

1 we were told, you know, accept them.

2 I mean, I kept writing them saying, look,  
3 they don't have ID on them -- I mean they don't have  
4 the current address, they do not include that. What  
5 do we do about this? And the response was follow the  
6 statute.

7 Q. Just to clarify, Ms. Kelly, you said the  
8 response was to follow the statute. Did the Secretary  
9 of State specifically tell you to accept military IDs  
10 without a current address or did he tell you to follow  
11 the statute and you interpreted that to mean to accept  
12 military IDs without a current address?

13 A. First of all, I'd like to clarify and say  
14 that the Secretary of State himself didn't tell me  
15 anything. I talked to a representative from the  
16 office.

17 And there really wasn't a definitive  
18 answer on this issue. There was acknowledgment that  
19 perhaps the statute needs to be clarified. And when I  
20 received the -- you know, the directive, I guess you'd  
21 say, to follow the statute, we are just accepting the  
22 military ID. We are not asking for anything  
23 additional.

24 However, I would like to note for the  
25 record that a lot of servicemen and women have

1 provided additional information themselves without  
2 being asked.

3 Q. Do you know approximately when you asked  
4 for clarification from the Secretary of State's  
5 office?

6 A. It was a long time ago. I'm sorry, I  
7 can't tell you when.

8 Q. Okay.

9 A. I'm assuming it was shortly after we  
10 received the Legislative Service Commission's bill  
11 analysis on House Bill 3. I spoke with our staff that  
12 handled ABB specifically and I said I'd like to see  
13 what a military ID card looks like, because I don't  
14 think it has an address on it.

15 And, you know, we were able to get a few  
16 and look at them, and yes indeedly, there was no  
17 address. And that's what prompted my inquiry.

18 Q. Do you have any plans going forward to  
19 continue to accept military IDs without another form  
20 of identification?

21 A. I guess after this deposition, I'm going  
22 to call the Secretary of State's office again and say,  
23 Yoo-hoo, we were deposed today on this issue, I think  
24 you need to clarify again.

25 Because otherwise, I'm just stuck with

1 the statute the way it's written. And I would note  
2 for the record that the Secretary of State didn't  
3 draft the statute. He's stuck with it just like I am.  
4 But I will call for additional clarification.

5 Q. Moving on to the next issue, Ms. Kelly,  
6 is your Board accepting driver's licenses that have  
7 former addresses?

8 A. Can you clarify that? Do you mean a  
9 driver's license that somebody's moved and it doesn't  
10 have their new address on it? Is that what you mean?

11 Q. Yes, that's what I mean.

12 A. Okay. We are accepting them pursuant to  
13 directives and statutes, but we are requiring our  
14 staff and we are training our poll workers that in  
15 that instance, the last four digits of that driver's  
16 license number has to be recorded in the poll books  
17 and also recorded on the logbook that we have here in  
18 the Board Elections if it's somebody voting here.

19 Q. All right. And how did you arrive at  
20 that conclusion that that's what you were going to do?

21 A. Directive and statute. And, also,  
22 seminar that we attended with the Secretary of State's  
23 office.

24 Q. When was that seminar?

25 THE WITNESS: When did we go?

1 MR. PILROSE: Last year.

2 THE WITNESS: I want to say  
3 during the summer conference.

4 BY MS. SESTILE:

5 Q. Do you have any written materials that  
6 discuss the standard to apply with respect to driver's  
7 licenses with former addresses?

8 A. Yes. We have directives from the  
9 Secretary of State.

10 Q. Within your Board, do you have any  
11 written materials that you've issued that discuss the  
12 standard?

13 A. Could you repeat that, please?

14 Q. Sure. Within the Lucas County Board of  
15 Elections, do you have any written materials you've  
16 issued as a Board to discuss that standard?

17 A. Yes. Our poll worker manual and our poll  
18 worker training film.

19 Q. The standard that you discussed earlier  
20 requiring staff to get the last four digits of a  
21 driver's license number on a license that has a former  
22 address, is that the standard that you plan to apply  
23 on election day?

24 A. Unless I'm instructed otherwise, yes.

25 Q. Moving on to the next issue, is your

1 Board requiring early in-person voters to provide  
2 identification?

3 A. Yes.

4 Q. What kind of identification are you  
5 requiring?

6 A. Well, first of all, we're requiring that  
7 the full driver's license number be placed on the  
8 application itself.

9 Whatever requirements there are for the  
10 absentee voter application, period, we're asking them  
11 to do that. And then we are also asking for the  
12 statutory ID requirements, that those be fulfilled, as  
13 well.

14 Q. Can I clarify something? I'm sorry. Did  
15 you say you're asking for the full driver's license  
16 number?

17 A. Whatever the application requires. I'm  
18 so sorry, I don't have it sitting in front of me.  
19 Whatever the Secretary of State's prescribed  
20 application requires, we're asking that those  
21 requirements be fulfilled.

22 And in addition to that, we're asking  
23 that the regular ID requirements be fulfilled, as  
24 well. In other words, you fill out your application,  
25 we're also asking for the driver's license, State ID,

1 et cetera.

2 Q. To make sure I understand, are you asking  
3 to see a photo ID for early in-person voters?

4 A. Yes.

5 MR. COGLIANESE: Objection.

6 THE WITNESS: If that's one of  
7 the requirements, yes, we are.

8 BY MS. SESTILE:

9 Q. But sitting here today, you don't know if  
10 your staff workers are actually requesting to see a  
11 photo ID from early in-person voters?

12 A. I will tell you that after we received  
13 directive 2006-78, we are following that directive.  
14 Specifically on Page 2 of that directive, it explains  
15 that pursuant to statute, a voter who's voting by  
16 absentee ballot -- and I'm talking about someone who  
17 comes into the Board of Elections, which you're  
18 referred to as an early voter.

19 In addition to providing the full  
20 driver's license number rather than the last four  
21 digits, in addition to that, the directive says we are  
22 also supposed to have the person who's casting their  
23 ballot in person or delivering it to us in person  
24 follow the ID requirements, which, again, is a current  
25 valid photo ID or copy of military identification,

1 current utility bill, bank statement, government  
2 check, et cetera.

3 MS. SESTILE: All right. Since  
4 we're talking about it, why don't we go  
5 ahead and mark Directive 78.

6 (Court Reporter marked Kelly  
7 Exhibit 1.)

8 MR. BORELL: All right.  
9 Directive 2006-78 has been marked Kelly  
10 Exhibit 1.

11 BY MS. SESTILE:

12 Q. Ms. Kelly, we have just been discussing  
13 this directive. I take it you're familiar with it?

14 A. Yes.

15 Q. When did you receive this document?

16 A. The 26th.

17 Q. Before you received it, what was Lucas  
18 County Board of Elections doing with respect to early  
19 in-person voters and showing identification?

20 A. Could you hold for a moment, please?

21 MS. SESTILE: Yes.

22 (Discussion had off the record.)

23 THE WITNESS: Can you hear us?

24 BY MS. SESTILE:

25 Q. We can.

1           A.       Okay.  Actually, we were doing just what  
2 the directive said to do and then stopped doing it for  
3 one day as a result of Judge Marbly's (phonetic) -- I  
4 hope I'm not mispronouncing his name -- his ruling.

5                   And then we went right back as soon as  
6 that ruling was overturned.  We went right back to  
7 doing it this way, the way the directive states again.

8           Q.       Okay.  Do you know if during the period  
9 you were not following the law as set forth in  
10 Directive 78, did you have any early in-person voters  
11 coming who were required to show identification?

12                   MR. COGLIANESE:  Objection.

13                   THE WITNESS:  We had a few  
14 people that came in and they were not  
15 asked to show the photo ID.  They just  
16 filled out the application and put all  
17 the information that was required, and  
18 they were permitted to vote for that one  
19 day.

20 BY MS. SESTILE:

21           Q.       And do you know what Lucas County Board  
22 of Elections' plan is with respect to those voters, if  
23 you're going to count those votes or not?

24                   MR. COGLIANESE:  Objection.

25                   THE WITNESS:  That will be



1 something that we'll discuss with Mr.  
2 Borell, with our Board, and Secretary of  
3 State.

4 I think my opinion on it, what I  
5 will be telling the Board, is fundamental  
6 fairness demands that they be counted.  
7 And that is what I will encourage our  
8 Board to vote on and adopt.

9 I don't think voters need to be  
10 punished or disenfranchised because of a  
11 court ruling at any time.

12 BY MS. SESTILE:

13 Q. And you mentioned, Ms. Kelly, that even  
14 before you received Directive 78, you were requiring  
15 identification from early in-person voters.

16 Were there discussions about that within  
17 the Lucas County Board of Elections, either internally  
18 or externally?

19 A. Yes. Internally, our administrative  
20 staff believed that, as this is a polling location and  
21 these are early voters, that we needed to apply the  
22 statute the way we were applying it.

23 Q. Did you issue any written directives on  
24 that?

25 A. No, we did not. However, we do meet with

1 our staff and provide that direction to all of them.

2 And, of course, we apprise our Board by means of phone  
3 calls, e-mails, and our weekly report.

4 And I can't tell you which of those  
5 methods we used to explain that's how we were doing  
6 this. I think we probably told them by phone.

7 Q. Are you planning on applying the same  
8 standard on election day?

9 A. Which standard are you referring to?

10 Q. Requiring identification for -- I'm  
11 sorry. Never mind.

12 Moving on to our last issue, Ms. Kelly,  
13 how will your Board determine whether a provisional  
14 ballot is eligible to be counted?

15 A. Okay. As always, we will turn to statute  
16 and we will turn to directives issued by the Secretary  
17 of State.

18 We checked on this question, because we,  
19 like everyone else, want to know what we're supposed  
20 to be doing. We called our field representative this  
21 morning and were advised that there will be a  
22 directive as to how provisional ballots will be  
23 examined and counted by Boards of Elections for this  
24 upcoming election.

25 I told them the only guidance we have

1 would be Advisory No. 2006-01, which was issued March  
2 13th of 2006. There was also a memorandum issued in  
3 2004, October 26th, 2004, regarding provisional  
4 voting, and a Directive 2004-42 that was issued  
5 October 25th of 2004.

6 Now, obviously we won't apply that older  
7 dated material unless we're not given anything new  
8 that applies to this election. But I assure you we  
9 will be.

10 Q. Okay. Assuming that you're not given  
11 anything new, what records would you examine to  
12 determine whether provisional ballots are eligible to  
13 be counted?

14 A. With all due respect, I'm not doing  
15 anything until I receive a directive. Nothing. And I  
16 need it in writing.

17 Q. Okay. So if the Secretary of State's  
18 office doesn't issue a directive or other guidance in  
19 writing, what will your Board do with respect to  
20 provisional ballots?

21 MR. COGLIANESE: Objection.

22 THE WITNESS: At that point,  
23 should there be no directive issued, we  
24 will turn to our prosecutor, who is a  
25 great legal sage, and ask him to

1 interpret the statutes as they exist, and  
2 we would follow whatever his legal  
3 opinion would be.

4 But that would only be if we  
5 receive no guidance from the Secretary of  
6 State.

7 MR. COGLIANESE: Off the record  
8 a second.

9 (Discussion had off the record.)

10 BY MS. SESTILE:

11 Q. At this time, Ms. Kelly, do you have any  
12 plans to examine other information to determine if  
13 provisional ballots are eligible to be counted,  
14 including, but not limited to, either BMV records or a  
15 Social Security number database?

16 MR. COGLIANESE: Objection.

17 THE WITNESS: Again, at this  
18 point, with all due respect, my mind is a  
19 clean slate.

20 I have to have direction from  
21 those -- from my betters. I have to have  
22 direction from the Secretary of State.  
23 In the absence of that, I have to have  
24 direction from our County prosecutor  
25 pursuant to statute.

1                                   And whatever the statute, as  
2                                   interpreted by the prosecutor, suggests  
3                                   that we do that, that is what we will do.  
4                                   We have every intention of following the  
5                                   law to the letter.

6 BY MS. SESTILE:

7                   Q.     I know you're waiting for direction from  
8                   your Secretary of State's office or your prosecutor,  
9                   but does Lucas County Board of Elections have the  
10                  ability to check driver's license numbers submitted on  
11                  provisional ballots against BMV records?

12                 A.     We would have to call a contact through  
13                  the BMV in order to do that. We don't have the  
14                  capability of doing that directly ourselves.

15                             Is that the question?

16                 Q.     Same question with regard to Social  
17                  Security numbers. If people put their last four  
18                  digits of their Social on their provisional ballots,  
19                  do you have the ability to check those against some  
20                  sort of database?

21                 A.     Not directly, no, ma'am, we do not.

22                 Q.     Okay. I have one more exhibit I want to  
23                  talk about with you, Mr. Kelly, and then we'll let Mr.  
24                  Coglianese take a stab at it.

25                             Does the court reporter have an e-mail

1 that's dated October 26, 2006 at the top? It says,  
2 "Damschroder, Matthew M"?

3 (Court Reporter marked Kelly  
4 Exhibit 2.)

5 THE WITNESS: May we have a  
6 moment to look at this?

7 (Discussion had off the record.)

8 BY MS. SESTILE:

9 Q. I know you just took a moment to look at  
10 Kelly Exhibit 2, but before just now, have you ever  
11 seen this before?

12 A. Yes. I believe I did in passing.

13 Q. Did you receive a copy of this e-mail?

14 A. I believe that we did.

15 Q. Okay. If you would take a moment to go  
16 ahead and read the only paragraph of Page 1 that says,  
17 "You have got to be kidding."

18 A. Uh-huh.

19 Q. Do you have any opinion on that  
20 paragraph?

21 MR. COGLIANESE: Objection.

22 THE WITNESS: At this point in  
23 time at this juncture of the election, I  
24 don't have an opinion about anything.  
25 I'm just tired.

1 BY MS. SESTILE:

2 Q. All right, Ms. Kelly, to your knowledge,  
3 has anyone requested guidance from your office from  
4 the Secretary of State's office as to how to apply  
5 Directive 78?

6 MR. COGLIANESE: Objection.

7 Are we asking her office? Are we asking  
8 if she knows of anyone who contacted the  
9 Secretary of State's office? Might want  
10 to clarify that question.

11 BY MS. SESTILE:

12 Q. Has anyone from the Lucas County Board of  
13 Elections contacted the Secretary of State's office  
14 with respect to how to apply Directive 78?

15 A. At this point, we have not. We read  
16 through it. We thought it was fairly clear and it  
17 provided good guidance.

18 Q. But is it fair to say that you disagree  
19 with the e-mail that is Kelly Exhibit 2?

20 MR. COGLIANESE: Objection.

21 THE WITNESS: Would you repeat  
22 that question?

23 BY MS. SESTILE:

24 Q. Is it fair to say that you disagree with  
25 the opinions expressed in this e-mail that is Kelly

1 Exhibit 2?

2 MR. COGLIANESE: Objection.

3 THE WITNESS: Let me have a  
4 second to reread.

5 I think my response to your  
6 question, counselor, is everyone's  
7 entitled to their opinion. This is  
8 America.

9 BY MS. SESTILE:

10 Q. Do you agree with that opinion, ma'am?

11 MR. COGLIANESE: Objection.

12 MS. CORL: Objection. Asked  
13 and answered.

14 BY MS. SESTILE:

15 Q. You may answer.

16 A. Would you restate your question?

17 Q. Do you disagree with the opinions set  
18 forth in Kelly Exhibit 2?

19 MR. BORELL: Yes or no.

20 MR. COGLIANESE: Objection.

21 MR. BORELL: The witness is  
22 reading it again.

23 THE WITNESS: You know, I don't  
24 think that this question can be answered  
25 in a yes or no.



1 I don't know the status of poll  
2 worker training. I don't have any  
3 personal knowledge as to how the Franklin  
4 County Board of Elections operates.

5 I don't know, you know, how they  
6 examine directives. I don't know how  
7 they teach their staff. So not having  
8 any personal knowledge about their Board  
9 of Elections, I don't know how I can say.

10 BY MS. SESTILE:

11 Q. Sure. Let me be just a little more  
12 specific. You disagree with the opinion in the e-mail  
13 that is Kelly Exhibit 2 that Directive 78 is  
14 confusing?

15 MR. COGLIANESE: Objection.

16 MS. CORL: Objection.

17 MR. COGLIANESE: Asked and  
18 answered.

19 MS. CORL: Asked and answered.

20 THE WITNESS: It's not confusing  
21 to me. Let me say that, as a former  
22 teacher with a master's degree, I always  
23 feel that everything can be explained  
24 better.

25 There's always a better way to

1 do everything. There's always a better  
2 mousetrap out there. However, we found  
3 the directive helpful in our county, and  
4 that's the only county I can speak for.

5 BY MS. SESTILE:

6 Q. Thank you. Final question from me, Ms.  
7 Kelly, at least on direct.

8 After reading Directive 78, are there any  
9 questions or concerns that you have about application  
10 of the new voter ID laws?

11 A. The only question I have -- and it will  
12 remain until the legislature does its duty -- is that  
13 the military identification provision should be  
14 clarified. Other than that, you know, we're bopping  
15 along as best we can.

16 MS. SESTILE: Thank you. I'm  
17 done on direct. I'll go ahead and turn  
18 you over to Mr. Coglianese.

19 MR. COGLIANESE: Thanks.

20 - - -

21 EXAMINATION

22 BY MR. COGLIANESE:

23 Q. Good morning.

24 A. Good morning.

25 Q. This is going to be very brief, Ms.

1 Kelly. I've just got a couple of questions for you.

2 Just for purposes to clarify the record,  
3 it is your testimony that you have not had an issue  
4 with the definition of "current" as it relates to  
5 current ID; is that correct?

6 A. That's correct.

7 Q. And you have not had an issue with other  
8 government documents; is that correct?

9 A. That's correct.

10 Q. You have not rejected any application for  
11 absentee ballots based on either of those two  
12 provisions; is that right?

13 A. To my knowledge, we have not.

14 Q. You have not rejected any absentee  
15 ballots themselves for either of those two issues; is  
16 that right?

17 A. To my knowledge, we have not.

18 Q. For the 2006 general election, how many  
19 applications for absentee ballots has the Lucas County  
20 Board of Elections received?

21 A. In excess of 20,000.

22 Q. Of those 20,000, do you know how many  
23 have had insufficient information that you've had to  
24 return to the potential voter?

25 A. I don't have the exact numbers for you.

1 I would say a significant number. And I want to  
2 qualify that answer by telling you, we also have an  
3 extremely large stack of rejection letters.

4 And when I say, "rejection letters," I  
5 mean the letter that the Board of Elections generates  
6 to tell people that critical information is missing.  
7 And we can't even send these letters, because we have  
8 no addresses for these people.

9 Q. Okay. So the problem has not been lack  
10 of identification. The problem has been wrong or  
11 missing addresses; is that right?

12 A. I'm saying both. We have had missing  
13 information, identification information. But we were  
14 able to send a letter to those individuals pursuant to  
15 the statute saying, Yoo-hoo, you're missing this or  
16 that and we need it so that we can get your ballot to  
17 you.

18 However, for the record, I want it to be  
19 known that we received a whole lot of applications  
20 from these registration drives with so-called voter  
21 protection groups who sent us either duplicative cards  
22 or cards people didn't sign or cards where there was  
23 no address. And we can't even help these voters  
24 because we can't find them.

25 Q. Can you estimate for me how many of those