process
22 already approved by the Department of State with us
23 that that was the best course of action.

24 Q. Okay.

25 Just before I jump to that so you said

1 that you checked all the ballots for that precinct
2 and confirmed there was only eight. Did you ever go
3 back and look at all the ballots yourself to check
4 that there was only eight?

5 A. Yes.

6 Q. I mean I'm talking about all 22,000.

7 A. No, because that was the affected
8 precinct. The other ones had - were correct. The -
9 we even went back. We double checked the test decks
10 and that was the only error between the two test
11 decks and it was so that was the precinct that we
12 checked.

13 Q. Okay.

14 So you only personally looked at about -
15 I don't know the number. You only looked at the
16 ballots for 5711.

17 A. The affected precinct, yes.

18 Q. Right. Did anyone else check beyond that
19 either?

20 A. We did not because - I mean we just
21 double checked again that that was the only error
22 and it was so that was the one we checked.

23 Q. Okay.

24 Would there have been a possibility here
25 - did anyone bring up as - you mentioned the

1 alternative being a hand recount. Who was involved
2 in saying that that wouldn't be a good idea? That
3 wouldn't be - you'd be talking about hand counting
4 14,000 ballots.

5 A. It was discussion of the group who
6 decided on the remark. We weighed the options of
7 the two and the remark was the decision we decided
8 to go with.

9 Q. Okay.

10 So once again the counsel, the
11 commissioners, and the two party -.

12 A. Correct, and the two party chairs.

13 Q. Okay.

14 And there was no discussion about the
15 idea of why don't we to give the voters a chance to
16 actually cast their own ballot. Was there a thought
17 of why don't we just delay this? We'll send out new
18 ballots to these people who didn't get a chance to
19 vote their ballot and let them vote and if it takes
20 some delay in certifying this election then so be it
21 but at least that way people would get to cast their
22 own ballot. Was there any discussion of that?

23 A. No, because the discussion was they had
24 cast their ballot and we would simply be making a
25 copy of their exact choices onto a ballot that could

1 be scanned.

2 MR. MILLER: Okay. I have no further
3 questions.

4 HEARING EXAMINER: Any Redirect, sir?

5 ATTORNEY NEWCOMER: I do not.

6 HEARING EXAMINER: Okay.

7 Then we have reached the point where I
8 want to make sure our exhibits are all admitted. I
9 know that Mr. Miller's were. I think we've
10 identified everything here. Were you planning on
11 moving all Exhibits 1 through 10, Mr. Newcomer?

12 ATTORNEY NEWCOMER: I do not have a
13 need for Exhibit Number, I believe it's 8. I did
14 not refer to that so but Exhibits 1 through 10 save
15 for Exhibit 8 I would move for their admission.

16 HEARING EXAMINER: Okay.

17 Any objection, Mr. Miller?

18 MR. MILLER: No objection.

19 HEARING EXAMINER: Okay. super-duper.

20

21 (Whereupon, Respondent's Exhibit 1, E-mails, was
22 admitted.)

23 (Whereupon, Respondent's Exhibit 2, Redistricting
24 Info, was admitted.)

25 (Whereupon, Respondent's Exhibit 3, E-mails, was