

**MARION COUNTY ELECTION BOARD MINUTES 4/22/04
(Emergency Meeting)**

Members of the Board:

Chairman, Candace Marendt

Vice Chairman, Steve Eichholtz

Secretary, Doris Anne Sadler

Others present:

Election Board Administrator, Robert Vane

Election Board Service Center Supervisor, David Woo

Election Board Attorney, Dan Ladendorf

E. S. & S. Representative, Ken Carbullido

The meeting was called to order by Chairman Candace Marendt.

Ms. Marendt: This is an emergency meeting of the Marion County Election Board. It has been called today to review the contract with our vendor, E. S. & S. We are temporarily recessed from the executive session, which we just left where we met with our counsel to review options and some of the legal ramifications of the recent discoveries. At this point, we will take testimony from various people. We have board members that do have questions and then we will recess this meeting, go back into executive session and then come back and make a final determination. So at this point, I will ask anyone who is going to be giving testimony in front of the board to please stand. We will have our board attorney, Mr. Ladendorf, swear you in and then we will begin the proceedings. So all of those who are going to be testifying we need to get you sworn in so if you could please rise and take an oath? Thank you.

Mr. Ladendorf: Do you swear or affirm under the penalties of perjury that the testimony that you will present before the Marion County Election Board on this 22nd day of April, 2004 will be the truth?

Mr. Carbullido: (Answers in the affirmative).

Ms. Marendt: Thank you. We are going to start today because I think probably the most serious consequence of the information that we have received is the confidence or lack thereof that the voter may have in the election process here in Marion County. It is the cornerstone of our country and of our freedom and voters have a right to know that these elections are being conducted in a manner that is fair and accurate and that is what our hope is today. That we will be able to get to the bottom of this so that we know the upcoming election that will be on May 4th the voters will have the highest degree of confidence in the integrity and results of that election. With that said, I am going to call on our vice-chairman, Steve Eichholtz, and we have sort of mapped out some questions that we would like to have answered and we will let you proceed.

Mr. Eichholtz: Thank you madam chairman. Mr. Carbullido?

Mr. Carbullido: Yes.

Mr. Eichholtz: Would you step forward please?

Mr. Carbullido: Yes.

Mr. Eichholtz: Please be seated, sir.

Mr. Carbullido: Thank you.

Ms. Marendt: And Mr. Carbullido, you were the one who took the oath?

Mr. Carbullido: Yes, I am.

Ms. Marendt: Thank you.

Mr. Eichholtz: Mr. Carbullido, I appreciate your attending today. As the chairman stated we have been given some information that has caused us to have some concerns about the equipment that we have in place in Marion County with your company. You are with E. S. & S. right?

Mr. Carbullido: Yes, sir.

Mr. Eichholtz: And these questions that have arisen are some allegations that there have been changes in the software that tabulates the votes. That the software we were previously utilizing may not have been certified. So these are very serious questions that not only the board but I am sure all voters of Marion County want to be assured that we have an election in two (2) weeks and that we will be using hardware and software that is certified and accurate and will make sure that everybody has a comfort level and that their votes will count. Our primary purpose here today is so that the board after listening today to what exactly is the status of our election machines will be able to go back and determine just what steps we need to take if any to insure the integrity of the election in two (2) weeks. So I appreciate your being here to assist us in that process. Just for the record would you identify yourself?

Mr. Carbullido: My name is Ken Carbullido. I am the senior vice president of product software development at Election Systems and Software.

Mr. Eichholtz: Okay and what is Election Systems and Software's relationship with Marion County?

Mr. Carbullido: Election Systems and Software supplies the voting equipment, hardware and software, as well as other services to Marion County in conducting their elections.

Mr. Eichholtz: And how long have you been providing hardware and software for Marion County elections?

Mr. Carbullido: I don't know. I know that we ran the last election and I believe the history goes back quite a ways but I don't know what those years are.

Mr. Eichholtz: Do you know what equipment and software Marion County currently uses for its elections provided by your company?

Mr. Carbullido: Yes, I do.

Mr. Eichholtz: And could you identify that for us please?

Mr. Carbullido: They use the Model 100 paper scanner tabulator. It's a precinct based tabulator and voters mark oval ballots and then the scanner reads those oval ballots and then that data is brought into another set of technology running on PCs using other software from E. S. & S.

Mr. Eichholtz: Okay, is there any other election equipment that Marion County has acquired from your company besides the M100 machines and the software that tabulates that equipment?

Mr. Carbullido: There are various peripherals that attach to those things, communication tags and printers and the like and I don't know specifically what PC you purchased through E. S. & S. and of course in the past I am not certain what was purchased in years past.

Mr. Eichholtz: In addition to the M100 units are you aware that Marion County has also acquired certain what we will call DRE machines?

Mr. Cabullido: Oh, yes, that's right, the DRE machines. I don't think Marion County has used those at this time but I do believe that that was part of the purchase.

Mr. Eichholtz: And in fact in the past are you aware that Marion County had also acquired a machine for the General Election of 2003 to tabulate absentee ballots?

Mr. Carbullido: You are speaking of the Model 650.

Mr. Eichholtz: That's correct.

Mr. Carbullido: I believe that was returned.

Mr. Eichholtz: Do you know why that was returned?

Mr. Carbullido: I believe it dealt with the fact that it wasn't certified at that time. So

therefore it was not able to be used.

Ms. Marendt: Is that machine currently certified, Mr. Carbullido?

Mr. Carbullido: Not in the State of Indiana but it is federally certified, yes.

Mr. Eichholtz: So there are certification requirements for hardware and software to be utilized both in the State of Indiana and around the country?

Mr. Carbullido: Yes.

Mr. Eichholtz: Of the equipment that will be utilized in the primary election I believe you identified the M100 machine, which is the actual optical scan tabulator. Is that right?

Mr. Carbullido: That is correct.

Mr. Eichholtz: Is that machine certified in the State of Indiana?

Mr. Carbullido: Yes, it is.

Mr. Eichholtz: Okay and then you indicate that there are other software and peripherals. Can you identify the other software and peripherals that are utilized by Marion County that must receive certification before they are utilized?

Mr. Carbullido: Yes, on the tabulator itself there is a software, which we call firmware. It's just a class of software and that's a version. Those versions get up updated and each of those versions need to be certified. On the PC network or servers that are in the central system or central elections office there is a couple components of software. One is called the election-reporting manager and the other is called the data acquisition manager.

Mr. Eichholtz: Okay and of the pieces that you have described do those all need to be certified before being utilized for an election?

Mr. Carbullido: Yes, they do.

Mr. Eichholtz: What version of the ERM are we currently using in Marion County?

Mr. Carbullido: I believe that is version 6312 but I would need to double-check that.

Mr. Eichholtz: And that is a certified version in this state?

Mr. Carbullido: Yes, I believe that is the certified version in this state. It's either 612 or 6312.

Mr. Eichholtz: Okay I pulled from the state's website today the approved or certified

optical scan ballot card voting systems for Election Systems and Software and that would be your company. Is that right?

Mr. Carbullido: Yes, sir.

Mr. Eichholtz: According to the State of Indiana Election Systems and Software reporting manager ERM software the certified or approved version is 6.3.1.0 so can you confirm today that that is what we are using in Marion County?

Mr. Carbullido: That is what you are using.

Mr. Eichholtz: You are sure of that?

Mr. Carbullido: Yes, sir.

Mr. Eichholtz: Where in the system would we have that? I mean how many devices, election devices, will have that software?

Mr. Carbullido: It would be loaded on PCs in the central network that the elections office will manage and that could be one (1) PC, two (2) PCs or three (3) PCs just depending on how many reporting type stations that they want to utilize.

Ms. Marendt: Mr. Cabullido, if I might ask, we are looking at a signed document that says on January 29, 2004 E. S. & S. installed firmware version 6.1.2.0 on the voting system. Is that a different version or are we talking about a different machine?

Mr. Carbullido: Yes, yes that is a different machine. That is the Ivotronic touch screen DRE systems. That refers to the firmware. The version that we were just speaking of refers to the reporting software.

Ms. Marendt: Okay.

Mr. Carbullido: I do have a prepared statement and if so after my time Vice Chairman Eichholtz I would appreciate the opportunity to make that statement.

Mr. Eichholtz: Certainly and in terms of the data, what was it?

Mr. Carbullido: Data acquisition manager.

Mr. Eichholtz: I just want to call if the Dam software.

Mr. Carbullido: No, we don't want to call it that.

Mr. Eichholtz: What version is currently installed for Marion County?

Mr. Carbullido: That is version 4.2.

Mr. Eichholtz: And is that version approved by the State Election Commission?

Mr. Carbullido: Yes, it is.

Mr. Eichholtz: Have there been any changes in the hardware or software utilized by Marion County between the general election in November and today's date?

Mr. Carbullido: Yes.

Mr. Eichholtz: And what changes have been made?

Mr. Carbullido: That version of the data acquisition manager was not used in the November election and it was a later version called 4.3, which was used in November. We have since that time installed version 4.2.

Mr. Eichholtz: Was version 4.3 certified in Indiana?

Mr. Carbullido: No, sir, it was not.

Mr. Eichholtz: And when was that conversion made?

Mr. Carbullido: I believe it was made in late March, within the last thirty-(30) days.

Mr. Eichholtz: And so that would have been made on all of the laptop computers that we utilize for tabulating votes as well as the central tabulator that is maintained at the office warehouse?

Mr. Carbullido: Data acquisition managers are not used to tabulate votes.

Mr. Eichholtz: Okay, I'm sorry but could you explain that to me?

Mr. Carbullido: There are several components. The DRE voting devices, which today were purchased but not used by Marion County and you have the paper scanners. Those are tabulation devices. They take the votes and they add up the votes and they score the votes in the internal memory. At some and point, those votes are retrieved from those devices and brought over to the election reporting software on the central computer. The data acquisition manager is the software that takes the data brought from the tabulators and moves it over to the central server. Its sole function is just to move the data from a card onto the central server. It does no tabulation at all.

Mr. Eichholtz: What software then does the tabulation?

Mr. Carbullido: The tabulation is performed by the tabulators, that being the paper

scanners or the touch screen systems. That is where the tabulation is performed.

Mr. Eichholtz: What brings them all together I guess and give us our total vote?

Mr. Carbullido: That would be the reporting software, the election-reporting manager, the ERM software.

Mr. Eichholtz: Okay and then that then gives us our final results?

Mr. Carbullido: Yes, sir.

Mr. Eichholtz: So the DAM just transfers the data from the optical scanner and puts it into a language that can be read by the tabulator I suppose in layman's terms?

Mr. Carbullido: It does nothing with the data except transport it.

Mr. Eichholtz: Transport it.

Mr. Cabullido: It doesn't open the data. It doesn't add it. It doesn't subtract it. It doesn't do anything but move the data.

Mr. Eichholtz: And that's the software that we are talking about that has been changed?

Mr. Carbullido: Yes, sir.

Mr. Eichholtz: What is the difference if any? I mean obviously we all know that software versions are upgraded. What was the nature of the upgrades from 4.2 to 4.3?

Mr. Carbullido: The difference was a windows parameter setting. In certain newer versions of PCs especially those with the highest speed processors we found that there is a windows parameter that had to be updated and you could either update that manually outside just using the windows controls or we could place that update in the data acquisition manager and that was the difference because we had counties who would forget to do the manual windows controls. We decided let's just put that in there and take one (1) step out of the election office procedure and that is the only difference between those two (2) versions.

Mr. Eichholtz: Have you tested our equipment to ensure that there are no significant glitches that we will encounter on Election Day as a result of that change?

Mr. Carbullido: Yes, sir, that has been tested and it fully works. Version 4.2 is in hundreds of counties across the country. It is the only version in Indiana now that we have. We replaced version 4.3 with 4.2 and it works fine. It may mean that you have to do a manual window setting if you have a certain manufacturer or brand of computer and the speed but that just means a manual setting of that windows option that is simply done

through the windows control manual.

Mr. Eichholtz: How did you become aware of the fact that we were operating with the uncertified version? How and when did that occur?

Mr. Carbullido: In January of this year, just by virtue of one of our managers at E. S. & S. through some charting and distributing versions he just thought that he would do a double check against our own records and we looked at our records and found that there were some counties in Indiana who had the newer version with the automatic setting, 4.3, and realized that we needed to restore that to the certified Indiana version.

Mr. Eichholtz: How many counties in Indiana had that version?

Mr. Carbullido: There were five (5) counties.

Mr. Eichholtz: Did you take any steps to notify the counties of, well I will call it a problem, the problem?

Mr. Carbullido: No, we did not.

Mr. Eichholtz: And these other five-(5) counties did you change their software as well?

Mr. Carbullido: We put the certified version back on all those counties servers and PCs.

Mr. Eichholtz: Did you tell any of these counties of the problem before or after you made the changes?

Mr. Carbullido: I think they now know or afterwards they knew but before we made the changes no we did not. We felt that it was a simple procedure. It is a five-(5) minute procedure. Our plan was on either the next visit or certainly before the May 4th election we would put the certified software in.

Mr. Eichholtz: Did it occur to you that all of these counties had conducted elections on uncertified software and it ought to be something that they should have been made aware of so that they could take steps if necessary to protect the process?

Mr. Carbullido: Well, in our evaluation the change was so minor and the difference in the version had absolutely nothing to do with the tabulation of votes. It had nothing to do with the votes being recorded and that change would not have effected the election results at all and so in our view all of the other things that we were doing to put the certified versions on the systems that this was just part of that effort to put all systems back to the certified versions.

Ms. Marendt: Mr. Carbullido, if I might, in all fairness this isn't just a tiny little five (5) minute change. The difference is either it is certified or it is not. It's not the difference

between a tenth of a point, whether it's 4.2 or 4.3. It would be almost like Windows 95 and 98. One (1) is illegal and one (1) isn't so I am having a hard time with your analogy there that it is a simple little five-(5) minute procedure.

Mr. Carbullido: We do admit that this was a mistake. We believe our mistake was not in restoring (inaudible). We believe our mistake was in not informing the counties of that plan to make that change.

Ms. Marendt: I guess in my estimation the mistake was that there was a lack of internal quality control to make sure that the contract is being lived up to and that the versions that are certified are ones that we are using. Could you speak to what your company does before an election to ensure some sort of quality control so that this isn't learned after the fact?

Mr. Carbullido: Yes, I can.

Ms. Marendt: Okay, thank you.

Mr. Carbullido: First off, the controls that we have in place today make certain that that doesn't happen again.

Ms. Marendt: Okay.

Mr. Carbullido: And we have in the past discussed and admitted that such controls were not in place as they should have been prior to the November election and hence the very same reason why the Ivotronic version, the DRE versions, were with a more updated version as well. They are the same process steps that we had to close internally to deal with the Ivotronic version and it's the same thing with the software that runs on PCs. We have now entirely revamped that process. We have made certain that there are traps in multiple places in the process so that does not ever happen again and any movement of the software from our distribution centers to our customers has to have the approvals and checked against the current state certified versions. It's not an easy job in that every state is at a different state of certification if you will. For example, the State of Illinois doesn't require certification of this particular piece of software. They only require certification of the hardware and the firmware. So every state has a different set of rules in what they want certified and this is where these versions have to be the most current and our practice was to give the most current software to all of our customers. Now we have to make a triple-check and say, "Okay, it is the most current but it has not yet gone through the administrative steps, certification steps, of that particular state". We now have those traps in place and this won't be happening again.

Ms. Marendt: Okay.

Mr. Eichholtz: Let's just make sure that we know that we basically had three (3), for lack of a better term, pieces of voting equipment that we have acquired for utilization in our

elections in Marion County and there has been a certification problem with each one. The M650 was not certified correct?

Mr. Carbullido: It is federally certified.

Mr. Eichholtz: But it was not certified and we had to hand count our absentee ballots last year because of that correct?

Mr. Carbullido: Yes, sir.

Mr. Eichholtz: The Ivotronics, which are to provide access for the disabled, which we have some six hundred (600) of, which we intended to utilize in this election, cannot be utilized because they are not certified correct?

Mr. Carbullido: That is correct.

Mr. Eichholtz: And now we find that while the M100 is the software that we utilized in the last election it was not certified in Indiana.

Mr. Carbullido: The election reporting manager software was.

Mr. Eichholtz: The DAM?

Mr. Carbullido: Yes.

Mr. Eichholtz: The 4.3 was not certified. The DAM 4.3 was not certified was it?

Mr. Carbullido: No, sir.

Mr. Eichholtz: So we have a ten million dollar (\$10,000,000) contract with your company roughly and so far nothing that we have acquired almost has been properly certified. How do you explain that?

Mr. Carbullido: Certification challenges are something that we have wrestled with and performed over the past few years. Election laws are changing. One of those election laws happened to change here in the State of Indiana in July of last year. We did not know that. Process and compliance controls have changed across the United States and it is our duty to be on top of those but in a couple of these circumstances we were not. We have bolstered the way and changed entirely the way that we now distribute software. We have received federal certification on all of those products. We are committed to the latest certification standards and will be leading those and are committed to getting those certifications in.

Mr. Eichholtz: Have you applied for certification for 4.3 in Indiana?

Mr. Carbullido: No, we have not.

Mr. Eichholtz: How long does that process take? Do you know?

Mr. Carbullido: There are some prerequisites and what we will be applying for is a version 5 because it will be the 2002 federally certified version and that is what the State of Indiana requires now. So 4.3 could have passed Indiana's certification rules prior to July of last year but the rules have changed. The State of Indiana now requires the 2002 certification, which will meet our later version and once we have been through the federal certification of that later version we will bring it here to Indiana and it will be certified by October 1st of this year.

Ms. Marendt: Mr. Carbullido, if I might, I am just going to give you a piece of unsolicited advice here and for some of the other voting machine companies that are in the audience. It was my experience when I was at the State Election Division that the election machine company did not spend their dollars on hiring professionals to stay on top of this. We have great minds in Indiana who know the law, keep up with the changes and provide excellent advice to their clients and it appeared to me that they wanted to use the state agency as their lobbyist and that's not how it works. So I guess in my mind I have very little sympathy for the company to say, "We didn't know". I might not know if I need an appendectomy but there is a professional out there who does. I go and see a doctor. Get yourself a professional. Avail yourselves of the expertise that is out there. We have good people who can provide this. I think you have incredibly complex things that your company does. Things that I couldn't begin to understand but checking to see if you have the right version ain't one of them. Come on. 4.2? 4.3? I am not particularly well-versed in computers but I could figure that one out. I am sure that you have folks at your company who are whiz bang computer people but it doesn't take a rocket scientist to figure that out. You are not putting somebody on top of that. You are just checking to make sure that you have 4.2 so I guess that's my frustration and I apologize if you are getting a little more of my ire than deserved but the industry as a whole needs to know elections are changing. Get yourself a professional. Stay up with the laws. That's how folks do it.

Mr. Carbullido: That's good advice and thank you Madam Chairman.

Ms. Sadler: Mr. Carbullido, I have some questions from when we met before and I have some detailed questions and then I have a couple of comments. First I want to go back to the ERM that you talked about and certifications. Mr. Eichholtz was asking you a question and you responded that what we have is 6.3.1.2 and he came up with the actual Secretary of State website and it's actually 6.3.1.0. Is there a version 6.3.1.2?

Mr. Carbullido: I don't know that there is. I just didn't have the specific numbers in front of me.

Ms. Sadler: Do you understand why that makes me nervous when you can't respond with

specifics?

Mr. Carbullido: Yes, I do. I do. I understand. It is a fairly simple activity to check the version on this list.

Ms. Sadler: Okay, you said that the 4.2 software that was on the system fully works. It was my understanding that one of the reasons that we discovered this was that after 4.2 was installed Miss Orange, our project manager, had some difficulties with it specifically the computer kept crashing and she had to reboot pretty consistently and because of that she called a technician to find out what was wrong. Do you know what those issues are? Have they been resolved? Can we expect more of those?

Mr. Carbullido: Yes, I know that she worked with our senior technician who helped her place the right parameter settings on the computer and then thereby was able to operate the system without the crashes and then was able to proceed and use the software without error.

Ms. Sadler: What is your confidence level that we won't have computer crashes Election Day when that data starts flowing in?

Mr. Carbullido: Extremely and of the highest confidence. This software is used in hundreds of counties. We just need to make sure that it has the right windows parameters when we use it and that's I am sure what was done to set those up correctly. It is an automated setting in the newer version but since the newer version was not certified we can't use the newer version and we will just make certain that manual step is done and you can use that version.

Ms. Sadler: Who is the person or the technician that came in and installed that software, installed 4.2?

Mr. Carbullido: I believe that was Mark Selinger.

Ms. Sadler: And did Mr. Selinger not set the parameters for the computers when he installed that 4.2?

Mr. Cabullido: Evidently he must not have.

Ms. Sadler: We had a meeting in my office a number of weeks ago, about six (6) or seven (7) weeks ago, and you and Mr. McGinnis were there. Mr. Ladendorf was in attendance with Mr. Vane. A couple of others including Miss Orange were there and we had what I thought was a very good discussion about this years elections. We discussed the problems that had happened last year. We talked about the need for a very clean election this year because we had so many problems. We needed to give the voters some confidence that we weren't going to have those again. I think I recall saying that the last thing that I ever wanted to see again was a circus out at the service center, which I think we had. You left

and McGinnis left and I felt very good about the meeting because you relayed to me the concept that you were going to be our partner working with us and making sure that all of the Is were dotted and the Ts were crossed and we had a good communication going forward and so forth. So you can imagine my dismay last Friday when Miss Orange comes to me and tells me what she did. Miss Orange isn't here today. I would probably be asking her some more questions but I feel that this board deserves a better explanation than what you have given already as to why something as important as unlawfully installed software was not communicated to us and if it's not to the higher board or in writing a phone call would have been appropriate and from what I can tell from what Miss Orange has told me and shown me she was instructed not to tell me. When asked what to tell me she was instructed to tell me something totally different. How do you explain that?

Mr. Carbullido: Well, I think you have asked me a couple of questions.

Ms. Sadler: Yes, I have.

Mr. Carbullido: I believe the first question was to explain a little better how we got to where we were and the second question might have been about communications with Miss Orange right?

Ms. Sadler: And I specifically would like to know who in the company and at what level was the decision made not to communicate to us that certification mistake?

Mr. Carbullido: First off, I did not and I don't know of any manager at E. S. & S. who told Wendy Orange not to disclose this information to you. So I am not certain how she came to believe that. In terms of what we wanted to share with and I thought we needed to share with the counties back in January when we discovered that this particular piece of software was an updated version and not certified we all talked clearly about making certain that we got that right version. We really didn't decide not to tell customers or to tell customers. We just knew that we had to get all of the right software into the systems. It's just like we were putting on the Ivotronic software. This was another piece that we needed to restore and we wanted to get that done as soon as we could.

Ms. Sadler: I am going to interrupt you here because you apparently discovered this during the audit that you were doing in March?

Mr. Carbullido: We first understood this in January.

Ms. Sadler: Okay, by January is it not true that you were already aware of the other certification problems? I know that you were aware of the M650 certification problems in Marion County. Were you already aware of the certification issues with the Ivotronics that you have now had to post the bonds on?

Mr. Carbullido: Yes, ma'am.

Ms. Sadler: So when you were making the decision and you discovered that we had this uncertified software my concern is that you as a management team knew how critically important this was and how the State Election Commission felt about it and how much publicity that this has received and you didn't want anybody to find out for fear of having more because you already knew that that was the case. Is that true or not?

Mr. Carbullido: We knew that was a mistake. We should have shared that information.

Ms. Sadler: I've got to stop you from answering the rest. I appreciate where you were going with that but I have a couple more specific questions about 4.3. I know that you haven't asked for certification for 4.3 and I believe that that has something to do with the fact that when we used that in November of last year it would have had to meet the 2002-certification standards and it would not have. Was that true?

Mr. Carbullido: When we used it last year we did not know it was not certified and should not have been used. Last year we did not consciously say, "Hey this is not certified but use it any way".

Ms. Sadler: Okay but even if it wasn't a conscious decision to use it or not knowing that it wasn't certified at some point you had an in-house certification team of people.

Mr. Carbullido: Yes.

Ms. Sadler: I cannot remember the lady's name.

Mr. Carbullido: Sue McKay.

Ms. Sadler: Who's job it is to make sure that all of this software is certified and I remember last year when we talked about the M650 there were emails that were given to me of exchanges between her and the State Election Commission. Was she responsible for getting this certified? She at the very least should have known that 4.3 wasn't certified in the State of Indiana and therefore shouldn't be used. What is the state of her certification team? It seems to me that they have pretty much failed miserably with what they are supposed to be doing with the State Election Commission.

Mr. Carbullido: Well, as a company we acknowledge those mistakes. I can't say it's just the certification team that made that mistake. It's really as a company. We had closed those processes and those holes that allowed one team to install while a different team chases and gets certifications. The communications between those teams were not tight enough for us at that point and time. That has absolutely changed now. With any piece of software it goes through some three (3) or four (4) steps of people now reviewing every area. That wasn't there before and so today it doesn't happen. Yesterday with those time frames unfortunately it did happen.

Ms. Sadler: We have an affidavit that we included October 21st of last year in the county's application to receive federal reimbursement for our voting machines and it was signed by Mr. Jablonski who I believe is your chief financial officer?

Mr. Carbullido: Yes, he is the board president of our financial division.

Ms. Sadler: And we were required in the application actually to have that affidavit in order to receive that federal funding and his affidavit said that the voting system obtained by the county complies with all requirements set forth for applicable Indiana federal election laws as of the date of application. We went out on a limb. This county spent 11.1 billion dollars purchasing all of this equipment and software. I went before the City County Council and said, "We've got everything in order to get our application in with the State Election Commission". We filled out that application and gave them all of the information that they needed and we confirmed to them that all of our stuff was certified and of course now we have to consider the fact that we conducted that election last fall and by the way this was signed October 21st on uncertified software. I don't know what that does for our federal reimbursement but I think you know how important that federal money is to us. It is a similar problem with the Ivotronic. I understand that we now have certified software actually residing on the Ivotronic because you came back in and switched that out so that we could get federal reimbursement but that software isn't compatible with our data accumulations office. Is that true?

Mr. Carbullido: I don't know that to be true.

Ms. Sadler: I will save that for a later discussion. I bring this up because of my extraordinary concerns about the fact that there we had made these statements to get federal money, which the county cannot live without and clearly can't buy and conduct these voting machines without that federal money and now that may well be in jeopardy and it seems to me and then I will wrap up because I think I've gotten most of my answers how large of a client are we for you? Are we in the top five (5) or the top ten (10) in the country?

Mr. Carbullido: I don't know how you characterize and rate clients. I mean to say that you have to be one of our most important. They are all important.

Ms. Sadler: Sure.

Mr. Carbullido: I don't want to slight anybody but certainly we want to do everything right for Marion County and make certain that you are happy and that the voters are confident in the elections.

Ms. Sadler: And certainly we have a lot of precincts by election standards, some nine hundred fourteen (914). We conduct elections for some of the small various inner cities that are within Marion County and we haven't had a great history this last year. We certainly got ballot litigation issues that we are still resolving before the fall and there is a

lot of work to be done with that and it just seems to me that given our history and I think I told you this when you were in my office. You guys need to be bending over backwards to make sure that we have got everything exactly right. We cannot afford to announce any more mistakes to our voters. We just can't. Why would anybody think that (inaudible) if we continue to make these kinds of announcements? We can't hide them and we don't want to make these announcements but we have to. I am extraordinarily disappointed that as a result of our meeting that we didn't get any improved communication effort. I just can't convey to you enough how disappointed I am after that. That's all I have.

Mr. Carbullido: I would like to respond. I certainly understand your sentiments there. I will personally be here for you the day before and after your election to personally make certain that you have all of the resources needed here in Marion County. I will be here throughout that evening and I hope to be here with everyone celebrating a well run positive election. I am confident that with all of the preparations that have been conducted and all of the testing that has been conducted and that the fully certified systems that are already in place today that the county and the voters of Marion County can be absolutely confident this will be a well run election.

Mr. Eichholtz: Well, I hope that's true but trust is earned and it's very important in this process that the voters have trust in the system and I'm trying to come up with a way and formulate a way in my mind that I believe I can trust your company and trust that we can rely on the results. We have an election in two (2) weeks, less than two (2) weeks and maybe you can offer something. What can we do to assure ourselves? I suppose I can take your word that we have certified equipment and certified machines. I can't personally verify that. I am sitting here thinking right now that we may have to bring in independent people and audit all of the equipment that we have, all of the software that we have, possibly run independent tests because of the conduct you have taken, which you may say was a minor change of software but it's basically a breach of trust. Do you have any suggestions of steps that you would recommend that someone similarly situated might want to take so that we can insure to the voters of Marion County that they can trust the results of this election?

Mr. Carbullido: Vice Chairman Eichholtz, maybe this would be a good time for me to read some of the prepared information that I would like to share with the board?

Mr. Eichholtz: If that answers that question by all means.

Mr. Carbullido: If it doesn't I'll elaborate further.

Mr. Eichholtz: I am sure that you will hear from us if it doesn't.

Mr. Carbullido: Vice Chairman Eichholtz, members of the board and County Clerk Sadler, we understand your concerns. We appreciate this opportunity to provide some background about the situation in Marion County and look forward to answering all of

your questions. Let me open by stating that Marion County and E. S. & S. are fully prepared to conduct a smooth and successful election on May 4th. In fact as part of our preparation we have already conducted for the upcoming May Primary earlier this week we held a public demonstration by using hardware, software and firmware fully approved by the State of Indiana. The system worked flawlessly. This is entirely consistent with the process we have put into place to deliver trouble free elections in Indiana and using secure, accurate and reliable equipment. I do want to acknowledge that we made a mistake in the way that we communicated to you and other customers in Indiana. Having said that however the actions we took were all intended to accomplish one very important goal, which I know you share. Ensuring that we achieve one hundred percent (100%) compliance with all Indiana requirements. We did what we believed was in the best interest of the state in making a change with the county and your voters. Though the one mistake we made was to ineffectively communicate with the specific actions that we took and for that we do apologize. Allow me to provide a bit more background. Earlier this year we reviewed records of the E. S. & S. software and firmware and had it shipped and installed it with our customers in Indiana. We conducted this review correlatively to confirm that the software and the firmware that we had installed met all certification standards. During this review we discovered that the version of one component of our overall election management software in Marion County was not certified by the State. This software runs on PCs separate from the voting and tabulation devices. This software version 4.3 the data acquisition manager specifically relates simply to the transfer of data from a memory card to a central server. It has nothing to do at all with how votes are tabulated. As part of the software sweep that includes many components the data acquisition manager was loaded onto your PC at the time of delivery and we should have checked that version when we did it. It was an admitted error that occurred because we had at the time not implemented the stringent processes and procedures that we now have in place. After learning of the error we replaced 4.3 with a prior version that has been approved and has been certified at the federal level and in the State of Indiana. In no way did this situation affect the results of the November election at all. It did not effect the (inaudible) or liability and security of our equipment. This software has been used successfully in many elections throughout the country, both 4.2. and 4.3. This change does bring us into full compliance with all state requirements. Importantly at no time did the change affect the reliability of the data acquisition manager software or any part of the tabulation systems. Again, we do regret making this error. We appreciate the opportunity to address your concerns and I am happy to answer any further questions that you might have.

Ms. Marendt: Mr. Carbullido, we have been entrusted with a very, very serious task and that is the voters of Marion County look to us to ensure that they have certainty that there is integrity in the election process. What are you proposing that you and your company do for the voters of Marion County to regain that trust?

Mr. Carbullido: I can understand how others who aren't as close to technology as I am may not have that trust. The systems that you have have run accurate and reliable elections. There is no question about the elections out come at all. The votes are tallied

correctly. They report correctly. In fact the paper ballot systems that we are using here are all there. So if there is any question about...

Mr. Eichholtz: You know Mr. Carbullido you say that but I have decided to interrupt you. The ultimate trust here is that we worry about outside hackers. I mean I have read the internet. You have read the internet. We have all seen the stories that people have concerns about hacking and the last thing that I felt that I had to worry about was our vendor who is entrusted to us under contract coming in and changing software. I mean you are the people that have the key to the software and the key to the data. What assurances now can I give people that you won't come in and change the data? I mean that's what you've done. Do you realize that? You've brought that whole trust into question. How am I going to convince people now that we can trust you not to do that? I am going to say, "Trust us. They are not going to change the data".

Mr. Carbullido: Just an important point of distinction Vice Chairman Eichholtz we did not change the data.

Mr. Eichholtz: I know you didn't but when you talk about trust and perception and we have all of these people running around the country questioning the integrity of this new type of voting equipment and it's critical that we go around telling people it can't be hacked and now we find the very people that are operating it going in and changing software without telling people. What else do we know or don't know that you go in and change? That's the issue here. That's the question of trust and credibility. I believe the software without interference from other people probably tabulates, counts and adds properly. The problem is now the people that are designing it, developing it and managing it for us have now shown us that they will go in and change it without telling us. That's the problem. How do we regain that trust?

Mr. Carbullido: Well, first as to the integrity and confidence that the voters need this May election the entire system will be done on the paper ballot system. So if for some reason someone ever did change the software again the votes are right there and so you can trust by reading the oval. If you don't trust E. S. & S. and you don't trust the software you can certainly look at the paper and it will tell you and it will corroborate the way the system has counted to exactly match what the voters have done. So there is an ultimate trust that you can balance and check without any of the software.

Mr. Eichholtz: Thank God we have the paper ballots.

Mr. Carbullido: If you don't use the equipment it will reliably and accurately count the votes and balance. By the time Marion County does plan to use this, this equipment will be 2002 certified. It will be certified by the State of Indiana. System changes can be secured. You can lock down that network so that if you don't want us making changes the security can be set so that we can't make changes without your permission. Now I believe that our systems and our services are entirely accurate and reliable. We did make a mistake in our communication and we admit that. That will never happen again. We

will now communicate on the side of too much communication rather than thinking some of this is not necessary.

Ms. Sadler: Mr. Carbullido, you did more than just make the mistake of not communicating to us. Although right now I am thinking of that as being less egregious but you did make the mistake of installing uncertified software. There have been a number of blunders here. What are you doing in terms of an internal investigation on that and is there anyone in your organization who is going to be disciplined or otherwise admonished for these screw ups?

Mr. Carbullido: What we have been doing is we have entirely changed the way that we distribute the systems and software. There is no one person who can make that happen any more. There are checks and balances and sign offs. We have restructured the various departments and roles and responsibilities and added resources and experts as you suggested to bolster those process controls. In terms of admonishing a particular individual it's not the fault of an individual. It's really the fault of an organization, which didn't have the type of checks and balances control across the group and balancing against the specific state certification levels. It's a matter of now retraining and what we have done is retrain the organization to make certain that that doesn't happen again.

Ms. Sadler: Someone and I can't remember for the life of me who that person was and I saw the email when asked what to tell me said, "Tell her that the system is operating". I take that as a specific denial of telling me the truth. When someone asks you knowing that there is a technician coming in to do that and the response is tell her something different than what it is, that is to me a "don't tell her the truth". You may disagree with that statement but I saw it and I wish that Miss Orange was here today because I should be asking her about these emails. You said it's not an individual and maybe this was corporate wide and maybe it's not limited to herself as the only one who is doing this but she (inaudible) made a statement of tell her something that wasn't the case. How do you sit here and explain that?

Mr. Carbullido: I don't know that I can explain that other than to say that it was a mistake not to be entirely forthcoming.

Ms. Sadler: Well, I don't know that I need to go any further. It's more than a mistake. That is not an error. That's not an omission of, "Gee, I forgot". I would certainly in the words of our chairman's unsolicited advice here look into exactly what disciplinary actions were taken.

Ms. Walda: (inaudible).

Ms. Sadler: Well, I think her job is broader than just Indiana. She responds to a lot of different areas. It is higher than just Miss Bennett and that was the kind of conduct that was encouraged or some how communicated to your employees that that is the kind of response to give than you've got a big problem and you are not going to overcome trust

with something like this.

Mr. Vane: May I ask a question?

Ms. Sadler: You may.

Mr. Vane: I'm sorry but I am going to ask this very quickly. As you know there was a problem in Johnson County in which an employee of E. S. & S., the product manager for Johnson County, his name is Doug Orange coincidentally, Mrs. Orange's husband, when he came forward with the information that he had about the IvoTronics was he terminated by E. S. & S. or did he resign?

Mr. Carbullido: Doug Orange and E. S. & S. ceased our relationship because of other personnel matters. It had nothing to do with what he might have shared in terms of information.

Mr. Vane: Did he resign or was he fired?

Mr. Carbullido: I don't know specifically the terms of the departure.

Mr. Vane: Go a head.

Ms. Sadler: No, that's okay.

Mr. Vane: No you are my boss. You go a head.

Ms. Sadler: I've got to follow up on that because I have talked to the Clerk of Johnson County a number of times about this issue and needless to say she is very upset about all of these transactions and specifically with Mr. Orange. She told me that Mr. Orange had informed her and the county attorney that E. S. & S. instructed him to do something with those machines that specifically put them in the "on" position prior to delivery to the voting places, which is illegal under Indiana law and he was instructed not to tell his client that that was the case. I understand that you probably can't talk about the specifics of a personnel matter here but you start to see why we are suspect of the communication issue here. That it's not just a mistake. That it's something more than that when there is a pattern and frankly clerks talks.

Ms. Marendt: Well, I think more to the point that we just want to make sure that we will continue to have the current project manager that has been assigned for continuity.

Mr. Vane: That is actually the exact question that I was going to ask.

Ms. Marendt: We just want that assurance.

Mr. Carbullido: With regards to Doug Orange, we can't comment on any of the personnel

matters. We have never instructed an employee to do anything illegal.

Ms. Marendt: Sir, my question was would you please assure us that we will have our current project manager.

Mr. Carbullido: At this time we have no plans to make any change there. If anything else our plans are to add more resources and support for Marion County.

Ms. Sadler: Okay, well then let me be a little more clear, Wendy Orange better be here through May 4th and beyond.

Mr. Carbullido: Absolutely.

Ms. Sadler: Thank you.

Mr. Carbullido: There is no question as to that.

Mr. Vane: That was my exact question. Are there any plans to or discussion of the termination of Wendy Orange's employment?

Mr. Carbullido: No, sir.

Mr. Vane: Are you aware of any language in your contract or the law that assigns a dark period before an election and during that time you cannot make any changes to the hardware, firmware or software?

Mr. Carbullido: I am not familiar with that term "dark period" being applied.

Mr. Vane: In other words you cannot do any of these changes between X and Y.

Mr. Carbullido: I think as a practice that once especially we have gone through the public test, finished your logic and accuracy test they really lock down the systems.

Mr. Vane: Are you aware of any time period that extends more than the ten (10) days or fourteen (14) days before the public test?

Mr. Carbullido: No.

Mr. Vane: Are you aware of a conversation between Wendy Orange and a technician from E. S. & S. during which the initial installation of the unity software that it was discovered that the ERM version that was going to be installed at the time, now this would have been early in 2003 in the initial installation, that that system, that ERM that was going to be installed was not certified and that that error was caught and therefore it wasn't certified but our project manager, Mrs. Orange, asking a specific question of DAM, data acquisition manager, whether that had to be certified? Are you aware of that

conversation in which she was told no?

Mr. Carbullido: No, I am not aware of any of those conversations at all.

Ms. Marendt: Are there any more questions or discussions? I think at this point we will recess this meeting, go back into executive session for a brief time, reconvene and have some final answers. So with that we will stand adjourned.

Ms. Sadler: I don't want anyone to believe that we are going to have any final answers and breach of contract questions.

Ms. Marendt: Oh, no.

Ms. Sadler: I don't think we are at that stage. I think we will just perhaps have a little more announcements.

Mr. Carbullido: Thank you.

Ms. Marendt: Thank you.

A BRIEF RECESS WAS TAKEN AND THEN THE HEARING WAS RECONVENED

Ms. Marendt: We took a brief recess to meet in executive session. A couple of things that we want to emphasize is that we did have a good clean public test just days ago. The election that we ran in November withstood two (2) very close elections and the recounts came out very accurately. So we don't want voters to have a skewed idea that we are missing votes or things aren't tallying up but there has been the question as to changes in software that has given us cause for thought and some concerns for the voters in Marion County. To that end we asked you what could you do to regain that trust with our voters and we didn't hear anything forthcoming so we met briefly and came up with an idea that we think is at least a first step in remedying this situation and that would be to have what we are going to call a compliance audit by an independent source to come in to look at not only the hardware, the firmware but also the software to make sure that all pieces are compliant with State certification requirements and what is said to be on there is in fact on there. We are operating on a very, very tight time schedule as you know. So it will be critical for your company to participate and cooperate in this audit. Additionally, we believe that you should bear the brunt of the cost of this audit. Is that something that your company is willing to agree to?

Mr. Carbullido: We will support that and we will cover such costs.

Ms. Marendt: Okay.

Mr. Carbullido: If that helps than we are absolutely happy to do that.

Ms. Marendt: Okay, at this point I think we have established that there has been a breach of contract on a couple of different levels. We are not prepared to close that issue today because of the tight time frame with the election. The most important thing on our minds is that the public had an understanding that we are using all forms of certified equipment in this upcoming election. So I do want you to be aware that we will probably revisit that issue after the election has been closed and we thank you for coming today and providing us with this information. We will be moving very quickly on this issue of a compliance audit and our Madam Clerk, Doris Anne Sadler, will be heading that up and getting an independent person to do that and we will make obviously the results well publicized to the voters of Marion County. Are there any additional board questions or input? If not, I will move to adjourn the meeting. Is there a second?

Mr. Eichholtz: Second.

Ms. Marendt: All of those in favor?

Ms. Sadler: I.

Mr. Eichholtz: I.

Ms. Marendt: I and the meeting is adjourned.