

1 Q (BY MR. SANDVEN) All right.

2 And one of the guys ran across the street. Is this the --
3 what is this thing right here?

4 A This is Yellowstone County.

5 Q But what is it?

6 A I'm trying to figure it out.

7 Q Okay.

8 A "Check here if the printed address on this card is not
9 correct."

10 Q Are these the envelopes you just referred to?

11 A Well, this here looks like it's maybe what they send out
12 for their annual absentees.

13 Q Okay.

14 A That's what this is.

15 Q Okay.

16 But does this look like the envelopes that you were just
17 describing?

18 A My envelopes don't look like this, no. But --

19 Q But there's a smaller envelope?

20 A Okay.

21 This is the secrecy envelope that the people put their
22 voted ballots in; they seal it; and they put it in the
23 affirmation envelope. And on this affirmation envelope right
24 here (witness indicating) is where that label with the bar code
25 has to go that has their name on it. It has the bar code that

1 identifies that voter's ballot.

2 THE COURT: Where does that come from?

3 THE WITNESS: It comes from the Montana Votes
4 computer system. It's part of the Montana Votes that you have
5 to have a secured Internet access to make the label machine
6 work. So it has to come out of the Montana Votes system and
7 equipment.

8 Q (BY MR. SANDVEN) And we'll get to that ballot. That's
9 kind of the last step.

10 But can I have the envelopes back?

11 All right.

12 So we've got a little envelope and a big envelope. All
13 right? So, so far, you've went ahead at the satellite office
14 when I came to ask for the opportunity to vote, you went ahead
15 and called the main office and said: "What ballot number we
16 on" to maintain sequencing. They went -- you went ahead and
17 faxed the signature to make sure it's confirmed; correct? In
18 the hypothetical now.

19 Then you went --

20 THE COURT: Wait. Wait. She's got to answer.

21 A Well, I'm just trying to listen to his process that, you
22 know, he's now the Election Administrator.

23 Q (BY MR. SANDVEN) No. No. I'll go ahead and start over.

24 A Okay.

25 Q And we'll go step-by-step.

1 Q That the system issues, yes. Then you --

2 THE COURT: You know, Mr. Sandven, I always want
3 questioning done from the podium. Can you do it from the
4 podium?

5 MR. SANDVEN: Yes. Can I approach once or twice
6 then? Or no?

7 THE COURT: Well, sure. But give her the stuff you
8 need, and then tell her what to pick up. It's easier for me to
9 hear.

10 MR. SANDVEN: Yes, sir.

11 THE COURT: I mean, we got her getting the sequential
12 number, I think. Right?

13 THE WITNESS: I think.

14 THE COURT: Okay.

15 MR. SANDVEN: One more approach, and then I'll just
16 talk from the --

17 THE COURT: Sure. You don't have to ask. But leave
18 the stuff up there, and then she can just --

19 MR. SANDVEN: All right.

20 So when I'm referencing documents, there's Number 1,
21 Number 2, Number 3, Number 4, ma'am.

22 THE WITNESS: Okay.

23 Q (BY MR. SANDVEN) All right.

24 The first document when I come at the satellite location
25 to go ahead and vote is: I have to request your form to

- 1 request an absentee ballot; correct?
- 2 A Yes. You have to have written request.
- 3 Q So then you could hand me that first form, Number 1?
- 4 A Okay.
- 5 Q And you hand that to the voter, and I go sign it?
- 6 A They complete it and sign it.
- 7 Q And then I bring it back to you?
- 8 A Okay.
- 9 Q All right.
- 10 Then you go ahead and take that completed form, my request
- 11 for an absentee ballot, and you put it in the fax machine in
- 12 your little office?
- 13 A Okay.
- 14 Q Okay?
- 15 You go ahead and give it a little bit to go ahead and get
- 16 printed off at the main office?
- 17 A For them to receive it, yes.
- 18 Q Yes? All right.
- 19 And then you wait for the person with that C designation
- 20 to go ahead and evaluate the signature? Yes?
- 21 A Yes.
- 22 Q And Number 2, to go ahead and confirm that the ballot
- 23 number, and that's the second document you're looking at?
- 24 A Okay.
- 25 Q That that document is numbered correctly. And you would

- 1 ask the main office, the one with the C access; right?
- 2 A Would ask them what that ballot number needs to be.
- 3 Q And if it was okay, you wouldn't do anything? If the
- 4 number was consistent with what they said, you wouldn't do
- 5 anything?
- 6 A That's correct.
- 7 Q All right.
- 8 And then, if you did need to change it -- and this is all
- 9 from the Hays precinct is the example, if you look at the lower
- 10 right-hand corner, I might have to go ahead and draw a line
- 11 through the Hays 001, for George, for myself, and insert --
- 12 strike that out -- 002. Correct?
- 13 A Yes. That's what I explained earlier.
- 14 Q Yep. And then I could go ahead and initial it. And then
- 15 after I've initialed it, I could take my notebook or my log
- 16 over here and just do this -- make a note: "I changed Hays
- 17 1" -- or fill out the log -- "from 001 to 002." Couldn't I?
- 18 A On your log, yes.
- 19 Q Then I go ahead with that ballot and I -- the number part
- 20 doesn't go with the ballot; correct?
- 21 A Correct.
- 22 Q So you just -- you keep the number part, you hand me the
- 23 ballot; correct?
- 24 A (Nods head affirmatively.)
- 25 Q And then I -- yes?

1 A What they will get from me are the ballots, the
2 instructions, the secrecy envelope, and the affirmation
3 envelope is what I will hand back that voter.

4 Q All right.

5 So the only thing you're missing up there, you've got the
6 two envelopes, what I missed was the directions?

7 A You missed that I need a label to go onto this envelope.

8 Q We'll get into that last.

9 A And if you look at that envelope, after the voter votes
10 it, they seal this. The label needs to go underneath this
11 flap, if you look at this envelope. How is that label going to
12 get under there, because once they've voted, it needs to be
13 sealed.

14 Q We'll get to that piece. That will be next.

15 A Okay.

16 Q All right.

17 So, you go ahead and you've handed me my part of the
18 ballot, and you've kept the number part in this hypothetical.
19 Then you've handed me both of those envelopes. And then you've
20 handed me the directions.

21 Do you understand?

22 A I do. But the normal process is: The label goes on this
23 affirmation envelope before I hand it to the voter.

24 Q Understood.

25 We'll get into the label and the normal process.

- 1 A Okay.
- 2 Q All right.
- 3 So you go ahead now, one more time: You've handed me, I
- 4 guess it's the two envelopes, the directions, and the ballot?
- 5 A Yes.
- 6 Q Understood?
- 7 A Yes.
- 8 Q So then I go over here, and I vote. And then I put my
- 9 ballot inside the little envelope; correct?
- 10 A The secrecy envelope.
- 11 Q And then I put it inside the big envelope?
- 12 A And seal it.
- 13 Q And seal it. All right.
- 14 And then I could come back to you, I could sign the
- 15 outside of the envelope and hand it to you?
- 16 A If you look at this envelope, the signature goes here
- 17 (witness indicating), the label goes here. So, after the voter
- 18 has put in their secrecy envelope, the voter needs to seal
- 19 this. And seal it. And this is all covered. I cannot get to
- 20 it now, again, because this ballot is voted. I can't open this
- 21 and put -- when am I going to put the label on inside this? Am
- 22 I going to open this voter's envelope and mess with it?
- 23 Q But why couldn't you watch that voter, protecting the
- 24 integrity of the process, insert that envelope into the ballot
- 25 box without that strip?

- 1 A Okay.
- 2 Q No. No. Let me finish.
- 3 A Okay.
- 4 Q And then that ballot box, at the end of the day, would go
5 ahead and be taken down to your main office, where they would
6 hand count those?
- 7 A It has to be received into the Montana Votes system.
8 Whose ballot is this now? Everything is covered up. I have no
9 idea whose ballot this voted ballot is, to go and scan into
10 their record saying: "I have received their ballot." There's
11 no name on here, which there shouldn't be any name, because
12 it's a secret ballot. How am I going to receive this ballot
13 where there's no bar code for me to scan it into the Montana
14 Votes system?
- 15 Because I have to prove that that person has already
16 voted. So they don't go somewhere else and vote again. How do
17 I do that?
- 18 Q Can I hand you your exhibit.
- 19 A Uh-huh.
- 20 MR. SANDVEN: Can I approach, Your Honor?
- 21 THE COURT: Sure. What exhibit is it?
- 22 MR. SANDVEN: It's her affidavit in defendants' book.
23 It's in 6.
- 24 MS. FRANKENSTEIN: Number 6.
- 25 Q (BY MR. SANDVEN) You have it in front of you?

1 A If I can find what page you're on.

2 Q Page 11, paragraph 41.

3 Okay.

4 In paragraph 41, you say that you "processed 342 absentees
5 that have been sent back thus far, which requires scanning the
6 bar code to get the voter to come up. And then checking the
7 signature against the scanned image in the computer. Then
8 hitting process, then filing away in a proper precinct to await
9 election day when it can be opened by counting board and run
10 through the counter to be counted."

11 Why do you need the bar code? Why can't you just go off
12 the signature if you're counting it?

13 A The bar code is what I scan and it brings up that voter's
14 record, so that I can go in and state that that ballot is going
15 to be either accepted or rejected. So that's why I need the
16 bar code to bring up their record.

17 Q But you say in your affidavit that you're checking the
18 signature?

19 A Which we do the signature, too, yes.

20 Q So why isn't it sufficient, just like the fax machine when
21 you issued the ballot in our hypothetical?

22 A But how am I going to get that label on with the bar code?

23 Q Let me finish. Let me finish.

24 THE COURT: Yeah. Let him finish.

25 Q (BY MR. SANDVEN) So then, when you go ahead and you fax

1 that signature over, and it gets checked by the person, by the
2 fancy C-1 or the C license, why isn't that sufficient at the
3 end of the day, too?

4 And what I'm getting at is: You check the signature
5 against the scanned image in the computer. On that outside
6 envelope, you've got that signature. Why isn't that
7 sufficient?

8 A Because the label has the person's name on it. It has
9 what precinct they're in. It has what ballot number they were
10 issued. Because I have to do a reconciliation of all of my
11 ballots received before they go to the counting absentee board.
12 So I have to make sure that all of my ballots are there.

13 If I'm off, then I'm going to have to put all of those
14 envelopes in numerical ballot order to see -- the computer
15 maybe didn't get picked up on Tom Jones, he didn't get received
16 in. We have to do a ballot reconciliation. And that's where
17 that label is going to tell me the name of the person and the
18 ballot number, so I need to be putting them in order to check
19 to make sure I have all of the ballots that need to be counted
20 by the absentee board.

21 Q All right.

22 So why can't that same information from the bar code, why
23 can't that be manually placed on the envelope in place of the
24 bar code?

25 A In hopes that you can read everybody's handwriting or

1 signatures?

2 Q What exact information would have to be written? What
3 information does the bar code include?

4 A It includes -- there's -- I wish I had one to show you.

5 It has a bar code. And then it has this large number that
6 reflects what the bar code is.

7 Q What does that represent, though? The ballot issued?

8 A It's a unique number that has been issued to that voter by
9 the Montana Votes system; that when I scan it, then, their
10 record pops up. Then I go through and see if it's a good
11 ballot. If I have to -- if I accept it, reject it, all of that
12 information comes from that label.

13 Q Tell me all the information that pops up on the screen
14 from that bar code for that -- besides --

15 A Okay.

16 So when I scan the bar code, then the ballot processing
17 menu comes up. And then it gives me the name of the person.

18 Q Name, one. What else?

19 A It tells the name of the person, then I have to go
20 through, check the signature. And I either accept it or reject
21 it.

22 Q But -- so -- but the signature -- okay.

23 But the signature is already on there. That's something
24 separate from the bar code; correct?

25 A The label that's printed from Montana Votes is just all of

1 the information that was issued to that voter.

2 Q Why couldn't that, at the satellite office, the
3 information that you just described from the bar code, why
4 couldn't, in our hypothetical, you go ahead, pick up the phone,
5 call the main office over here, and say: "Give me the bar code
6 information. I'm going to hand write it on the envelope."

7 A Okay.

8 So they hand write it on the envelope, and maybe they
9 transpose a number. If they transpose a number and I try to
10 input that into the Montana Votes, it's going to tell me it's
11 not a valid number. How am I going to know, without that label
12 that I need to have --

13 THE COURT: Let me ask a question: On the bar code
14 is a precinct number. I suppose that is an important number?

15 THE WITNESS: Yes, it is, because --

16 THE COURT: So, let's say you've verified the
17 signature. You've faxed the application in. The C person at
18 the home office -- well, at Cut Bank, says: "Yeah, he's
19 registered. This is his precinct; this is his signature." You
20 give him a ballot. He votes it. And I think what
21 Mr. Sandven's getting at: Why can't you just write the
22 precinct number down, which is the place where his ballot would
23 go to be counted when it's time to be counted? What else is on
24 there besides the precinct number?

25 THE WITNESS: The long number that is associated with

1 the bar code. I either need -- the bar code is what designates
2 that person. So I can bring him up for me to know for sure
3 that's the person.

4 THE COURT: But you already know, because you -- he
5 came in, he filled out an application, and you faxed it, and
6 the people in Cut Bank said: "Yeah, this is Mr. Jones." And
7 -- does the law require the number or the bar code or
8 something?

9 THE WITNESS: Well, it's part of the Montana Votes
10 system is all I can tell you.

11 But the ballot is actually going to be received in at the
12 main office. It's not going to be received into the Montana
13 Votes system at the satellite office.

14 THE COURT: It's received into Cut Bank, and then
15 placed somewhere until they go to the precinct for counting,
16 election night, or --

17 THE WITNESS: Actually, what the -- the absentee
18 ballots, the satellite office, if I understand him right, will
19 bring it back to the main office. And see, the absentee
20 ballots are actually counted at the courthouse.

21 THE COURT: On election night?

22 THE WITNESS: On election night. They are not sent
23 out to the precinct.

24 THE COURT: By precinct; right?

25 THE WITNESS: Yes. By precinct.

1 And we have to have a reconciliation of our reports and
2 they have to make sure they match the number of envelopes with
3 the ballots, in that they've all been received into the
4 computer.

5 THE COURT: What more would need to be written on the
6 outside envelope, other than the precinct number, if everything
7 else has been verified? You've faxed, bar code's come up, the
8 C person is looking at it and says: "Yeah, that's him. He's
9 registered to vote. Go ahead and give him the ballot." What
10 other information would need to be on there before it went back
11 to Cut Bank?

12 THE WITNESS: To the main office, it would have to
13 have, like I said, either the bar code, or that really long
14 number that identifies the bar code. Because we have to put
15 that into Montana Votes --

16 THE COURT: Oh.

17 THE WITNESS: -- before we can receive that ballot
18 into the system.

19 THE COURT: Oh. I got it.

20 So you have to have that bar code or the number to get it
21 into Montana Votes.

22 Does every vote go into Montana Votes computer?

23 THE WITNESS: Every absentee ballot received goes
24 into Montana Votes, yes.

25 THE COURT: I'm sorry. Keep going.

1 Q (BY MR. SANDVEN) How many digits is that number?

2 A I don't even really want to guess, but it must be eight,
3 ten, I don't know. It's a long number. I can't tell you for
4 sure.

5 Q About the same as a Social Security number? About that
6 length?

7 A Yeah. I can't even tell you. I just know it's a lengthy
8 number.

9 Q But you would estimate it's around ten digits?

10 A I would think it is at least that. But like I said, I'm
11 just guessing, because I don't have it in front of me.

12 Q All right.

13 So it would have -- you would have to hand write at the
14 satellite location, under our hypothetical, you've got the name
15 of the person already; correct?

16 A Which I take -- you said that you've wrote that on the
17 envelope. Is that what you said?

18 Q Yes.

19 And then the satellite office worker would call the main
20 office and say: "I need that ten-digit number," similar to the
21 length of a Social Security number; correct?

22 A Whatever the length of the number is, yes.

23 Q All right.

24 Can you give me a ten-digit number right now, any
25 ten-digit number?

1 THE COURT: Or could they fax the bar code?

2 Q (BY MR. SANDVEN) Or it could be faxed? What's the risk
3 there?

4 A Well, where the risk is: Is a person manually putting a
5 number down. And I guess where I work with numbers and
6 figures, it is very easy to write an incorrect number, to
7 transpose numbers. When you've got a chance of human error in
8 it, you have a chance of having errors.

9 THE COURT: Can you copy the bar code, fax it back to
10 the satellite office, cut out the bar code and tape it to the
11 envelope?

12 THE WITNESS: I don't know that it would be the same
13 density, whatever, for the bar code reader to read it. I don't
14 know. I -- I would --

15 Q (BY MR. SANDVEN) All right.

16 So, for me, for instance, first, you would have to write
17 my name, Steven Sandven, then you would write ten digits, and
18 I'll just do my cell: 605, and then the remaining digits. All
19 right?

20 And then what else would have to be written on there?

21 A The precinct number.

22 Q And that's usually how many digits?

23 A Precinct number?

24 Q Yes.

25 A The most would be two digits.

- 1 Q All right.
- 2 A So it would have to say precinct whatever.
- 3 Q So I have the precinct number. There's two digits.
- 4 A And then you need the ballot number.
- 5 Q And then I need the ballot number.
- 6 How many digits is that?
- 7 A Depending on how many absentees are issued. It's just how
- 8 many of the number. That's hard to say. Could be one, two,
- 9 three, four, whatever.
- 10 Q But at most, probably four digits?
- 11 A Probably.
- 12 Q All right.
- 13 How would -- when you came through security today, and we
- 14 all went through security. They took your phone number; didn't
- 15 they?
- 16 A Yes.
- 17 Q How many digits was that?
- 18 A Seven.
- 19 Q Then they wrote down your name; didn't they?
- 20 A Yes. They used my ID, so I'm guessing they used it.
- 21 Q And he was manually writing that up front; correct?
- 22 A Yes.
- 23 Q And then they went ahead and they issued a badge, didn't
- 24 they? And they wrote that three-digit, I think mine is, that
- 25 three-digit badge number; didn't they?

1 A You know, I actually didn't watch them. But if you say
2 so, then yes. I didn't watch them do it. But --

3 Q How long did it take him to do that information down there
4 on you?

5 A (No response.)

6 Q The big guy with the mustache got me. It took about one
7 minute.

8 A Well, it seemed like longer than that, but --

9 Q But what he did down there is no more difficult, correct,
10 than the process that you just described on filling out the
11 envelope; is it?

12 A I disagree. I mean, to me, you just have to have
13 everything perfect with your numbering, you can't make a
14 mistake. I'm sure there's been times the gentleman downstairs
15 has made a mistake in spelling a name, writing down the number.

16 Q I'm looking at page 16 of your affidavit now, ma'am -- oh.
17 Before we move on to that: So then, you would have a box
18 sitting somewhere in your satellite office; correct?

19 A Yes.

20 Q All right.

21 And I don't hand you the -- my completed envelopes, I put
22 it in that box?

23 A No. You'd hand it to the judge.

24 Q Oh, I hand it to you, and then you put it in that box?

25 A Correct.

1 Q And then at the end of the day, you would drive that box
2 back down to the county seat?

3 A Yes.

4 Q And then you would take it out of your car from the county
5 seat and walk it up to where?

6 A To the office at the county seat.

7 Q And then it would be counted on election day?

8 A Well, first, it has to be -- the ballots have to be
9 received into Montana Votes. It also has to all be reconciled.

10 Q Which you have to do anyway?

11 A Yes. But it has to be received. I have to show who has
12 voted. I have to make sure it shows on their record that their
13 ballot has been received and voted. And then it is sent --
14 it's put then into the locked, secured office for the precincts
15 to be later counted on election day.

16 Q And that process I just described didn't require that
17 Montana Votes computer up at the satellite location; did it?

18 A I got the impression you said there wasn't a Montana
19 Votes.

20 Q Right.

21 A Okay.

22 So yes, it has to be received in at the clerk and -- at
23 the main office.

24 Q And that's why you do all the calling back and forth so
25 you don't need that C designation up there. You wouldn't need

1 the C designation if I'm calling someone at your office with
2 that designation; correct?

3 A But the actual ballot, I would have to have it in my hand
4 to receive it into Montana Votes.

5 Q Right. So someone could just take the ballot box, bring
6 it to your office, you open up the box and do your thing?

7 A Yes.

8 Q Okay.

9 And then, so under your estimate on page -- I guess it's
10 paragraph 16 --

11 A Okay.

12 Q -- you would still need a fax, but you probably wouldn't
13 need the copier or the computer?

14 A With your method.

15 Q The hypothetical that we just went through?

16 A Correct.

17 Q All right.

18 So that drops down the copier and fax; that drops it down
19 to about a hundred and fifty bucks; would you agree?

20 A What about the wages of the two --

21 Q Oh, no. I'm just talking that single line item in your
22 affidavit, ma'am.

23 A Oh. Okay. Okay. Whatever the price of a fax machine is.

24 Q Okay.

25 And then the wages that you put in your affidavit, that

1 THE WITNESS: Is that where you want --

2 MR. SANDVEN: Yep.

3 THE WITNESS: Okay.

4 Q (BY MR. SANDVEN) All right.

5 So is that a voter ID number?

6 A That's the ballot ID number.

7 Q Right.

8 So that's a nine-digit number?

9 A And I don't know if -- if they become larger, I don't --
10 you know, like I told you, I can't tell you the exact number.
11 But if this one is nine --

12 Q But all you would need to do on the envelopes at the
13 satellite is draft or hand write a nine-digit number; wouldn't
14 you?

15 A Yes. And like I told you, there's a chance of human error
16 in writing an incorrect number, yes.

17 Q All right.

18 Back -- can I have my binder -- back to your affidavit. I
19 think we're on page -- Exhibit 6 of the book, page 6 of the
20 book.

21 A On the expenses? Is that where you're at?

22 Q Right.

23 A Okay.

24 Q Okay.

25 So wages you agreed was 25 percent lower.

1 the three counties sued, do they have an inability to elect
2 candidates of choice?

3 We've already put on evidence showing that Blaine County
4 Native Americans are able to elect candidates of choice.

5 THE COURT: I'm not going to tell you how to run your
6 case or who you can put on, but you can call whoever you want.

7 MR. SANDVEN: And Your Honor, in responding to what
8 Jorge's concerns were before the break, I think if we went
9 ahead and called the -- one of the Secretary of State
10 witnesses, who went ahead and drafted, in part, that election
11 directive on the mark-out procedure, the court might appreciate
12 that.

13 THE COURT: Yeah. We can get to that. You mean, the
14 five-step kind of advisory if a satellite office was set up?

15 MR. SANDVEN: Yes, Your Honor.

16 THE COURT: Okay.

17 Go ahead.

18 MS. FRANKENSTEIN: Your Honor, what I would ask is
19 that I be allowed to put on a couple of witnesses, and they'll
20 take about five minutes each, with the ability to re-call them,
21 but at that time, I would make a motion to dismiss based on
22 failure to prove that the Voting Rights Act --

23 THE COURT: Well, you do what you want. Call your
24 witnesses.

25 MS. FRANKENSTEIN: We call John Pretty On Top.

1 JOHN PRETTY ON TOP, having been called as a witness on behalf
2 of the county defendants, being first duly sworn according to
3 law, was examined and testified as follows:

4

5 CLERK OF COURT: Be seated, please.

6 State your name and spell it for the court reporter,
7 please.

8 THE WITNESS: John Pretty On Top. It's not Tree on
9 Top, it's Pretty to Top. And it's J-O-H-N, John. P-R-E-T-T-Y.
10 O-N. T-O-P. Three words.

11 CLERK OF COURT: Three words.

12 Sara, could you touch the left-hand bottom part of the
13 screen right on the screen and remove that.

14 Thank you.

15 DIRECT EXAMINATION

16 BY MS. FRANKENSTEIN:

17 Q John, do you hold a position with Big Horn County?

18 A Yes. I'm a Big Horn County Commissioner.

19 Q And how long have you been a commissioner there?

20 A I've been in three terms, 16 years.

21 Q Have you been opposed in your efforts to be a
22 commissioner?

23 A First time I ran, I had four people running against me,
24 all non-Indians. And I won.

25 THE COURT: Sir, could you either scoot closer or

1 pull the microphone to you, so everybody can hear, especially
2 me.

3 CLERK OF COURT: There you go. You don't have to --

4 THE WITNESS: One, two, three testing.

5 THE COURT: That's good. That's good.

6 THE WITNESS: I'm a pow-wow announcer.

7 Q (BY MS. FRANKENSTEIN) Commissioner, where do you live?

8 A Pardon?

9 Q Where do you live?

10 A I live in Lodge Grass, Montana, on the reservation.

11 Q And that's Crow Reservation; correct?

12 A Yes. Uh-huh.

13 Q Are Native Americans in Big Horn County able to elect
14 their candidates of choice?

15 A They've been able to elect seven elected officials in Big
16 Horn County out of nine. They've been able to elect three in
17 the state offices, a senator, two representatives. Two Crows
18 and one Cheyenne.

19 Q In those state districts, are those state districts
20 majority Indian?

21 A Yes. Uh-huh.

22 Q So they're able to elect candidates?

23 A Yes. That's how good they're there. That's how they won.

24 Q Because Native Americans were able to elect their
25 candidates of choice there?

1 A Yes. They've all been unopposed, or if they are opposed,
2 they're opposed by another Indian.

3 Q Are each of the three county commissioner districts in Big
4 Horn majority Native American?

5 A Yes.

6 Q Are those --

7 A I'll take that back. The north end, I think it's District
8 2, is majority non-Indian. It's the City of Hardin and a
9 little bit north in Big Horn County.

10 Q Have Native Americans in Big Horn County been able to
11 elect statewide candidates of choice?

12 A Yes. Like I said, we have a senator and two
13 representatives.

14 Q How about for statewide office such as a -- such as
15 governor?

16 A Yes. Governor. I'm pretty sure that he got the most
17 Indian votes, he's in there, Max Baucus, Senator from
18 Washington, has been in there almost a lifetime now, has had
19 Indian votes. Tester has had Indian votes. These are
20 candidates that come to the tribes, they come campaign, they
21 come to us, we listen to them, and we go their way.

22 Q How about the Superintendent of Public Instruction?

23 A Juneau has been in the tribe. She's been to Crow Fair
24 campaigning.

25 (Court reporter asked the witness to repeat his

- 1 answer.)
- 2 A Yes. Denise Juneau.
- 3 Q And is she a Native American-preferred candidate?
- 4 A Yes.
- 5 Q Is she a Native American herself?
- 6 A She is a Native American, yes.
- 7 Her mother was a representative from the northern tribes
- 8 for, I think, one or two terms and was elected by Indian votes.
- 9 Q How about the President of the United States?
- 10 A President of the United States was adopted by a Crow
- 11 tribal member. He goes by Obama Black Eagle now. And we claim
- 12 that we put him in the office.
- 13 Q And why is that?
- 14 A Because we all voted for him.
- 15 Q Can you think --
- 16 A Nothing against the Republicans. Just, he's our man.
- 17 Q Can you think of any election that Native Americans in Big
- 18 Horn County, where they are not able to elect their candidate
- 19 of choice?
- 20 A You know, when the voting rights case, Windy Boy versus
- 21 State of Montana, was successful, we took advantage of it in
- 22 Big Horn County. We made it work. That's why we have seven
- 23 out of nine elected officers in the county, Sheriff, Justice of
- 24 the Peace, District Court Clerk, Clerk and Recorder, two
- 25 commissioners -- well, three, Chad Fenner is Blackfeet.

1 Descendant of Blackfeet. And out of that nine, seven of us are
2 Crows.

3 MS. FRANKENSTEIN: That's all the questions I have
4 for this limited purpose, Your Honor.

5 THE COURT: Mr. Sandven.

6 CROSS-EXAMINATION

7 BY MR. SANDVEN:

8 Q Did you know that less -- or that 7.4 percent of the
9 citizens of this state are Native American?

10 A I've never gone into it. I concentrate on Big Horn
11 County. That's where I work, and that's the people I
12 represent.

13 Q So you don't know?

14 A And I do go to MACO conferences. I go to legislative
15 sessions if there's anything that Big Horn County --

16 Q So you don't know?

17 A No.

18 Q All right.

19 Do you know how many senate members are Native American in
20 the state legislature in 2011?

21 A Two thousand eleven? I believe we had Veronica Small. I
22 believe we had -- oh, I couldn't come out and say. I know
23 there were Indians there. I know there were representatives,
24 like Mrs. Juneau was a representative. Jerry Pease was there.

25 Q Is that the senate or the house, sir?

1 A The senate and the house, I'm counting Indians that were
2 there.

3 Q Did you know that there are eight Indians in the state
4 legislature in 2011?

5 A Yes. Because I dealt with them. Every time I go, I call
6 them, I e-mail them, tell them that we're coming; why we're
7 going.

8 Q And sir, I think you can listen to the question and answer
9 it.

10 A Yes.

11 No.

12 Q Did you know that's only 5.3 percent of the population?

13 A Of the whole state?

14 Q I mean the percentage of all members in the state house
15 and senate that are Indian is 5.3 percent. Did you know that?

16 A Yes. Uh-huh. And that depends on their region, the area.
17 Like I say, when the voting rights case was won, the
18 reservation took advantage of it. They made it work; they were
19 able to get their people in. Other areas, there were no
20 Indians, so they had non-Indians in there.

21 Q Did you know that there were a total of nine people during
22 the 2009 session in the state house and senate that were
23 Indian?

24 A Yes, I know.

25 Q So only 6 percent of the state legislature was Indian in

1 2009?

2 A Yeah.

3 Q You knew that?

4 A I'm from there.

5 Q All right.

6 Did you know in 2007, only 6.6 percent of the legislators
7 were Indian?

8 A Yes. Uh-huh. I'm from there.

9 Q And then in 2005, you knew that only 5.3 percent of the
10 Indian legislatures were Indian?

11 A Yes. I'm aware of it, and that's when we started getting
12 the votes out, and we started to increase those positions in
13 the state. We made it work.

14 Q And you consider 5.3 percent a pretty high number?

15 A No. It's never high. Even the 9 -- 9 percent is not
16 high.

17 Q Did you know in 2003, it was 4.6 percent of the state
18 house and senate?

19 A That's low.

20 Q Did you know in 2001, it was 3.3?

21 A No. I wasn't aware of that then.

22 I know that it started to increase as the years go by,
23 because we made it work, like I said. We took advantage of
24 that lawsuit, and we made it work. We went out and got the
25 votes out, we got the candidates out, we supported them, along

1 with other state and federal candidates of our choosing.

2 We choose who we wanted we vote for, we voted for them,
3 and they got in. Because we --

4 Q Did you know in 1999, only 1.3 percent of the senate house
5 total in the state legislature was Indian?

6 A Yes. I'm from there.

7 Q All right.

8 In 1997, did you know that it was 1.3 percent of the state
9 house and legislature was Indian?

10 A Yes. Uh-huh.

11 Q Did you know in 1995, it was only 0.6 percent --

12 A Yes.

13 Q -- Indian?

14 A Uh-huh.

15 Q Did you know in 1993, it was only 1.3 percent Indian?

16 A Yes.

17 Q Did you know in 1990 --

18 A This is when we started to realize that in order for us to
19 make a --

20 Q In 1991?

21 A -- to make a name or a count in the state and federal that
22 we needed to move. That we needed to get off our chairs and
23 get to work.

24 Q Did you know --

25 A And since then, we've had the increase and the success.