we were told, you know, accept them.

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

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

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

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

However, I would like to note for the record that a lot of servicemen and women have
provided additional information themselves without being asked.

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

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

Q. Okay.

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

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

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

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

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

Q. Moving on to the next issue, Ms. Kelly,
is your Board accepting driver's licenses that have
former addresses?
A. Can you clarify that? Do you mean a
driver's license that somebody's moved and it doesn't
have their new address on it? Is that what you mean?
Q. Yes, that's what I mean.
A. Okay. We are accepting them pursuant to
directives and statutes, but we are requiring our
staff and we are training our poll workers that in
that instance, the last four digits of that driver's
license number has to be recorded in the poll books
and also recorded on the logbook that we have here in
the Board Elections if it's somebody voting here.

Q. All right. And how did you arrive at
that conclusion that that's what you were going to do?
A. Directive and statute. And, also,
seminar that we attended with the Secretary of State's
office.

Q. When was that seminar?
THE WITNESS: When did we go?
MR. PILROSE: Last year.

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

BY MS. SESTILE:

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

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

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

A. Could you repeat that, please?

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

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

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

A. Unless I'm instructed otherwise, yes.

Q. Moving on to the next issue, is your
Board requiring early in-person voters to provide identification?

A. Yes.

Q. What kind of identification are you requiring?

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

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

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

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

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

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

A. Yes.

MR. COGLIANESE: Objection.

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

BY MS. SESTILE:

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

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

In addition to providing the full driver's license number rather than the last four digits, in addition to that, the directive says we are also supposed to have the person who's casting their ballot in person or delivering it to us in person follow the ID requirements, which, again, is a current valid photo ID or copy of military identification,
current utility bill, bank statement, government check, et cetera.

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

(Court Reporter marked Kelly Exhibit 1.)

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

BY MS. SESTILE:

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

A. Yes.

Q. When did you receive this document?

A. The 26th.

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

A. Could you hold for a moment, please?

MS. SESTILE: Yes.

(Discussion had off the record.)

THE WITNESS: Can you hear us?

BY MS. SESTILE:

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

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

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

BY MS. SESTILE:

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

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

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

Q. Did you issue any written directives on that?

A. No, we did not. However, we do meet with
our staff and provide that direction to all of them. And, of course, we apprise our Board by means of phone calls, e-mails, and our weekly report.

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

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

A. Which standard are you referring to?

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

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

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

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

I told them the only guidance we have
would be Advisory No. 2006-01, which was issued March 13th of 2006. There was also a memorandum issued in 2004, October 26th, 2004, regarding provisional voting, and a Directive 2004-42 that was issued October 25th of 2004.

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

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

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

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

MR. COGLIANESE: Objection.

THE WITNESS: At that point, should there be no directive issued, we will turn to our prosecutor, who is a great legal sage, and ask him to
interpret the statutes as they exist, and
we would follow whatever his legal
opinion would be.

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

MR. COGLIANESE: Off the record
a second.

(Discussion had off the record.)

BY MS. SESTILE:

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

MR. COGLIANESE: Objection.

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

I have to have direction from
those -- from my betters. I have to have
direction from the Secretary of State.
In the absence of that, I have to have
direction from our County prosecutor
pursuant to statute.
And whatever the statute, as interpreted by the prosecutor, suggests that we do that, that is what we will do. We have every intention of following the law to the letter.

BY MS. SESTILE:

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

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

Is that the question?

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

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

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

Does the court reporter have an e-mail
that's dated October 26, 2006 at the top? It says, "Damschroder, Matthew M"?

(Court Reporter marked Kelly Exhibit 2.)

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

(Discussion had off the record.)

BY MS. SESTILE:

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

A. Yes. I believe I did in passing.

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

A. I believe that we did.

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

A. Uh-huh.

Q. Do you have any opinion on that paragraph?

MR. COGLIANESE: Objection.

THE WITNESS: At this point in time at this juncture of the election, I don't have an opinion about anything.

I'm just tired.
BY MS. SESTILE:

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

MR. COGLIANESE: Objection.

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

BY MS. SESTILE:

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

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

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

MR. COGLIANESE: Objection.

THE WITNESS: Would you repeat that question?

BY MS. SESTILE:

Q. Is it fair to say that you disagree with the opinions expressed in this e-mail that is Kelly
1 Exhibit 2?

2 MR. COGLIANESE: Objection.

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

4 I think my response to your question, counselor, is everyone's entitled to their opinion. This is America.

9 BY MS. SESTILE:

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

11 MR. COGLIANESE: Objection.

12 MS. CORL: Objection. Asked 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 forth in Kelly Exhibit 2?

19 MR. BORELL: Yes or no.

20 MR. COGLIANESE: Objection.

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

23 THE WITNESS: You know, I don't think that this question can be answered in a yes or no.
I don't know the status of poll worker training. I don't have any personal knowledge as to how the Franklin County Board of Elections operates.

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

BY MS. SESTILE:

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

MR. COGLIANESE: Objection.

MS. CORL: Objection.

MR. COGLIANESE: Asked and answered.

MS. CORL: Asked and answered.

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

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

BY MS. SESTILE:

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

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

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

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

MR. COGLIANESE: Thanks.

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EXAMINATION

BY MR. COGLIANESE:

Q. Good morning.

A. Good morning.

Q. This is going to be very brief, Ms.
Kelly. I've just got a couple of questions for you.

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

A. That's correct.

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

A. That's correct.

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

A. To my knowledge, we have not.

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

A. To my knowledge, we have not.

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

A. In excess of 20,000.

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

A. I don't have the exact numbers for you.
I would say a significant number. And I want to qualify that answer by telling you, we also have an extremely large stack of rejection letters.

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

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

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

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

Q. Can you estimate for me how many of those