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Report of the
Attorney General of Maine
and the
United States Attorney
for the District of Maine

***Ballot Tampering
in Two
Election Recounts
for the
Maine House
of Representatives***

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SUMMARY

On the afternoon of Friday, December 11, 1992, a locked room on the first floor of the State Office Building in Augusta, used to conduct State of Maine election recounts, was burglarized for the purpose of tampering with ballots in at least one Maine legislative race. Two such races, House Districts 35 and 38, became the subject of actual tampering. Blank or unused ballots¹ were altered to reflect additional votes for the Democratic candidates in both of these contested races.

While certain other events relating to the incident became known over the next few days, evidence of actual ballot tampering was not brought to the attention of State election or law enforcement officials until the morning of Wednesday, December 16, 1992, when participants in one of the contested legislative races gathered to finish a recount which had commenced on Thursday, December 10, 1992. An intensive investigation which followed the December 16th disclosure led to conclusive evidence that:

¹A "blank ballot" is the common term to describe a ballot on which no vote appears for either candidate in an election or a ballot on which a vote appears for both candidates in the election. Blank ballots are not included in the official count. For purposes of this report, a ballot on which no vote appears for either candidate in the election is a "blank ballot." A ballot on which a vote appears for both candidates is an "overvote." A ballot which was not used in an election and, thus, contained no markings at all is referred to as an "unused ballot." A ballot rejected during the course of an election, such as in the case of a voter making a mistake in voting and requesting a new ballot, is commonly referred to as a "spoiled ballot." Finally, a ballot on which a vote appears for one candidate in an election, and which is thus included in the official count, is commonly referred to as a "live ballot."

- (1) Room 122 of the State Office Building was burglarized on December 11 for the purpose of tampering with ballots stored in the room for re-counts;
- (2) within Room 122, 15 unused Windham ballots in the District 38 House race were altered to reflect additional votes for the Democratic candidate, and 14 blank Westbrook ballots in the District 35 House Race were similarly altered to reflect additional votes for the Democratic candidate;
- (3) four other legislative house races (Districts 1, 73, 82, and 101) for which ballots were stored in Room 122 were not the subject of similar ballot tampering;²
- (4) the Legislative Information Office on the third floor of the State House containing a key to Room 122 was also burglarized over the weekend;
- (5) a plan to burglarize Room 122 yet again over the same weekend failed, and;
- (6) the persons responsible for the burglaries and the acts of ballot tampering were Kenneth P. Allen, 41, of Farmingdale, the Executive Assistant to Speaker of the House John L.

²*District 106, comprising the towns of Guilford, Atkinson, Dover-Foxcroft, and Garland, was also the subject of a recount. Notwithstanding a significant election day vote margin favoring the Republican candidate, a recount was requested by the Democratic candidate. As of December 11, 1992, however, the recount had not commenced, and the Secretary of State's Office had that day begun the process of transferring boxes of ballots from the municipalities to Augusta.*

Martin, and Michael T. Flood, 39, of Augusta, a longtime legislative committee clerk.

Allen and Flood, both veteran Democratic party activists who had participated in numerous recounts in the past, were ultimately convicted on criminal charges arising from their conduct.

Flood, represented by legal counsel, agreed on January 21, 1993, to cooperate with investigators. This agreement provided for a suspended jail sentence if Flood fully complied with the provisions of an agreement calling for his unconditional cooperation with Federal and State investigators. Flood plead guilty to a single count of felony burglary³ on February 19, 1993, in Kennebec County Superior Court. The Court continued the case for sentencing.

Less than a week after Flood's guilty plea, Allen also agreed to cooperate with investigators. This agreement resulted in Allen's subsequent guilty pleas to two counts of felony burglary, and two counts

³17-A M.R.S.A. § 401(1). "A person is guilty of burglary if he enters or surreptitiously remains in a structure, knowing that he is not licensed or privileged to do so, with the intent to commit a crime therein." *See also*, *Accomplice Liability*. 17-A M.R.S.A. § 57(C)(3).

of ballot tampering⁴. Allen's plea to these charges was entered in the Kennebec County Superior Court on March 3, 1993.⁵ The agreement with Allen included no limitations with respect to sentencing. The agreement provided that the State and Allen could petition the Court for the imposition of any lawful sentence and that the Court could impose any lawful sentence up to a statutory maximum imprisonment of 12 years and \$12,000 in fines. The Court continued the case for sentencing.

Both agreements required that Allen and Flood cooperate fully with investigators and that they testify fully and truthfully at any and all State and Federal proceedings or other official proceedings, including judicial, legislative, or administrative hearings.

The investigation which led to the convictions of Allen and Flood was jointly conducted by the offices of Maine Attorney General Michael E. Carpenter and the United States Attorney for the District of Maine, Richard S. Cohen. Because the alleged criminal conduct could have

⁴21-A M.R.S.A. § 674(2)(B). "A person who tampers with ballots or voting lists or who breaks a seal or opens any sealed box or package of ballots or voting lists, except as permitted by this Title," is guilty of a Class D crime.

⁵Allen was dismissed from his job as Executive Assistant to the Speaker of the House the same day.

potentially deprived Maine citizens of rights secured to them by the United States Constitution, Federal civil rights laws were implicated.⁶ Federal jurisdiction has been found to exist in circumstances where there is evidence of ballot tampering and where such ballots include Federal as well as State and local elections.⁷ Because of the potential for Federal jurisdiction in this case, early consultation was sought from the Public Integrity Section of the United States Department of Justice. Within days of initiating the criminal investigation, the United States Attorney, the Maine Attorney General, and attorneys and investigators from their offices met with an attorney from the Public Integrity Section who had traveled to Maine for an assessment of the facts as then known.

The administration of elections is primarily a State and local responsibility. Absent evidence of systematic or institutional corruption at the State or local level, or a failure by State and local law enforcement

⁶Title 18, *United States Code*, Section 241 provides that it is unlawful for "two or more persons [to] conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise of any right or privilege secured to him by the Constitution of the United States. . . ." Violations of this statute are punishable by imprisonment for not more than ten years, a fine of \$250,000, or both.

⁷*See, e.g., United States v. Olinger*, 759 F.2d 1293 (7th Cir.), *cert. denied*, 474 U.S. 839 (1985) (conspiracy to tamper with ballots to reflect straight party ticket in mixed federal/state election sufficient to support federal jurisdiction).

authorities to investigate election fraud cases, unilateral investigative action by the Department of Justice will ordinarily not be taken in election fraud cases that do not directly affect the outcome of Federal elections.

On the basis of the evidence known at the outset of this investigation, and after consultation with the Public Integrity Section, the United States Attorney and the Maine Attorney General concurred that there existed no basis for a unilateral Federal investigation of this matter. Both agreed that under the circumstances, a joint investigation involving day-to-day coordination between both offices was the preferred approach. Both the United States Attorney and the Maine Attorney General agreed that should changed circumstances later warrant Federal prosecution of any individual, that option would remain open.

The field investigation was principally carried out by investigators from the Maine Attorney General's Office, with forensic assistance from detectives assigned to the State Police Crime Laboratory. Attorneys from both the United States Attorney's Office and the Maine Attorney General's Office were fully involved in all aspects of the investigation and the subsequent prosecutions.

BACKGROUND

As a result of the November 1992 general election, six elections for the Maine House of Representatives became the subject of recounts. State law provides that recounts in these elections be conducted by the Secretary of State. Recounts are governed by State law⁸ and subject to rules promulgated by the Secretary of State. Pursuant to these rules and the established practice of the Secretary of State, arrangements were made to transport the ballots from each of the six House districts to Augusta where the recounts would be carried out. The ballots were transferred from the voting jurisdictions to Augusta in one of two ways. In some cases, an employee from the Secretary of State's Office picked up boxes of ballots from the municipalities. In other cases, the municipal clerks of the voting jurisdictions mailed boxes of ballots to the Secretary of State. In either case, the expense of transferring the ballots was borne by the Secretary of State.⁹ The ballot boxes were ultimately placed in

⁸21-A M.R.S.A. § 737.

⁹*Contrary to a popular perception, the task of transferring ballots to Augusta is not an official responsibility of the State Police. However, on occasions when it has been discovered during the course of a particular recount that ballots were missing, the State Police have been asked to transport ballot boxes from a municipality to Augusta.*

Room 122 of the State Office Building where recounts in the House elections were to be conducted.¹⁰

The Recount Process

A recount is triggered when a candidate files a notice with the Secretary of State. Thereupon, the Secretary of State arranges for the delivery of the applicable ballots to Augusta. At the municipal level, every document associated with the election is placed into boxes and sealed after the polls close and ballots have been tallied on election day. The boxes are required to be stored in a secure location.¹¹ In a general election, the ballots and any other documents related to the election are required to be kept for 22 months as a matter of law. Documents other than marked ballots include voting lists, voter check-off lists, absentee ballot applications and envelopes, tally sheets of ballot counting on election night, register tapes from machine counts, unused ballots, blank

¹⁰Also stored in Room 122 were ballots from elections in Senate District 31 and House District 106, the Sagadahoc County sheriff's election, and the election for Penobscot County treasurer. All of these elections were slated for recounts by the Secretary of State's Office. The request for a recount in the senatorial district was later withdrawn. The recounts for the other elections were later carried out in a conference room at the State Police Crime Lab where all ballots in Room 122 were transferred on December 22.

¹¹In Maine, because many towns do not have a town office, the ballots are often stored in the home of a town clerk. Sometimes, according to State election officials, the "most secure" place to store ballots may even be under the town clerk's bed in a private home.

ballots, and spoiled ballots.

A candidate contemplating a recount may first request a process of "ballot inspection" at the local level. A candidate may sometimes concede on the basis of such a local ballot inspection. The ballot inspection, however, does not involve counting votes. It is a process by which candidates may view ballots to determine if there is a basis to believe that enough ballots can be challenged or disputed so as to affect the outcome of the election night count. A candidate who loses on election night by a slim margin often does not invoke the ballot inspection process given the likelihood in any election that there will be a sufficient number of ballots open to challenge or dispute.

Ballots were delivered to municipalities from the commercial printer in "shrink wraps" of approximately 50 ballots each. Municipal election officials, however, are not permitted as a matter of law to open these packages until a half hour before the polls open. Consequently, election officials seldom have ample opportunity to count the ballots in the packages. According to State election officials, it is not unusual for the packages to actually contain slightly more or less than 50 ballots. Random checking by State election officials during the 1992 general

election revealed that some packages contained 49, 46, 54, and 53 ballots. While State officials maintain records of the number of ballots delivered to a particular town, the numbers are based on an assumption that each package contains 50 ballots.

In past years, the Secretary of State's Office maintained total control over the shipping of ballots to municipalities. Ballots were counted, packed, and shipped from the State Office Building. Budget considerations in recent years, however, have required the Secretary of State's Office to contract with a commercial printer of the ballots to ship the ballots to the municipalities. Prior to 1992, the ballot shipping process was monitored closely by officials of the Secretary of State's Office assigned to supervise the packing and shipping on the commercial printer's premises. The contract for ballot printing in 1992 was awarded to the low bidder, an out-of-state printing company. According to the Secretary of State's Office, budget constraints did not permit the assignment of State of Maine personnel to monitor or supervise the packing and shipping of ballots. Consequently, ballots were counted, packed, and shipped directly from the commercial printer to the municipalities with little oversight from State officials.

The six House races which eventually became the subject of recounts were District 1, comprising part of Kittery; District 35, comprising parts of Gorham, Westbrook, and Windham; District 38, comprising parts of Cumberland, Windham, and Yarmouth; District 73, comprising all of Topsham and part of Bowdoinham; District 82, comprising part of Rockland, and; District 101 comprising all of Canaan, Cornville, Hartland, and Pittsfield.

The Six Legislative Recounts

District 1

The party candidates in the District 1 race were Kurt A. Adams (D) and Kenneth F. Lemont (R). The election day winner was Lemont who polled 1,591 votes to 1,573 for Adams, a difference of 18. A third candidate, Kenneth S. Snow, Jr., received 532 votes on election day. A recount, requested by Adams and conducted on December 1, 1992, resulted in the same 18 vote margin for Lemont although the totals for each candidate changed (1,571-1,553) with 53 votes in dispute. Lemont, however, was declared the official winner with an eight vote margin when the candidates, in resolving the disputed votes, signed off on a vote

total of 1,592 for Lemont and 1,584 for Adams.¹²

District 35

The candidates in District 35 were Gerald A. Hillock (R) of Gorham and Elden McKeen (D), the incumbent, of Windham. Election day results placed Hillock as the winner with a 24 vote margin. The election day totals were 2,311 for Hillock and 2,287 for McKeen. Pending the results of a recount requested by McKeen, Hillock was conditionally seated in the House of Representatives. The recount was conducted on December 1, December 2, and December 8, 1992, and resulted in Hillock leading McKeen by one vote (2,292-2,291) with 13 votes in dispute. McKeen appealed the recount results to the Commission on Governmental Ethics and Election Practices. No decision has been reached by the Commission. In the meantime, Hillock remains seated in the Legislature.

District 38

The candidates in District 38, both first time legislative candidates and both from Cumberland, were Deborah Shaw Rice (D) and Joseph B.

¹²*This appears to be the only recount which was conducted on the same day that the ballots arrived at the State Office Building.*

Taylor (R). Taylor, the declared election day winner, polled 2,836 votes to Rice's 2,811, a difference of 25. Taylor was conditionally seated in the House of Representatives pending the outcome of a recount requested by Rice. The recount, conducted principally on December 10, 1992, resulted in Taylor maintaining a lead of 11 votes (2,819-2808) with 41 votes in dispute.¹³ The recount was resumed on December 16. It was that day when altered ballots were found in one of the District 38 ballot boxes and the recount was suspended. Taylor remains seated. The Secretary of State's Office is now free to resume the recount.

District 73

The candidates in District 73 were Daniel Billings (R) of Bowdoinham and Lorraine N. Chonko (D), the incumbent, of Topsham. Chonko was the election day winner, polling 2,527 votes to 2,515 for Billings, a difference of 12 votes. A recount requested by Billings and conducted on December 3, 1992, resulted in a 21 vote lead for Chonko (2,483-2,462) with 107 ballots in dispute. The election was settled on

¹³Taylor was losing in the recount late in the day. His lead of 11 votes came as a result of the discovery of 217 ballots at the Cumberland Town Office. The ballots had apparently been overlooked on election day when other ballots in Cumberland were placed into boxes which were sealed and later transferred to Augusta for the recount. A large majority of these ballots represented votes for Taylor.

December 8, 1992, when Billings conceded the race and the candidates signed off on the election day totals of 2,527 for Chonko and 2,515 for Billings.

District 82

The candidates in District 82 were Clayton L. Fowlie, Jr. (R) and Rita B. Melendy (D), both of Rockland. Melendy was the incumbent. Election day results placed Melendy as the winner with a 52 vote margin. A recount requested by Fowlie and conducted on November 30, 1992, resulted in a 27 vote lead for Fowlie (1,187-1,160) with 635 ballots in dispute. The matter was appealed to the Commission on Governmental Ethics and Election Practices. The Commission decided the election in favor of Melendy.

District 101

The candidates in District 101 were Sumner A. Jones (R) of Pittsfield and Louise Townsend (D) of Canaan, both first time legislative candidates. Election day results declared Jones the winner by 36 votes (2,275-2,239). Jones was conditionally seated in the House of Representatives pending the outcome of a recount requested by Townsend. The recount, conducted on December 4 and December 9, 1992, placed

Townsend in the lead by three votes (2,317-2,314) with 32 ballots in dispute. The matter was appealed by Jones to the Commission on Governmental Ethics and Election Practices. The Commission voted in February 1993 to recommend to the Legislature that a new election be conducted. The Legislature, however, subsequently rejected the recommendation, declared Townsend the winner and voted to seat her.

FINDINGS

Introduction

When he arrived home in Houlton late on the evening of Friday, December 11, 1992, Attorney General Michael E. Carpenter received a message to call Secretary of State G. William Diamond. Carpenter stated that he immediately called Diamond who told him that a legislative committee room across from the cafeteria on the first floor of the State Office Building was being used by his office for ballot storage and recounts. Diamond told Carpenter that, according to Deputy Secretary of State Gary Cooper, Anthony Noonan, an employee of his office, became suspicious when in the process of delivering boxes of ballots to the room that afternoon, he entered the locked and presumably unoccupied room and smelled cigarette smoke and heard what he thought was a window closing. Diamond also told Carpenter that Noonan, near the time of these observations, saw two legislative aides, Kenneth Allen and Michael Flood, in the hallway outside the room. Diamond also disclosed to Carpenter that one of the two, Allen or Flood, went outside the State Office Building where Noonan was retrieving ballot boxes from his car and, according to Diamond, appeared to be trying to distract Noonan.

Diamond explained to Carpenter that Noonan and Deputy Secretary of State Gary Cooper returned to the room after Noonan's initial observations and found nothing significantly out of order.¹⁴ Diamond advised Carpenter that an officer of the Capitol Police had likewise inspected the room and found nothing to indicate a breach of the room's security. As a precaution, however, Diamond said that the lock on the door of the room had been changed and that the only two keys for the new lock had been issued to Gary Cooper and building security officials. When later interviewed, Carpenter stated that he was satisfied that the security of the ballot room was intact with the precautionary change of the door lock. He told Diamond that he would look into the matter further on the morning of Monday, December 14, 1992.

On Monday morning, December 14, the Attorney General's Office undertook an initial inquiry of the matter. An investigator interviewed Anthony Noonan. In addition, Room 122 was inspected. An examination was made of the interior and exterior of the room for any

¹⁴*Cooper and Noonan did find a closed window unlocked, but determined that the design of the window precluded the possibility that a person could enter or exit the room through the window. This was also demonstrated to Cooper and Noonan by a Capitol Police officer when he examined the window.*

physical evidence suggesting an unlawful entry. It was determined later in the day that there were insufficient facts on which to base further investigation. Other than the circumstances described by Noonan, no evidence was discovered which would reasonably suggest that anyone had entered the room without authority or that the security of the room had been otherwise breached.

On Wednesday morning, December 16, Carpenter, at the request of Diamond, went to Room 122 to inform the District 38 candidates and their counsel of the facts as then known. As Carpenter began to speak about the events of the previous Friday, Jonathan Hull, attorney for Deborah Rice, the Democratic candidate in the District 38 House election, interrupted to say that he and Rice wished to give statements about telephone calls each of them received the same Friday from Kenneth Allen. They said Allen told each of them, in separate telephone conversations about a half hour apart, that there would be 14 extra votes for Rice when the recount was completed. They said the implication of Allen's conversations with each of them was that the 14 extra votes referred to by Allen in these conversations would assure Rice a slim

victory in the election. Hull also informed the group that he had spoken with Speaker of the House John L. Martin shortly after he and Rice received the calls on December 11. Hull said he informed Martin of the calls from Allen. Hull also said that Martin had suspended Allen from his job as Executive Assistant to the Speaker and any further participation in the recounts.

These statements from Hull and Rice, when viewed with the earlier information provided by Anthony Noonan, resulted in an immediate inspection of District 38 ballot boxes in Room 122. The discovery of 15 ballots marked for Rice in a box labeled as containing only unused ballots led to an investigation that spanned the next three months and consumed thousands of staff hours by personnel of the Maine Attorney General's Office, the Office of the United States Attorney for the District of Maine, the Maine State Police Crime Laboratory, and the Maine Secretary of State's Office. Nearly 100 separate interviews were conducted and thousands of documents examined. The details of this investigation, which resulted in clear evidence of ballot tampering in House Districts 35 and 38, are discussed below:

Tuesday, December 1, 1992: The District 35 Recount

The recount for District 35 (Hillock-McKeen) started on December 1. The recount had been requested by the Democratic candidate, incumbent Elden McKeen, who was the election day loser by 24 votes. McKeen was represented at the recount by attorney James Case of Topsham and by Kenneth P. Allen. Allen was Executive Assistant to Speaker Martin having been employed in that or a similar capacity for about 12 years. Allen was known to be highly experienced and proficient in the election recount process. Allen's assistance was often sought by Democratic candidates and he often participated in legislative recounts.

Also participating in the recount was the Republican candidate for the District 35 House seat, Gerald A. Hillock, his attorney Joseph Carleton, and several counters selected by each of the candidates. Also present for the Republican Party for part of the recount was Rep. Sumner Lipman, a lawyer from Augusta. Finally, representatives of the Secretary of State's Office were present to supervise the recount.

One of the Democratic counters was Michael T. Flood of Augusta,

a longtime Democratic party activist.¹⁵ The recount started at about 12:30 p.m. on December 1 in Room 122 of the State Office Building. According to a record prepared by the Secretary of State's Office, a 15-minute formal recess was taken by all in the room at about 3:30 p.m. As was customary in all the recounts, when a formal recess was taken, all persons vacated the room, the lights were turned off, and the room was locked. After the recess, no one entered Room 122 until all the persons expected to return were gathered outside the room. The recount on this day ended at about 9 p.m.

Hillock, the Republican candidate, stated that a recess was taken at about 6:15 p.m. when McKeen, Allen, Case, and others left the recount to meet with Speaker Martin in his office in the State House. Hillock further stated that an "odd lot"¹⁶ containing 35 ballots inexplicably appeared under some boxes in the room when the group returned to the

¹⁵*For the past seven years, Flood had served as a committee clerk when the Legislature was in session. His most recent assignment was with the State and Local Government Committee. Prior to his service as a committee clerk, Flood had worked during election season in the Secretary of State's Office. Part of his duties included packing boxes with ballots for upcoming elections and shipping them to municipalities. Flood, like several other Democratic counters, was experienced at recounts and, like many of the others, was enlisted by the Democratic candidates in all six House districts to work as a counter in the recounts.*

¹⁶*A packet of ballots containing less than 50 ballots.*

room about a half hour later. He said Allen and Case, upon entering the room asked about the "34 or 35 ballots" and walked directly to the table where the ballots were located and announced their discovery. The majority of the votes in the newly-discovered batch favored McKeen.¹⁷

The evidence does not support a conclusion that a formal recess was taken from 6:15 to 6:45. While Allen and others may have left the room at approximately that time, the evidence does not establish that Allen immediately returned to Room 122 with the others. In addition, other participants in the recount, including employees of the Secretary of State's Office, do not corroborate Hillock's recollection of the discovery of the odd lot of 35 ballots.

The record prepared by the Secretary of State's Office states that the only formal recess in the recount on December 1 was taken from 3:15 to 3:45. One of Hillock's counters stated in a sworn affidavit that such a formal recess was taken at 5:45. The same counter said the recount was in progress when he left for the day at 6:30, making it unlikely that such a recess was taken from 6:15 to 6:45. Other participants who were

¹⁷According to the Secretary of State's Office, these 35 ballots included 24 votes for McKeen, ten for Hillock, and one blank vote. While the majority were clearly for McKeen, the additional votes were not enough to assure McKeen victory.

interviewed recall that a recess was taken but do not remember the specific time. Most of the participants recall that a recess was taken sometime during the afternoon. It is evident that in all of the recounts, participants and observers frequently moved in and out of the room, but that the room was always occupied by officials of the Secretary of State's Office and representatives of both sides in a recount, except at those times when a formal recess was taken.

Employees of the Secretary of State's Office and others do recall that the Democratic candidate, McKeen, and his advisers left the room to caucus at about 6 p.m. and did not return to the room for nearly a half hour. Whether these persons went to the Speaker's Office at or about 6 p.m. to meet remains unresolved. McKeen, the candidate, recalls that he and the others went to the canteen area across from the cafeteria and talked. It is also James Case's recollection that they went directly to the canteen area after exiting Room 122. In any event, the recount room was not completely vacated and, while actual recount activity may have ceased, some participants remained within the room while others may have gone in and out. At all times, however, officials from the Secretary of State's Office remained in the room.

On the basis of the totality of the evidence, it appears most likely that McKeen and his advisers, including Case and Allen, were absent from the room for perhaps a half hour starting at about 6 p.m. Allen may not have immediately returned to the room after this temporary absence or, if he did, he left before the discovery of the odd lot of 35 ballots. Allen went to a legislative banquet being held on the evening of December 1 at the Augusta Civic Center. According to Allen, he returned to the recount after being notified that additional ballots (the odd lot of 35) had been found in the room.

For his part, John Martin said that he participated in no such meeting or caucus with McKeen or other participants in the recount. He does recall, however, walking into his office, which includes a large conference area, on the third floor of the State House on December 1 and seeing Allen, McKeen, Case, Ed Gorham (a counter in the District 35 race) and possibly others. Martin recalls he simply acknowledged Allen's presence and asked Allen how the recount was going; he doesn't recall Allen's response.¹⁸

¹⁸*It is entirely possible that this encounter between Martin and Allen was earlier in the day, possibly prior the start of the recount. Indeed, Martin has some memory of it being near noon.*

The recollections of other participants in the recount differ from Hillock's account of the discovery of the 35 additional ballots.

Employees of the Secretary of State's Office recall that the 35 ballots comprised an odd lot which accumulated through the initial stages of the recount as ballots were separated into lots of 50 for ease of later counting.¹⁹ As stacks of ballots were grouped in this fashion, they said, extra ballots (those in excess of 50) in a particular stack were set aside in a separate pile. This separate pile became the odd lot of 35, they said. Through the course of the recount, they said, boxes were inadvertently placed on the pile of extra ballots and the packet was overlooked until later in the recount when the ballots were discovered and counted. While it may have been James Case who eventually asked about the odd lot, no one, they said, could have known at that point that the pile contained

¹⁹*The ballots were from the Town of Windham which uses ballot-counting machines. Machine ballots are different than the paper ballots widely used in other towns. The machine ballots are larger and constructed of much heavier bond paper. Because they are counted by machine at the time the voter exits the polling booth, the ballots are not separated into lots of 50 at the municipal level for counting purposes. When the election ends, the ballots are simply packed into boxes without regard to bundling or counting the ballots into lots of a specified number. When the ballots are removed from these boxes during the initial stage of a recount, they are separated into lots of 50 to ease a later counting by hand. Paper ballots are hand counted at the municipal level on election night and rolled into bundles of 50 before being packed into boxes.*

exactly 35 ballots or that the majority of those ballots represented votes for McKeen.

James Case, interviewed later, disputed Hillock's claim with respect to the odd lot of ballots. He said that he and other members of McKeen's recount team, including Allen, took a break from the recount to caucus in a small lunch area in the canteen across the hall from the cafeteria. Case said that when they returned to the recount in Room 122, he asked whether a batch of ballots, which had been previously placed on a small table in the room, had been counted. He said neither he nor anyone else made reference to a particular number of ballots. While Case recalls that Allen had left the recount at some point to attend the legislative banquet, and that Allen returned to the recount shortly thereafter, Case does not recall whether Allen's return was because of the discovery of the odd lot of 35 ballots nor does Case recall who requested Allen's return to the recount.

In a sworn affidavit given on January 5, 1993, Corey E. Corbin, 23, of West Gardiner, one of the Republican counters in the District 35 recount, said he saw two men enter Room 122 during a formal recess in the recount on December 1. He said the recess occurred at about 5:45

p.m. at which time all persons in the room were instructed to leave because the door to the room would be locked until the recount resumed. Corbin said he recalled that Hillock was holding about a 14-vote lead over McKeen at the time of the recess. Corbin said he went across the hall to the cafeteria and, while standing in line at the cash register, he noticed two men entering Room 122. Assuming the recount was about to resume, he said he went to the door of Room 122 and knocked on it. He said Kenneth Allen²⁰ opened the door and told him the recount would not resume for another 15-20 minutes.

Corbin said he returned to the cafeteria and joined other Republican recount participants. He said the recount resumed at about 6:15 p.m. He said it was about ten minutes later that the odd lot of 35 ballots was discovered and McKeen took over the lead in the recount. Corbin said he temporarily left the recount room at Hillock's request to report the apparent McKeen lead to the House Minority Office in the State House and to request that another person replace him as a counter because he had to leave for a commitment in Auburn. He said he returned to the

²⁰Corbin was not personally familiar with Allen; his identification of Allen came from describing to others the man who he said came to the door. Later, Corbin identified Allen from a photo array shown to him by an investigator from the Attorney General's Office.

recount room about ten minutes later and left shortly thereafter for the day.

The State House cafeteria closes at 3:30 p.m. On December 1, the cafeteria was closed and locked with the last employee leaving at 3:45 p.m. according to cafeteria records. Under no circumstances, according to the cafeteria manager, would the cafeteria be occupied by anyone, including employees, beyond 4 p.m. One of the persons with whom Corbin said he took a break during the recess and to whom he said he mentioned the incident does not corroborate Corbin's statement.²¹

Because of certain public statements by Hillock, the investigation also sought to determine if Speaker Martin had announced at the December 1 legislative banquet that McKeen had won the District 35 race. Hillock said Martin's announcement preceded the discovery of the odd lot of 35 ballots which placed McKeen narrowly ahead in the race. Hillock said that he was not personally in attendance at the legislative

²¹*If Corbin's memory is indeed accurate, he may be referring to the cessation in recount activity which occurred at about 6 p.m. when McKeen and his advisers, including Allen, left the room to caucus. If that was the case, however, the person he claims answered his knock at the door in all likelihood was not Allen. At the same time, it is apparent that no formal recess was taken at this time. This would explain why persons were still in the room. Finally, it is an established fact that the State House cafeteria was not open beyond 3:45 p.m. on Tuesday, December 1.*

banquet at the time of this announcement, but that others at the banquet later advised him of Martin's assertion. Investigators interviewed persons known to have attended the legislative banquet, including those identified by Hillock as having heard the statement allegedly made by Martin. None of the persons interviewed conclusively corroborated Hillock's assertions concerning the timing of Martin's alleged statement.²²

Three legislators seated at the Republican leadership table at the banquet, Rep. Walter Whitcomb, Rep. Stephen Zernkilton, and Sen. Pamela Cahill, recall Martin, in answer to a question from someone at the table, stating that McKeen was "up" by a few votes. Martin recalls that he was at the banquet when Kenneth Allen arrived and advised him that it appeared that McKeen had lost the race. According to Martin, Allen was not at the banquet very long before he informed Martin that he had been summoned back to the recount still underway in Room 122.²³ Martin said he had repeated Allen's news of McKeen's apparent loss to

²²*If Martin made the statement at or about the time suggested by Hillock, the statement would have been made before the very discovery of the odd lot of 35 ballots in Room 122.*

²³*Allen said he was at the banquet no longer than 20 minutes. He said when he arrived at the banquet and sat down at Martin's table, Martin asked him about the McKeen-Hillock recount. He said he told Martin that McKeen had lost the race.*

several persons at the banquet. Martin does recall that at some later point in the evening, he was advised that McKeen was, in fact, then leading the recount by a few votes. Martin did not find this surprising given that the recount was still underway. Martin does not recall stating to anyone that McKeen was ahead in the recount. Moreover, Martin does not recall making comments at any time to persons seated at the Republican leadership table.

The investigation addressed Hillock's concern that it may have been part of a conspiracy that Anthony Noonan was allowed to transport ballot boxes from the various municipalities to Augusta. Hillock stated that the Gorham town clerk, Brenda Caldwell, was refused permission by Noonan to re-seal damaged ballot boxes before Noonan transferred them from the town office to Augusta. Caldwell, however, disputed Hillock's assertion in this regard. While she expressed displeasure at not having been given prior notice that the ballot boxes were to be picked up by the Secretary of State's Office, Caldwell said she was not refused permission to re-seal the boxes. She said two of the boxes had split open from the weight of other boxes while in storage at the town office. She said it was her intention to re-tape the boxes, but she was distracted by a telephone

call when she went back to her office to retrieve a roll of tape. By the time she finished with the phone call, she said, Noonan had loaded the boxes into his car. Noonan, for his part, does not recall if Caldwell expressed a concern about the boxes. Noonan said, however, that it would have been improper for him or Caldwell to re-tape or otherwise repair damaged boxes outside the presence of the respective candidates. Noonan said he would have explained such to Caldwell if the subject had come up.

Hillock also stated that many more Gorham overvote ballots²⁴ appeared during the course of the recount than were cast on election day. Hillock stated that there were perhaps 16 or more such ballots in the recount while the town clerk of Gorham remembered none or very few. Hillock suggested the "extra" overvote ballots might have been the result of someone in the recount room using a black felt-tip pen to cast votes for McKeen on ballots which previously contained only a vote for

²⁴An "overvote ballot," referenced in Footnote 1 above, is a term used to describe a ballot on which a voter voted for both candidates. Such a ballot is invalidated when it is counted. Thus, it has the same effect as a "blank" ballot, one on which a voter voted for neither candidate. In fact, the term "blank" ballot, because it represents no vote for either candidate, is often used more broadly to describe a ballot on which no vote appears for either candidate or a vote appears for both candidates.

Hillock.

According to Brenda Caldwell, the town clerk of Gorham, however, there were 80 "blank" ballots counted by machine on election day in the District 35 House race. She said that the machine counted as "blank" those ballots on which neither candidate received a vote and those ballots on which both candidates received a vote, that is, so-called overvotes. Caldwell said there is no way of determining from the machine record the actual number of overvote ballots among the broader category of "blank" votes. Accordingly, a manual examination of all Gorham ballots was undertaken by investigators and officials of the Secretary of State's Office to determine the actual number of Gorham overvotes. The examination of the Gorham ballots revealed the existence of only three overvote ballots, and not the 16 or more suggested by Hillock. In all, there were 42 bundles of machine ballots examined. On average, there were two "blank" ballots²⁵ per bundle, a figure generally consistent with the total of blank ballots referenced previously by

²⁵*The broader description of "blank" is applicable here given Caldwell's previous explanation that the machine counted as "blank" those ballots on which neither candidate received a vote and those ballots on which both candidates received a vote, that is, overvotes.*

Caldwell.

Thursday, December 10, 1992: The District 38 Recount

The recount in the District 38 House race, requested by the election day loser, Deborah Shaw Rice (D), commenced in Room 122 of the State Office Building on the morning of December 10. Rice was represented by attorney Jonathan Hull and by Kenneth P. Allen.²⁶ Hull, who maintains a private law practice in Damariscotta and serves as paid legal counsel for Speaker of the House John L. Martin when the Legislature is in session, was an experienced election recount attorney having acted as counsel for a number of Democratic legislative candidates in recounts. Like Allen, Hull was considered to be highly experienced and proficient in the recount process. Allen also participated in the recount.²⁷

Also participating in the recount was the Republican candidate for

²⁶At least in the initial stages, Rice was also represented by two other lawyers, Robert Crawford and Patricia Peard. Hull, who was asked to represent Rice because of his experience in recounts, was a later addition to the Rice legal team.

²⁷Allen was not a counter but, according to Hull, had been enlisted to put together a group of experienced Democratic counters and to help supervise the recount for Rice. This would typically include keeping a running tally of the votes for each candidate, Hull said, but Allen did not perform that function in the District 38 recount because Hull attempted to "neutralize" Allen given that Allen, according to Hull, smelled of alcohol at 10 o'clock that morning when the recount was scheduled to commence. Allen did not, however, according to Hull, demonstrate any signs of drunkenness.

the District 38 House seat, Joseph B. Taylor, his attorney Joseph Carleton, and several counters selected by each of the candidates. Finally, representatives of the Secretary of State's Office were present to supervise the recount. One of the Democratic counters was Michael Flood.

As described above, the election day results in the District 38 race declared Taylor the winner by 25 votes. The recount lasted throughout the day and, at about 6 p.m., Rice had taken a lead over Taylor by 44 votes. It appeared, however, that there was a difference of about 200 votes between the recount tally and the official results recorded by the town's voting machine on election day, a discrepancy that indicated a need to search for more Cumberland ballots possibly overlooked previously by municipal election officials.²⁸ By consent of the parties, it was decided to travel to the Cumberland Town Office in an attempt to discover if missing or overlooked ballots were the reason for the

²⁸*The discrepancy was also reflected by a comparison of the number of Cumberland voters, including same-day registrants, who were known to have voted on election day with the number of ballots actually counted during the course of the recount.*

discrepancy.²⁹

Meeting at the Cumberland Town Office at approximately 8 p.m. on the evening of December 10 were Deputy Secretary of State Gary Cooper, candidate Deborah Shaw Rice, two of Rice's friends, candidate Joseph B. Taylor, and Klara Norton, the Cumberland town clerk. Soon discovered were several ballots in a locked bin of a ballot counting machine. The ballots were informally counted. While apparently unusual to actually count additional ballots discovered in this fashion prior to transferring them to Augusta, Cooper felt that it would be best to informally count the votes at the time of their discovery "to relieve any further concerns about security."³⁰ Cooper asked the two candidates to telephone their legal counsel to determine if they would agree to an informal count of the ballots at the Cumberland Town Office. Taylor was unable to reach his lawyer, Carleton, but was comfortable with

²⁹Prior to leaving Room 122 that evening, Jonathan Hull recalls Kenneth Allen directing his attention to a particular box, the contents of which at that point were believed to contain no "live" ballots. This incident became significant on December 16 when altered ballots in the District 38 House race were found in this box or one physically located near it.

³⁰Cooper's "concerns about security" went to the very discovery of unsecured ballots in the town hall, ballots which apparently had been left unnoticed and unattended for the five weeks since the election. Indeed, according to officials of the Secretary of State's Office and others experienced in election recounts, the discovery of such a large number of ballots under these circumstances was very unusual.

conducting an unofficial tabulation. Rice discussed the proposal with her lawyer, Hull, and he agreed to an informal counting of the ballots at the town office.

There were 217 ballots recovered at the Cumberland Town Office. Fourteen of the ballots contained no vote for either legislative candidate ("blank" ballots), 129 represented votes for Taylor, and 74 for Rice. Although unofficial at this point, this count placed Taylor back in the lead by a margin of 11 votes.

Deborah Rice returned to her home in Cumberland at about 10:30 p.m. She was met with a message that Kenneth Allen had called.³¹ She returned the call to Allen. Allen expressed an interest in the results of the search for more ballots at the Cumberland Town Office. Rice disclosed to him the discovery of the 217 ballots at the Cumberland Town Office and the result of the informal tally of those ballots which indicated that she was now behind by 11 votes. According to Rice, Allen sounded maudlin about this revelation. Rice, not knowing Allen that well, did not

³¹*Telephone records show that four calls were placed from Allen's residence in Farmingdale to Rice's home in Cumberland on the evening of December 10. All of short duration, the calls were made on Allen's state-issued credit card at 8:31, 9:25, 9:48, and 9:49. Allen recalls having telephoned Rice's residence two or three times to inquire about the search for ballots in Cumberland.*

know whether Allen was under the influence of alcohol. In retrospect, however, she recalled her feeling that he may have been intoxicated, particularly when she later had the opportunity to compare her Thursday evening conversation with Allen with at least two other calls she received from him over the coming days.

Telephone records reflect one other call from Allen's residence which was charged to his state credit card on the evening of December 10. The ten-minute call was placed at 9:36 p.m. to the home of attorney James Case in Yarmouth.³² Allen has no recollection of this call. Case does not specifically remember the call, but suggested that it may have involved a discussion about an intention at the time to file an appeal of the District 35 election results to the Ethics Commission.

Also, telephone records indicate that a call charged to Allen's state-issued access code was placed on the state's Centrex telephone system at 6:44 p.m. on December 10. The call, placed from Augusta, was to the Hyatt Regency Hotel in Washington, D.C. Speaker of the House John L. Martin left for Washington on December 10 for a meeting of the National

³²Case was legal counsel in a recount in House District 35 for the Democratic incumbent Elden McKeen.

Conference of State Legislatures the same day. Martin planned to stay at the Hyatt Regency. Records indicate that the duration of this call was about two minutes. It is known that Allen returned from the termination of the District 38 recount activity in Room 122 of the State Office Building to the office suite of the Speaker of the House in the State House sometime after 6 p.m. on December 10 to leave files he had maintained during the course of the District 38 recount.³³ According to Martin, he received no call or message from Allen the evening of December 10. Martin arrived at the hotel at about midnight. While having no specific recollection of making this call, Allen said that if he had made the call, his likely purpose would have been to brief Martin on the current status of the Rice-Taylor recount.

Friday, December 11, 1992: The Unlawful Entry to Room 122

Early on the morning of December 11, Anthony Noonan of the Secretary of State's Office had set out from his home in Fairfield to collect ballot boxes in Piscataquis County and Penobscot County. At about 8:30 a.m., Michael Flood walked to the State House from his home

³³*These files were later turned over to investigators by Speaker Martin. Allen, when interviewed later, confirmed that he had taken these files to the Speaker's Office after the recount in Room 122 and left them there.*

in Augusta. While unemployed at the time, Flood had participated as a volunteer for the Democratic candidate in each of the legislative race recounts conducted to that date, including the District 38 recount which had recessed the evening before. Flood, a legislative committee clerk for the past seven years, expected to be hired again in that capacity for the upcoming legislative session. Flood went to the State House to borrow Teen Griffin's car to run errands.³⁴ Flood, well known in the corridors of the State House, conversed with several people in the State House when he arrived there early Friday morning. He heard from more than one person that the events at the Cumberland Town Office the previous night had resulted in a reversal of the District 38 recount status, and that the Republican candidate Joseph Taylor was now outpolling Deborah Rice by 11 votes.

Flood left with Griffin's car and returned to the State House at about 11:15 a.m. Flood went to the Legislation Information Office on the third floor to return Griffin's car keys. Upon entering the office, Flood was told by Griffin that Kenneth Allen was on the telephone and

³⁴*Teen Griffin worked in the Legislative Information Office and, among other duties, was responsible for maintaining custody of the keys for legislative hearing rooms, including Room 122.*

wanted to speak with him. Flood took the call as Griffin left for lunch.

Allen, according to Flood, asked him if he "still had a key to Room 122." According to Flood, Room 122 was his office several years before when it was the meeting room for the committee for which he served as clerk. Flood said the knowledge that he once occupied the room as an office and may have still had a key to the room was a source of lighthearted joking by participants in the legislative election recounts occurring in Room 122. Allen does not recall the jesting about the key. Allen remembers that he asked Flood "can you still get a key to Room 122?" Allen indicates that his request to Flood was based on Flood's statement to him on the previous day that he could get a key to the room. Allen said Flood's comment in this regard was made in response to expressions of anger and frustration by Allen and others that, for the third time in the course of the legislative race recounts, it appeared that not all ballots had been transferred to the recount room.³⁵ Allen recalled

³⁵Previously in the District 35 recount, it was discovered that some ballots were left behind in Westbrook when boxes were transferred to Augusta. Similarly, ballots in the District 82 recount were left behind in Rockland. In both cases, the ballots were located by the respective municipal clerks when they were notified by recount officials that it appeared that not all ballots were transferred to Augusta. In both cases, the State Police transported the extra ballots to Augusta.

that Flood mentioned that he could probably get a key to the room and that might resolve the problem. Allen said his reaction at the time was to say to Flood, "I don't want to hear it."

Flood said he told Allen in their Friday morning telephone conversation that he did not think he still had a key to the room. He remembers that Allen then asked him if he could obtain a key to the room and Flood, standing at the time in the small office in which he knew committee room keys were stored, told Allen that he thought he could. Allen recalls that Flood's affirmative answer was in response to his question of "can you still get a key to Room 122?"

Flood said he told Allen that it was likely that the lock on the door had been changed given that the room was being used to store ballots and conduct recounts. Nevertheless, Flood offered to retrieve the Room 122 key he presumed to be in Griffin's office and determine if it unlocked the door to Room 122 of the State Office Building.

Flood took from a file drawer in Griffin's office a ring of keys identified as belonging to Room 122. The ring contained two door keys with identifying labels and several smaller keys which Flood knew to be keys to filing cabinets or desks in the committee room. Flood went to

Room 122 of the State Office Building and tried the key labeled as belonging to Room 122 in the lock of the door. Discovering that the key would open the door, Flood returned to Griffin's office, called Allen at Allen's home in Farmingdale, and informed Allen that the key worked. Allen asked to meet Flood for the purpose of obtaining the key. Flood told Allen that he planned on having lunch within the hour with two women who worked in the State House. He told Allen he would meet him at a restaurant in Hallowell where he and the women would be having lunch. Allen agreed.

Flood then went into a restroom in the State House and placed the ring of keys in a small manila envelope which he had taken from Griffin's office. He folded the envelope and placed it in his pocket.

At some point near mid-day on December 11, Flood encountered two legislative employees in the hallway of the first floor of the State House. While it remains unclear as to exactly when the encounter occurred³⁶, it is believed that it was shortly before Flood left the building for lunch, possibly on his way back into the State House after checking

³⁶*The legislative aides place the time at approximately 12:30 p.m.*

the key to Room 122 in the State Office Building. A conversation was initiated by one of the aides concerning the discovery of missing ballots in Cumberland the night before. Flood told the aides that a tally of the previously overlooked ballots placed Rice behind in the race, but not to worry "because it's not over yet." Asked what he meant, Flood responded that he had been "sworn to secrecy," but not to worry.³⁷

Allen had participated in all the legislative recounts to date. His role was personal adviser to the Democratic candidate in each of the races. Allen recalls that he and others were frustrated with the recounts because it appeared that there was less attention paid to ballot security than in past elections, particularly at the municipal level. He said in at least two other legislative recounts,³⁸ it had been discovered that not all ballots had been transferred to Augusta for the recounts. He recalls being angry over the news that this was apparently also the case for the District 38 race. Allen recalls his further frustration when informed by Deborah Rice on the night of December 10 that over 200 additional

³⁷*Flood recalls this encounter with the two legislative aides, but believes it was later in the day or possibly another day. Flood does not recall making the comments attributed to him by the aides.*

³⁸*House Districts 35 and 82. See Footnote 35 above.*

ballots had been discovered in the Cumberland Town Hall under less than secure conditions, and that the majority of the ballots contained votes for the Republican candidate, Taylor. Allen said he came to a decision to call Flood to get a key to the room. He said his purpose in wanting a key was to enter Room 122 and "mess with the ballots" in the Rice-Taylor race to ensure a victory for Rice in the recount. Allen said he did not have Flood's telephone number at home which is why he called Teen Griffin. He said it was mere coincidence that Flood was in Griffin's office when he called her to get Flood's telephone number.

Flood left the State House for lunch in Hallowell with the two women.³⁹ When they arrived at the restaurant, Allen was sitting alone at a table. While the women ordered their lunches, Flood sat down at Allen's table and passed Allen the envelope containing the ring of keys. Allen asked Flood if he was sure the key worked; Flood responded that he had tried it and it worked. At this point, the two women sat down at

³⁹*The time of their departure is not entirely clear. Flood recalls a plan to meet Allen at the restaurant in Hallowell at 12:30 p.m. Both women, however, remember that they were late in leaving the State House; one recalls leaving at 1:15 p.m. It is known from telephone records that Allen, who lives perhaps 10 minutes away from the restaurant, was at home at 12:20 p.m.*

a table next to Flood and Allen.⁴⁰ Flood left Allen alone at the table and sat for a few minutes with the two women. Nothing more than limited social conversation took place between Allen and the women while they ate lunch.⁴¹

Allen was joined briefly by another man not employed in State government. It appeared to the others that this was a chance encounter. In any event, the brief conversation between the two appeared to be social in nature. During the course of this investigation, the individual known to have spoken with Allen at lunch was interviewed. The man, however, recalled that the encounter was on Monday, December 14, rather than Friday, December 11. In any event, the man said that he conversed briefly with Allen who struck him as possibly being intoxicated.⁴² He said Allen was incoherent and his speech was slurred.

⁴⁰*The choice to sit at a different table, the women said, was based on the fact that Allen smoked and they preferred a lunch free from smoking.*

⁴¹*The two women, while hearing from Flood on the way to the restaurant that Flood intended to meet Allen there in order to speak with him briefly, did not know the purpose of the Allen-Flood meeting. Indeed, one of the women recalls asking Flood the purpose of his meeting Allen and Flood responding that "you probably don't need to know."*

⁴²*The two women who accompanied Flood to lunch also recall that Allen appeared intoxicated. Flood, however, noticed nothing about Allen which would indicate that he was intoxicated or recently drinking. Flood did recall that Allen seemed to act differently when speaking with the women, as if he was intoxicated.*

The man said it occurred to him that Allen probably should not be driving. The man recalled no discussion with Allen concerning election or recount results.

After eating lunch, the women left the restaurant. Flood told them he would get a ride back to Augusta with Allen. Flood, worried that the keys would be missed, attempted to learn from Allen when Allen intended to use the keys to Room 122. While Flood does not recall Allen ever telling him exactly what he intended to do in Room 122, he said it was his assumption that Allen intended to tamper with ballots in the District 38 House race.⁴³ Flood said the District 38 recount was the only recount still pending.

Flood suggested to Allen that he take from Room 122 whatever ballots he intended to change, make whatever alterations he wanted, and return the ballots to the room. Flood suggested that this method was preferable to spending a long time inside the room. Flood further suggested that they stop on their way back to the State House to pick up a shopping bag at a store or a gym bag at Flood's house to use as a means

⁴³*Flood maintains that actual conversations between Allen and Flood concerning Allen's apparent plans were very limited prior to Allen's entering the room.*

of concealing ballots or other documents or materials removed from the room. Allen apparently did not respond to this suggestion.

Allen and Flood drove from Hallowell to the State House in Augusta in Allen's van. Upon arriving at the rear of the State House, Allen, who was driving, got out of the van and instructed Flood to park it. Allen also told Flood to keep watch for anything that might come out of the window of Room 122 and to retrieve it if it did. Flood drove the van to the south side of the State Office Building and parked in a space near the building.

The time was about 2 p.m. Allen thinks that when he entered Room 122, Flood was in the hallway outside the room. Flood, however, said that he did not observe Allen actually enter the room because, after parking the van, he stayed outside the building near the windows to Room 122. Flood does recall, however, seeing Allen inside the back portion of the room. Flood said he could see Allen through the windows. He recalls seeing Allen twice during this time. He said Allen was moving about in the back portion of the room. Flood could not see exactly what it was that Allen was doing. Flood was able to see boxes of ballots, identified by a distinctive large fluorescent sticker, piled in the

room.

Inside the room, Allen set out to find the ballot boxes for the District 38 Rice-Taylor race. During the course of looking for these boxes, Allen came across certain District 35 (Hillock-McKeen) boxes. Without considering the fact that the recount in this race had already concluded and was then on appeal to the Ethics Commission, Allen, "on the spur of the moment" decided to alter blank ballots in this race so that they would reflect extra votes for Elden McKeen.

When questioned about his motivation for tampering with ballots in the Hillock-McKeen race, Allen stated that his primary motivation was his personal dislike for Gerald Hillock, the Republican candidate, and not his affinity for Elden McKeen. Allen has maintained that his sole intention upon entering Room 122 was to affect the outcome of the Rice-Taylor election. Only after entering the room and encountering ballot boxes in the District 35 election did Allen consider tampering with those ballots.⁴⁴

⁴⁴*It is noteworthy that once inside Room 122, Allen's efforts were immediately directed to locating ballot boxes which were unsecured, that is, boxes which were not properly sealed with official State of Maine tape, and which would thus be more susceptible to tampering. According to Allen, he had noted during the 1992 recount process that ballot boxes were routinely left unsecured by officials of the Secretary of State's Office. This surprised Allen,*

Allen said he opened a large "grocery-type box" which contained bundled paper ballots from Westbrook. He unrolled the bundles to expose blank ballots⁴⁵ and, attempting to act in a manner consistent with the way the voter had originally marked other candidates on the ballot, changed the blank ballots to show votes for McKeen. Allen cannot remember the specific number of ballots he altered, nor can he remember if all such ballots were blank or whether there were some that were simply unused. He does recall marking enough to compensate for the ballots left in dispute at the conclusion of that recount.⁴⁶

A later examination of the contents of this box⁴⁷ by investigators revealed 14 altered ballots. No fingerprint impressions identified as Allen's were recovered from either the box or any of the ballots contained therein. The 14 ballots were contained in nine separate

who said that in past recounts, boxes were officially resealed after each and every examination of their contents. However, during this year's recounts, numerous boxes were left unsecured during the pendency of the recount.

⁴⁵*Ballots on which there was no vote for either legislative candidate.*

⁴⁶*The District 35 recount had concluded on December 8 with Hillock leading by one vote, but with 13 votes in dispute.*

⁴⁷*This box became known as "Box 1" due a legend on the outside of the box and the reference to "Box 1" by Allen in a later telephone call on December 11 to James Case.*

bundles. Discrepancies corresponding to the number of altered ballots were noted on the recount tally sheets for the bundles.⁴⁸ While Allen recalls trying to alter the ballots in a manner that was consistent with the rest of the ballot, an examination of the 14 altered ballots revealed some instances in which the mark for candidate McKeen was in ink while the rest of the ballot was marked in pencil. There were also some instances in which the mark for McKeen was made in pencil when the rest of the ballot was marked with ink.

A fingerprint impression identified as being that of Anthony Noonan was found on the adhesive side of the cellophane tape which Allen is believed to have placed on the box when he resealed it after altering the ballots on December 11. It is probable, however, that Noonan's fingerprint impression was transposed to the tape on the morning of December 17 when he and Gary Cooper examined the box, along with all the other boxes in Room 122, for signs of tampering. This examination was conducted by Noonan and Cooper at the request of

⁴⁸*The recount tally sheet for a bundle showed the number of ballots for each candidate and the number of blank ballots in each bundle. Apparently, Allen made no attempt to alter the tally sheets so that they would correspond with the changes in he had made on the blank ballots.*

investigators, who were eager to determine if additional ballot boxes had been the subject of tampering.⁴⁹ During the course of this examination, all the boxes in Room 122 were handled by Noonan and Cooper and some of them contained tape which had started to peel off.

Allen said he located the District 35 boxes in the rear portion of Room 122. It was in this rear portion of the room that he removed the ballots from the box, altered them, and returned them to the box. Allen said he used clear cellophane tape which he found in the room to reseal the box.

Allen located the boxes for the District 38 race in the forward portion of Room 122. One of the boxes, located next to a file cabinet under another box, contained a legend indicating that it contained blank or unused ballots from Windham. Allen removed the box to the rear portion of the room and opened it from the bottom to remove its contents which consisted primarily of unused machine-count ballots. Many of these unused ballots were loose while others were still contained within

⁴⁹*At that point, only the District 38 box was known to contain ballots believed to have been the subject of tampering.*

the shrink-wrapped packages shipped from the printer.⁵⁰

While in the rear portion of Room 122, where he could conceal himself from the view of anyone passing by the room in the hallway or anyone entering the room, Allen marked 15 unused machine-count Windham ballots to reflect votes for Rice.⁵¹ He also marked votes for a candidate in each of the other elections reflected on the ballots. He did not, however, mark any of the referenda questions on the back side of the ballots.⁵² Allen recalls using different writing implements to give the ballots a more authentic appearance. Allen also thought that when the extra ballots were discovered later in the course of the recounts, they would be viewed as ballots previously rejected -- and thus uncounted --

⁵⁰*During the investigation, we talked with the election worker in Windham who remembered packing this box. She was able to describe not only the contents, but the order in which the materials were packed into the box. Interestingly, the order of the contents was reversed when the box was examined on the morning of December 16 by investigators. It is apparent that Allen's opening the box from the bottom confused him when he returned the contents to the box.*

⁵¹*Allen recalls his intention to mark 14 of the unused ballots to show extra votes for Rice. He apparently lost count in the process of marking the ballots. It is noteworthy, however, that one of the 15 ballots was marked with X's. Such a machine-count ballot marked with X's would typically be challenged by the opposing candidate.*

⁵²*Allen acknowledged later that he did not notice the back of the ballots.*

by the machine counter.⁵³

Allen said he attempted to reseal the District 38 box with one of two strips of State of Maine tape he found in the box, but the tape did not stick well because his mouth was dry and he could not get the tape wet enough. Accordingly, he said, he placed clear cellophane tape from a roll he found in Room 122 over the loose paper tape he had placed on the box. Allen said he placed the extra strip of tape he had found in the box into his pocket and discarded it later.

A later examination of these 15 ballots by investigators disclosed that three were marked in pencil, six in black ink, and six in blue ink. The ballots may indeed have taken on the appearance of ballots usually rejected by the counting machine, notwithstanding the absence of a certain rejection code typically found on machine-rejected ballots. Allen, however, said that he knew from his experience at examining ballots in recounts that not all ballots rejected in a machine count were necessarily marked with the rejection code. As noted above, the examination of the ballots also revealed the absence of voter marks for the

⁵³While not always the case, the ballot counting machine will normally reject ballots which were improperly marked. Ballots thus rejected are not counted by the machine and must be counted by hand at the close of the polls.

referenda questions on the back of the ballots. In addition, all 15 ballots were in one lot in a box clearly labeled as not containing marked ballots.

The 15 ballots bore no fingerprint impressions identified as Allen's. However, the box containing the ballots did disclose an impression of Allen's right thumb print on a piece of tape. An examination of the box by a fingerprint specialist in the State Police Crime Lab revealed loose State of Maine tape on the box top. A section of the same type of paper tape was present on one of the flaps of the box; the tape held the flap to the side of the box. The examination disclosed that the piece of tape holding the flap to the side of the box was once part of the longer piece of identical tape present on the top of the box. One latent fingerprint impression of comparable value was developed on the smaller piece of tape which held the flap to the side of the box. The latent impression was positively compared to the known inked impression of the right thumb of Kenneth Allen.⁵⁴

Allen recalls handling the boxes and ballots in Room 122 without regard to whether he was leaving fingerprint impressions. His hands

⁵⁴*It was an impression of Allen's right thumb which was later found on the outside of the window through which Allen and Flood burglarized the Legislative Information Office on the third floor of the State House on Sunday, December 13.*

were not gloved or covered in any other way. It is noteworthy that many fingerprint impressions were developed on the ballots now known to have been altered. Not all of the impressions contained enough significant identifying characteristics, however, to successfully compare them with known inked impressions of individuals. None of those which were of comparable value were identified as the impressions of Allen or Flood. Some were identified as the impressions of persons who were authorized to handle the ballots and who, as part of this investigation, voluntarily submitted to fingerprinting for the purpose of eliminating from further consideration latent fingerprint impressions which were legitimately on the boxes or ballots.⁵⁵

During Allen's stay in Room 122, he recalls opening the window known as the "fire escape window" in the rear of the room. While Allen

⁵⁵Det. Craig F. Handley, assisted at times by Det. John Otis and Det. Bryan Batchelder, all of the State Police Crime Lab, conducted the fingerprint examinations. A total of 852 items were submitted by investigators to the Crime Lab for examination. Of these, 538 were processed for latent fingerprints. A total of 1,928 separate examinations and 15,330 latent-to-inked impression comparisons were made. The examinations revealed 73 latent impressions of comparable value. Eight of these latents were identified to five individuals, including Allen. The other four individuals were known to have handled the boxes or ballots for legitimate purposes. It is most likely that the remaining 65 latent impressions of comparable value, primarily recovered from ballots, were impressions legitimately left by voters, election workers, and recount participants.

says that he does not recall exactly why he opened the window, he is certain that he did not smoke while in the room. Although Allen does not specifically recall it, his opening the window was apparently to summon Flood. Flood, for his part, said that he remained outside the building near the windows to Room 122. Flood said Allen had not been in the room very long when he summoned him to an open window to request that he obtain for Allen a black felt-tip and a pencil.⁵⁶

Flood entered the State Office Building on the west side to the second floor lobby. He by chance encountered Lorraine Fleury⁵⁷ in the lobby. Fleury told Flood she was surprised to see him around the State House on a day that no recounts were occurring. Flood lied to Fleury, telling her that he was in the building to check out job opportunities in the personnel office. So that Fleury would not become suspicious, Flood, upon ending the conversation with Fleury, walked to the personnel office and spent a few minutes flipping through job announcements. He took copies of a couple of the announcements with him when he left to

⁵⁶*Allen maintains a vague memory of getting "a couple of pens" from Flood, but does not recall with any specificity the circumstances.*

⁵⁷*Fleury, the director the Elections Division of the Secretary of State's Office, was one of those in charge of conducting the recounts in the legislative elections.*

resume his search for a black felt-tip pen and a pencil.⁵⁸

Flood first went to his former work area, the office of the State and Local Government Committee, on the first floor of the State House to retrieve a pen and pencil. Finding the door locked, Flood went to the office of the Revisor of the Statutes on the first floor. There, he persuaded a clerk to loan him a black felt-tip pen of the sort used to mark on a so-called "white board." The clerk gave him the pen with a promise from Flood that he would return it. Flood may have also retrieved a pencil from the same office.

The clerk from whom Flood said he borrowed the pen does not specifically recall the event. She does recall that Flood often borrowed office items. The pen was not returned, however. Flood asked Allen about it when they met after Allen left Room 122 for the final time but, according to Flood, Allen did not have the pen in his possession and remarked to Flood that Flood had not given him a pen like that. Later, as part of the investigation, a set of such felt-tip pens of various colors was located in the Revisor of the Statutes office. However, the black-ink

⁵⁸*Fleury, when interviewed later, confirmed all of the details of this encounter.*

pen in the set was missing.

Flood returned to the west side of the State Office Building, walked over to the open window, and handed Allen the pen and pencil. Flood continued to loiter outside the building. During the wait, Flood entered the building again and went to the second floor lobby to use the restroom.

It was now about 3 p.m. Anthony Noonan of the Secretary of State's Office was just arriving at the State Office Building after a day of collecting ballot boxes for upcoming recounts. Flood, concerned about the amount of time Allen was taking in the room, entered the first floor of the building via the south side entrance near the cafeteria. He went into another committee room (#120) which adjoins Room 122 and attempted to get Allen's attention by tapping on a common wall and calling out, "Ken! Ken!" Receiving no response from Allen, Flood returned to the hallway. At this point Flood observed Noonan at the door of Room 122 with a handcart of ballot boxes. Fearing that Noonan was about to enter the room, Flood walked over to Noonan and positioned himself between Noonan and the door to Room 122. Flood remarked to Noonan, "Tony, you don't really want to go in there right now."

The versions of this encounter and the events that followed, as

recounted later to investigators by Flood, Noonan, and Allen differ in significant respects. Each version is discussed below.

Flood's Version

Flood recalls that Noonan appeared perplexed at the remark. He said Noonan, who apparently had already placed the key in the lock and turned the door knob, opened the door a few inches. Flood said he took on a more serious tone and warned Noonan that he didn't "really want to go in there right now." He said he told Noonan that he might encounter a "surprise you won't like." Flood said Noonan, while still appearing somewhat perplexed, backed away allowing the door to close.

Comfortable that he had dissuaded Noonan from entering the room, Flood said he went back into Room 120 and attempted again to alert Allen by tapping on the wall. Getting no response, Flood said he used a telephone in Room 120 to call Room 122. No one answered.

Flood said he was somewhat frenzied at that point wondering what had become of Allen. He said he went back out into the hallway and, without looking to determine the whereabouts or activity of Noonan, immediately walked down the hallway and left the building. Outside the building, Flood said he observed Allen sitting in his van smoking a

cigarette. Flood joined Allen in the van. Allen told Flood that he had left the room by the fire escape window after seeing Noonan and another person he thought was Gary Cooper at the door.⁵⁹ Flood asked Allen if he was finished in the room and Allen told him that he needed to go back into the room to "clean things up." Flood said he indicated to Allen a possible opportunity to get back into the room.⁶⁰

Flood said that he and Allen entered the building together. As they were coming into the building, Flood said he observed Noonan still at the door of Room 122 with the handcart of ballot boxes. He said Noonan was talking with a young woman. Flood said the woman, apparently taking no notice of Flood, left as he approached Noonan. He said the woman either went into the cafeteria or to the stairwell near the cafeteria. Flood said Noonan had opened the door of Room 122 and was placing the ballot boxes from the handcart just inside the door as he continued to approach him. Flood said Allen had lagged behind or may have gone

⁵⁹*Allen, as it turned out, saw Noonan and Flood at the door, but confused Flood for Cooper.*

⁶⁰*Flood, while apparently not explicit in his comments to Allen in this regard, later told investigators that he had taken Noonan's acquiescence to not enter the room as a sign that Noonan was susceptible to further persuasion that he not immediately enter Room 122.*

into the canteen or smoking area across from the cafeteria.

Flood said he reached Noonan just as he finished unloading the handcart. He said Noonan, having seen Allen with Flood and referring to Allen, remarked, "He must be crazy to go out the window." Flood said Noonan then informed him that he had another load of ballots to retrieve and he would be gone for five minutes. Flood said he took the unsolicited remark from Noonan as a "green light" for Allen to go back into the room.

Flood said he informed Allen that they had five minutes before Noonan would return to Room 122. He said Allen, who was still in possession of the room keys, went back into Room 122. For his part, Flood said he went to the intersection of the hallway and the elevator lobby - near the underground tunnel that connects the State Office Building with the State House - where he intended to wait for Noonan from a position which permitted him to observe the door of Room 122. In this way, he would know when Allen left the room.

A few minutes later, Flood said, Noonan arrived on the first floor by elevator with another load of ballots on the handcart. Flood said he remarked rhetorically to Noonan, "You've only been four minutes."

Flood said he and Noonan then engaged in small talk in the elevator lobby. He said he counseled Noonan at one point to move out of the range of a video camera in the wall that faces the tunnel. He said he at the same time motioned Noonan to move closer to the south wall of the elevator lobby.⁶¹ Flood said that it was but a moment or so later that he observed Allen leaving Room 122. He recalls mentioning something to Noonan along the line of "all set" and walking off to meet Allen.

Flood said Allen, upon leaving Room 122, turned and walked down the hallway toward the south exit of the building. He said he followed Allen outside, joining him for the second time in Allen's van.

Noonan's Version

Noonan recalls the remark from Flood of "Tony, you don't really want to go in there right now." Noonan said he arrived at the door of Room 122 with a handcart of ballot boxes. While balancing the cart against himself with one hand, he said he reached into his pockets with the other hand to retrieve the key to the room. He said he saw Flood come out of the next room (#120). He said Flood approached him and

⁶¹Flood noted that Noonan was not in a position to observe the hallway or Room 122.

made the remark in a chuckling manner. Noonan said he did not take the remark from Flood, whom he knew to be a jester, as anything more significant than a reflection of the adversarial nature of the several recounts conducted in Room 122 to date.

Noonan said Flood engaged him in social chatter while moving to a position generally between him and the door. Noonan said it occurred to him that Flood was not someone he wished to be seen with given that he was in possession of ballots and given Flood's role as a partisan counter in the recounts. He said he "pushed by" Flood, unlocked the door, and entered the room.

Upon entering the room, Noonan said he was struck by a pungent odor of cigarette smoke. His immediate thought was that Gary Cooper had for some reason permitted people to smoke in the room.⁶² Upon entering Room 122, Noonan heard a noise from the rear of the room that sounded like a door or window closing. Parking his handcart, Noonan said he went to the rear portion of the room and unlocked the door that led to a smaller space where many boxes of ballots were stored. Noonan

⁶²Noonan did not know at that point that the room was not used on Friday. As described above, Noonan had left home early that morning to travel to Piscataquis County and Penobscot County for the purpose of collecting boxes of ballots for upcoming recounts.

said he checked the entirety of Room 122, including this rear portion. He said he looked under desks and into other areas where a person might hide. He did not check either window in the rear portion of the room.

Satisfied that no one else was in the room, Noonan unloaded the ballots from the handcart⁶³ and left the room. Upon entering the hallway outside the room, Noonan saw Flood in the hallway near the cafeteria walking away from Noonan. Noonan saw Kenneth Allen entering the building through the south entrance and walking toward him. Noonan said Flood then turned around and started walking toward him in the same direction as Allen was walking. Noonan said Flood, closer to him at this point than Allen, asked him if he was done. Noonan said he responded that he had another load to bring down from his car and he would be another five minutes.⁶⁴ Noonan recalled seeing Allen walking into the area of the smoking room or canteen located across the hall from

⁶³*Contrary to the assertion by Flood that Noonan at a later point unloaded the ballots at the open doorway, placing them just inside the door of Room 122, Noonan recalls quite distinctly having parked the handcart "one-half to three-quarters way into the room," and unloading the ballots there after checking the room. Several days later, after the discovery of altered ballots in the District 38 recount, these boxes were in fact in the location described by Noonan.*

⁶⁴*Not only does Noonan steadfastly maintain that his disclosure that he would be another five minutes was in answer to a question posed by Flood, he denies making a statement of "he must be crazy to go out the window" in the context of seeing Allen with Flood.*

the cafeteria.

Noonan remembers encountering a female co-worker from his office during one of his trips to Room 122 to deliver ballot boxes. Although he has been unable to recall whether the encounter was during the first or second trip, he does recall that there were ballot boxes on his handcart when he greeted the woman outside Room 122 and talked with her momentarily. The woman, for her part, recalls encountering Noonan on the first floor of the State Office Building near the cafeteria while on a break during the afternoon of December 11. She placed the time of the encounter as between 3:00 and 3:30. She recalls that Noonan had a handcart with boxes of ballots on it and was outside the door of Room 122, which she knew to be the room in which recounts were being conducted. She said she and Noonan talked for about five minutes and that the nature of the conversation was social. At no time, she said, was the door to Room 122 open. At the same time, she said that she did not observe Noonan going in or coming out of the room. Finally, the woman said she did not observe Noonan talking with anyone else before, during, or after her conversation with him. While the woman recalls that there may have been others in the hallway at the time, she could not recall

seeing anyone she knew. The woman did not know Kenneth Allen or Michael Flood.

After the second encounter with Flood, Noonan said he went back to his car which was parked near the second floor loading dock. He said he retrieved the remainder of the ballot boxes in the car, loaded them onto the handcart, and went back to the first floor by elevator.

Noonan said he arrived on the first floor where he observed Flood in the elevator lobby. Noonan recalled that he was dismayed at seeing Flood again and wondered whether Flood was going to engage him in further conversation.⁶⁵ Noonan said he was unable to avoid Flood given that Flood was in his path to the hallway leading to Room 122. As he approached Flood, Noonan said Flood greeted him with words to the effect that "it hasn't been five minutes yet." Noonan said Flood then engaged him in conversation while periodically looking around the corner down the hallway. Noonan said his impression in retrospect was that

⁶⁵Noonan said he continued to be concerned about being seen with Flood while he was in possession of ballots.

Flood was trying to delay him.⁶⁶ Noonan said it was not long before Flood abruptly turned and walked away down the hallway toward Room 122.

Noonan said he started down the hallway and observed Kenneth Allen walking toward him and Flood. He said Allen turned around and walked away from them. As he did so, Noonan recalled that Allen was crumpling something in his hand and, as Allen passed by the main entrance to the cafeteria, he deposited the object into a trash receptacle. Noonan said that Flood remained slightly behind Allen although it appeared that Flood had stepped up his pace in an attempt to catch up with Allen. Noonan said he last observed Allen and Flood near the secondary entrance to the cafeteria -- the one closer to the south exit of the building. At this point, he said, he had reached Room 122 and entered it for the second time to deliver ballot boxes. Upon his second entry to Room 122, Noonan remembers smelling no odor of cigarette smoke.

⁶⁶Noonan firmly denies any counsel or advice from Flood to move out of the range of the camera. Indeed, Noonan says that he had no knowledge of the camera's existence until questioned about it in early February 1993. Also, Noonan does not recall any words or gestures from Flood which resulted in Noonan moving from the spot where he first encountered Flood.

Allen's Version

Allen recalls that while inside Room 122, he saw Noonan at the door along with a person he thought at the time to be Gary Cooper.⁶⁷ Allen stated that he saw Noonan and the second person through a small window in the door of Room 122. Allen is not sure whether the door was partially open at that point, but thinks that the noise of the door opening may have been what attracted his attention to the door.⁶⁸ Allen said that when he saw Noonan and the second person at the door, he panicked and quickly left the room via the open fire escape window, closing the window behind him. Because of his hasty exit from the room, Allen left the contents of the District 38 ballot box on the desk in plain view.⁶⁹

Allen said he realized the risk of going out the window of the room, which was on the front side of the building and faced a large

⁶⁷Allen recalls Flood informing him a minute or so later, when they met outside in Allen's van, that the person with Noonan at the door was in fact Flood and not Gary Cooper.

⁶⁸Allen does not remember Flood's attempt to get his attention a few moments later when Flood went into Room 120, tapped on the wall, and called out Allen's name.

⁶⁹Allen said the box was on a desk in the rear portion of the room. He said the contents of the box, including the loose ballots he had just altered, and the writing implements he had used to mark the ballots, were also on the desk in plain view.

parking area, in mid-afternoon, but he said he panicked upon spotting Noonan and the other person at the door of Room 122. Allen said he observed his parked van, walked to it, and got in. He said he was joined at the van by Flood. He told Flood that he had exited Room 122 via the rear window. According to Allen, Flood mentioned that there may be an opportunity to re-enter the room if Allen needed more time to finish what he had started. Allen said he told Flood that he needed to go back into the room to pick things up.

Allen said he and Flood re-entered the first floor of the building at its south exit. He recalls that he and Flood were together as they entered the building. He does not recall seeing Noonan or observing any conversation between Flood and Noonan. He recalls using the key to unlock the door of Room 122 and re-entering the room. Although Allen knew that Flood was in the corridor outside Room 122, he said there was no agreement with Flood whereby Flood would act as a look-out for him. Allen said he re-entered the locked rear portion of Room 122 where he had left the District 38 box. He said he replaced the box with its contents, including the now altered ballots. Allen resealed the box with a strip of tape bearing the State seal which he found inside the box and

with a strip of clear cellophane tape he dispensed from a roll he found in Room 122. Allen returned the box to its original location next to a file cabinet under another box in the forward portion of the room. Allen recalls looking around to assure himself that nothing looked out of place. Allen does not remember locking the window, although he recalls the window being closed when he finally left Room 122.⁷⁰

Allen said he exited Room 122 via the hallway door. Allen said he walked diagonally across the hallway to discard a piece of tape in a trash can.⁷¹ He said he then turned and walked down the hallway and left the building through the south exit. Allen said he recalled seeing Flood in the hallway near the elevator lobby standing close to the west wall.⁷² He did not observe Noonan at all.

⁷⁰*The window may have locked when Allen closed it earlier after exiting through it. The design of the lock is such that the lock may engage if the window is closed securely. The Capitol Police officer who examined the room later that day recalled when interviewed for the purposes of this investigation that he, for one, was able to engage the lock on this window by shutting it securely from the outside.*

⁷¹*Allen said he had earlier placed a piece of the clear cellophane ballot box tape in his pocket. He said the tape was a fragment from the District 38 box which ripped and became loose when he opened the box.*

⁷²*The location of Flood at this point, as described by Allen, contradicts the versions of both Flood and Noonan, which placed Flood across the hallway nearer the elevator lobby at the corner of the hallway and lobby.*

The Aftermath of the Unlawful Entry to Room 122

When Flood joined Allen in Allen's van parked at the south end of the State Office Building, Allen told Flood, "Elden won his race, also." According to Flood, this was his first knowledge that Allen had altered ballots in two legislative races. Flood said the statement surprised him because the District 35 Hillock-McKeen recount had been completed a few days prior. Flood mentioned this to Allen. He said Allen's response was one of unconcern; Allen merely remarked that the Ethics Commission could sort it out.

Allen returned the keys to Room 122 to Flood. Flood asked Allen for the black felt-tip pen Flood had borrowed earlier from a clerk in the Revisor of the Statutes Office, but Allen stated that he did not have it. Allen removed several pens from his pocket, but the felt-tip was not among them. Allen could not recall that Flood had given him a pen of that description.

At this point, Flood and Allen parted ways. Flood went to the Legislative Information Office on the third floor of the State House to return the Room 122 keys; Allen drove home to Farmingdale. Flood recalls that a receptionist was present in the Legislation Information

Office when he returned there. Teen Griffin was not in her office. Flood told the receptionist he was there to retrieve his hat and gloves from Griffin's office.⁷³ Flood went into Griffin's office, returned the Room 122 keys to the file drawer, retrieved his hat and gloves, and left. Flood walked to his home which is located a short distance from the State House. He left home a short time later with a friend to attend a Christmas party. Flood spent the night at his friend's house, returning home by mid-morning the next day, Saturday, December 12.

Anthony Noonan, who recalls that he was troubled by his observations in Room 122 and his encounters with Flood, returned to his office on the second floor of the State Office Building and reflected on what had happened. He recalls that Deputy Secretary of State Gary Cooper had taken a late lunch and was not in his office. While waiting for Cooper to return, Noonan said that, in his own mind, he was trying to determine if his observations in Room 122, that is, the smell of cigarette smoke and the noise of a closing door or window, were in any way related to his encounters with Flood and his later observation of

⁷³*Flood in fact had left his hat and gloves in Griffin's office that morning.*

Allen coming into the building on the first floor. While feeling an obligation to report the observations to Deputy Secretary of State Cooper, Noonan said he was deeply concerned about the ramifications of reporting something that could be baseless given that such a report would likely result in a great deal of attention being focused on Allen and Flood.

Noonan said he was concerned about the possibility of falsely accusing these individuals of wrongdoing. Noonan added that his trepidation was also due to the highly charged and partisan atmosphere he had observed during the recount process. Noonan finally concluded, however, that it was not within his discretion to decide whether the information should be passed on to his superiors. Noonan reported his observations to Cooper.

It was nearly 4:30 p.m. before Cooper and Noonan went to Room 122 to check it. While at that point neither of them felt overly suspicious about Noonan's observations, Cooper decided it would be best to check the room. Noonan remembers distinctly the absence of any smell of cigarette smoke when he and Cooper entered Room 122.⁷⁴ They did

⁷⁴*At this point, Noonan remembers that he was perplexed at the absence of the smell of cigarette smoke and theorized later that the noise he heard when he first entered Room 122 was a ballot box falling in the rear portion of the room and the smell was either residual smoke from a nearby smoking area or his imagination.*

become somewhat concerned, however, when they discovered that a latch on one of two windows in the rear partitioned portion of the room was not in place.⁷⁵ They checked the other window and found it closed and locked.

Cooper and Noonan returned to Cooper's office and discussed their observations. Cooper decided it was best to have the room checked by the Capitol Police. A Capitol Police officer was summoned to the room at 5 p.m. The officer checked the window on which the latch was found disengaged and demonstrated that the window's configuration was such that no person could fit through it. At the same time, the officer, along with Cooper and Noonan, thoroughly examined the room and found no evidence that the room had been unlawfully entered or that anyone had used the "fire escape" window as a means of entry or exit. Indeed, an accumulation of dust on both window sills and a sloped portion of the wall under the "fire escape" window showed no indication of any

⁷⁵The window was not the "fire escape" window through which Allen had actually exited the room. Allen, however, said that he may have been the one to have unlatched the window when he was in the room earlier.

disturbance.⁷⁶ Cooper and Noonan also conducted a cursory examination of the ballot boxes in the room and detected no visible signs of tampering.

While Cooper, Noonan, and the Capitol Police officer reached a conclusion that there was nothing to indicate a breach of the security of the room or the ballot boxes, the officer suggested that any lingering concern could be resolved by changing the lock on the door to Room 122. Cooper agreed and authorized a change in the lock. The state locksmith installed a new lock in the door at approximately 6 p.m. The only two keys to the lock were issued to Cooper and building security.⁷⁷

⁷⁶*This same condition existed on the morning of Monday, December 14, when the room was checked by an investigator from the Attorney General's Office. There were no physical signs that the room had been unlawfully entered or that anyone had exited the room through a window. The ground beneath the window was not snow-covered nor was it otherwise susceptible to the recovery of footprint impressions.*

⁷⁷*Cooper later relinquished his key to the Attorney General's Office on December 16 when evidence of actual ballot tampering in Room 122 came to light. At the same time, boxes suspected of containing altered ballots were seized by the Attorney General's Office along with the several other boxes in the two legislative races, and placed under lock in the Attorney General's Office. While the second key remained in the custody of building security, officials there were under specific instructions to report to the Attorney General's Office any request for use of the key. Thus, entry to Room 122 was controlled solely by the Attorney General's Office until the contents of Room 122 were transferred to the State Police Crime Lab on December 22. Also transferred to the Crime Lab were the boxes previously seized by and stored in the Attorney General's Office, boxes of ballots previously released to the state's Records Retention Center, and four District 82 boxes containing Rockland ballots which were being stored in a vault in the Attorney General's Office by request of the Commission on Governmental Ethics and Election Practices pending action by the*

Thereafter, Cooper notified Secretary of State G. William Diamond; Diamond, in turn, notified Attorney General Michael E. Carpenter.

Allen, after arriving home, made a series of telephone calls. These calls commenced at about 3:45 p.m. and spanned a little more than an hour.⁷⁸

Allen claims to have first reached Deborah Rice, the Democratic candidate in the District 38 House race, at her home in Cumberland. Allen recalls that he informed Rice that he had "reliable information" that more votes would be found for her in the Rice-Taylor recount. He does not recall mentioning any specific number.

Rice remembers the call well. She said Allen started the

Commission on Clayton Fowlie's appeal of the District 82 election results.

⁷⁸In terms of the sequence of these calls, there appears to be some disparity between telephone toll records subpoenaed during the investigation and the recollections of the witnesses. For his part, Allen recalls speaking first with Deborah Rice, next with Jonathan Hull, her attorney, and finally with James Case, counsel for Elden McKeen. Subpoenaed telephone toll records indicate that at 3:44 p.m., Allen called the law office of James Case in Topsham, the duration of the call being two minutes. The records also indicate that at 3:47 p.m., Allen placed a call to the law office of Jonathan Hull in Damariscotta, the duration of the call being one minute. At 3:49 p.m., a three-minute call was placed from Hull's office to Allen's home in Farmingdale. At 3:57 p.m., a seven-minute call was placed from Allen's home to Case's law office. Immediately thereafter, at 4:05 p.m., a four-minute call was placed from Allen's home to the home of Deborah Rice in Cumberland. Finally, at 4:12 p.m., a 54-minute call was placed from Allen's home to the home of Molly Pitcher in Brunswick. While the sequence of these conversations remains unclear, that they transpired is not disputed by Allen, Rice, Case, Hull, or Pitcher.

conversation with small talk. Rice recalls Allen offering her words of encouragement and promoting a winning attitude about her recount. Rice said that Allen's tone soon shifted, however, from general words of encouragement to saying that she would win the election in the recount because he knew there were additional Windham ballots which had not been counted. Rice distinctly recalls Allen mentioning another "Windham box" and telling her that 14 extra votes for her would be found when the recount resumed. Rice said she responded by telling Allen that if she was going to win the election, it was going to be on the basis of the ballots cast in the election. Rice said Allen then softened his original statement in which he referenced 14 extra votes for Rice by saying that there were uncounted ballots, but there was no way at that point of determining how many would be votes for her.

Rice recalled that her impression at the time was that it was certainly feasible that not all the boxes, Windham or otherwise, had been thoroughly checked for marked ballots. Accordingly, she said, she did not find Allen's remarks entirely surprising given a reasonable assumption that more uncounted ballots might be found. She admitted, however, that she did not find it reasonable that Allen would somehow

know the nature of the contents of a box yet to be examined or checked.

Allen said nothing to Rice that would lead her to believe that anyone had actually tampered with ballots or a ballot box. To a large degree, Rice took Allen's words to be mere "puffing," and drew an inference from the conversation that Allen was trying to impress her. She also recalls her impression that Allen had been drinking although she could not be certain given that she previously had only limited contacts with him.⁷⁹

Rice, after receiving the Friday afternoon call from Allen, telephoned her lawyer, Jonathan Hull, at his office in Damariscotta. While her conversation with Hull dealt initially with the recount which was then scheduled to resume the following Monday, Rice eventually informed Hull of the call she had received from Allen.

Hull recalls Rice telling him that Allen indicated to her that there were at least 14 more votes for Rice that had not been counted. Hull said he was stunned by the statement, and recalled Allen's comment to

⁷⁹Rice does recall in retrospect, however, that Allen's demeanor was much different when she received another call from him two days later, Sunday, December 13. She said that on Sunday, December 13, Allen seemed sober and spoke in a more straightforward and businesslike manner.

him the day before that extra ballots might be found in a box near the file cabinet in Room 122.

Allen claims to have next spoken with Jonathan Hull, Rice's lawyer in the recount, reaching him at his law office in Damariscotta. Allen recalls that his conversation with Hull was essentially the same as his conversation with Rice, that is, that he had "reliable information" that there were ballots yet to be counted and there would be extra votes for Rice. Allen said he remembers Hull questioning him about the source of his information. Allen declined to disclose either the source or the specific nature of the "reliable information." He also recalls Hull telling him not to mention the information to anyone else. Allen specifically recalls Hull making this statement because Allen remembers being concerned that he had already disclosed the same information to Rice. Allen did not inform Hull that he had already spoken to Rice.⁸⁰

Hull said it was not long after the call from Rice that he received a call from Allen. Hull said that Allen was "obviously intoxicated." He said that he and Allen briefly discussed the issue of the 217 Cumberland

⁸⁰*Hull, unknown to Allen at that point, was already aware of Allen's call to Rice, having himself just received a call from Rice.*

ballots which had resulted in Rice trailing by 11 votes in the recount. Hull said Allen told him, "Don't worry, there are 14 more votes. You don't have to worry about it." Hull does not recall a great deal of further discussion with Allen over this revelation. Hull stated, though, that "I didn't get the impression that he'd done something; I got the impression [that] he knew something." Hull said he thought Allen might have seen ballots which were missed in the recount, and that Allen was trying to "show me up."

Hull said he did not ask Allen whether or not Allen had put ballots in the box because it did not even occur to him that Allen was suggesting such a possibility. Hull said that at the time of the conversation with Allen, he thought that he (Hull) had somehow missed marked ballots during the recount. Hull said his astonishment at Allen's statements to Rice and him that Friday afternoon went more to his feeling that he had somehow missed ballots in the recount.

Allen claims that after his conversation with Hull, he called James Case, Elden McKeen's lawyer in the District 35 recount, and told Case that he had "reliable information" that more votes would be found for Elden McKeen in the recount. Allen said he declined to elaborate

further, notwithstanding a request from Case to disclose the source and nature of the "reliable information."

Case said Allen called him the afternoon of December 11.⁸¹ In the course of the conversation, Case told Allen that he was working on an appeal to the Ethics Commission for Elden McKeen that was due the following Monday. Allen told Case that an appeal might not be necessary. Case said he asked Allen if the other candidate had conceded or if the candidates had agreed to a new election. He said Allen answered that there were additional uncounted ballots which would favor McKeen. Case said he tried to get more specific details from Allen, including Allen's source of information, but Allen responded that he could not tell him any more. Case said he told Allen that he neither understood what Allen was saying nor could he rely on the information and forego filing the appeal. Case said he also told Allen that the recount was finished and it was his judgement that the recount results would stand. He said that Allen, who sounded intoxicated, was not entirely coherent.

⁸¹Case, upon learning of the alleged ballot tampering in District 38 discovered on December 16, came to the Attorney General's Office on December 17 to relate the specifics of the call he received from Allen on December 11.

While Case does not recall that Allen mentioned a particular number of ballots, he does remember that Allen said the additional uncounted ballots which would favor McKeen would be found in "Box 1." This reference, Case said, meant nothing to him; he had not noticed that ballot boxes were numbered.⁸² Case said, also, that Allen at no time in the conversation either implicated himself with respect to putting extra ballots into the box or indicated in any fashion that anyone else had done so. Indeed, Case said it was his impression that Allen was somehow aware of ballots that had been overlooked during the recount. Case recalls, in fact, that Allen may have actually mentioned the possibility of "missing some ballots" during the recount.

After his conversations with Rice, Hull, and Case, Allen called Molly Pitcher, a personal friend and one of the Democratic counters in the legislative recounts, at her home in Brunswick. The duration of this call was 54 minutes. Allen remembers the call. Allen maintains that he did not disclose to Pitcher any of his actions in Room 122 less than two

⁸²*In fact, ballot boxes are not numbered. The District 35 box in which the 14 altered ballots were eventually discovered, however, bore a handwritten legend of "Box 1" on the side of the box. Strangely, while Kenneth Allen, recalls this box to have been of a much different shape and larger than typical ballot boxes, he has no memory of the "Box 1" legend on it or the reference to "Box 1" in his December 11 conversation with Case.*

hours earlier, nor did he discuss with her his calls to Hull, Case, or Rice less than a hour earlier. Allen said the purpose of the call to Pitcher was to notify Pitcher of a cancellation of a recount in an unrelated race, and that he and Pitcher discussed personal matters. He described Pitcher as an "old and close friend."

Pitcher also maintains that the 54-minute conversation with Allen on the afternoon of December 11 included no reference by Allen to his actions in Room 122 or to his calls to Hull, Case, and Rice.⁸³ Pitcher remembered that Allen sounded intoxicated and talked about his personal situation, including his recent divorce.⁸⁴

There is no evidence that Allen made any other toll calls on the afternoon or evening of Friday, December 11. However, calls within the local Augusta-Gardiner calling area would produce no records to confirm this fact. For his part, Allen recalls making no other calls, local or

⁸³*When Pitcher was initially interviewed by investigators, she made no mention of this conversation with Allen.*

⁸⁴*Allen does not recall with any specificity his state of sobriety through the afternoon of December 11 or, for that matter, at other times. He did say, however, that he did not drink during the course of the recounts; he said the odor of alcohol noted by others may well have been from his heavy drinking on previous evenings. Allen, however, said that he was generally drinking at the time and he was likely under the influence of alcohol when he made the calls Friday afternoon to Rice, Hull, Case, and Pitcher.*

otherwise.⁸⁵

In the meantime, Hull had called his client Deborah Rice and informed her of Allen's call to him. Hull said he and Rice discussed whether or not the calls they received from Allen should be reported to the Attorney General's Office. He said they mutually reached a conclusion that they had only a "very thin statement. . . from a person whose judgement I believe was seriously clouded with alcohol at the time he said it, and that it wasn't a statement of any illegality." Hull said he and Rice agreed that they would not report the calls to the Attorney General's Office unless something arose that would give the statements by Allen some credibility or some substance. Hull said he was well aware of the significance of even hinting at a possibility of ballot tampering in the highly politically-charged atmosphere that prevailed at the time, and he was determined to have more of a basis for reporting Allen's conduct.

Gary Cooper, the Deputy Secretary of State in charge of elections

⁸⁵*Allen was asked why he didn't call Elden McKeen, the Democratic candidate in District 35, given that he called Rice, the Democratic candidate in District 38, and each candidate's lawyer. Allen said it was indeed his intention to call McKeen, but he did not have at home with him a telephone number for McKeen.*

and recounts, recalls returning a telephone call to Jonathan Hull on December 11 after the lock on the door of Room 122 had been changed. Cooper recalls that it was about 5:30 p.m. when he returned a call that Hull had made to his office at about 4:10 p.m.⁸⁶ Cooper said Hull discussed briefly with him his intention to appeal the results of the District 38 and District 82 legislative recounts to the Ethics Commission. Cooper said that Hull spoke of ballot security issues in both races. He said Hull made particular reference to the discovery of the 217 ballots in the Cumberland Town Office the night before and, as well, mentioned the previous discovery of extra District 82 ballots previously in Rockland. Hull asked Cooper if he was comfortable with the security of Room 122 and questioned whether keys to the room were controlled. Cooper said he essentially let Hull talk and offered little response to Hull's comments because he wanted to determine whether Hull knew something about the incident reported by Anthony Noonan which had occurred just a few hours earlier. Cooper did not disclose any information about the incident

⁸⁶*Telephone records subpoenaed during the course of the investigation show that calls were placed from Hull's office to the Elections Division at 4:07 p.m. and again at 4:37 p.m. Cooper's estimate of when he returned a call to Hull that day is probably inaccurate given that Hull was on the telephone with Deborah Rice from 5:17 p.m. to 5:58 p.m.*

to Hull nor did Cooper inform Hull of the recent change of the lock in the door of Room 122. Cooper said that by the time he completed his conversation with Hull, he was of the opinion that Hull knew nothing of the Room 122 incident. He said he passed the call off as coincidental.

For his part, Hull does not recall a conversation with Cooper about ballot security after the Friday afternoon calls made by Allen to Rice and him. Hull said he could recall no conversations with Cooper which focused on ballot security, but that the subject may have come up as "casual commentary" in other conversations about election recounts. Hull said Allen's calls on Friday afternoon to Rice and him did not generate concern about ballot security, because Allen's statements had no relationship in his mind to ballot security.

Hull said he was angry with Kenneth Allen for making the calls to Rice and him. He said Allen sounded intoxicated and, while Hull did not find it out of the ordinary for Allen to display somewhat bizarre behavior when he was drinking, he was particularly upset over Allen calling the candidate, Deborah Rice, while he was drinking. Hull said that he was well aware of Allen's drinking problem and that a few people involved with the recounts had mentioned that Allen smelled of alcohol. Hull said

he decided it was necessary for Allen to be excused from any further participation in the recount process. Hull said he made several telephone calls trying to find Speaker of the House John L. Martin. He eventually learned from Martin's personal secretary that Martin was in Washington, D.C. Hull called the Hyatt Regency Hotel in Washington, D.C., where Martin was staying. The call was placed from Hull's home in Newcastle at 6:56 p.m. Martin was not in and Hull left a message. He received a call back from Martin at 7:30 p.m.⁸⁷

Hull said he told Martin that he wanted Allen excused from the recount process. He said he informed Martin that Allen was showing up at the recounts smelling of alcohol. He said he also informed Martin of the telephone conversations Allen had had a few hours earlier with Rice and him. While he said the focus of his call to Martin concerned Allen's drinking and the problems it was causing, Hull also said that he told Martin about the nature of the Allen telephone calls; that is, that Allen was stating that he knew of the existence of additional ballots which no one else knew about. Hull said he was firm in his assertion to Martin

⁸⁷*Records of telephone calls subpoenaed during the course of this investigation confirm these calls. The duration of the call from Martin to Hull at 7:30 p.m. was 16 minutes.*

that Allen be removed from the recount process. Hull said Martin informed him that he would "take care of it." Hull said he did not ask Martin what it was he intended to do because he knew from his relationship with Martin that Martin would follow through in an appropriate manner.⁸⁸

Martin remembers the conversation with Hull. He said he was given a message that Hull needed to talk with him. He said he called Hull at his home from the lobby of the Hyatt Regency Hotel in Washington, D.C.⁸⁹ He said Hull was extremely upset and demanded that Allen be removed from the recount process. Martin recalls the gist of Hull's comments to be the problems created by Allen's drinking, which included "strange" telephone calls Allen had made to Deborah Rice and Hull in which Allen professed to have knowledge that Rice would win the recount. Martin recalls his impression that it was ridiculous to think that Allen or anyone else could know who would win the election

⁸⁸*Hull believes, also, that he informed Martin that he and Rice had reached an understanding to call the Attorney General's Office if anything developed which might support the notion that Allen or anyone else had engaged in wrongful conduct.*

⁸⁹*This call is corroborated by telephone records requested from Martin during the course of this investigation.*

prior to the conclusion of the recount. Martin also recalls Hull mentioning that Allen somehow knew the whereabouts of some uncounted ballots. Martin said he did not find it unusual that Allen would make calls like this if he had been drinking. Martin said that he got calls of a similar "strange" nature from Allen before Allen entered an Arizona alcohol rehabilitation program in the summer of 1992.

Martin said Hull also told him that he and Rice had decided they would notify the Attorney General's Office if anything more developed that in any way indicated wrongdoing on someone's part. Martin said he fully concurred with this judgement and informed Hull that, by all means, he should notify the Attorney General if anything appeared amiss. Martin said that he informed Hull that he had already decided to take action concerning Allen.

Subsequent to the conversation with Martin, Hull said that he telephoned Deborah Rice to let her know that he had contacted Martin and that Martin would see to it that Allen no longer participated in the recount.⁹⁰

⁹⁰*Deborah Rice also recalls that Hull informed her after talking with Martin that Martin agreed that Hull and Rice should immediately stop the recount and call the Attorney General's Office if any improprieties surfaced.*

Martin said his first instinct upon terminating the conversation with Hull was to call Allen to inquire of his conduct, but he thought better of it when he realized that Allen would likely be drunk. Martin said he was not surprised by Hull's description of Allen's conduct because Allen had often acted in a similar fashion in the past when he was drinking. Martin said he also knew from past experience with Allen that it served no useful purpose for him to try to deal with Allen when he was drinking and acting in an irresponsible manner.

Martin said he later had dinner with his aide Patricia Eltman and State Representative Michael Michaud. He said Eltman noticed he was upset and asked him if the call from Hull was about Allen's drinking. He said he told her that it was. She asked him what he intended to do and Martin told her that it was probably inappropriate for him to discuss the situation with her given that she was a co-worker of Allen's. Martin remembers, however, that he had concluded in his own mind that it was necessary at that point to place Allen on administrative leave and require him to seek treatment for his drinking problem.⁹¹ Martin said he

⁹¹*Martin added that he had been considering placing Allen on administrative leave for the purpose of compelling Allen to get treatment. He said that he was, in fact, close to making that decision on December 10 when Eltman called him in Fort Kent and informed him that*

decided he would call Allen on Monday morning when there was a greater likelihood that Allen might be sober and in a better position to understand the import of the situation.

Telephone records subpoenaed during the course of this investigation show that a call of one-minute duration was placed from Hull's home to the Hyatt Regency in Washington, D.C., at 9:29 p.m. on Friday, December 11, which was precisely the time Hull ended a 28-minute call he had made to the home of Deborah Rice. Martin recalls no other call from Hull that night. He said that he and Eltman and Michaud had gone to dinner and returned to the hotel much later than 9:30. He said there was no message that Hull had called. Hull has no recollection of the call although he is fairly certain that he did not again speak with Martin that Friday night.

Saturday, December 12, 1992: Allen Fears Detection

Michael Flood arrived home from a friend's house about mid-

she was willing to go on record as complaining that Allen's drinking habit was adversely affecting his performance and the overall performance and work environment of Martin's office. Martin said that earlier attempts on his part to deal with Allen's drinking problem were thwarted by an unwillingness of staff members and others who knew about Allen's drinking and diminished work performance to have their names used if it became necessary to force the issue with Allen.

morning on Saturday, December 12. He was met with a message that Allen had called. He called Allen at Allen's home in Farmingdale. Allen told him he had been back to the State Office Building that morning and noticed "something different" about the lock on the Room 122 window he had used as a means of hastily exiting from the room the previous afternoon. Flood said Allen was unable to articulate his observation in this regard, but he was clearly concerned and somewhat fixated on the possibility that the lock had been changed. Allen told Flood only that something looked different about the lock. Allen suggested that Flood might be able to determine if there was anything different about the window or lock given that Flood once occupied that part of the room as an office. Allen suggested that he pick up Flood and drive him to the State Office Building so that Flood could have an opportunity to observe the window. Flood agreed to Allen's request.⁹²

In the meantime, on Saturday morning, Patricia Eltman, a top aide

⁹²Also during this conversation, as well as the several others that would occur between Allen and Flood over the weekend, both over the telephone and in person, they discussed the possibility of detection and tried to predict the consequences. They were particularly concerned about Noonan and whether he would report any of the events of the previous afternoon. They at one point considered calling Noonan, but decided against it. Flood and Allen both confirmed such discussions when they were interviewed during the course of this investigation.

to Speaker of the House Martin who was then with Martin in Washington, had telephoned Jonathan Hull at Hull's home. Eltman later said in an interview that she telephoned Hull without Martin's knowledge because she wanted to learn more about the situation of Allen and his drinking. Eltman explained that she shared office space with Allen and had been directly affected by his drinking and diminished work performance. She said the situation had become intolerable for her and other staff members and she was interested in what action might be taken. Eltman's call to Hull was placed at 8:22 a.m. and her conversation with Hull lasted 19 minutes. Eltman said the crux of her conversation with Hull was Allen's drinking and the effect it caused on others. She does not recall any conversation in which there was a suggestion of ballot tampering or any other unlawful conduct related to the recount process.

Hull also spoke of the call from Eltman. His memory of the call parallels Eltman's. John Martin said he became aware of the Eltman call to Hull later that morning when he and Eltman had breakfast together. He said, also, that Eltman was interested in what it was that Martin intended to do with regard to Allen. Martin said he avoided discussing the situation with Eltman feeling that it was inappropriate given her

position as a co-worker of Allen's.⁹³

Flood recalls that it was late afternoon or evening on Saturday, December 12, before Allen picked him up at a pre-arranged location near Flood's home in Augusta and drove to a point near the south side of the State Office Building. Allen then drove his van to an area near the north side of the State Office Building and waited there while Flood walked over to the building to inspect the window of Room 122. Flood walked to the building and looked at the window from the sidewalk in front of the building. He said he was apprehensive about walking directly to the window for fear that he would be detected. In any event, Flood said it was much too dark at that point to make any clear observation of the lock on the window. Flood said he found Allen sitting in his parked van on a side street next to the Blaine House. He told Allen that he had looked at

⁹³Rep. Michael Michaud, who was also with Martin and Eltman in Washington, was interviewed. He could add little to that already provided by Martin, Eltman, and Hull concerning the Hull call to Martin the evening of December 11 or the Eltman call to Hull the morning of December 12. Michaud recalls receiving a message in his room the evening of December 11 that Hull had called. He said he telephoned Hull who informed him he wanted to talk with Martin. Michaud said he saw to it that Martin got the message. He remembers that Martin returned the call, but said he was not privy to any conversation between Martin and Hull. Michaud said that Martin did not later discuss the conversation with him.

the window and observed nothing out of the ordinary.⁹⁴ Allen drove Flood back to the location where he had originally picked him up and they went their separate ways.

Building access logs maintained by security personnel of the Department of Administration indicate that Allen entered the State House at 1:34 p.m. on Saturday, December 12. Allen, however, maintains no memory of this visit.⁹⁵ The same log for December 12 shows that John Martin entered the State House at 3:44 p.m.⁹⁶ Martin said he went to his office to do work after returning from Washington. He said Rep. Michaud dropped him off at the State House where he worked several hours. Martin said he encountered no other persons while in the State House that day.⁹⁷

⁹⁴*Flood did not share Allen's concern about the possibility that the lock on the window had been changed.*

⁹⁵*Flood maintains that he knew nothing of Allen's visit to the State House on Saturday until he saw it reported on television. There is no indication from telephone records provided by Martin during the course of this investigation that Allen used a telephone in his office to make calls. Again, these records would not reflect local calls.*

⁹⁶*The logs do not show departures from the building.*

⁹⁷*Martin, specifically asked in an interview if he saw or met with Allen, said that he did not. Martin said that he had no direct or indirect contact with Allen until the morning of Monday, December 14, when he called Allen to place him on administrative leave. Moreover, Martin said that he had no further contact with Allen beyond the brief telephone*

Sunday, December 13, 1992: The Attempt to Conceal the Crime

Kenneth Allen called Michael Flood on Sunday morning, December 13, and told him he wanted to go back into Room 122 to remove any evidence of ballot tampering. Flood does not recall that Allen explained the basis for his decision. Allen, when interviewed, said he decided to try to reverse what he had done after thinking about it over the weekend and realizing "the stupidity" of his conduct. Allen said that nothing more than his own awareness of having acted with poor judgement on December 11 influenced his decision to go back to Room 122 to rectify what he had done.⁹⁸

By prior arrangement, Allen picked up Flood near Flood's home in Augusta and the pair drove to the State House. Allen entered the

call to him that morning. For his part, Allen said that his only contact with Martin was the telephone call Martin made to him on the morning of December 14. Allen, in fact, said that following his unlawful entry to Room 122 on December 11, his only contact with anyone in his office was with a secretary on Monday morning to make sure that financial disclosure statements given to him previously by Deborah Shaw Rice would be filed with the Office of the Secretary of State that day. Michael Flood said that Allen gave him no indication that he had had any contacts with Martin. Flood said that Allen never mentioned Martin in any context during their several discussions over the weekend following the unlawful entry to Room 122. Neither did Allen disclose to Flood that he had been placed on administrative leave by Martin.

⁹⁸*When interviewed, Allen was specifically asked if he had engaged in ballot tampering in the past. He unequivocally answered that he had not.*

building on the first floor via a door controlled by security personnel while Flood waited outside.⁹⁹ Once inside the building, Allen ascended to the second floor where, as pre-arranged, he granted Flood access through the "Governor's entrance." Allen and Flood then ascended to the third floor of the building and exited from a door off the rotunda onto a third floor portico overlooking Capitol Park on the east or front side of the State House. Their intent at this point, according to both Allen and Flood, was to enter the Legislative Information Office through a window off the portico for the purpose of again obtaining the ring of keys for Room 122.

Outside on the portico, Flood, with Allen's assistance, entered the Legislative Information Office through a window which appeared to have few objects stored on its sill. While this particular window was not the one which opened directly into Teen Griffin's work area, Flood said that entering this window, as opposed to the one directly outside Griffin's office, would result in less disruption. The window, with a sill about six feet from the floor of the portico, was not locked. Allen reached up and

⁹⁹*The building access log for December 13 indicates Allen's entry into the State House was at 11:02 a.m.*

opened it partway while Flood, standing on a heavy cigarette ash barrel, placed his hands under the partly opened window and pushed it high enough to crawl through.¹⁰⁰ Once inside the office, Flood went to the file cabinet in Griffin's work area and retrieved the ring of keys for Room 122. Flood left the office via the door and met Allen in the rotunda.

The pair descended to the first floor with the intention of entering the State Office Building through an underground pedestrian tunnel that connects the two buildings. However, they soon observed that the tunnel was dark, indicating a closed exit at the other end. Nevertheless, Allen walked through the tunnel. He found the entrance into the State Office Building closed and locked. Returning via the tunnel to the State House, Allen informed Flood that they would be unable to enter the State Office Building.¹⁰¹

¹⁰⁰The window was processed for latent fingerprint impressions by Det. Craig Handley of the State Police. Two such impressions of comparable value were developed. One of them matched a known ink impression of Allen's right thumb. Indeed, the impression, found at the point that a pane of glass met its mounting, indicated that it was left by someone using his thumbs to push up the window.

¹⁰¹Allen said he decided against gaining access to the State Office Building by signing in through an outside entrance in that building controlled by security personnel because he thought his name on the access log would cause suspicion later. He said it would not appear unusual for his name to appear on the State House after-hours access log but he seldom if

Flood suggested to Allen that Allen return to the State Office Building early the next morning when the building would be accessible and few people would be present. The pair left the building with Allen still in possession of the Room 122 keys. They agreed that Allen would return the next morning to again attempt to gain entry to Room 122. It was also agreed that Allen would meet Flood in the State House-at about 8 a.m. so that Flood could return the keys to Teen Griffin's office. According to Flood, if he was unable to locate Allen by 8 a.m., Flood was to call Allen at home to learn where Allen had left the keys.

Not long after returning home, Allen spoke by telephone with Deborah Rice, the Democratic candidate in the District 38 House Race, and James Case, the lawyer for Elden McKeen, the Democratic candidate in the District 35 House race. The conversations were short and direct. Allen told each of them to disregard his Friday afternoon calls concerning the existence of additional ballots. Allen indicated to Rice and Case that his information was not as reliable as originally thought and that his prior statements about additional uncounted ballots were "someone's idea of a

ever had entered the State Office Building through the security door after hours.

practical joke." Rice and Case both remember Allen's tone and demeanor being more serious and businesslike than it had been during conversations on the previous Friday. Rice, in particular, who did not know Allen well, found the difference in Allen's demeanor significantly different.

Allen remembers making the calls to Rice and Case. Allen said it was his belief at the time of the calls that he would be successful the next morning in removing any evidence of the ballots he had altered in Room 122.

John Martin was also in the State House on Sunday, December 13. According to the building access log, Martin signed into the building at 8:39 p.m. According to both Allen and Flood, they had departed the building several hours prior to Martin's arrival. Martin confirmed that he went to his office in the State House on Sunday evening to work.

Monday, December 14, 1992: Martin Suspends Allen

At about 6 a.m. Monday morning, Allen went to Room 122 of the State Office Building. He soon discovered, however, that the lock on the door had been changed and that he was thus unable to enter the room. Allen cannot specifically recall the circumstances under which he later

met Flood to return the Room 122 keys to him. He remembers, though, that Flood did get the keys back and that Flood returned them to their rightful location in the Legislative Information Office.

Flood said he went to the State House at about 8 a.m. that morning expecting to meet Allen in the State and Local Government Committee meeting room. Flood said Allen was nowhere to be found. Flood said he called Allen's home from the committee room shortly after 8 a.m. Allen informed Flood that he would find the Room 122 keys in a drawer of the desk upon which the telephone was located. Flood opened the drawer and retrieved the keys, returning them shortly thereafter to the Legislative Information Office. Flood said Allen told him that the lock on the door of Room 122 had been changed and that he was unable to gain entry to the room.

Allen had driven back to his home in Farmingdale after his unsuccessful attempt to re-enter Room 122. He recalls that it was shortly after 7 a.m. that he received a call from John Martin. Allen said Martin seemed surprised that he was awake. Allen said he told Martin that he was just getting ready to come into work. Allen said Martin then informed him that he was placing him on administrative leave for 30

days, during which time he was required to seek treatment for his drinking problem. Allen said Martin told him that certification of successful completion of a treatment program was required before Allen could return to work. Martin asked him if he wanted the terms of the administrative leave in writing and Allen told him it was not necessary. Allen said he was relieved after Martin's call. Allen said that Martin mentioned nothing to him about Allen's December 11 calls to Rice and Hull.

Martin said he had decided on December 10 to take some action to deal with Allen's drinking problem. Before then, he said, he had not been able to confirm with any degree of certainty that Allen was again drinking.¹⁰² Martin said he left the same day for a meeting in Washington, D.C. After receiving the call from Hull on the evening of

¹⁰²Martin disclosed during an interview that Allen had been struggling with an alcohol problem for the past two years. He said he granted sick leave to Allen in the summer of 1992 so that Allen could enter a rehabilitation program in Arizona. Allen spent five weeks in the program and returned to work. Martin said he suspected on a few subsequent occasions that Allen was again drinking. However, when he confronted Allen, Allen persuaded him that he was not drinking. Martin said that he started to observe in Allen evidence of diminished performance, much as Allen had exhibited when he was previously drinking. Martin said he was confronted by a member of his staff on December 7 who insisted that Martin do something to deal with Allen's behavior. It was not until December 10, however, when he received a call in Fort Kent from an aide, that Martin confirmed beyond doubt that Allen was again drinking.

December 11, Martin said he decided to call Allen early Monday morning, December 14, and place him on administrative leave. Martin said his decision to wait until Monday morning was based on his belief that if Allen was drinking on Thursday and Friday, he would more than likely be drinking more heavily over the weekend. Martin said Allen would not be in any condition to appreciate the import of such a call over the weekend.

Martin remembers his Monday morning call to Allen very well because he considered it a most difficult call to make. He called Allen at Allen's home in Farmingdale from his home in Augusta at 7:31 a.m. He remembers the time, he said, because he looked at a clock when he picked up the telephone to make the call. Martin said that he was surprised when Allen told him that he was about ready to leave for work. Martin said this indicated to him that Allen must have been sober on Sunday. Martin said he informed Allen that he was placing him on a 30-day paid leave during which time he expected Allen to seek treatment for his alcohol problem. Martin said Allen expressed relief and informed Martin that he had wanted to tell Martin sooner about his drinking problem.

Martin said he did not disclose to Allen the Friday evening telephone call he had received from Hull nor did he discuss with Allen the issue of Allen's claims to Hull or Rice concerning the existence of additional uncounted ballots for Rice. Martin said he did not raise the issue of the Friday afternoon calls with Allen because he placed no credibility in Allen's statements to Hull and Rice. He said when Allen was drinking, Allen would make "outlandish" statements.

Hull said he spoke with Martin later Monday morning and Martin told him he had called Allen at 7:30 that morning. Hull asked Martin why he didn't call Allen over the weekend. Martin told him he wanted to make sure Allen was sober enough to understand what Martin was saying. Hull said he asked Martin specifically if he made any reference to Allen about Hull's call to Martin Friday evening. Martin responded that he did not. Hull said he asked Martin about this because he wanted to be prepared if Allen should call him.

Tuesday, December 15, 1992: Rumors of a Breach of Security Surface

Martin said he knew nothing of "this alleged break-in" until

Tuesday afternoon when Dan Gwadosky¹⁰³ called him and told him he'd heard there had been a "break-in" of the ballot storage room. Martin said he questioned Gwadosky about this information but that Gwadosky would neither tell him the source nor elaborate further on the information. Martin said it occurred to him much later that Gwadosky was perhaps intentionally discreet so as to shield his source of information. Martin said he suspected later that Gwadosky's source was Anthony Noonan's wife, a secretary in Gwadosky's office, or a Gwadosky aide married to an employee of the Attorney General's Office.¹⁰⁴

Martin said he became agitated in the conversation with Gwadosky because Gwadosky spoke only in vague terms. Martin said he told Gwadosky, "Look, if anyone's got anything, they've [sic] got to go to the AG's Office. I don't know anything." Martin said he did not know at

¹⁰³*Gwadosky, D-Fairfield, is the Majority Leader of the Maine House of Representatives.*

¹⁰⁴*In fact, Gwadosky's source was Tony Noonan who informed Gwadosky on Monday evening, December 14, of his December 11 observations in and outside Room 122 and of having been interviewed by an investigator from the Attorney General's Office the morning of December 14. It is also noteworthy that the December 11 incident involving Noonan was being referred to by Noonan and others in the Secretary of State's Office as a "break-in," notwithstanding the fact that no evidence of an actual break-in had been developed at that point.*

that point that the Attorney General's Office was already involved in an investigation. Martin said he told Gwadosky in response to Gwadosky's declination to name his source of information that "someone better tell the AG's Office."

Gwadosky recalls the Tuesday conversation with Martin. He remembers telephoning Martin in the morning and reaching him either at his home in Eagle Lake or the University of Maine in Fort Kent.¹⁰⁵ Gwadosky told Martin he had heard a rumor of a possible breach of security in the ballot room and that it was being investigated by the Attorney General's Office. Gwadosky said Martin responded by asking what it was that he had heard and who told him. Gwadosky said he told Martin generally what he had heard about the December 11 incident involving Anthony Noonan without disclosing to Martin that the source of the information was Noonan. Gwadosky said he told Martin that the information had been given to him confidentially.

Gwadosky recalls that Martin responded that he had already "heard

¹⁰⁵*Gwadosky said that Anthony Noonan came to his home in Fairfield the evening of Monday, December 14, and told him of a possible breach of security in Room 122. Noonan related the episode of December 11 and told Gwadosky that there "may be an investigation" by the Attorney General's Office.*

about it," that he was not sure there was anything to it, and that he intended to discuss it with Jonathan Hull and "have Hull take care of it." While the comment of having "Hull take care of it" puzzled Gwadosky, he said he did not question Martin about it.

Martin recalls that he did not call Hull after the Gwadosky conversation. Moreover, Martin does not recall telling Gwadosky that he intended to call Hull. Martin said there was no reason for him to call Hull because he knew that Hull would be present on Wednesday morning for the resumption of the District 38 recount. He said Hull had already informed him¹⁰⁶ that if he found anything suspicious, "extra ballots or whatever," at the recount on Wednesday, December 16, Hull intended to call the Attorney General. Martin said he had reinforced with Hull during their Friday evening telephone conversation to "disclose it quickly" if Hull found in the course of the recount "anything that even looks smelly, or appears to be wrong."¹⁰⁷

¹⁰⁶*In the telephone conversation between Martin and Hull on Friday evening, December 11.*

¹⁰⁷*Hull confirms that Martin did not speak to him about the call from Gwadosky. Hull said his first knowledge of a possible breach of security in Room 122 was the morning of Wednesday, December 16.*

Wednesday, December 16, 1992: The Crime is Exposed

On the morning of Wednesday, December 16, participants in the District 38 recount gathered in Room 122 to resume the recount which had started on December 10. Previously, Secretary of State G. William Diamond had requested that Attorney General Michael E. Carpenter join the group for a few moments that morning to brief the candidates and their representatives on the December 11 incident and the inquiry that followed it. The incident at that point in time was being referred to only as a "possible breach of security" in Room 122. Carpenter said he anticipated that he would inform the parties to the recount of an incident on December 11, the results of the inquiry by his office which had disclosed insufficient facts on which to go forward, and to suggest that there was no reason at that point to suspend the recount.

Carpenter said he joined an assembled group in Room 122 and invited some of them, the candidates, their legal counsel, and an official of the Secretary of State's Office, to accompany him outside the room. At someone's suggestion, the smaller group gathered in an adjoining room. Carpenter said the group included Democratic candidate Deborah Rice and her attorneys, Jonathan Hull and Robert Crawford; Republican

candidate Joseph Taylor and his attorney, John Bott; and Deputy Secretary of State Gary Cooper.

Carpenter said he was barely into an explanation of the events of the previous Friday when Jonathan Hull interrupted him by saying, "Mike, now that I see you're involved . . . Deborah Rice and I wish to make a statement." Hull went on to say that he and Rice had planned on seeing Carpenter that day to advise him that he and Rice had each received a telephone call from an intoxicated Kenneth Allen the previous Friday. Hull said Allen told them they were not to worry about Rice's 11-vote deficit in the recount because there were 14 votes or ballots that had yet to be found and counted. Hull also disclosed, according to Carpenter, that Allen, this time not intoxicated, telephoned Rice again on Sunday and informed her to disregard the Friday call as it was a practical joke. Hull went on to say that because of the calls he and Rice had received from Allen on Friday, Hull contacted Speaker of the House John Martin in Washington, D.C., on Friday night. Hull also said that Martin either then or shortly thereafter had placed Allen on administrative leave.

Carpenter summoned investigators from his office to Room 122. Jonathan Hull led officials to a box which was one of a small group of

boxes near a file cabinet in the room. The box was labeled as containing unused ballots from the Town of Windham.¹⁰⁸ The box, the bottom of which was not sealed well, was opened. While containing several loose unused Windham ballots and several unopened packages of unused ballots, the box also contained 15 ballots marked with votes for Rice. These ballots were soon determined to be previously unused ballots which had been altered to reflect votes for Rice.¹⁰⁹

¹⁰⁸*Prior to leaving Room 122 on the evening of December 10 and during the course of the discussion about the possibility of missing ballots, Jonathan Hull recalls Kenneth Allen directing his attention to some ballot boxes near a file cabinet in the room. According to Hull, Allen urged him to look in the boxes. When Hull remarked that the boxes were not of significance in terms of marked ballots, Allen further focused Hull's attention to one of the boxes, a box which Hull believed contained unmarked or unused ballots. While Allen was not specific about his attraction to the box, his actions indicated to Hull that there were possibly more ballots for Rice in the box. Hull discounted Allen's interest in the box given no need at the time to concentrate on finding more votes for Rice. (Rice was ahead by over 40 votes.) For his part, Allen recalls that he pointed out a box in the room to Hull and possibly Noonan as a box that might contain more ballots. Allen said it was during the time that everyone in the recount was focused on locating more ballots to satisfy a concern that about 200 ballots were missing. Allen said he walked over to the box and tapped at it with his foot as a means of pointing it out. Allen said it was not his intention to signal that the box might contain more ballots for Rice. He said he simply wished to point out that it was a box which did not appear to have been checked.*

¹⁰⁹*While Hull believes these ballots were found in the same box which was pointed out to him the evening of December 10 by Allen, it is not entirely clear. The box in which these 15 altered ballots were located, however, was among the few boxes near or on the file cabinet described above. Allen, for his part, does not recall that the box he pointed out on December 10 was the same box which he opened in Room 122 on December 11 to alter ballots in the District 38 race.*

The District 38 recount was suspended and an investigation commenced. Officials of the Secretary of State's Office, under the direction of investigators from the Attorney General's Office, immediately commenced an examination of the numerous other ballot boxes in Room 122.

The Days Following the Exposure of the Crime

On Thursday, December 17, 1992, officials continued to check other ballot boxes in Room 122 for signs of tampering.¹¹⁰ At the same time, investigators undertook interviews of all persons known to have participated in the recount process or who may have had knowledge of the circumstances surrounding the unlawful entry to Room 122 on December 11. Also, on December 17, evidence technicians from the State Police Crime Lab examined Room 122.¹¹¹

James Case, the attorney for Elden McKeen in the District 35 race, came to the Attorney General's Office on December 17 after hearing of

¹¹⁰About 250 ballot boxes and other containers, such as large envelopes containing voting lists, were thus checked on December 16 and 17. Of these, only one, "Box 1" in the District 35 election, showed signs of suspected tampering.

¹¹¹The results of the examination, like earlier independent examinations by Capitol Police and the Attorney General's Office, yielded no additional visible evidence of an unlawful entry or breach of ballot security.

the news of the discovery of altered ballots on December 16. He provided investigators with a statement detailing the telephone call he had received from Kenneth Allen the afternoon of December 11 in which Allen spoke of additional uncounted ballots in "Box 1" in the District 35 race. Case also provided details about a Sunday afternoon conversation from Allen in which Allen advised him to disregard the Friday call and to consider it as "someone's idea of a practical joke."

Armed with the information from Case about the District 35 "Box 1," investigators were present on Thursday, December 17, as Gary Cooper and Anthony Noonan of the Secretary of State's Office continued to examine ballot boxes in Room 122 for signs of tampering. Neither Cooper nor Noonan was informed of the independent information obtained from Case concerning "Box 1." The last of the District 35 boxes thus examined bore the handwritten legend, "Box 1." Both Cooper and Noonan noted that the tape over the flaps on the bottom of the box appeared to have been the subject of tampering. They both pointed out, for example, that it was unlikely that a strip of clear cellophane tape over the official State of Maine tape on the bottom of the box had been placed there by Secretary of State officials. They said they could not recall an

instance in the current series of recounts in which clear tape had been placed over the official tape bearing the State seal.

"Box 1" was later opened by personnel of the State Police Crime Lab and found to contain 14 altered blank Westbrook ballots in the District 35 race. These altered ballots all reflected votes in favor of Elden McKeen.

CONCLUSIONS

On the basis of the evidence developed during the course of this investigation, the following conclusions can be made:

1. There is no evidence that Kenneth P. Allen and Michael T. Flood acted in concert with any other persons in committing the crimes described in this Report. Their actions were not the result of a well-planned criminal venture nor was their conduct undertaken with the knowledge of others in Maine's state government. The criminal conduct in which they engaged was restricted to the events of December 11, 1992 and their subsequent attempts to conceal that criminal conduct. The crimes of Kenneth P. Allen and Michael T. Flood were the actions of two partisan operatives bent on corrupting the outcomes of two specific Maine legislative elections.
2. There is no evidence establishing that recounts in any of the legislative elections other than those in District 35 and District 38 were the subject of any criminal conduct. In the District 35 and District 38 recounts, criminal conduct was restricted to the events of December 11, 1992 and the subsequent attempts by Allen and Flood to conceal that conduct.
3. The procedures employed during the recounts of the 1992 elections were insufficient to properly safeguard the integrity of ballots at both the municipal and State level. These procedural deficiencies included the following:
 - A. Failure to ensure that all ballots in elections subject to recounts were properly transferred to Augusta when a recount was requested;
 - B. Failure to ensure that there was restricted access to the facility in which the ballots were stored; and

- C. Failure to uniformly seal and secure boxes containing ballots during the recounts.

4. There is no compelling evidence to support a conclusion that, other than Kenneth P. Allen and Michael T. Flood, any official of Maine's state government or any person involved in the election recount process engaged in criminal conduct to conceal the existence of election crimes or to obstruct or defeat the investigation of such crimes by State and Federal law enforcement agencies. Whether government officials or other persons participating in the election recount process acted reasonably and responsibly in detecting possible criminal conduct, in interpreting information suggesting the possibility of criminal conduct, or in undertaking to notify appropriate law enforcement agencies of the possibility of criminal conduct, are not questions which the criminal justice system is designed to address. The final judges of such conduct must be those in positions of public trust and, ultimately, the People of the State of Maine.