

1 Q Which room or which office is being offered for a
2 satellite office?

3 A The building was renovated in accordance with some Bureau
4 of Indian Affairs' findings where there were deficiencies, so
5 we redesigned the whole building and renovated the whole
6 building. And part of that renovation was that we needed two
7 separate waiting rooms for opposing parties, in case there was
8 any trouble. One of the waiting rooms, which is identical to
9 our tribal youth program office, has a locking door handle and
10 opens up into the -- directly into the lobby. And that is the
11 room that is made available.

12 Q How big is that waiting room?

13 A It is -- it's an odd shape, because the building is
14 odd-shaped. A couple of the offices are odd-shaped. In this
15 particular instance, it is 15 feet wide at one end, and it is
16 approximately 24 feet deep, and then it angles down to where
17 near the doorway, it is around five feet.

18 Q Does that waiting room -- is it wired with high-speed
19 Internet?

20 A Yes.

21 Q Does it have a telephone?

22 A Yes. It has telephone wiring.

23 As a part of the -- if I may add, as a part of the
24 renovation, the whole building was wired for networking. So
25 the network -- this office is also tied into the network. And

1 all we have to do is hook up a computer, and they have access

2 to a printer, copier, fax, to Internet if they choose.

3 Q Who's the contact person to talk to about setting up a
4 waiting room for a satellite office?

5 A Judge Healy. Or this particular office.

6 Q And that was my question. I appreciate that.

7 Mr. Main, are you aware that Delores Plummage went to the
8 tribe and requested to know who their contact person was?

9 A I don't know what Delores did.

10 Q Are you aware that Delores asked for a site to be offered
11 from the tribe?

12 A I'm not aware of that.

13 Q Are you aware that the tribe refused to provide a contact
14 person?

15 A I'm not aware of that either.

16 Q Are you aware that the tribe refused to provide or offer a
17 site for the satellite office?

18 A That they refused to? I'm not aware of that.

19 Q Let's look at Exhibit 9, please, Mr. Main.

20 A Pardon?

21 Q Exhibit 9.

22 A Mine are numbered different, so you'll have to -- I'm
23 sorry.

24 Q It's previously Number 52.

25 A Okay.

1 Q And if we could just go back to Number 9, quickly -- oh,
2 I'm sorry. Number 10. I apologize.

3 How many officers are going to be available for security?

4 A Pardon?

5 Q How many officers will be provided for security?

6 A I have no idea. However many the county requires.

7 Q Is unlimited manpower available?

8 A Is unlimited manpower available? I would say no. But at
9 these particular special occasions, the Fort Belknap Indian
10 community, tribal council, provides money to hire temporary
11 security guards at community functions, and they indicated to
12 me that they would do the same thing here. Or use their own
13 officers if they have to.

14 Q Do you have any idea if they have officers available for
15 this purpose?

16 A No.

17 Q What type of security would be available?

18 A Whatever type of security the county requests for the
19 office.

20 Q Is it possible, Mr. Main, that the county may need some
21 type of security that the tribe can't offer?

22 A I don't know that until I see the request.

23 Q Exactly. We don't know what kind of security is needed or
24 what kind of security is offered, so there's no way of knowing
25 whether or not the tribe can actually provide adequate

1 security; isn't that right?

2 A I do -- no. But I do know that there is security provided
3 at the polling place on election day at both locations on the
4 reservation. There used to be three locations where security
5 was provided at the request of the county. And I didn't think
6 it would be any different than that.

7 Q Mr. Main, can Blaine County on its own just come into Fort
8 Belknap and look for a site for a satellite office?

9 A No.

10 Q It needs the assistance of the tribe; isn't that right?

11 A Yes.

12 Q And so if these letters are never given to Blaine County,
13 how is Blaine County able to set up a satellite office?

14 A These letters were issued after Blaine County refused to
15 set up a satellite office.

16 Q Would you like the satellite office to be set up tomorrow?

17 A Yeah. If it could be.

18 Q And in order to do that, the tribe needs to work with
19 Blaine County by providing us information; isn't that right?

20 A They already said -- the commission already voted no.
21 Twice. So the only other option was to come to court. And
22 there was -- like I said earlier, there were several offices
23 being considered at the time. And it wasn't until we were
24 getting ready to go to court that we were forced to choose one
25 of those offices and get a commitment to show that the office

1 Q You just heard, we don't need to go through everything
2 Snuffy just said, you heard the Chief Judge -- or do you know
3 what's going on here? We haven't sequestered witnesses.

4 A Absolutely.

5 Q Chief Judge, why should he think we're serious about
6 getting this location open that Snuffy just went ahead and
7 described?

8 A Your Honor, I have text messages from our President King,
9 president of our tribal council, this morning reassuring me
10 that we do have a primary and an alternate office available and
11 ready to go, to the specifications that were shared with us.

12 I would like to add, for the most part, our philosophy in
13 the tribal council is when we have to do things for our people,
14 is we ask our subordinates or who the people we're working
15 with: "What do we need to do to make your program the best
16 program available to our people?"

17 And that's one of our philosophies.

18 And so, in this case, we'll do whatever we have to do, you
19 know. As long as the lines of communication are open, we're in
20 this -- we're fully committed to this operation, the concept of
21 absentee voting and voting registration for our constituents,
22 our enrolled memberships, equal access. We'll do whatever we
23 have to do to make that available and make that successful.

24 Q Do you agree with everything Snuffy Main just testified
25 about?

1 A Yes.

2 Q Tribal law enforcement or security, you'll get it?

3 A It's available now, as we speak, yes.

4 Q How long will it take to establish -- if the court issues
5 an order, to establish communication with county officials?

6 A We're ready.

7 Q You'll work with Blaine County?

8 A Yes.

9 MR. SANDVEN: No further questions.

10 CROSS-EXAMINATION

11 BY MS. MANN:

12 Q Mr. Moore, is there a black binder up there with a whole
13 bunch of exhibits that are tabbed?

14 A Yes, ma'am. I believe -- I don't know if this is the one
15 you're referring to --

16 CLERK OF COURT: Oh, it is.

17 A -- but there is a big black binder here.

18 Q (BY MS. MANN) Yeah.

19 If you could please flip to the one under Number 35.

20 A Fort Belknap voter registration 2012 submitted by Jesse
21 James-Hawley.

22 Q Nope. I think we're on the wrong page. Let me look.

23 A Oh. Okay. Delores Plummage, Chairperson, Tracy "Ching"
24 King -- yeah. Exhibit 35.

25 Q Yes.

1 THE COURT: Not only is the causation --
2 Ms. Frankenstein, do you have something to say? The 14th
3 Amendment requires actual discrimination, causation -- I'm
4 talking about causation under Section 2 of the Voting Rights
5 Act.

6 MS. FRANKENSTEIN: Section 2 of the Voting Rights Act
7 still requires the plaintiff, it's the plaintiffs' burden to
8 show that the challenged practice, which in this case is a lack
9 of a satellite office in the three places demanded, is the
10 cause of the injury. The injury being vote denial. That's
11 still required. The U.S. Supreme Court has said that over and
12 over.

13 And while I think Mr. Sandven is talking more about a
14 depressed socioeconomic causing depressed turnout, that's
15 different than the challenged practice causing the injury
16 alleged.

17 THE COURT: No. I agree with you. I mean, in
18 looking at this Gonzalez case out of the Ninth Circuit this
19 year, they're talking about a Section 2 violation. They
20 reiterate: "Proof of causal connection between the challenged
21 voting practice and prohibited discriminatory result is
22 crucial. Bare statistical showing of disproportionate impact
23 on a racial minority does not satisfy the Section 2 results
24 inquiry. But let's -- well, and you may be right, Mr. Sandven,
25 considering the exact nature of this case. But with your

1 statement, are you telling me that not only do you not have to
2 prove this causation, but that you're making that statement
3 because you don't have any proof?

4 MR. SANDVEN: No. I do, Your Honor. I do. I wore a
5 belt and suspenders today, and we're ready to proceed with some
6 reports and evidence going along with that.

7 But again, where there is evidence, because we all know
8 that there's disproportionate educational, employment, income
9 level, living conditions arising from past discrimination when
10 the court takes judicial notice at the other voting rights
11 cases cited in the United States Attorney General's brief. All
12 right? And what the Senate Report said: "Where these
13 conditions are shown, plaintiffs need not prove any further
14 causal relationship."

15 THE COURT: Yeah. There isn't any proof in this case
16 yet, but from a practical standpoint, when -- you know, when
17 you look at those senate factors, one of the factors is the
18 history of official state discrimination against minority with
19 respect to voting and that sort of thing. I mean, there are
20 cases where there were big districts. And Native Americans
21 couldn't, in essence, elect a Native American to county
22 commission and that sort of thing. And then they were ordered
23 or, in essence, redistricted and make some districts conform
24 with Native American populations. And then, of course, Native
25 Americans began to be elected to various positions. I mean,

1 there are those kinds of facts out there in this state that
2 exist, that undoubtedly satisfy some of those senate factors in
3 the cases, the Gingles case talks about the -- well, it set
4 forth the senate factors that the senate ultimately adopted.
5 You don't have to have a certain number of them satisfied and
6 that sort of thing. So it's a fact-intensive determination
7 considering all those factors.

8 But let's proceed.

9 MR. SANDVEN: Can I reply briefly, Your Honor?

10 THE COURT: Sure.

11 MR. SANDVEN: All right.

12 When the senate was adopting that -- those factors that
13 you talked about, when the senate was adopting the totality of
14 the circumstances in 1982, while they were adopting it, they
15 said that there didn't need to be any further causal nexus
16 between the disparate socioeconomic status. They said that
17 they didn't need to go any further when you had a situation
18 like this. Right when they were adopting those factors. So,
19 Chief Judge, even before you get to those factors, you got to
20 look at page 29, Note 114, that says in situations where you
21 have disproportionate educational, employment, income level,
22 and living conditions, there is no further nexus that needs to
23 be established. And Judge, I think they're talking -- when I
24 read the Senate Report and looking at that Note 114, Section
25 2(b), and this is under Section 2(a) that --

1 THE COURT: I don't have that in front of me. I
2 don't have the Senate Report that you're talking about. Tell
3 me which --

4 MR. SANDVEN: Senate Report Number 97-417.

5 THE COURT: No. Tell me where it is in here.

6 MR. SANDVEN: We just cited. We didn't print the
7 whole report, Judge. Over lunch I will.

8 THE COURT: Well, okay.

9 So it isn't in the materials that have been filed? Is
10 that true?

11 The question is: I don't have it yet from you folks; do
12 I? That's just -- I don't have it; do I? It's okay. But I
13 don't have it. Is there someplace I can look in here and pull
14 it out?

15 MR. SANDVEN: The whole act -- I'll pull it over
16 lunch. No, Judge, I didn't print out the whole document.

17 THE COURT: Okay.

18 I don't have it. So let's proceed.

19 But you're going to get it for me, and my law clerk, I'm
20 sure, will -- if you have it available, you can get it for me.

21 MR. SANDVEN: I'll -- yeah, if I had 20 minutes in my
22 truck, I could print it out for you, Judge.

23 THE COURT: You're going to get 20 minutes in your
24 truck here pretty soon. And when I say "pretty soon," I don't
25 mean -- probably not this morning, but we're going to take a

1 K-E-N-N-E-T-H. E. Peppers, P-E-P-P-E-R-S. Facility manager
2 for the Northern Cheyenne Tribe.

3 DIRECT EXAMINATION

4 BY MR. SANDVEN:

5 Q Sir, yesterday the Chief Judge had a lot of questions, or
6 there's a lot of questions about what's a suitable location.
7 Have you researched this?

8 A Yes, I have.

9 Q Where?

10 A In Lame Deer, where the voting takes place there right in
11 the tribal chambers, we have both the tribal election goes on
12 in the tribal chambers and the county and state elections in
13 the same chambers.

14 Q On election day?

15 A Yes, on election day.

16 Q And what's the address for the tribal council chambers?

17 A 600 North Cheyenne Avenue.

18 Q All right.

19 Can you go ahead and do your best of describing to the
20 court the physical dimensions of the room?

21 A Okay.

22 It's probably a 30-by-30 room. And then it's got double
23 doors that access right out to the front doors, which are
24 ground level. We have handicap parking on both sides of the
25 entry into there. On the north side of the building, we have a

1 handicap ramp that accesses the building. And the office that
2 the tribal chairman explained to me is adjacent to the voting
3 area, and we have access to phones, fax machines, whatever's
4 needed in the office.

5 Q All right.

6 So there's two rooms that are available?

7 A Yes, uh-huh.

8 Q But they can just -- they can be used exclusively for
9 early voting?

10 A Yes. Uh-huh.

11 Q Are they ADA accessible?

12 A Yes. Uh-huh.

13 Q How do you know that?

14 A We have handicap bathrooms in the public bathrooms, all
15 the office bathrooms in the tribal chambers and the council
16 chambers are handicap accessible.

17 Q And on precinct day, this is where the folks come?

18 A Yes.

19 Q Or on election day, that's a voting location?

20 A Yes, uh-huh.

21 Q How's the parking?

22 A Parking is -- plenty of parking area, yes. For the -- you
23 know, we've never had trouble with -- I'm in charge of
24 security, and we've never had trouble getting anybody parked
25 or, you know, if there's special needs for someone that comes

1 in, you know, we have security right there, we assist them in
2 any way they need.

3 Q How do I know those rooms will just be used for voting,
4 and someone else won't be moving in and out of there doing
5 other tribal work?

6 A Well the tribal chambers -- I was called into the tribal
7 president's office, and they directed me to say that they were.

8 Q When was that?

9 A That was last night.

10 Q Who directed you?

11 A The tribal council and chamber, president's office.

12 Q So who directed you? The tribal president and who else?

13 A Council members.

14 Q And was council in formal session?

15 A No.

16 Q But there was several council people that reaffirmed?

17 A Yes, uh-huh.

18 Q And how soon could this occur?

19 A At your -- at your discretion, I imagine, yeah.

20 Q And then you said you're in charge of security?

21 A Yes. Uh-huh.

22 Q If there were any concerns about security on the office,
23 could you work out -- could you address those?

24 A Yes, uh-huh.

25 Q How would you do that?

1 A Well, depends on what the situation was.

2 Q What resources are available to you, sir?

3 A Well, we have the local law enforcement agency. You know,
4 we've got EMTs and that.

5 Q So -- and there's a fax and phone right in those rooms
6 that you just described?

7 A In the room -- yes. Not exactly in the room, but right
8 adjacent to it in the main office.

9 Q And they would have access to that?

10 A Yes, uh-huh.

11 Q How long have you been facilities manager?

12 A It will be two years this coming February.

13 Q Do you think you could work with county officials?

14 A Yeah.

15 Q Why do you say yes?

16 A Well, we work with them. They want us to set up an area
17 for, oh, to register people, well, we accommodate them there,
18 you know. There's different requests we get. We work with
19 either the county, state, or who needs to come in.

20 MR. SANDVEN: No further questions on direct, Judge.

21 THE COURT: Ms. Mann.

22 CROSS-EXAMINATION

23 BY MS. MANN:

24 Q Mr. Peppers, when did this space become available?

25 A Oh, you know, I really don't know exactly when, but you

1 know, I was just called up there yesterday and they explained
2 to me what the situation was, and, you know, that's, you know,
3 when I was brought, you know, up to date on it anyway.

4 Q Who called you up there?

5 A The tribal chairman's office.

6 Q Do you know who at the tribal chambers office you spoke
7 with?

8 A Jolene, the secretary.

9 Q The room that's available, is it -- does it have wired
10 high-speed Internet available?

11 A Yes.

12 Q Is it a secure Internet connection?

13 A Secure meaning -- well, it's run through the tribe anyway.
14 You know, there's limited deals we can do, as long as it's
15 approved through the tribe, you know. I guess it would be
16 secure that way.

17 Q Are you aware that to run the Montana Votes system, they
18 need a secured, high-speed Internet connection?

19 A Uh-huh.

20 Q And are you -- is your testimony today that that is
21 available or not available?

22 A I'd have to, you know, clarify that.

23 Q You're not sure?

24 A Yeah.

25 Q And there's been no tribal council decision on using this

1 site for absentee voting; has there?

2 A As far as I understand, the letter I got out there, I do
3 have a letter in the car, you know, that states that that was
4 -- that was the designated area anyway.

5 Q Doesn't the tribal council have to vote and make a
6 decision on this issue?

7 A It sounds like it was already done from the letter I had.

8 Q Who's the letter from?

9 A Tribal Chairman, Leroy Spang.

10 Q Can the chairman do that without a vote from the tribal
11 council?

12 A Well, you know, I'd have to, you know, clarify that. The
13 letter is out there in the car if you guys want to look at it.

14 Q Tribal elections, are those going on right now?

15 A No. They'll go on the same day as the state and county,
16 and they go on in the same location in the tribal chambers.

17 Q On election day?

18 A Yes. Uh-huh.

19 Q Do you have any commitment from local law enforcement for
20 security?

21 A Oh, yeah, we do, yeah. They are -- as soon as -- if we
22 need them, the President calls them, they come right up, you
23 know. We have both the BIA and --

24 Q Have you spoke with someone from the BIA about this issue?

25 A This issue, no, huh-uh.

1 Q Have you spoke with anybody from any local law enforcement
2 about this issue?

3 A No, huh-uh.

4 Q So you're just assuming that they would be available?

5 A Well, they are, you know. They're a part of our system.

6 Q And so there's telephone service in the room or next to
7 the room?

8 A In the room.

9 Q In the room?

10 A And there's a computer, you know, high-speed computer, but
11 I don't know how -- what you call it -- secure it is or --

12 Q Secure?

13 A Yeah.

14 Q Okay.

15 MS. MANN: No further questions, Mr. Peppers.

16 THE COURT: I need to stop.

17 I have a fire brewing. Not literally, now.

18 MS. MANN: You're going to put me in labor.

19 THE COURT: Don't -- I have -- just sit here, it's
20 going to take me a minute. I got a problem in another case I
21 need to put the fire out, so to speak. It's a figure of
22 speech.

23 (The Judge left the courtroom at 8:59 a.m.)

24 (The proceedings were off the record briefly.)

25 (The Judge returned to the courtroom at 9:01 a.m.)

1 Q I apologize, Mr. Peppers, I'm having a hard time hearing.
2 Could you maybe raise your microphone just a tad?

3 A There you go.

4 Q And if you could just, I didn't catch the answer to your
5 question. You've been designated to speak on this issue?

6 A Yes, uh-huh. They called me yesterday to the tribal
7 chairman office, and Leroy Spang was out, but they said they
8 wanted me to come up and represent the tribe and talk on behalf
9 of the tribe, because I am the, you know, facility manager.

10 Q Who's "they"? Who are you referring to?

11 A The council, Leroy Spang's office. Vernon Small, the
12 councilman, was in there.

13 Q This letter also does not indicate, Mr. Peppers, if the
14 space is going to be provided free of charge?

15 A If the -- excuse me.

16 Q Is the office space going to be provided free of charge?

17 A Yes, uh-huh.

18 Q How do you know that?

19 A That's -- they indicated that it was. And I know the
20 tribe usually accommodates, you know, veterans, handicap, you
21 know, to the best of their ability without, you know --

22 Q Who indicated that it would be free of charge?

23 A Well, I can't say, you know. But I did -- they very
24 seldom ever charge. Do they charge the county for using the
25 tribal chambers to vote in? Probably not.

1 Q Thank you, Mr. Peppers.

2 THE COURT: You can step down, sir. Thank you.

3 (Witness excused from the witness stand.)

4 THE COURT: Now, let's get back to your statement.

5 Tell me if I'm wrong: The senate factors were passed in
6 1982. And that's the report you were reading from; right?

7 MR. SANDVEN: Yes, Your Honor.

8 THE COURT: And that was, I think, legislative
9 history you were reading from; right?

10 MR. SANDVEN: Yes, Your Honor.

11 THE COURT: Thornburg versus Gingles that I think was
12 -- it was a case that talked about these senate factors that
13 was decided in 1986. And there have been cases that have
14 discussed Section 2 of the Voting Rights Act, Supreme Court,
15 and, I think, Circuit Court cases since then; correct?

16 MR. SANDVEN: Yes, Your Honor.

17 THE COURT: I think the rule is that you don't look
18 to legislative history when you've got Supreme Court and
19 appellate court cases construing the law. Correct?

20 MR. SANDVEN: Correct. That's why the U.S. Attorney
21 General's Office, on page 6, or page 5 and 6 -- or beginning on
22 page 5 of their brief, Document 45 filed in this case, went
23 ahead and referenced decisions, Operation PUSH -- these are the
24 cases that are the closest cases on point to what's going on
25 here. U.S. Attorney General's Office was, we believe, was

1 expanded to include drivers -- a driver examiner one day a week
2 in Browning. And in the last election, we started providing a
3 ballot box during elections. We could accept ballots there.

4 THE COURT: There's a polling place?

5 THE WITNESS: Not a polling place. No. It was just
6 that we had the availability to drop ballots at the satellite
7 office during the period that they can do that.

8 THE COURT: During that 30-day period?

9 THE WITNESS: Right.

10 We did that at the last election, we started that process.
11 In this election process now, we've had the discussion on
12 providing same day voting application, registration and same
13 day voting at the Browning office. And addressed the different
14 scenarios, I guess, and how we could make that work.

15 And our elections judge realized there was some
16 difficulties in some of that, because I think some of the
17 misunderstandings that we've discussed here in this hearing,
18 transporting ballots and secure line. And so we looked at a
19 lot of that.

20 We have one secure Internet line to the Department of
21 Justice for the driver's examiner in that office. We've
22 discussed the possibility if we needed another secure line. So
23 the plan that we came up with in our discussions with the
24 elections judge and the commissioners was that the voters could
25 come into the satellite office, request absentee ballots,

1 register there, that application would be faxed to the
2 courthouse in Cut Bank where our clerks would put it into the
3 Montana Votes system, and a ballot would be issued there. And
4 then our elections clerk or one of her two deputies would then
5 take that ballot and transport it to Browning so that voter
6 could vote there at that time on the same day.

7 THE COURT: Can a person come into the satellite
8 office in Browning, apply for an absentee ballot, and have it
9 printed right there?

10 In other words, is there one of these Clerk and Recorders
11 with the C registration, the one -- is there a Clerk and
12 Recorder or deputy that sits in the Browning office that can
13 access the state --

14 THE WITNESS: Not in the satellite office, no.

15 THE COURT: Okay.

16 That's why they have to transport them from Cut Bank?

17 THE WITNESS: It's printed or issued in Cut Bank and
18 then, yes, they transport it from Cut Bank to Browning.

19 THE COURT: Somebody delivers it?

20 THE WITNESS: Right.

21 And that was some of the discussions we had with our
22 elections and Clerk and Recorder that we would -- Commissioners
23 agreed that that would be an expense on our part that we had
24 budgeted for, the Clerk and Recorder budgeted for, and we
25 approved the budget to do that.

1 THE COURT: I didn't mean to interrupt you, but I
2 thought I'd get to it.

3 Q (BY MR. SANDVEN) So are they doing it or not?

4 A As far as I know, in our discussions, I'm not aware the
5 last couple of days since I've been on the road. What I am
6 aware of is that prior to my leaving town, that one person had
7 -- we've got a lot of requests and ballots were issued, but
8 they were chosen to vote them at home and drop the ballot off
9 there.

10 One person requested a ballot in the Browning office. The
11 Clerk and Recorder, he came in, like, at 4:20 -- or made the
12 call and was faxed down at 4:20 p.m., the close of the day.
13 But our Clerk and Recorder brought the ballot up to him. And
14 he was there to meet her. He took the ballot, and then at that
15 time, he decided that he wanted to take it home and vote it
16 that night and bring it back the next morning. So it's
17 happened once, although he didn't physically vote it right
18 there at the satellite office. But one ballot was delivered as
19 far as I know, unless there's been more since then and I don't
20 have any idea. I haven't been in contact with them.

21 Q When did you first learn that some of the folks in your
22 area wanted a satellite location in Browning?

23 A Well, prior to my being elected, that was always an issue.
24 And it was kind of an issue during my campaign, is that there
25 was no services available in Browning and there was a lot of

1 difficulty traveling to the county seat to conduct any kinds of
2 business that you have to conduct with the county. And so it
3 was kind of part of my campaign in 2003 and four, that we would
4 work, or that I would work with other commissioners and we
5 would look at the possibility of trying to get satellite
6 services in Browning to provide the basic services that people
7 in the -- you know, address the problems of access to county
8 services.

9 So it was a long process to try to work with other
10 commissioners. When I first started, it was a little more
11 difficult. And then as we moved on, looking at budgets and
12 process, you know, we finally were able to do that. I'm not
13 sure the exact date it was opened. We had to find a location.
14 The mayor at the time was very gracious in offering a spot in
15 their city hall meeting room where we started. And then he had
16 some money, and I think we collaborated with the city
17 government and they built a little addition on the city hall
18 strictly for county operation. And we're still looking to
19 expand that office and those services. We need a larger
20 facility. And so we have an ongoing process with the city
21 government, and also the tribe, to try to expand services in
22 our satellite office, larger facility, and possibly another
23 worker.

24 Q Did you see the Secretary of State election advisory on
25 how to do satellites? Or did you ever have any discussions on

1 that? Kind of a recipe card for how you do it?

2 A I'm not sure if I did. I don't recall. At the time we
3 were doing the satellite office, I don't think so. It was just
4 kind of something we were doing on our own.

5 Q Yeah. When did your folks really start working hard on
6 the satellite election office this election cycle?

7 A On this election cycle?

8 Q Yes, sir.

9 A Probably when we really started addressing it was probably
10 September sometime.

11 Q That's when you went to work and said: "Let's make this
12 happen"?

13 A Yeah.

14 Q And you were able to make it happen by when?

15 A Well, I think we finally agreed -- all agreed that we
16 could make it happen. It was probably -- gosh, I don't know
17 exactly. October, maybe. It was -- it was kind of difficult
18 getting to that point, because the elections process was
19 starting. The clerks were doing military ballots, starting to
20 stuff the ballots, and I'm not sure their dates that they do
21 that right now. But it started about the time elections
22 started. And elections in our office become real busy, kind of
23 a hectic time. Everything seemed like it all started at once.
24 So it's been kind of a hectic time to try to get
25 everything going at once.

1 sequential order with a number on it. And she was concerned
2 about having to cross out numbers and change that sequence;
3 that there might be some problems with the way those ballots
4 are recorded and stuff like that. And so the issued ballots
5 that she would transport would already be issued, that number
6 would be assigned for that ballot. And it's, you know,
7 recorded or accounted for, that that would be more secure, or
8 something.

9 **Q** What's your understanding, going forward until November
10 6th, until election day, of what's going to occur for early
11 voting at that satellite office in Browning?

12 **A** Well, my understanding is: We're going to go as the -- as
13 we have discussed a number of times that if somebody comes in
14 and wants to vote right there, that they can request a ballot
15 right there, their request will be faxed to the courthouse, the
16 elections office at the courthouse in Cut Bank. It will be
17 checked with the Montana Votes system. Their signature will be
18 verified and their status as a registered or non-registered
19 voter, and a ballot will be issued, a ballot will be delivered
20 to the Browning office as soon as it runs through that system.
21 Probably a few minutes, five minutes, and that ballot will be
22 delivered to the Browning office and that person can vote
23 there.

24 If they requested an absentee ballot, what's delivered at
25 the Browning office, we have a little voting booth set up

1 there, they could walk into that little voting booth and vote
2 it right there, or they could take it home with them and vote
3 it and return it in the next day, or put it in the mail.

4 Q Do you recall when the commission made a decision, this is
5 what we're going to do, the process you just described?

6 A I don't recall an exact date. We had a couple of
7 discussions on it. It was probably in September sometime, I'm
8 thinking.

9 Q And that was enough time to go ahead and get the system in
10 place that you just described?

11 A Well, it seemed like it was really getting difficult.
12 Like there wasn't enough time. Like I talked about, opening
13 this satellite office, our whole plan is to have all the
14 services available. And we're working toward that goal, but
15 it's been a slow process, and we assumed we would have a lot of
16 time to look at all of the things, like the secure line and the
17 extra personnel and the location and accessibility issues and
18 all of that stuff. So when it kind of happened this time, it
19 seemed like we were really up against the gun. So it didn't
20 seem like we had enough time to really implement everything.
21 It certainly wasn't enough time to make our Clerk and Recorder
22 comfortable. She was very uncomfortable with the timeframe and
23 the late hour of when we were asked to do all of this. I mean,
24 it's a process we plan on and have always worked toward
25 but . . .

1 A Right.

2 Q Okay.

3 And that's 22 calendar days?

4 A In an election year, yes.

5 Q I think it's 22 days in a non-election year, as well?

6 A A little bit more immediate this time of year.

7 MR. QUINTANA: No further questions, Your Honor.

8 THE COURT: What more could you have?

9 MR. SANDVEN: I want to hand you your report, Judge,
10 that you asked for earlier.

11 I don't have anything on redirect.

12 THE COURT: You can step down, sir.

13 THE WITNESS: Thank you.

14 (Witness excused from the witness stand.)

15 MR. SANDVEN: Can I hand your law clerk the 243-page
16 Senate Report 97-417.

17 THE COURT: Go ahead.

18 MR. SANDVEN: On page 189, footnote 114.

19 THE COURT: Yeah. This is the -- that's the
20 legislative history; isn't it? Huh?

21 LAW CLERK: Yep.

22 THE COURT: Yeah. Do you agree that the -- when you
23 have cases construing a statute, you don't go to the
24 legislative history to reconstrue it?

25 MR. SANDVEN: That's the rule, Judge.

1 A Because the law states that.

2 Q Who else works in your office?

3 A I have three other employees besides myself.

4 Q How many people in the county of Blaine have a C number in
5 order to access MT Votes software?

6 A Everybody in my office.

7 Q Anyone other than that in the county?

8 A No. It is not anything to do with an election judge.

9 They are only certified and trained to work a poll election.

10 Q So there are four total people in Blaine County with a C
11 number. True?

12 A Correct.

13 Q Are you and your employees at capacity as far as work
14 load?

15 A Yes. And in fact, we're over our work load, yes. It's
16 very, very busy and takes me -- I work a lot of 12-hour days
17 just to get things done. And with this being election time,
18 our regular Clerk and Recorder duties do not go away. It's
19 just additional, on top.

20 Q Let's start with your responsibilities outside of election
21 season. Well, I shouldn't put it that way. Other than
22 election services, what types of duties are you responsible for
23 in your office?

24 A As Clerk and Recorder -- sorry -- try to remember
25 everything, because there's so many things. I'm the chief

1 A Regular registration is -- voter registration is taken up
2 until the close of registration, which was October 9th at 5
3 p.m.

4 Late registration started October 10th.

5 And what late registration is, the difference is, those
6 people who didn't for some reason get a chance to register to
7 vote by the close of registration, they can complete a voter
8 registration card in my office, and then they are issued an
9 absentee ballot at that time in my office. They can take that
10 absentee home with them, or they can choose to vote it there.
11 But that ballot has to come back to my office.

12 Q Why do you say that? What requires that?

13 A State law.

14 Q So when we're talking here in the courtroom yesterday and
15 today about registration, we need to be careful whether we're
16 talking about regular versus late; correct?

17 A Correct. Because they are different.

18 Q Now, if we opened up a satellite office elsewhere during
19 this 30-day period, and we're talking about late registration,
20 that necessarily means an absentee ballot is issued at that
21 time; true?

22 A Correct. Through the Montana Votes system.

23 Q I think this is a good time for you to explain to the
24 court how you use the Montana Votes system, how that's related
25 to late registration and the issues involved in this case as

1 we've heard.

2 A Okay.

3 What you do have to have, a state-issued C number. And
4 that, with your password, allows you to sign into the State
5 Montana Votes. And if I'm going to be issuing, doing a late
6 registration, I have to go through it, register that voter to
7 vote. And that means going through, verifying, also, which you
8 need a C number, to verify their Social Security number or
9 their Montana driver's license number.

10 So once you get that verified, then you go through the
11 process of registering them to vote, which means inputting
12 their name, their date of birth, their mailing address, their
13 physical address.

14 Q Can those be two separate things?

15 A Yes.

16 Q So one can indicate where they reside, their physical
17 address, but they can also have a ballot sent to any address
18 that they write down?

19 A Well, on an application for an absentee ballot, right on
20 that form, you can indicate where you would like your ballot
21 mailed to.

22 Q And that can be anywhere they choose?

23 A Correct.

24 Q Okay.

25 Please continue.