

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL ORGANIZATIONS;  
AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES; AFL-CIO FLORIDA  
PUBLIC EMPLOYEES COUNCIL 79, AFSCME; AFL-CIO  
SERVICE EMPLOYEES INTERNATIONAL UNION,

Case No. 04-22572-CIV-KING

Plaintiffs.

vs.

Miami, Florida  
February 6, 2008  
9:00 a.m.

KURT S. BROWNING, SECRETARY OF THE  
STATE OF FLORIDA,

Defendant.

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TRANSCRIPT OF PROCEEDINGS  
NON-JURY TRIAL  
BEFORE THE HONORABLE JAMES LAWRENCE KING  
UNITED STATES DISTRICT JUDGE

VOLUME 2  
PAGE 261-472

REPORTED BY:           DAWN M. WHITMARSH, RPR  
                          Official Court Reporter  
                          United States District Court  
                          301 N. Miami Avenue  
                          Room 340  
                          Miami, Florida 33128  
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1 APPEARANCES:  
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FOR THE DEFENDANT:

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P-R-O-C-E-E-D-I-N-G-S

AFL-CIO, et al. vs. BROWNING

1 go.  
 2 Mr. Abt, can you call someone else and we'll start.  
 3 MR. ABT: I'm sorry. She's 20' behind me and again, Your  
 4 Honor, we apologize.  
 5 THE COURT: It's not your fault. Not your fault at all.  
 6 I'll blame Mr. Antonacci if it makes you feel better.  
 7 All right. Step forward please and have a seat in the  
 8 jury box, Ms. Korman. We'll continue the direct examination.  
 9 Mr. Abt.  
 10 CONTINUED DIRECT EXAMINATION  
 11 BY MR. ABT:  
 12 Q. Good morning, Ms. Korman.  
 13 A. Good morning.  
 14 Q. Ms. Korman, you manage the budget for voter registration  
 15 in Miami-Dade County, correct.  
 16 THE COURT: Let's don't -- she testified yesterday for  
 17 half -- you're not going to repeat all that. I know what she  
 18 does. I know she's deputy director, I know she's been there 22  
 19 years, don't cover all that again.  
 20 MR. ABT: Oh no, Your Honor. I'm not going through the  
 21 pedigree information.  
 22 THE COURT: This is a new something?  
 23 MR. ABT: Yes.  
 24 THE COURT: You said does she manage -- what was your  
 25 question that's new? She's the deputy manger, she runs these

1 THE COURT: Thank you. Be seated please.  
 2 All right. We are continuing with the non-jury trial in  
 3 the matter of -- well, they've changed the name on me here. I  
 4 remember it as Diaz versus Secretary of State, but it  
 5 apparently is American Federation of Laborers versus Browning,  
 6 04-2257-Civil.  
 7 Okay. When we recessed yesterday, Mrs. Korman, Ivy  
 8 Korman, the deputy superintendent for Miami-Dade County,  
 9 Florida, was on the stand testifying on direct examination.  
 10 Is she here?  
 11 MR. ABT: She is. We'll call her now. She may actually  
 12 be in the elevator, so it just may be a matter of moments.  
 13 THE COURT: So she's not here. Now, do you know that  
 14 she's in the elevator or you're just guessing?  
 15 MR. ABT: We know for sure that she's in the elevator.  
 16 THE COURT: All right. Is there anyone else we can start  
 17 with and come back to her. Who's your next witness?  
 18 MR. ABT: There is, Your Honor. Let me just step out and  
 19 see.  
 20 THE COURT: Okay. Thank you. It's not your fault or  
 21 responsibility, but I'm not critical of the fact you can't  
 22 control the elevators or the people appearing, but I would just  
 23 like to go ahead if we can.  
 24 MR. ABT: We understand.  
 25 THE COURT: All right. Maybe I can send -- okay. Here we

1 elections. I'm sorry. Don't repeat yourself please. I mean,  
 2 you know, if it's new, go ahead. All right? Go ahead. Let's  
 3 see where it goes.  
 4 MR. ABT: I'll just ask this one question then I'll move  
 5 on.  
 6 BY MR. ABT:  
 7 Q. You manage the budget for voter registration in  
 8 Miami-Dade, correct?  
 9 A. No.  
 10 Q. What do you do?  
 11 A. Basically --  
 12 MR. ANTONACCI: Objection.  
 13 THE COURT: I think this is all repetitive. She's the  
 14 deputy manager, she handles the budget, the people -- she told  
 15 us that she had enough people to run an election, she did all  
 16 that yesterday.  
 17 You all aren't giving me credit, I know I'm getting old  
 18 and senile, but I can remember from overnight until morning.  
 19 Do you prepare the budget, do you try to do the best you can  
 20 with the budget they give you. You don't always get what you  
 21 need or what you want or what you'd like to have, but you  
 22 always do your dead level best to make it work, and the last  
 23 several elections you have said that using all the energy that  
 24 you have got and the help that you've got and everything you  
 25 can do, you've made it work, right?

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1 THE WITNESS: Yes, sir.  
2 THE COURT: All right. Now that covers it.  
3 BY MR. ABT:  
4 Q. In Miami-Dade County, are voter registration costs  
5 primarily a matter of labor?  
6 A. I don't quite understand, sir.  
7 THE COURT: The question should be, let you answer it,  
8 what are the primary costs of running an election, if you know.  
9 THE WITNESS: Overtime, seasonal help, equipment.  
10 BY MR. ABT:  
11 Q. And so those are labor costs?  
12 A. Some of them.  
13 Q. Okay. With regard to voter registration in particular,  
14 there's very little that's in the budget -- withdrawn.  
15 Does voter -- does the voter registration process today  
16 differ from the process as it was in 2006?  
17 A. Yes.  
18 Q. How does it differ.  
19 A. Today?  
20 Q. I'm sorry. Before the NAACP injunction, did it differ.  
21 A. The 2004 election you were asking? I'm sorry, 2002 versus  
22 -- I'm sorry.  
23 Q. I'm sorry. Withdrawn. It's the first questions of the  
24 morning.  
25 Aside from the NAACP injunction, does the voter

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1 registration process today differ significantly from the  
2 process in 2006.  
3 A. Today we don't -- as long as there is some sort of ID  
4 number in the social security field or the driver's license  
5 field, it actually doesn't get sent up to the state any longer  
6 and the voter is registered.  
7 Q. Okay. And does the process differ significantly, aside  
8 from the NAACP injunction, does it differ significantly from --  
9 THE COURT: I think it was a court injunction, I doubt  
10 that they can enter injunctive orders. Why don't we refer to  
11 it -- I'm sorry, but it sort of bothers me. I mean, you're  
12 talking about the injunction, the case that was tried,  
13 injunction entered several weeks or several months ago in the  
14 middle district or the northern district of Florida?  
15 MR. ABT: Yes, Your Honor.  
16 THE COURT: What was the name? Just one of the names.  
17 How shall we refer to that case?  
18 MR. ABT: It was the -- I believe it was the NAACP versus  
19 the Secretary of State or something like that.  
20 THE COURT: What was the name of the judge that entered  
21 the order, maybe that will help.  
22 MR. ANTONACCI: Stephan Mickle in the Northern District,  
23 Your Honor.  
24  
25 THE COURT: Judge Mickle. All right. Prior to the Judge

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1 Mickle case or injunction, whatever your question was.  
2 BY MR. ABT:  
3 Q. Does the process differ today from the process in 2004.  
4 A. Okay. I'm sorry. I'm getting very confused with the  
5 dates of which and what.  
6 Q. Withdrawn.  
7 THE COURT: I think she told us this yesterday, but I'm  
8 not -- may well be that it's something new. I think she told  
9 us that after the injunctive order was entered or the opinion  
10 was rendered in the Judge Mickle case, that after that point in  
11 time, the process whereby either the state or local or both  
12 checked to make sure that the digits are right and social  
13 security and driver's license, whether it was a difference and  
14 they were then put on some kind of a hold list or something,  
15 that that's been eliminated now. So neither side, neither the  
16 state, the local or even this magnificent computer, which is  
17 really the cause of all this complexity about time is the  
18 computer.  
19 So, but none of the three; computer, the state, the local  
20 have to deal with that anymore. As long as she said there's  
21 some numbers in there, somebody may have made them up out of  
22 whole cloth, but if they filled in the blank and if you don't  
23 just catch it, obviously it goes through. Is that right?  
24 THE WITNESS: Yes, sir.  
25 THE COURT: All right. She told us all that yesterday.

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1 Because I certainly never heard of it before yesterday. I  
2 didn't know anything about it. So all I have learned about it  
3 I've learned from these people here.  
4 MR. ABT: May I approach?  
5 THE COURT: Yes.  
6 THE WITNESS: Sir, may I have my purse please? I'm sorry.  
7 I left it over there and I left it with my glasses.  
8 MR. ABT: Is this it here?  
9 THE WITNESS: Yes, sir.  
10 BY MR. ABT:  
11 Q. Ms. Korman, you're being shown what's marked as  
12 Plaintiffs' Exhibit 1. Are you familiar with this document?  
13 A. Might not be in this form, but yes, I am.  
14 Q. What is this document.  
15 A. The FVRS system. Which is the voter system, that's the  
16 state voter system, Florida Voter Registration System.  
17 MR. ABT: At this time, we offer Plaintiffs' 1 into  
18 evidence.  
19 MR. ANTONACCI: No objection, Your Honor.  
20 THE COURT: Plaintiffs' 1 is admitted into evidence.  
21 (Plaintiffs' Exhibit 1 in evidence)  
22 MR. ABT: Bill, could we have -- I'm sorry. One second.  
23 Can we have page 62, section 15 on the -- and can you blow out  
24 section 15 please? Just the precinct registers right there.  
25 No, just the actual title.

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1 BY MR. ABT:  
2 Q. Are you on page 62, Ms. Korman?  
3 A. Yes, sir.  
4 Q. This section deals with precinct registers, correct?  
5 A. Yes, sir.  
6 Q. Can you please read aloud from the third full paragraph.  
7 THE COURT: No, no, no, no, no, no, no. Now you're  
8 assuming that I can't read. Please, if there's something about  
9 that, invite her attention to it. If there's something that  
10 you want her to explain that you know is incomprehensible to  
11 the average 12th grade high school student, then fine. But not  
12 just sit here and read to us.  
13 I'm sorry. That seems to be what lawyers are being taught  
14 by the law professors these days to do, but if there's  
15 something that needs explaining, fine. But where on page 62?  
16 Now, what part of it is it that you want her to explain?  
17 MR. ABT: Your Honor, the text of the third paragraph in  
18 this case is actually particularly relevant to this case and  
19 the actual words are quite important.  
20 THE COURT: Well, let's read them and see. Let's turn to  
21 page 62. You read it to yourself and I'll read it to myself,  
22 then I'll listen to your question and we'll see if there's any  
23 objection to it or what the situation is.  
24 See, you get a chance to argue this in closing argument.  
25 You don't have to summarize it as you go. You know. But if

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1 there's something confusing about it, let me see. I can't even  
2 65, 64, good heavens, anybody got a magnifying glass anywhere?  
3 Have you got a better copy of this? Oh, you found it for me?  
4 Good. We'll mark one of them in evidence. All right.  
5 Now I have 62. All right. Go ahead. Ask your question,  
6 whatever it is.  
7 BY MR. ABT:  
8 Q. You've read the third full paragraph now Ms. Korman,  
9 correct?  
10 A. Yes, sir.  
11 Q. And this paragraph talks about that the close of books  
12 period would be very straightforward if it were truly a freeze  
13 on registration. Is that accurate?  
14 THE COURT: You're asking her opinion as to what something  
15 is said in this document. She's not an expert on legal  
16 matters.  
17 Are you objecting to any of this? I mean, she's here as a  
18 fact witness. Please, we've got to get it back to that. You  
19 all can argue, each of you may have different interpretations  
20 as to what those words mean, but having a fact witness come and  
21 read a document and then tell me what she interprets it to  
22 mean, that's not within the contemplation of the rules of  
23 evidence. You all can argue what that meant.  
24 I'd much rather have your view of what it meant and other  
25 counsels' view it of what it meant than hers. Why not bring in

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1 the newest employee in an office and you bring in 10, he'll  
2 bring in 13, you'll bring in two more and get all their  
3 openings. No.  
4 I'm sorry. I'm not picking on you about this, let's see  
5 what this says and if there's something about it that is  
6 confusing or --  
7 MR. ABT: Your Honor, if I may, yesterday you did qualify  
8 this witness as an expert.  
9 THE COURT: Well, on the operation of her office. Now  
10 you're not asking about her office. You're asking her to give  
11 me a legal interpretation of what the words mean in the third  
12 paragraph or fourth paragraph of page 52 of Plaintiffs' Exhibit  
13 1.  
14 That's objectionable, Mr. Antonacci. Do you want to throw  
15 this all wide open, both sides and let everybody come in here  
16 and try this on ignoring the rules of evidence or are we going  
17 to follow the rules of evidence. Let's make a decision now one  
18 way or the other.  
19 MR. ANTONACCI: I'm mindful of the questions that are  
20 being asked, Your Honor. And in some cases, it will be helpful  
21 for the court to know from the people who operate these systems  
22 how they work.  
23 THE COURT: How they work, yes. But not what they -- what  
24 their opinion is or what the words mean, and that was the last  
25 question.

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1 MR. ANTONACCI: That certainly was and I think it is  
2 objectionable because --  
3 THE COURT: I'm not going to permit either side to bring  
4 people in here and just read language to me and say judge, if I  
5 were sitting where you are, I would interpret it this way.  
6 That's nonsense. That's not evidence, that's simply bringing  
7 in -- and whoever brought in the most citizens from the county  
8 or whatever and we take a vote or a poll, no.  
9 Now, I would be very interested if your question had been  
10 read that to yourself, are you following that, are you doing  
11 that, if not what are you doing. See, she can tell us what  
12 she's doing. But not just what she thinks this means.  
13 Let me ask this question and when I finish, you'll be  
14 permitted to go further.  
15 Ms. Korman, you glanced over or read over this page, the  
16 whole page or the paragraph he's talking about?  
17 THE WITNESS: Yes, Your Honor.  
18 THE COURT: Do you understand what the procedures mean and  
19 what do you operate under this document number one?  
20 THE WITNESS: It's basically -- it's basically talking  
21 about the book closing date.  
22 THE COURT: Well, don't tell us what it says. Just tell  
23 us that you are familiar with it.  
24 THE WITNESS: Yes, I am familiar with it, sir.  
25 THE COURT: And as the deputy director, do you implement

1 what's in here or do you read it as just late night reading to  
2 put yourself to sleep, what do you use this document for? Do  
3 you try to follow it? Or do you follow it? And if you don't,  
4 what do you do? That's what we're getting at. What do you do.

5 THE WITNESS: We do produce -- yes, I think I'm answering  
6 your question, we do produce precinct registers. And we do it  
7 when a certain date is done and book closing date as such  
8 doesn't mean the book --

9 THE COURT: What it means tell me what you do. What you  
10 do.

11 And marshal, Ms. Korman, I meant to do this at noon.  
12 Marshal, and maybe I could get a couple of you, let me get this  
13 young lawyer over here. Marshal, come over here and push this  
14 whole thing -- ma'am, would you come down, it's on wheels, a  
15 couple three of you just push it forward. Somebody push it  
16 straight forward. No, no, don't bang in. Yeah, that way.

17 THE WITNESS: I thought I was going to get a Disney ride.

18 THE COURT: That's much better, and this thing doesn't  
19 interfere and I can see her. Thank you very much.

20 Usually the GSA people will come do that for me, but they  
21 came in and put some new tables in and they moved things  
22 around.

23 Thank you, ma'am. I meant to do that over the night  
24 recess.

25 Now, basically the question is you've read this, does your

1 office follow this or do you do something else and if you do  
2 something else, tell us what it is. If you follow it, fine,  
3 or whatever.

4 THE WITNESS: We print a precinct register with whatever  
5 voters we have at a certain time, usually about two weeks  
6 before the election because everything has to be put in cases  
7 and taken to the different precincts. So as such, there's not  
8 a day at book closing, let's say December 29th, that all the  
9 registers are being printed because you're still adding new  
10 people in and moving voters to different precincts because of  
11 changes of address.

12 THE COURT: Go ahead.

13 BY MR. ABT:

14 Q. And are you saying that after the precinct register is  
15 generated the first time, it's supplemented?

16 A. They add in absentee ballot information with different  
17 lists, but that's a different division than myself. And then  
18 of course, people do move and we send out postcards to let them  
19 know where the new precinct is. Or they call us and they give  
20 us the address by phone and we tell them where their new  
21 precinct is.

22 Q. And these changes, are they added to the precinct  
23 registers?

24 A. If we got them by the printing date.

25 Q. And do you supplement the precinct registers?

1 A. Except for the absentee ballot, received information and  
2 -- which is not my division, no, we do not.

3 Q. You do not supplement the precinct registers?

4 A. Because at a certain time it has to stop because we have  
5 To start delivering to all of the precincts and getting all the  
6 cases together.

7 Q. All right. Ms. Korman, I'd just like to maybe refresh  
8 your recollection from your previous deposition testimony. Can  
9 we --

10 THE COURT: While he's reaching for that, so if I  
11 understand it correctly, you print -- your office prints  
12 precinct registers and you deliver them to the precincts; is  
13 that correct?

14 THE WITNESS: Actually at the Steven P, we print all 749  
15 precincts, I have staff that separates them into the proper  
16 letter booklets. They do.

17 THE COURT: Excuse me. Excuse me. I'm sorry, ma'am. We  
18 could be here all month.

19 Your office at some point prints a register of voters that  
20 you have that are on your list that are eligible to vote and  
21 you deliver those to precincts; is that correct?

22 THE WITNESS: Yes, sir.

23 THE COURT: When do you deliver them to precincts, what --  
24 in terms of the election, how much before the election. One  
25 day before the election, two days, 10 days?

1 THE WITNESS: Just about two weeks because it takes at  
2 least three or four days to put them together.

3 THE COURT: I don't want all your reasons why you do  
4 something, I'm trying to get facts, just facts. So you say two  
5 weeks, pretty much approximately that's pretty accurate, so two  
6 weeks prior to the election day you deliver them to the  
7 precincts. The registers.

8 No? What do you do? See, I'm trying to find out what she  
9 does. Not what she thinks she's supposed to do or whatever.  
10 What do you do, ma'am?

11 THE WITNESS: System sends a file, the file then gets  
12 printed and that file is sent about -- at least about a week  
13 and a half to two weeks before the election. They're made into  
14 books, the books then come to us and about a week before the  
15 election, they start getting into cases and then the Friday  
16 before they get delivered to the polls.

17 THE COURT: All right. So fine. Now we know you take the  
18 precinct registers and you put them all in a form that can be  
19 used in books and the precincts and you deliver them Friday  
20 before Monday, Friday before Tuesday?

21 THE WITNESS: Yes, sir.

22 THE COURT: Which is it? Friday before Tuesday or Monday?

23 THE WITNESS: Uh-huh. Yes, sir.

24 THE COURT: Three days before?

25 THE WITNESS: Yes, sir.

1 THE COURT: So that's when they deliver, whatever they  
2 produce and generate. Okay.  
3 BY MR. ABT:  
4 Q. If I may, Ms. Korman, can you turn to page 165 please of  
5 your deposition? If we could put it up here. I would  
6 specifically refer you to lines 21, going over to the next page  
7 to lines four.  
8 Were you asked the following questions and gave the  
9 following answers?  
10 "After a precinct register is finalized, are they also  
11 supplemented?"  
12 Answer "yes."  
13 "And how many times were they supplemented before election  
14 day?"  
15 Answer, "two or three times."  
16 Question, "and what is the last time they are  
17 supplemented?"  
18 Answer, "day of election."  
19 Was that your statement?  
20 A. Yes, it was.  
21 Q. And is that accurate?  
22 A. Accurate in the fact that we supplement it with the A/B  
23 information.  
24 Q. Ms. Korman, just to save everybody time, we'll be here a  
25 long time, if you could just -- if I ask a question or ask a

1 yes-or-no question, just answer yes or no.  
2 MR. ANTONACCI: Your Honor, I object to this.  
3 THE COURT: Sustained. You can answer yes or no, try to  
4 answer the best you can, then you can explain afterwards if it  
5 needs explanation. Go ahead.  
6 The question deals with do you supplement the registers,  
7 I'm not sure the time frame of the question, but let me assume  
8 that it was after they've been delivered to the precincts one,  
9 and then secondly are they supplemented before they're  
10 delivered to the precincts. But it's a two phrase question.  
11 THE WITNESS: Yes to both.  
12 THE COURT: Yes to both. So you can supplement them, the  
13 precinct registers, both before and after they're delivered to  
14 the precincts?  
15 THE WITNESS: Yes.  
16 THE COURT: And that's what you do.  
17 THE WITNESS: Yes.  
18 THE COURT: Fine. Next question.  
19 BY MR. ABT:  
20 Q. With regard to early voting, Ms. Korman, how are changes  
21 made, how are changes made to the voter registration rolls  
22 accounted for in early voting.  
23 THE COURT: Accounted for? You mean kept track of or  
24 listed? I'm sorry. What do you mean.  
25 MR. ABT: Let me use an example.

1 BY MR. ABT:  
2 Q. If a voter comes to an early voting site and wants to  
3 correct their voter registration information, can they do that?  
4 A. Yes.  
5 Q. How would they do that.  
6 A. When they would bring their picture ID to the clerk at  
7 early voting, they would say I have a change of address. We  
8 would update that change of address.  
9 Q. And is your system what's known as a live system?  
10 A. Yes.  
11 Q. And for a live system, does that mean that you can make  
12 changes in real-time?  
13 A. For early voting, yes.  
14 Q. Now, what is a book closing report.  
15 A. A book closing report is something that the system  
16 division provides to the state on a certain day, although it  
17 might not be complete yet because we're still entering voters  
18 in or taking voters out.  
19 Q. Do you use a book closing report for voter registration?  
20 A. I don't.  
21 Q. Okay. Now, supervisors must accept corrections to --  
22 after the close of books to a person's name, address or  
23 signature. Is that correct?  
24 THE COURT: She just said that. She just said they do.  
25 MR. ABT: Withdrawn.

1 BY MR. ABT:  
2 Q. Ms. Korman, do you know of any instance in which a voter  
3 intentionally failed to complete their registration form  
4 properly?  
5 A. Yes.  
6 Q. You know of one personally?  
7 THE COURT: She said yes. Are you asking her about that  
8 or what? She said she knows of an example.  
9 BY MR. ABT:  
10 Q. When voters submit an application, do they generally do so  
11 accidentally?  
12 THE COURT: You're asking her the mind state of people  
13 that fill out applications and in this county, there are a  
14 million or 200,000, I don't know how she could possibly know  
15 the state of mind.  
16 I think what he's trying to get at is are you aware or has  
17 your experience taught you that people deliberately,  
18 intentionally mess up the form when they fill it out so as to,  
19 for whatever reason, cause you problems or because they don't  
20 understand or for whatever reason do you know of intentional  
21 failure to input information properly.  
22 THE WITNESS: Yes.  
23 THE COURT: You do. Now, how do you know that? Before  
24 you blurt out what it is, I don't mean blurt out, how do you  
25 know that, somebody has told you this?

1 THE WITNESS: No. Being with elections all the years and  
2 especially presidential and things, I get a lot of forms during  
3 these big election years filled out by other groups that give  
4 me wrong information and things like that. And the person can  
5 never get registered.

6 THE COURT: Give you wrong information. Do you know their  
7 state of mind, do you know that whoever sent that form in did  
8 it deliberately and intentionally with malice or whatever? You  
9 don't know that, do you? You just know the form is incomplete  
10 or messed up in some fashion.

11 THE WITNESS: I have to say yes, I agree with you.

12 THE COURT: If you know it, tell us. But the question is,  
13 and what he's trying to get at is do people generally,  
14 deliberately, on some large scale or some number of them at  
15 least, could be 20, 30, 40, doesn't matter, I'm not giving you  
16 a number, but do you know that people sit down when they apply  
17 to vote and deliberately mess up the form. You don't know  
18 that, do you?

19 THE WITNESS: No.

20 THE COURT: And if you did, it would only be that somebody  
21 has told you that I guess.

22

23 THE WITNESS: Yes, sir.

24 MR. ABT: Thank you, Your Honor.

25 THE COURT: I think that was your point. Your point is

1 that people -- your point is, it's quite simple, that people,  
2 when they apply to vote, want to vote and they fill it out as  
3 best they can. That's all it is. All right. Let's move on.

4 BY MR. ABT:

5 Q. Generally speaking, what portion of the applications are  
6 rejected as ineligible. Not incomplete, but ineligible.

7 A. I don't have a number, I'm sorry.

8 Q. Approximately, would it be less than half.

9 MR. ANTONACCI: Objection, Your Honor, she's answered the  
10 question.

11 THE COURT: Don't lead your witness. Ask her what she  
12 knows and she'll tell you whatever she knows.

13 BY MR. ABT:

14 Q. Do you know?

15 A. I don't know.

16 Q. Let's maybe take a look at your deposition testimony  
17 again. Let's go to page 114 and look at lines 15 through 24.  
18 Let me know if this refreshes your recollection.

19 You were asked the following questions and you gave the  
20 following answers.

21 "Approximately what percentage of people are denied an  
22 application.

23 "I wouldn't be able to give you an answer, I don't know.

24 "Is it a significant portion, is it one in four.

25 "No.

1 "Would it be one in 10.

2 "I wouldn't even say it's close to that."

3 THE COURT: All right. That's not inconsistent in any way  
4 with what she just said. So don't waste our time reading over  
5 consistent statements. Let's move on. This is impeachment.  
6 You read it for impeachment and it's consistent with what she  
7 said. She said she didn't know.

8 MR. ABT: One more question on this.

9 BY MR. ABT:

10 Q. Does that refresh your recollection that the number of  
11 ineligible voters is actually something less than one in 10.

12 MR. ANTONACCI: Objection, Your Honor. This is his  
13 witness and he's now --

14 THE COURT: Well, sustained. What it refreshed her  
15 recollection is that you said that when you led her in the  
16 deposition. This was your question about the percentages. She  
17 said she didn't know, you led her some, she still didn't know.  
18 Now that doesn't give us any proof.

19 If you want to testify, of course you can be subject to  
20 cross-examination, be sworn and you can give us these valid  
21 numbers and whatever. The numbers are probably valid. I don't  
22 have any trouble with that.

23 What I'm saying, that the use of the deposition is to  
24 simply get across your questions, which she says she doesn't  
25 know, is an improper use and not permitted under the rules of

1 evidence. It's for impeachment or refreshing of recollection.  
2 She said she didn't know then, she said she didn't know in the  
3 deposition. That's it.

4 You must have somebody that can come in and tell us these  
5 numbers that does know. I'm sure there's somebody there that  
6 does.

7 MR. ABT: Mr. Sancho has already testified to this as  
8 well.

9 THE COURT: Well, let's move on. If you got it in the  
10 record, you can argue. But that's a fact if it's in the  
11 record. But trying to get it out of her when she doesn't know  
12 is counter-productive.

13 MR. ABT: Thank you, Your Honor.

14 BY MR. ABT:

15 Q. Are you familiar with the term grace period.

16 A. I know --

17 THE COURT: As used in voting. Not as in church. You  
18 know, he's talking about this, have you ever heard this term  
19 thrown about in voting registration grace period.

20 THE WITNESS: Yes, sir.

21 THE COURT: Go ahead.

22 BY MR. ABT:

23 Q. And do you understand a grace period to mean --

24 THE COURT: You're going to lead her again and tell her  
25 what it means. Ask her what it means. It's your witness. You

1 can't lead here. There's no leading questions on direct  
2 examination.

3 BY MR. ABT:

4 Q. What do you understand it to mean?

5 A. When there's a deadline, a grace period would give you X  
6 amount of time to do something after a deadline.

7 Q. Okay. Would a grace period with regard to incomplete  
8 applications in voter registration, if this court were to rule  
9 that you had to do that, would it cause an increase in voter  
10 fraud.

11 MR. ANTONACCI: Objection to the hypothetical question.

12 THE COURT: Yes. You can get at it in a simple way and  
13 that is well, I don't know. It's a broad, open-ended thing  
14 that question. I'm sorry. The question is could you perform  
15 your function, the work you do about these -- processing these  
16 applications if the period were shorter than the deadlines that  
17 you now understand to be in place, which is I think 29 days  
18 before the election. If you were required to do it in less  
19 time than the 29 days, and I may be wrong on the days, no.

20 MR. ABT: Your Honor, if I may, I'm right at the end of my  
21 examination.

22 THE COURT: Yeah, but it's -- you've got to ask proper  
23 questions. You have to rephrase your last question. Go ahead.  
24 I was trying to help you out. Go ahead.

25 MR. ABT: I appreciate that, Your Honor.

1 If I may just define the term so we have a common  
2 understanding, Your Honor.

3 THE COURT: Well then what do you need her for? You're  
4 going to define it to me. You've got to ask -- you can't lead  
5 your witness. You asked her if she knew what a grace period  
6 was, then you asked her what her opinion was. And then you  
7 want -- and the question is she can give us facts about whether  
8 she's complying with it, she can give us a limited opinion  
9 because of her 22 years whether or not she can comply with it.  
10 If it's changed. But you've got to ask the question in some  
11 fashion that she can answer it. Rephrase the question in some  
12 fashion, let's see where you go.

13 MR. ABT: I'll withdraw the last question and just sum up.

14 BY MR. ABT:

15 Q. If you know, would a grace period cause an increase in  
16 voter fraud at your office.

17 A. No.

18 Q. And if you know, would a grace period allow your office to  
19 register more voters.

20 MR. ANTONACCI: Objection, calls for speculation.

21 MR. ABT: This is an expert talking about her --

22 THE COURT: Answer the question and let's move on.

23 THE WITNESS: Yes, I would be able to register more  
24 voters.

25 MR. ABT: Thank you, Ms. Korman.

1 MR. ANTONACCI: Good morning, Ms. Korman. Your Honor.  
2 CROSS-EXAMINATION

3 BY MR. ANTONACCI:

4 Q. I want to go back to yesterday's testimony regarding the  
5 2004 presidential election.

6 Did your office receive paper applications for voter  
7 registration purposes just before the book closing deadline?

8 A. Yes.

9 Q. Approximately how many, in your recollection, did you  
10 receive during that period?

11 A. About 10,000.

12 Q. And were those -- how were those 10,000 delivered to your  
13 office?

14 A. Dropped off by somebody on book closing day.

15 Q. In lots of how many?

16 A. They were boxes. We got probably about 6,000 on book  
17 closing day and a couple right before, about 10,000.

18 Q. And did you have to process those applications for  
19 completeness purposes.

20 A. We try to go through, if we see any obvious errors as  
21 we're doing it, but basically we try to enter them right in.

22 If we do see a glaring problem, we'll put it to the side and  
23 enter that in such a way that they could get the letter a  
24 little quicker but --

25 Q. What do you do first when you get a box full of

1 applications on book closing day.

2 THE COURT: What year?

3 MR. ANTONACCI: '04.

4 THE COURT: Thank you. What time frame now is --

5 MR. ANTONACCI: 2004, just before book closing. Let's say  
6 one week before book closing.

7 THE WITNESS: Like in anything that we get, we would put a  
8 stack, let's say 50 to 100, we would wrap it with the sort  
9 sheet so we know that it was, let's say, an outside group as  
10 opposed to mail. And then we would just put them together and  
11 get them to staff to start working on.

12 BY MR. ANTONACCI:

13 Q. Do you try to deal with the complete applications first.

14 A. If while we're getting the 50 together we see that there  
15 is an obvious problem, we pull that out and enter that, give it  
16 to somebody to enter. But basically we're just struggling to  
17 get everything done and just get them to the proper clerk to  
18 process.

19 Q. In 2004, were you able to get all of those applications  
20 into the system or were some put aside. Prior to the election.

21 A. A lot were put to the side.

22 Q. All right. Now, in your experience during the 2004  
23 presidential year just before book closing with respect to this  
24 same group of applications that we're talking about, were you  
25 able to determine whether those applications were submitted at

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1 about the time that the voter signed the registration card.  
2 A. In some of the cases, the voter signed the card a couple  
3 of months before and in some of the cases, there might not have  
4 been a date, and in some of the cases it was within a week or  
5 so.  
6 Q. So a whole range of anywhere between a couple of months  
7 and fairly contemporaneous with the delivery to your office?  
8 A. Yes.  
9 Q. Do you have any estimation, as you sit here today, of how  
10 many were dated one month before the time they were submitted.  
11 A. No, sir.  
12 Q. All right. Same set of questions with respect to the 2006  
13 general election cycle. Did you have voter registration  
14 applications dropped off just before the book closing deadline.  
15 A. Yes.  
16 Q. In what volume?  
17 A. A lot, but not like 10,000. The presidential years are  
18 always much more.  
19 Q. Refresh my recollection. How many did you say you got in  
20 '04?  
21 A. About 10,000 right at book closing.  
22 Q. What about a week before?  
23 A. Couple of thousand here and there.  
24 Q. All right. So would you say 20,000 during the prior week  
25 or less?

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1 A. Less.  
2 Q. All right. And do you know why you had fewer applications  
3 that were received just before book closing in 2006 than you  
4 had in 2004?  
5 A. There are not as many third party groups doing anything on  
6 non-presidential years is one of them.  
7 Q. How many third party groups, to your knowledge, to your  
8 specific knowledge, were operating in Miami-Dade County during  
9 2004?  
10 A. Probably about four that I know of.  
11 Q. Did it include labor unions?  
12 A. Make that five, yes.  
13 Q. All right. Does your office conduct municipal elections  
14 on behalf of municipalities in Miami-Dade County?  
15 A. Yes.  
16 Q. Approximately how many do you conduct in a year?  
17 A. There are 35 municipalities, sometimes a couple of them  
18 might be on the same day, but in times spread out through the  
19 odd numbered years. Then again some of them redo stuff on  
20 even.  
21 Q. So you're not just preparing for federal elections or  
22 state elections, you're preparing for local elections as well.  
23 A. Yes.  
24 Q. Does that include special districts?  
25 A. Yes.

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1 Q. And how many, on the average during the course of the  
2 year, if you can tell the judge.  
3 A. About eight or ten.  
4 Q. Now, you testified that there were 800 some odd precincts?  
5 A. About 749.  
6 Q. How many polling places are there?  
7 A. About 550.  
8 Q. So some polling places have more than one precinct?  
9 A. Yes.  
10 Q. All right. Now with respect to printing supplemental  
11 precinct registers, the two or three supplementals that you  
12 testified about previously, are you adding additional voters to  
13 those precinct registers or are you eliminating voters who  
14 voted early, voted absentee or changed addresses.  
15 A. Eliminating voters that voted absentee ballot or early  
16 voted after the precinct registers were printed.  
17 Q. So no new voters are added to those precinct registers?  
18 A. No.  
19 THE COURT: Now, let me understand that last series of  
20 questions.  
21 Are you referring to early voting in the last question?  
22 THE WITNESS: Yes, sir.  
23 THE COURT: So Mr. Abt asked you on direct about a voter  
24 coming to vote and whether or not you could change or add or  
25 delete information, I believe your answer was yes you could.

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1 THE WITNESS: Yes, sir.  
2 THE COURT: Okay. And this person that he would then be  
3 referring to was not your general voter at the general election  
4 day.  
5 THE WITNESS: Correct.  
6 THE COURT: But it was early voting.  
7 THE WITNESS: Yes, sir.  
8 THE COURT: That's the way you answered the question.  
9 Now, let me follow-up with the question that he may have  
10 asked you and I missed, but on election day, can your voting  
11 people, can a voter stand before someone and change, add,  
12 modify information that's in the computer already about his  
13 application?  
14 THE WITNESS: A voter on election day can go and change  
15 their address. So if they used to live in Miami and now they  
16 live in Miami Beach, they would go to Miami Beach, change their  
17 address to that precinct and be eligible to vote in that  
18 precinct.  
19 THE COURT: Any other information that normally is  
20 included, can any other information be changed on election day.  
21 THE WITNESS: An affirmation would have to be done after  
22 the precinct register is already printed. You could only move  
23 a voter from one precinct to another precinct when they move.  
24 But you can't actually change the registered person's name.  
25 You would do an affirmation and for the next election the

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1 voter's new name would be there.  
2 THE COURT: So if voter John Smith went to your example,  
3 the Miami Beach precinct, John Smith could say I used to live  
4 in Hialeah but now I live on Miami Beach and I'd like to change  
5 my address. And the person presumably would say yes and type  
6 in the new address.  
7 THE WITNESS: No. They would have to call election  
8 central and we change the address there or if they're within  
9 that precinct, they make an affirmation and they just fill in  
10 their name at the back of the precinct register. There's no  
11 computer or anything doing it live on election day.  
12 THE COURT: But there is a process for them to change  
13 their address.  
14 THE WITNESS: Yes, sir.  
15 THE COURT: Is there a process for them to fill in a blank  
16 that had been previously left on the --  
17 THE WITNESS: No, sir.  
18 THE COURT: On the application. So your answers to those  
19 questions dealt with early voters.  
20 THE WITNESS: Yes, sir.  
21 THE COURT: The what about adding information at the  
22 polls.  
23 THE WITNESS: Because that's a live system.  
24 MR. ANTONACCI: Not at the polls, Your Honor. Early  
25 voting only.

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1 THE COURT: Okay. I believe I understand. And if you're  
2 confused, you can correct it later on in redirect.  
3 BY MR. ANTONACCI:  
4 Q. Let's just clear up one small matter there, Ms. Korman.  
5 With respect to the example that Judge King just gave you,  
6 someone wanting to change their address at the polling place,  
7 the Miami-Dade voter registration system is not updated until  
8 that affirmation returns to your office and somebody processes  
9 that information into the computer; isn't that correct?  
10 A. Correct.  
11 Q. And that information really doesn't become final until its  
12 communicated to the Florida Voter Registration System. Isn't  
13 that correct?  
14 A. Yes.  
15 Q. Because the Florida Voter Registration System now, after  
16 January first '06, is the official register of voters in  
17 Florida. Isn't that correct?  
18 A. Yes.  
19 Q. So the county registration system once was the official  
20 voting registration voting register for each county, right?  
21 A. Yes, sir.  
22 Q. No longer the case.  
23 A. Yes.  
24 Q. All right. Now, is the book closing report that Mr. Abt  
25 asked you about generated from state data or local data, if you

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1 know?  
2 A. I don't because I don't prepare the report.  
3 Q. All right. Fair enough. We saw up on the screen the term  
4 fluid with respect to the book closing period. And you agreed  
5 with that term, correct?  
6 A. Yes, sir.  
7 Q. How else would you describe the atmosphere in your office  
8 during the book closing period. What words would you use for  
9 the judge to describe the atmosphere in addition to fluid?  
10 A. Pandemonium. Mostly we just have stuff -- everything is  
11 happening all at that time. A perfect example is this past  
12 election, we had 100,000 petitions we needed to do.  
13 Q. When you said petitions you needed to do, tell the judge  
14 what you're doing.  
15 A. Petitions had to be verified by December 31st. We had a  
16 book closing date December 29. Cards being delivered, mail is  
17 coming in, we sent a mailer out and everything happens. Plus  
18 I'm running early voting, most of my staff is being double used  
19 for early voting as well as voter registration, two weeks of  
20 early voting, preparing for the precincts, putting the  
21 registers together and just getting ready for election day.  
22 Q. During that pandemonium period, are you putting every hour  
23 to good use for the purposes of preparing for the election.  
24 A. We were putting in a lot of overtime.  
25 Q. Do you need additional time in your experience?

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1 A. I need -- I always need, yes, I do.  
2 Q. Is that true of both presidential elections as well as  
3 general elections in the off years?  
4 A. Presidential mostly. County-wide we're usually okay.  
5 Q. Does county-wide mean the off year elections?  
6 A. Yes.  
7 Q. So '06, '02, those elections?  
8 A. For regular county elections, yes, sir.  
9 Q. All right.  
10 THE COURT: What period of time are you -- I know he went  
11 over it, he went over it quickly, excuse me.  
12 What period of time are you talking about where it is  
13 hectic and overtime, as you described it as pandemonium, what  
14 period of time did he ask you about or what period of time are  
15 we talking about taken from election day back.  
16 MR. ANTONACCI: I asked during the book closing period,  
17 the whole 29 day period.  
18 THE COURT: I'm asking her.  
19 THE WITNESS: And actually, let's say this past book  
20 closing, at least two weeks before because of all the  
21 additional mail, we got an extra card for presidential election  
22 and just basic planning.  
23 THE COURT: So tell me in your word, no disrespect to  
24 counsel, tell me in your word, when is this hectic time, in  
25 your word.

1 THE WITNESS: May I use this last election as an example  
2 or --  
3 THE COURT: Any way you want to express it. I'm looking  
4 ultimately at the number of days. That's what we're talking  
5 about. This case is about grace period. We're talking about  
6 days. So any way you can express it in your own words.  
7 THE WITNESS: This past book closing was December 29.  
8 Now, forgetting of course it was a holiday,  
9 THE COURT: What was December 29?  
10 THE WITNESS: Book closing for the January 29 election  
11 that we just had.  
12 THE COURT: Uh-huh. Go ahead.  
13 THE WITNESS: So we had about 60,000 petitions in-house  
14 that we had a 30 day deadline that we had to get out and this  
15 is typical for all elections. We had cards, probably about  
16 10,000 cards that we were going to be working on, we were  
17 planning for early voting, doing the normal registration, plus  
18 we sent out a county-wide mailer notifying the voter that this  
19 was your political party, your address, making sure that the  
20 name, everything was correct and letting them know about the  
21 upcoming elections.  
22 So we were basically taking every employee from every  
23 division, I was begging people to help us and we were working  
24 overtime, every night and Saturdays and Sundays in order to get  
25 this done and the book closing as well as the petition

1 deadline.  
2 THE COURT: Okay. Thank you.  
3 MR. ANTONACCI: May I, Your Honor?  
4 THE COURT: Yes.  
5 BY MR. ANTONACCI:  
6 Q. Now, in your experience, have deadlines in the voter  
7 registration system been helpful to you for the purposes of  
8 processing applications.  
9 MR. ABT: Objection.  
10 THE COURT: Overruled. You may answer that question.  
11 THE WITNESS: I think that there have to be.  
12 BY MR. ANTONACCI:  
13 Q. That's not what I'm asking, Ms. Korman. Have they been  
14 helpful or not?  
15 A. Yes.  
16 Q. Why have they been helpful?  
17 A. You have to be able to at least kind of stop and then kind  
18 of just do what you need to do. The book closing isn't the  
19 only thing that goes on at elections.  
20 Q. Now, does a potential voter have an advantage to having  
21 his or her application processed and get a voter information  
22 card the earlier prior to book closing they submit it.  
23 So in other words, if you submit it in March, you have a  
24 greater chance of voting in August than you would if you  
25 submitted it in July?

1 THE COURT: Well, this is your legal argument. This is  
2 asking her for -- I mean, just a general conclusion. You can  
3 argue that.  
4 MR. ANTONACCI: I'll move on, Your Honor.  
5 BY MR. ANTONACCI:  
6 Q. In your experience, have third party groups hoarded voter  
7 registration applications and put them in your office at the  
8 last minute?  
9 A. Yes.  
10 Q. Now, with respect to a grace period, and this is going to  
11 sound like a ridiculous question, but we do need to make a  
12 record.  
13 Are you asking this court, from the point of view of a  
14 voter registration supervisor, for an implementation of any  
15 grace period whatsoever.  
16 MR. ABT: Objection.  
17 THE COURT: Well, we let the last witness testify to that.  
18 I think this is one of the issues that the last witness went on  
19 yesterday at some length about his recommendations nationally  
20 and locally and all that. I'll let her answer the question.  
21 State it again so she understands clearly.  
22 BY MR. ANTONACCI:  
23 Q. Are you asking the court to enter an order requiring a  
24 grace period from the point of view of Miami-Dade voter  
25 registration operations.

1 MR. ABT: Objection to the term ask. He can ask for her  
2 opinion.  
3 MR. ANTONACCI: All right. I'll rephrase the question,  
4 Your Honor.  
5 BY MR. ANTONACCI:  
6 Q. Are you recommending to this court that a grace period be  
7 implemented?  
8 A. No.  
9 Q. If a grace period is implemented, will additional work be  
10 required of you in your office?  
11 A. Yes.  
12 Q. Can you say today how much additional work will be  
13 generated?  
14 A. No.  
15 Q. Will additional work lead to mistakes by your office and  
16 at the polls, in your experience.  
17 THE COURT: Only if you know. That's getting speculative.  
18 Do you think that it increases the probability of mistakes  
19 being made?  
20 THE WITNESS: Yes, Your Honor.  
21 THE COURT: All right.  
22 MR. ANTONACCI: I don't have any further questions, Your  
23 Honor. Thank you, Ms. Korman.  
24 THE COURT: Redirect.  
25 REDIRECT EXAMINATION

1 BY MR. ABT:  
 2 Q. Ms. Korman, you stated on cross-examination that the  
 3 period between the book closing deadline and the election day  
 4 is pandemonium?  
 5 A. Yes.  
 6 Q. You run an orderly election in Miami-Dade, don't you?  
 7 A. Yes.  
 8 Q. You stated previously that you have adequate staffing for  
 9 voter registration, correct?  
 10 A. Yes.  
 11 Q. And during that book closing period, you have hundreds if  
 12 not thousands of employees working on voter registration, isn't  
 13 that true.  
 14 MR. ANTONACCI: Object, Your Honor, to the leading  
 15 question.  
 16 MR. ABT: It's redirect.  
 17 THE COURT: Well, it's leading but I'm going to overrule  
 18 the objection, permit her to answer.  
 19 The question is do you have thousands of people working.  
 20 THE WITNESS: No.  
 21 BY MR. ABT:  
 22 Q. Hundreds?  
 23 A. No.  
 24 Q. You don't have hundreds of temporary employees working?  
 25 A. Not in my division.

1 Q. Throughout the entire office?  
 2 A. Doing other division work, correct.  
 3 Q. Okay. You stated that on cross that this would  
 4 -- implementing a grace period would require additional work.  
 5 You also stated on direct examination that allowing a  
 6 correction to pass through your system would simply be a matter  
 7 of filling out a field. Is that correct?  
 8 MR. ANTONACCI: Objection again to the leading and  
 9 multiple questions.  
 10 THE COURT: Well, it kind of summarizes -- let's see, well  
 11 you know what you said earlier based on that, that what was it  
 12 that she -- the last -- hold it right there just for a moment.  
 13 If you get it down, fine. If you don't, it's all right.  
 14 The last question you asked, you don't have hundreds of  
 15 temporary employees working. Answer, not in my division.  
 16 Throughout the entire office? Answer, doing other division  
 17 work, correct. Okay. You stated that on cross that this would  
 18 -- implementing a grace period would require additional work.  
 19 You stated on direct examination that allowing a correction to  
 20 pass through your system would simply be a matter of filling  
 21 out a field. Is that correct. I think the answer is yes and  
 22 we'll go on. Is that -- would your answer be yes?  
 23 THE WITNESS: Yes, sir.  
 24 THE COURT: All right.  
 25 BY MR. ABT:

1 Q. Now, it's your testimony that you're not recommending a  
 2 grace period to this court; is that true?  
 3 THE COURT: That's what she said. What's your question.  
 4 She said that 30 seconds ago. What's your question.  
 5 MR. ABT: If this court were to implement or -- excuse me,  
 6 if this court were to order a grace period, you could implement  
 7 one, correct?  
 8 THE WITNESS: Yes.  
 9 MR. ABT: And while you're not -- withdrawn.  
 10 Thank you very much.  
 11 THE COURT: Thank you. You may step down, Ms. Korman.  
 12 Thank you very much. And I'm sure all counsel would join me in  
 13 saying that we appreciate the hard work that your office does  
 14 and the others around the state, the folks -- the work you guys  
 15 do and a lot of it unknown and unappreciated by the general  
 16 public.  
 17 THE WITNESS: They only thing, we do one election every  
 18 four years.  
 19 THE COURT: I hope you all don't mind. I speak for all of  
 20 us, don't I? That we say that to all these hard working people  
 21 whatever office they're in around the state. Thank you, Ms.  
 22 Korman.  
 23 Your next witness please.  
 24 MR. ABT: Your Honor, if I may, before the next witness is  
 25 called, I just wanted to -- may I approach the podium?

1 THE COURT: Of course. Of course. I can hear you better.  
 2 MR. ABT: Your Honor, I just want to make a point about  
 3 questioning on direct. This next witness and many of the  
 4 witnesses are not here voluntarily. They're under subpoena.  
 5 And in fact, the next witness we expect to be quite hostile and  
 6 so we would ask that we have a little leeway to be able to ask  
 7 leading questions.  
 8 THE COURT: You know the procedure for doing that, don't  
 9 you?  
 10 MR. ABT: Yes.  
 11 THE COURT: What is it? Tell me the procedure that's  
 12 provided for in the rules when you have a hostile witness.  
 13 MR. ABT: Well, for this particular witness because --  
 14 THE COURT: For any hostile witness in the United States  
 15 of America in the district court today, what is the rule of  
 16 evidence. The rule of evidence is very clear. You stand up  
 17 and say judge, I wish to have this witness declared a hostile  
 18 witness and the other side gets to object or agree and whatever  
 19 they do or you do, I rule. Now that's the procedure. And that  
 20 follows after hostility is shown by the witness on the stand.  
 21 Now that's the procedure. It's very simple. Let's follow it.  
 22 Asking me in advance to rule on whether the person is  
 23 going to be hostile or not, I don't know. I haven't sensed any  
 24 hostility in either of the last two witnesses to either side.  
 25 To either side. I think they've both been courteous,

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1 nice people, just my impression of them. Regardless of who  
 2 called them or who they were responding to.  
 3 It seemed to me that both the supervisor from Tallahassee  
 4 and the lady from Dade County were both trying to give you  
 5 their best impression of what they do in their offices.  
 6 MR. ABT: Respectfully Your Honor, just some of these  
 7 witnesses are former defendants and none of these witnesses  
 8 have, you know, agreed to speak with plaintiffs in advance of  
 9 the questioning.  
 10 THE COURT: Yeah, but you can't just stand up, which is  
 11 what you did with the last witness, and give them your view and  
 12 theory of the case and ask them to say yes or no. That's not  
 13 the way cases are tried by either side and both of you are  
 14 doing some of that or a lot of that. You're to elicit facts  
 15 from them and you ask them and actually letting them tell in  
 16 their own words what happens is much clearer anyway than you  
 17 telling them what they do and then disagreeing with one little  
 18 part of your hypothetical or whatever. Hypotheticals can only  
 19 be based and they can be posed to expert witnesses based on the  
 20 record, not the record that the lawyer thinks it is or believes  
 21 it to be in good faith, but what the record is.  
 22 So I'm sorry. I don't mean to lecture you on the  
 23 rules of evidence, but until hostility is shown, I would be  
 24 abusing my authority if I said the next witness is going to be  
 25 hostile or the third one, based on what either one of you say.

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1 It shows, it comes out. But originally, your witnesses, you  
 2 call them, you can ask these questions without leading. You  
 3 don't have to read them your theory of the case and ask them to  
 4 say yes or no. Not that you were doing just that, but you were  
 5 getting -- so just follow the rules and I don't -- I believe  
 6 you're sincere, I'm sure you think this person is going to be  
 7 adverse. But if he's that adverse, don't call him if he's  
 8 going to hurt your case. You don't have to call him. See,  
 9 that's the answer. Or you can bring it out on -- if they call  
 10 him, you can then cross-examine and on cross-examination you  
 11 can lead the witness all over the place. All right.  
 12 Let's move on. Call your next witness.  
 13 MR. ABT: Plaintiffs call Buddy Johnson.  
 14 THE CLERK: Please raise your right hand.  
 15 BUDDY JOHNSON, PLAINTIFF WITNESS, SWORN.  
 16 THE CLERK: Please be seated and state your name, spell it  
 17 for the record.  
 18 THE WITNESS: Buddy Johnson. B U D D Y, J O H N S O N  
 19 THE CLERK: Thank you.  
 20 MR. ABT: Your Honor, may I inquire?  
 21 THE COURT: Yes.  
 22 DIRECT EXAMINATION  
 23 BY MR. ABT:  
 24 Q. Good morning, Mr. Johnson.  
 25 A. Good morning.

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1 Q. Do you currently serve as supervisor of elections for  
 2 Hillsborough County?  
 3 A. I do.  
 4 Q. And were you elected or appointed to that office?  
 5 A. Both.  
 6 Q. When were you appointed?  
 7 A. 2003.  
 8 Q. And when were you elected?  
 9 A. 2004.  
 10 Q. What is the population approximately of Hillsborough  
 11 County?  
 12 A. A little over a million.  
 13 Q. And approximately how many registered voters are there in  
 14 your county?  
 15 A. 610,000 currently.  
 16 Q. To other counties in Florida, would you  
 17 describe Hillsborough County as a small, medium or large  
 18 county?  
 19 A. Large county.  
 20 Q. And approximately how many people does your office employ  
 21 full-time?  
 22 A. 33.  
 23 Q. And on a part-time basis or seasonal basis?  
 24 A. Depending on the time of the year, between 50 and 200,  
 25 plus the election day pollers.

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1 Q. As the supervisor, you're responsible for voter  
 2 registration within Hillsborough County; is that true?  
 3 A. Yes.  
 4 Q. Is voter registration an important part of your duties?  
 5 A. Yes.  
 6 Q. How so?  
 7 A. Because it's the record of voters to make certain that  
 8 they're, number one, eligible to vote and that we maintain all  
 9 records pertinent to each of those individual persons.  
 10 Q. And as supervisor, is it important to you that every  
 11 eligible applicant that wants to vote can vote?  
 12 A. Absolutely.  
 13 Q. Mr. Johnson, my next questions to you on direct  
 14 examination will concern voter registration in 2004 only in  
 15 Hillsborough County.  
 16 A. Sure.  
 17 Q. Do you remember the close of books date for the  
 18 2004 general election?  
 19 A. The specific date, the 29 days before the election. I  
 20 don't recall the specific date.  
 21 Q. Does October 4, 2004 ring a bell?  
 22 A. If that was 29 days before the election, yes, sir.  
 23 Q. In 2004, did your office receive an increased number of  
 24 voter registration applications just before the close  
 25 of books?

1 A. Repeat your question please.  
 2 Q. Yes. In 2004, did your office receive an increased  
 3 number of voter registration applications in the weeks prior to  
 4 the close of books?  
 5 A. It was my first presidential. We received a deluge  
 6 of applications in the last day. So if that is a yes, yes. I  
 7 wasn't there in 2000.  
 8 Q. Okay. Just referring to 2004 for these questions. So  
 9 it's fair to say it increased dramatically?  
 10 A. Relative to what I was trying to clarify.  
 11 Q. I see. I understand your point. Thank you.  
 12 And some of those applications that were received just  
 13 prior to the close of books were incomplete; is that true.  
 14 THE COURT: He wasn't, even though he said -- were you in  
 15 the office in 2004?  
 16 THE WITNESS: 2004, yes, sir. 2000, the year 2000, I was  
 17 not. I had no reference to another presidential.  
 18 THE COURT: Well, you all pick a time now. I'm trying to  
 19 keep notes on this and I had that your questions dealt with  
 20 2004 and you suggested and we all accepted October 4  
 21 would have been the 29 days. He doesn't know exactly, but  
 22 let's assume that's correct for book closing.  
 23 Now are you talking about '04 or '02 or --  
 24 MR. ABT: For the remainder of my direct, I will be only  
 25 speaking about --

1 THE COURT: Your last question, was it '04 or '02 or  
 2 2000? What was it?  
 3 MR. ABT: 2004, Your Honor.  
 4 THE COURT: Thank you very much. Were you there? Because  
 5 I heard him say he was not in the office at some point in time,  
 6 when were you in the office in 2004?  
 7 THE WITNESS: Yes, sir.  
 8 THE COURT: Okay. So he's asking you questions about what  
 9 happened there in 2004 and I would like to hear that and  
 10 understand his answers. Now, go ahead.  
 11 BY MR. ABT:  
 12 Q. According to the Florida election law in 2004, were you  
 13 required to send notices to voters who submitted incomplete  
 14 applications.  
 15 THE COURT: Mr. Abt, I'm very sorry but you had asked him  
 16 several questions about whether or not there were any  
 17 applications at the last time. I didn't --  
 18 MR. ABT: You'd like me to clarify?  
 19 THE COURT: I didn't hear that because I wasn't -- can you  
 20 go back and repeat those questions please so we can understand  
 21 please?  
 22 MR. ABT: Yes.  
 23 BY MR. ABT:  
 24 Q. In 2004, did your office receive a large number of voter  
 25 registration applications just prior to the close of books?

1 A. Yes.  
 2 Q. And were some of those applications that were received  
 3 just prior to the close of books, were some of those  
 4 applications incomplete?  
 5 A. Yes.  
 6 MR. ABT: Your Honor, may I have on --  
 7 THE COURT: Yes. Unless he has -- unless he knows how  
 8 many there were, that might be helpful because -- go ahead.  
 9 BY MR. ABT:  
 10 Q. Mr. Johnson, if you know, do you know how many were  
 11 submitted in the period just before the close of books.  
 12 A. I know we got one delivery of 27,000, but there were more.  
 13 Are you asking for incompletes or for applications submitted?  
 14 Q. I'm asking for incompletes.  
 15 A. No. That's not the correct answer to that question. I  
 16 misunderstood your question. No. I don't know the answer to  
 17 how many we had that were incomplete and it surely would not  
 18 have been 27,000.  
 19 Q. According to Florida election law, in 2004, you were  
 20 required to -- I'm sorry. Withdrawn.  
 21 Were you required to send notices to voters who submitted  
 22 incomplete applications?  
 23 A. We send notices to voters who submit incomplete  
 24 applications, yes.  
 25 Q. And you did that in 2004?

1 A. Yes.  
 2 Q. So in 2004 in the weeks leading up to the close  
 3 of books, did you send out incomplete notices to voters?  
 4 A. Yes. Yes. To those that we considered incomplete, yes.  
 5 Q. In 2004, between the close of books and election day, did  
 6 you allow voters to correct applications if they were  
 7 incomplete?  
 8 A. That the understanding of that period of time was a bit  
 9 discretionary and there were -- I don't recall anyone coming in  
 10 to make a correction on an application. But there was a big  
 11 discussion regarding the check box and whatnot, that we  
 12 exercised, you know, some discretion.  
 13 THE COURT: No. Counsel's question, and you got to listen  
 14 to it, and I would like for you to listen carefully to it and  
 15 answer his question.  
 16 His question was, were voters allowed to make  
 17 corrections on incomplete, what you called incomplete  
 18 applications in 2004. You said there was confusion,  
 19 discretion, whatever.  
 20 The question is did you do it. That's  
 21 his question.  
 22 THE WITNESS: Can I ask a clarifying question, Judge?  
 23 THE COURT: Sure.  
 24 THE WITNESS: Do you mean by that do I have knowledge of  
 25 anyone coming into the office to make a change on their

1 application? Is that what you're asking?

2 BY MR. ABT:

3 Q. No. My question is simply between the close of books and  
4 election day, did your office allow voters who submitted a  
5 correction after the close of books to make corrections?

6 A. Well, if they submitted a correction, that would have been  
7 the correction -- the correction wouldn't have been to allow a  
8 correction. So to answer your question, I would say no.

9 Q. So your answer is no?

10 A. As I understand your question, the answer is no,  
11 but there were corrections made by virtue of a voter sending in  
12 information directly. That would be the correction.

13 THE COURT: Mr. Abt, let me interrupt you to ask -- I'm  
14 trying to get an answer. I want to help Mr. Abt get an answer  
15 to this question.

16 In 2004, after the books closed, if somebody, a  
17 voter wanted to change the information or if a voter came into  
18 the supervisor's office and said hypothetically, I left the  
19 blank as to whether I was a citizen or not, I want to tell you  
20 I am and here's my passport or here's my birth certificate.

21 Did the office, no criticism of you either way, we  
22 just want to know what happened, did the office say fine and  
23 let him change it and you may have had to sign something, but  
24 did you let him do it?

25 THE WITNESS: I'm not aware of any particular person that

1 came in to do that. There were incomplete applications that  
2 were processed.

3 THE COURT: All right. Now then, you're not aware of any  
4 and that's certainly understandable. We wouldn't expect the  
5 person, the lady out at the front desk to come in and bother  
6 you every time with that.

7 But you ran the office. You're the supervisor. Did they  
8 do it. Did the people out there, did your staff permit people  
9 to do it.

10 THE WITNESS: I am certain that that was allowed, yes.

11 THE COURT: See, that's all we're getting at. Whatever  
12 the facts were, nobody is criticizing your office or your lady  
13 out front or you, we just want to know what happened.

14 So in 2004, if somebody came in and said I'd like -- I got  
15 a notice or I think -- or somebody phoned me or here I am, I'd  
16 like to fill out, make sure that I can vote and I want to fill  
17 it all out, you all, probably being nice, good people would  
18 just say -- would let them do it, wouldn't you?

19 THE WITNESS: That did happen on occasion.

20 THE COURT: Oh, why sure it did. Of course it did. You  
21 could have argued it without even asking Mr. Johnson, because I  
22 would not assume there were any organizations over there with  
23 sharpened, double axe swords that chopped the heads off  
24 people that wanted to vote. So it's logical. That's what your  
25 point was and that's what the evidence in this record shows in

1 those circumstances it probably happened.

2 Is that what you were trying to get out? Was there more  
3 or less? I think that was your point, wasn't it? Am I  
4 mistaken about that?

5 MR. ABT: Judge, I may be confused a little bit.

6 THE COURT: Well, what were you -- your point that you  
7 will argue to me is that in 2004, people could go in and  
8 change and fill in the blanks and it would be accepted. Isn't  
9 that your point?

10 MR. ABT: No. Actually that wouldn't be the point. The  
11 point that I'm trying to establish is that Hillsborough County,  
12 unlike other counties, did allow corrections after the close of  
13 books and I'm trying to clarify that they did.

14 THE COURT: Isn't that what I just said?

15 MR. ABT: Perhaps I misunderstood you.

16 THE COURT: We're not communicating at all. Mr. Johnson  
17 said, and I'll paraphrase it, that he has good people working  
18 for him and if somebody came in after the close of books and  
19 wanted to fill out -- fill in a blank, they probably let them  
20 do it. Is that a fair statement, Mr. Johnson?

21 THE WITNESS: Yes, sir.

22 THE COURT: Or in your own words you --

23 THE WITNESS: I would like that. I was appointed as  
24 supervisor in February of 2000, and the first presidential was  
25 in '04, the discussion -- and as my deposition would state, the

1 discussion that is most clear about those changes given at that  
2 time, this issue was not as predominant as it is now, the  
3 discussion was really about whether or not the box of  
4 citizenship was checked or not checked and whether that in  
5 light of the fact that the oath said that the person was a  
6 citizen, was that an incomplete application. That was really  
7 the extent to which, in our conversations, we talked about  
8 incompletes being processed. And we did process applications  
9 that did not have either box checked on the citizenship  
10 question.

11 To the other fields on that application, I do not  
12 have that personal knowledge.

13 THE COURT: Mr. Abt, I give up. Ask whatever  
14 questions you want to ask. Let's see where it goes. I thought  
15 that this was would be helpful to what you were trying to bring  
16 out, but obviously it's difficult. Go ahead.

17 BY MR. ABT:

18 Q. I just would like to refer to you your deposition  
19 testimony for one moment. You testified in the deposition in  
20 this case, correct?

21 THE COURT: Do you remember testifying?

22 THE WITNESS: I testified in --

23 THE COURT: So many you don't know?

24 THE WITNESS: The case was -- I believe that was the case,  
25 yes.

1 BY MR. ABT:  
 2 Q. And that deposition took place on October 12, 2007?  
 3 A. I don't recollect that date.  
 4 Q. At the beginning of the deposition, you swore to tell the  
 5 truth.  
 6 MR. ANTONACCI: Your Honor, I object. I don't know what  
 7 he's impeaching him with.  
 8 THE COURT: It will have to be impeachment or I will  
 9 admonish counsel that it's a waste of time. If you simply want  
 10 that in the record whatever he said there, he was a party at  
 11 the time he gave it or was he, I don't know. He's been  
 12 dismissed out?  
 13 MR. ABT: He was not.  
 14 THE COURT: A deposition party can be offered for any  
 15 purpose. Just hand it into the record. If he's not a party,  
 16 then you can use it for impeachment or to refresh a  
 17 recollection, this is provide in the federal rules of evidence.  
 18 He does not -- he has not said he needs it for refreshing his  
 19 recollection, that predicate has not been laid, so it can  
 20 only be for impeachment. If you are offering it to impeach  
 21 what he has just said on the stand, that's fine. Then you read  
 22 him the question and the answer and ask him, provided it's  
 23 different. But if it's not different, then it's not  
 24 impeachment and all is stricken upon appropriate motion.  
 25 Now, that's the rules of evidence. I am going to apply, I

1 think, to FIU or University of Miami or maybe Central Florida  
 2 so I can teach a course in evidence and I could, like my friend  
 3 Judge Marcus, who teaches prominently, I could supplement my  
 4 income I suppose.  
 5 In any event, I'm rambling. The point is that is the way  
 6 we do it. If you're impeaching something, if he says something  
 7 here today under oath that's different from what he said  
 8 before, then you can go ahead.  
 9 MR. ABT: It may not be necessary to impeach, Your Honor.  
 10 Let me just ask a qualifying question.  
 11 BY MR. ABT:  
 12 Q. With respect to allowing corrections after the close of  
 13 books in 2004, that was not just limited to check boxes, that  
 14 was true of all types of mistakes or omissions; is that true?  
 15 It wasn't limited to that one category.  
 16 A. The knowledge I have -- by the way what does impeachment  
 17 mean? I don't --  
 18 THE COURT: You can't -- impeachment would be simply if  
 19 you said something today that earlier you had said something  
 20 different that was material, not a minor something, you know.  
 21 If you said today for example I was elected in 2001 and earlier  
 22 you said you'd been elected in 2000, in December of 2000 and  
 23 now you're saying 2001, that would be a different statement,  
 24 that would be -- and he could say well, didn't you tell me in  
 25 your deposition it was in 2000 I was elected and you say well,

1 I -- the election was in November but I took office in January.  
 2 Now that would -- and that's impeachment. It's minor, that  
 3 wouldn't really count. That's all we're talking about.  
 4 So he's entitled to take your deposition statement, read  
 5 you the question and answer and say why is something different  
 6 today than what you told me before. He cannot take it and read  
 7 to you a long question he asked that you may have said yes or  
 8 no or something, but that's not your problem. That's something  
 9 the court and counsel deal with when the objection is made.  
 10 So what he's asking you about is whether or not the  
 11 conversations you all were having in your office,  
 12 which again are all hearsay and subject to other objections but  
 13 none were made, you made a statement that there were  
 14 conversations in the supervisor's office which you knew about  
 15 or were involved with that had to do with  
 16 the filling out of the question on the application question  
 17 number two, which said I am a US citizen.  
 18 THE WITNESS: Correct.  
 19 THE COURT: Or question number 17, which is where the  
 20 person signed and it said I am -- I certify I'm a citizen and  
 21 there were questions you said, if I understand correctly in  
 22 your office, about how to treat those. If one was left blank,  
 23 I guess if question two was left blank and that you all decided  
 24 okay, Number 17, if they signed it probably takes care of it,  
 25 we're trying to let people vote, we'll say great, we'll

1 register you. I think that's what you said. I may not -- now  
 2 if I'm incorrect about that, you tell me now.  
 3 Am I incorrect or is that what you were referring?  
 4 THE WITNESS: No, sir. I would like to explain to you  
 5 just shortly, very briefly.  
 6 THE COURT: Well, you can take all day. I'm not trying to  
 7 cut people off. But they have to follow the rules of evidence.  
 8 Mr. Abt may or may not want to ask you about your explanation,  
 9 Mr. Antonacci may or may not want to and if they don't give you  
 10 that opportunity, then we apologize to you, I know you'd like,  
 11 as a professional, to explain it. But let's leave it there  
 12 unless one of them asks you. Mr. Abt is going to ask you  
 13 something about the time frame and the whatever, or maybe that  
 14 covered it, I don't know.  
 15 MR. ABT: Thank you, Your Honor. I think you explained it  
 16 well.  
 17 BY MR. ABT:  
 18 Q. In 2004, did your office conduct an orderly election?  
 19 A. Yes.  
 20 Q. And in 2004, did you have sufficient resources to conduct  
 21 your election?  
 22 A. Yes.  
 23 Q. And in 2004, did you have any problem with voter fraud,  
 24 specifically with regard to voter registration?  
 25 A. We had registrations that were -- applications that were

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1 turned in that I believe were not signed by the individuals  
2 who purported to sign them, if that's what you mean.  
3 Q. That sounds like yes, there was voter fraud with regard to  
4 registration. Is that your answer?  
5 A. On the part of the voter, the applicant, I would say yes.  
6 Q. Let's take a look at your deposition. Hold on one second.  
7 Now Mr. Johnson, I'd refer you to Page 27 of your deposition,  
8 lines 14 through 24 and we'll just blow this up here.  
9 Were you asked the following questions and did you give  
10 the following answers?  
11 "Did you have any problems with voter fraud this that  
12 election?"  
13 Answer, "can you be more specific?"  
14 Question, "yes. Did you have any problems with voter  
15 registration fraud in that election?"  
16 Answer, "I'm not really sure what -- there's no attempt  
17 here not to answer your question, but there are so many --"  
18 Ms. Harris, your attorney, "are you aware of any?"  
19 Answer, "I'm not aware of any, no. You're not talking  
20 about -- I'm sorry. No, I'm not. No, I'm not."  
21 A. I can explain exactly why I answered the question the way  
22 I did and I don't know what your --  
23 Q. My question to you is simply did you -- were you asked  
24 those questions and did you give those answers?  
25 A. It appears -- I'm not sure.

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1 MR. ANTONACCI: Excuse me, Your Honor the entire answer is  
2 not up on the screen if that's what you're looking at.  
3 THE COURT: I'm not looking at the screen, I'm looking how  
4 the traditional -- I'm looking at the deposition he's got the  
5 deposition in front of him. But if you want --  
6 THE WITNESS: Judge if I could, the -- appointed in 2003,  
7 I have a very good staff, a very competent staff and this  
8 deposition was very difficult. The one that he refers to. And  
9 the question I asked you today about what the definition -- if  
10 you want to, there were voters who signed applications that was  
11 -- a Rico Suave signed as a voter applicant. When  
12 these questions were asked, I may not have clarified the  
13 question as I did here today, but Rico Suave applied  
14 for an application. So there's your answer.  
15 BY MR. ABT:  
16 Q. Those are your answers?  
17 A. I can't recollect, but that's the transcript so I'm not  
18 going to say that it wasn't.  
19 Q. And at the beginning of that deposition you swore to tell  
20 the truth.  
21 THE COURT: Yes, he did.  
22 THE WITNESS: Yes, I did.  
23 THE COURT: We don't need to go through that. The answers  
24 are today he said in the context of the question today. No, no  
25 voter fraud. I'm sorry, today he said yes, voter fraud to the

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1 one question. On the deposition he said no.  
2 Mr. Antonacci will ask you more questions undoubtedly  
3 about this and we can spend some time on this and he's -- go  
4 ahead. He gave those answers at that time under oath, he gave  
5 the answer today under oath and at the end of the day you all  
6 can argue the meaning of that.  
7 Go ahead.  
8 BY MR. ABT:  
9 Q. So how many Rico Suave applications did you  
10 receive?  
11 A. That's actually the only one that I'm aware of.  
12 Q. One out of the entire voter registration applications that  
13 you received?  
14 A. My answer is that that's the only one that I am aware of  
15 by name.  
16 Q. Now, in 2004 -- so in 2004, the policy of making  
17 corrections between the close of books and election day did  
18 not, did it, interfere with your ability to conduct an orderly  
19 election?  
20 A. Any exercise that takes away from the basics of our  
21 election interfere. So to answer the question, the answer  
22 would be yes.  
23 Q. Okay. I'd like to direct your attention to Page 28 of  
24 your deposition.  
25 A. And I'll explain that.

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1 Q. Lines four through 12. Were you asked the following  
2 questions and did you give the following answers?  
3 Question, "so the practice in 2004 of accepting  
4 corrections between the close of books and election day did not  
5 interfere with your ability to conduct an orderly election."  
6 Your answer, "the practice of -- say that again please."  
7 Mr. Abt, "reporter, can you read the question back  
8 please."  
9 The question was read back.  
10 Your answer, "no".  
11 MR. ANTONACCI: Your Honor, I object. This is his witness  
12 and now this is being offered for impeachment purposes. It is  
13 utterly inappropriate. He's been asked and answered a question  
14 as his witness.  
15 THE COURT: Wait just a minute. Leave it alone now. Now  
16 unless I'm confused, I think he has said the same thing today,  
17 that he did not interfere with his election with the operation.  
18 I don't see any inconsistency. Didn't he say today that in  
19 2004 the election went off and it was run? He answered  
20 specific fact questions about that, were some at the end, there  
21 were more applications or something, what do you suggest is the  
22 inconsistency, Mr. Abt?  
23 MR. ABT: Your Honor, the inconsistency was that I asked  
24 him a question linking the fact that there was an orderly  
25 election in 2004.

1 THE COURT: Right.  
 2 MR. ABT: With the acceptance of corrections after the  
 3 close of books.  
 4 THE COURT: Right.  
 5 MR. ABT: He did not accept that link and  
 6 he accepted the link.  
 7 THE COURT: No, what did he say. He did not accept that  
 8 link, what did he say? On oath here today about that? About  
 9 what you just said?  
 10 MR. ABT: He said -- I believe he said I would have to  
 11 disagree with that. We could have the --  
 12 THE COURT: He's disagreeing with your statement of your  
 13 theory. That's not impeachment, no. The objection is  
 14 sustained. The last series of questions will be stricken and  
 15 it should be something that is meaningful. If you're talking  
 16 about credibility of a witness, it should be some material  
 17 deviation, not a disagreement with the theory of -- at one time  
 18 and not a disagreement of another or whatever. If he's not  
 19 giving you evidence that is helpful to you, you shouldn't  
 20 impeach him. In fact, the rules prohibit it from your own  
 21 witness. The procedure is you don't call somebody that's going  
 22 -- you don't set up a witness and knock him over. You don't  
 23 call him if he's not going to be helpful to you in some way or  
 24 you feel you're going to have to impeach him.  
 25 Let's move on. Let's just follow the rules of evidence as

1 best we can. Go ahead. What's your next question.  
 2 BY MR. ABT:  
 3 Q. Was this policy of making corrections between the close of  
 4 books and election day in place when you became a supervisor.  
 5 THE COURT: What year now are we talking about please?  
 6 Because I don't know when he began.  
 7 BY MR. ABT:  
 8 Q. When you became a supervisor in -- I believe did you say  
 9 2000?  
 10 A. I did not become a supervisor in 2000. 2003.  
 11 Q. In 2003 was that policy in place?  
 12 A. Judge, the policies of the office that I came to in  
 13 leading up to the 2004 presidential election were not changed.  
 14 They continued to do business as they had been doing business.  
 15 I did not have a review of every specific policy down to the --  
 16 you know, that would have taken ten years to have done that.  
 17 The policies were in place when I got there and they were  
 18 continued on. I made no changes in those policies.  
 19 Q. Thank you very much.  
 20 CROSS-EXAMINATION  
 21 BY MR. ANTONACCI:  
 22 Q. Mr. Johnson, again, confining my questions only to 2004,  
 23 how many, if you know today, how many applications, incomplete  
 24 applications were processed during the book closing period in  
 25 2004, if you know?

1 A. I don't know.  
 2 THE COURT: I'm sorry, sir. That was -- I didn't --  
 3 THE WITNESS: I don't know, sir.  
 4 THE COURT: You don't know. All right. That the  
 5 question? You went through it quickly.  
 6 MR. ANTONACCI: I'll ask the question again.  
 7 BY MR. ANTONACCI:  
 8 Q. If you know, how many voter registration applications with  
 9 amendments, changes or corrections were processed by your  
 10 office during the book closing period in the general election  
 11 in 2004?  
 12 A. I don't know.  
 13 Q. Directing your attention to the 27,000 voter registration  
 14 applications that were delivered to your office in 2004,  
 15 towards the end of book closing, can you tell the court when  
 16 those applications were dropped off?  
 17 A. The last day.  
 18 Q. During the prior 10 days prior to book closing, how many  
 19 additional applications were dropped off at your office?  
 20 A. I don't have that number.  
 21 Q. Were those 27,000 applications dropped off by individuals  
 22 or were they dropped off by groups?  
 23 A. They were in one bundle. By groups.  
 24 Q. All right.  
 25 MR. ANTONACCI: I don't have any other questions, Your

1 Honor.  
 2 THE COURT: All right. Thank you. You may step down.  
 3 Unless you have any questions about these two, any redirect on  
 4 these two questions?  
 5 MR. ABT: No, Your Honor.  
 6 THE COURT: Okay. Court has a question. Do you know the  
 7 group or groups that dropped off the one bundle of 27,000  
 8 applications on the last day before the book closing took  
 9 place? Do you know the name of the group or groups.  
 10 THE WITNESS: Judge, it's one of two groups. I don't know  
 11 which one it was.  
 12 THE COURT: Well, which of the two groups' names that you  
 13 do know?  
 14 THE WITNESS: ACORN was one and the other group is -- I  
 15 forget their name.  
 16 THE COURT: ACORN. Okay. Thank you, sir. Thank you very  
 17 much. We appreciate your being here. We're sorry we held you  
 18 over. I believe you may have been here yesterday. Were you  
 19 the gentleman seated back there somewhere yesterday?  
 20 THE WITNESS: I was here for part of and --  
 21 THE COURT: The one that I excused, you were here  
 22 yesterday in the courthouse somewhere?  
 23 THE WITNESS: I was.  
 24 THE COURT: And I'm sorry we didn't get to you yesterday.  
 25 This witness can be excused or do you want him to remain?

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1 MR. ANTONACCI: For the Secretary of State, he's excused.  
2 THE COURT: The Secretary of State?  
3 MR. ANTONACCI: Excused.  
4 THE COURT: You have no further need?  
5 MR. ABT: Nothing further.  
6 THE COURT: Thank you. You may leave. Thank you, sir.  
7 All right.  
8 10:44. When did we start? Seems like it was about a  
9 week. We started about at 9. All right. Let's take a ten  
10 minute recess and you can get your next witnesses lined up to  
11 be brought in. Thank you.  
12 (Brief recess)  
13 THE COURT: Thank you. Be seated. All right. Would you  
14 swear the witness please?  
15 THE CLERK: Sir, please stand and raise your right hand.  
16 ROBERT SWEAT, PLAINTIFF WITNESS, SWORN.  
17 THE COURT: Be seated please. State your name and spell  
18 it for the record.  
19 THE WITNESS: Robert Sweat.  
20 THE CLERK: Please spell it.  
21 THE WITNESS: S W E A T.  
22 THE COURT: Mr. Abt.  
23 MR. ABT: Thank you, Your Honor.  
24 DIRECT EXAMINATION  
25 BY MR. ABT:

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1 Q. Good morning, Mr. Sweat.  
2 A. Good morning.  
3 Q. Do you currently serve as the supervisor of elections  
4 for Manatee County?  
5 A. Yes sir, that's correct.  
6 Q. And when were you first elected?  
7 A. I was elected in November of 1984, took office January,  
8 1985.  
9 Q. So you've been a supervisor of elections for over 20  
10 years?  
11 A. Yes, sir. This will be my 24th.  
12 Q. Have you received any education or training in the area of  
13 elections?  
14 A. About 24 years' worth.  
15 Q. Have you received any certifications or anything like  
16 that?  
17 A. Yeah. We have a certification here in the State of  
18 Florida the supervisor goes through. You have to become  
19 recertified every year. They're not going to kick you out of  
20 office if you're not certified, but it's an opportunity as a  
21 learning process for us where we can take so many hours, as  
22 many, you know, constitutional officers do, so we stay  
23 certified each year.  
24 Q. And are you a member of any organizations with regard to  
25 elections?

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1 A. Well, the Florida State Association of Supervisors, I've  
2 been a member of that since 1985. And but -- that's the only  
3 -- IACREOT is another organization. Those are the only two  
4 that I currently am active in.  
5 Q. Can you briefly describe for the court what IACREOT is?  
6 A. It's the international group of clerks, recorders,  
7 supervisor of elections that meet, lobby, participate  
8 with each other in trying to make our jobs better for the  
9 people of the State of Florida and the states that are  
10 represented in IACREOT which is throughout the United  
11 States.  
12 Q. Do you have any leadership roles in any of these  
13 organizations?  
14 A. I do not at the present time, no.  
15 Q. Have you had leadership roles in the past?  
16 A. I've been the president of the Florida State Association  
17 of Supervisors, served on the legislative committee for a  
18 number of years.  
19 MR. ABT: Your Honor, at this time Plaintiffs move to  
20 qualify Robert Sweat as an expert in the administration of  
21 elections and voter registration.  
22 MR. ANTONACCI: No objection.  
23 THE court: He will be so recognized and permitted to give  
24 opinions. Not on the law and things like that, but on the  
25 operation of his office or offices in general that deal with

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1 supervision of elections. All right. Go ahead.  
2 MR. ABT: Thank you, Your Honor.  
3 BY MR. ABT:  
4 Q. What is the population of Manatee County, approximately?  
5 A. The population is a little over 300,000. We have a  
6 hundred, almost 200,000 registered voters and we have a  
7 seasonal population, it might jump up to 450,000 people during  
8 the season, but normally about 350, 375.  
9 Q. Relative to other counties, would you describe Manatee  
10 County as a small, medium or large-sized county?  
11 A. We, the association that I belong to, has always  
12 classified Manatee County, up until about two months ago, as a  
13 medium-sized county, and they try to base this on number of  
14 registered voters in the county and they just moved us up to a  
15 large county status, which I don't know if it makes any  
16 difference one way or the other.  
17 Q. Approximately how many people does your office employ?  
18 A. We have 15 full-time employees and four to five part-time  
19 employees during the election cycle.  
20 Q. And as supervisor, what are your responsibilities  
21 generally speaking?  
22 A. Well, generally speaking is to register voters. My job is  
23 really kind of an administrative job where we make sure the  
24 records are kept up to date.  
25 We have voter registration drives, we work with the

1 schools, we work with the different groups and different  
2 parties in that. And basically, we perform  
3 all of the elections that are held through Manatee County  
4 including special taxing districts right on up to the  
5 presidential election.

6 Q. Thank you. You mentioned voter registration. Can you  
7 explain the importance of voter registration to your overall  
8 mission as a supervisor?

9 A. Well, obviously if we didn't have registered voters, we  
10 wouldn't have elections and I wouldn't have a job. But I think  
11 that that's probably a minor role. That plays out for us  
12 because obviously our country was built on the right for a  
13 person to go cast a secret ballot in a timely manner and make  
14 sure that ballot's counted.

15 And I think that is my basic role to make sure these  
16 things are performed in Manatee County.

17 Q. Do you conduct voter outreach or registration drives?

18 A. Yes, we do, through the League of Woman Voters, we do this  
19 through the parties, special interest groups sometimes will  
20 come in and want to have a voter registration drive. We try to  
21 guide them, we do not handle that for them, but we try to guide  
22 them to make sure that it's done properly.

23 We also go into the schools. As of this date, over the  
24 last 10 years, we've registered almost 12,000 17-year-olds,  
25 pre-registered them to vote. So it's just a full-time cycle,

1 with the voter registration going on.

2 Q. Why is that outreach important to your office?

3 A. I think number one we try to stress, or at least I do, I'm  
4 speaking strictly for Manatee County now, what I try to  
5 stress is the importance of voting and the right of a person  
6 to be able to select or make a choice, not just in local  
7 elections and federal elections, right on down to our special  
8 taxing districts.

9 Q. Thank you. Is your office committed to registering all  
10 individuals who are eligible and want to vote?

11 A. Anybody that wants to register in Manatee County certainly  
12 has an opportunity to register. Our registration forms are  
13 on our website. They're at probably 250 or 60 banks, real  
14 estate offices, at all of our constitutional offices, so if a  
15 person is looking to register to vote, if they can't find any  
16 of those places, they can call us and we'll put one in the mail  
17 to them.

18 Q. Thank you. Does your office maintain adequate staffing to  
19 handle its voter registration workload?

20 A. No. We've never had enough staff to handle the job. But  
21 we put in a lot of overtime. And so that's one of the ways  
22 that we offset being able to handle, and the workload comes in  
23 shifts, you know. It's not an every day thing either.

24 Q. Okay. How many employees do you -- work in your  
25 voter registration office full-time?

1 A. Our employees are cross-trained, and that's kind of hard  
2 to say because I may have one working in there today and three  
3 in there tomorrow. It all depends on the workload that we have  
4 when we get, you know, the applications in or the workload that  
5 we have. When somebody requests that we mail them out. It can  
6 vary from one to five on any given day to process these.

7 Now, during election time, probably 90 percent of my  
8 people are working in some phase of the registration, changing  
9 names, changing parties and stuff like that.

10 Q. Is it fair to say that you -- during busy times, do you  
11 hire temporary or seasonal workers?

12 A. I don't like to hire temps or seasonal  
13 workers because it's extremely difficult to train them on the  
14 quality of work that I want done. I'd rather pay overtime.

15 My people are cross-trained. They can do any job in that  
16 office and I'd rather pay them overtime. In fact, my overtime  
17 budget is quite substantial, but at least I know the quality of  
18 service that my voters are getting are the best that they can  
19 get.

20 Q. Fair enough. And having them cross-trained like that, is  
21 that flexibility important to your office?

22 A. Oh, definitely, because you never know when someone is  
23 going to be sick. Obviously you've got vacations every year  
24 and when you have a small staff, you've got to have somebody  
25 that can fill in if these people are out.

1 Q. Thank you.

2 Now, directing your attention to the 2004 general  
3 election, is it fair to say that was a busy election for you?

4 A. 2004 was a busy election, yes.

5 Q. For that election, was there a surge in voter  
6 registration prior to the close of books?

7 A. There always is a surge in registration in any  
8 major election, gubernatorial election or presidential  
9 election.

10 Q. And in 2004 -- withdrawn. Of these voter registrations in  
11 this surge, were some of these applications incomplete?

12 A. Yes.

13 Q. And some had not checked certain boxes?

14 A. That is correct.

15 Q. Some were missing a date of birth?

16 A. Yes.

17 Q. Driver's license, social security number?

18 A. That's correct.

19 Q. Okay. Nevertheless, while these applications were  
20 incomplete, they were timely; is that true?

21 MR. ANTONACCI: Objection, Your Honor, to the fifth  
22 leading question. I've been patient.

23 THE COURT: Sustained. You can ask him what happened.

24 BY MR. ABT:

25 Q. Mr. Sweat, what did your office do in response to

1 receiving these incomplete applications just before the close  
2 of books?

3 A. If the applications -- today I hold them until after the  
4 election, and then we do whatever is necessary to make sure  
5 that they're completed then we issue them a voter registration  
6 card.

7 Q. But with regard to 2004?

8 A. Okay. I thought that's what you're asking.

9 Q. Yes. Thank you.

10 A. 2004, if I got a voter registration application and it was  
11 signed by the applicant and it needed a date of birth, it  
12 needed a few extra items on there, I would immediately send  
13 them a form that I have in the office saying that before I can  
14 process this, I need to have this filled out and returned back  
15 to me. If they came back in a couple of weeks, we processed  
16 them and registered that voter.

17 Q. And you would register them even if you got that  
18 correction after the close of books?

19 A. Yes. Well, let me clarify that if I may.

20 At the time before this all played out from the Division  
21 of Elections --

22 Q. If I may, I am going to ask you about that a little bit  
23 later.

24 A. Okay. I'm sorry.

25 Q. In your experience, has processing corrections after the

1 close of books resulted in any voter fraud? And I'm talking  
2 about -- well, actually, I'm sorry, withdrawn.

3 This policy of allowing corrections after the close of  
4 books, did you do it before 2004 as well?

5 A. Yes.

6 Q. How much before?

7 A. I don't know. Maybe four years before, three years  
8 before. I really can't give you an exact deadline, but I know  
9 that I had been doing it prior to that.

10 Q. Was it a long-standing practice?

11 A. I think that any time I had one, two or a dozen, that I  
12 would process those. And if it was 10 years before that,  
13 doesn't come to mind that it happened then, but if it were, I  
14 would have done it.

15 Q. And why did you do that? Why did you think that was  
16 important?

17 A. Well, I think the intent was there, and it was not clear  
18 in the law at that time as to the process to follow there. The  
19 person signed the application and as the supervisor of  
20 elections, without any guidance from anybody else, I felt the  
21 intent of the voter was there that they signed the application  
22 and because they left something off did not negate the fact  
23 that they were trying to register to vote.

24 Q. Now, in your experience, did that policy of accepting  
25 corrections after the close of books, did it

1 result in any voter fraud, to your knowledge?

2 A. None to my knowledge.

3 Q. Did it interfere with your ability to conduct an orderly  
4 administration -- an orderly election in any way?

5 A. Well, as you stated earlier, it gets pretty hectic  
6 prior to the election after the books close. And if it were a  
7 matter of just processing a dozen or 20 or something or  
8 whatever, that is not a real big deal.

9 What worries me and always did worry me was if I got a  
10 hundred or 200 or 300 that were bad. Then it would pose a real  
11 problem for me.

12 Q. But under your previous policy, 2004 going back, you would  
13 try to?

14 A. I would have tried to have done it, yes.

15 Q. Okay. Now, and you said that in 2004, that was a  
16 particularly busy election?

17 A. Real busy, yes sir.

18 Q. But for that particular election, it was not a problem in  
19 terms of running your orderly election?

20 A. No, because I didn't have that many, you know, that I had  
21 to worry about getting out and getting back to process.

22 Q. Okay. Now, at some point -- I think this is where we were  
23 going earlier -- at some point did you stop making corrections  
24 to the applications after the close of books?

25 A. Yes. There was an article in the newspaper referencing

1 the fact that there was some question from some of the  
2 elections offices that did do it, some that didn't do it, and  
3 when I saw that in the newspaper, I called the Division of  
4 Elections and asked for a ruling to follow on that. And at the  
5 time that I called them, they said that I should probably not  
6 do it. And my comments to them were that I've been doing  
7 this for a number of years, you know, and I just wanted to make  
8 them aware of the fact that I had been doing it for a number of  
9 years. And their comments to me were well, if you've been  
10 doing it for a number of years, maybe you should not stop until  
11 you get a ruling on it.

12 It wasn't but a very short time after that that we did get  
13 a ruling from the Division of Elections saying cease and  
14 desist, and we did.

15 Q. Okay. Now, you mentioned that there was some reports in  
16 the newspaper about accepting corrections. The public reaction  
17 to that was very positive, wasn't it?

18 MR. ANTONACCI: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. ABT:

21 Q. What was the public's reaction to your decision?

22 THE COURT: Sustained. We're going to have --

23 BY MR. ABT:

24 Q. Mr. Sweat, if this court were to rule that you should  
25 return to your policy of making corrections after the close of

1 books, could you do so?  
 2 A. I would not like it, but if it were a law, I would try to  
 3 abide by the law.  
 4 Q. Well, if you were required to do so, would it affect the  
 5 orderly administration of elections in any significant way?  
 6 A. Well, I think that you, if you don't already know this,  
 7 you should know this, and the court should probably know this;  
 8 the chain of events leading up to an election in the State of  
 9 Florida -- and again, please let me reference my county because  
 10 I can't speak for the rest of them, there is just massive  
 11 amounts of work that has to be done in a short period of time.  
 12 And that's the nature of the beast. We do not have a lot of  
 13 time to process.  
 14 For instance, I train poll workers for four and  
 15 a half weeks, 1,500. I have roster books to print up with all  
 16 the, you know, all the voters in Manatee County on it. A  
 17 couple weeks before the election, I have to go back in and hand  
 18 stamp the ones that voted early, the ones that voted absentee  
 19 the ones that ordered absentees. There's just a multitude of  
 20 things that has to be done.  
 21 If I had five times the staff that I have that were  
 22 trained to do that, it might not be such a chore. And, I mean,  
 23 I could go on and on telling you the things -- some of the  
 24 things we have to do there the 45 days prior to the election.  
 25 Q. Mr. Sweat, I understand that you're a very busy person and

1 thank you for being here today. But my question is simply if  
 2 you were asked to return to this policy, would it affect your  
 3 ability to run an orderly election.  
 4 MR. ANTONACCI: Your Honor, that's the same question that  
 5 he asked before and it's been answered.  
 6 THE COURT: I think that it is a very broad question. I  
 7 think it can be asked, but I think that it should be in terms  
 8 of what would he have to do if -- and I think you're saying if  
 9 a grace period were implemented.  
 10 MR. ABT: Yes, Your Honor. Thank you.  
 11 THE COURT: Something like that. Ask Supervisor Sweat  
 12 What he would be required to do that would or -- however you  
 13 wish.  
 14 MR. ABT: Yes.  
 15 BY MR. ABT:  
 16 Q. If this court were to require you to implement a grace  
 17 period, accepting corrections after the close of books, how  
 18 would you do that?  
 19 A. You know, I don't think I could answer that without doing  
 20 some research and study on it because it would have to fit  
 21 in with the current role that we presently have under the  
 22 constitution and the Florida Statutes. And without having  
 23 something like that to work on, I don't think I  
 24 can give you an answer.  
 25 Q. Well, have you -- you executed a declaration in this case;

1 is that true?  
 2 A. I executed a -- I'm sorry.  
 3 Q. You submitted a declaration in this case.  
 4 THE COURT: You signed an affidavit or gave a statement,  
 5 right?  
 6 THE WITNESS: Yes, sir.  
 7 BY MR. ABT:  
 8 Q. In that document, did you state that having -- that you  
 9 could in fact implement a grace period?  
 10 MR. ANTONACCI: Objection to the use of this document for  
 11 this purpose, Your Honor. It's improper for purposes of  
 12 impeachment or refreshing of recollection.  
 13 MR. ABT: Just trying to streamline things, Your Honor.  
 14 THE COURT: Well, I think what -- I'm not sure that  
 15 there's much else that you can ask him on this. He has said --  
 16 you asked him if the court ordered him to do something, would  
 17 he -- well, maybe it wasn't quite that clear. But let me make  
 18 it easier on the witness and everybody and ask this question  
 19 and you all can ask follow-up.  
 20 If the court orders you to do something, you're  
 21 going to do your best to comply with it. Is that a fair  
 22 statement?  
 23 THE WITNESS: That's absolutely correct, sir.  
 24 THE COURT: You're not going to go running around here  
 25 trying to get around my order, are you?

1 THE WITNESS: No, sir. Not at all.  
 2 THE COURT: I wouldn't think so. And when he asked --  
 3 when counsel asked you if you could implement such an order, I  
 4 presume logically you would have to read the order first and  
 5 find out what I said before you know what you had to do. But  
 6 whatever it was, you do your best to comply. Is that fair?  
 7 THE WITNESS: Yes, sir.  
 8 THE COURT: I think that's about what he's saying, and I  
 9 don't think that's -- I mean, if he said something at variance  
 10 with that, we get in to this area of his opinion about what he  
 11 would have to do and all that, there might be some minor  
 12 differences, but it doesn't affect credibility. He's telling  
 13 us honestly whatever, you'd do your best to comply.  
 14 THE WITNESS: Yes, sir.  
 15 THE COURT: Okay. If I told you to do it right up to  
 16 election day, you'd do your best.  
 17 THE WITNESS: I'll do whatever you say, sir.  
 18 THE COURT: It's that easy and that's your point. All  
 19 right.  
 20 MR. ABT: Judge, if I could just have one moment to  
 21 confer.  
 22 THE COURT: Sure.  
 23 MR. ABT: Mr. Sweat, thank you very much. No further  
 24 questions.  
 25 THE WITNESS: Thank you.

CROSS-EXAMINATION

1 BY MR. ANTONACCI:

2 Q. Good morning, Mr. Sweat.

3 A. Good morning, sir.

4 Q. Making reference to your experience in the 2004 cycle,  
5 with respect to accepting late registrations, how many did you  
6 accept?  
7

8 A. It was a guesstimate when we discussed this in the memo  
9 here. Forty to 50 was the figure that I gave. It should be  
10 close.

11 Q. And when you say 40 to 50, do you mean you sent out 40 to  
12 50 incomplete notices or you accepted 40 to 50 incomplete  
13 applications?

14 A. I sent out 40 to 50 incomplete notices.

15 Q. How many applications did you receive in response to those  
16 notices?

17 A. I'm sorry, I can't answer that. Something my staff  
18 processes.

19 Q. All right. Are you recommending today to this court that  
20 there be a grace period implemented for the purposes of  
21 voter registration in Florida.

22 THE COURT: I'm not sure that this is -- I know, I've let  
23 you all ask that question before. But really, just a question  
24 of, you know, piling up, we could ask that of almost anybody in  
25 county government; in Manatee County, Dade County, Orange

1 County and where would we end. And it's a factual question  
2 about what he would do or have to do, but that's all going to  
3 depend on what's the definition of grace period, and so that's  
4 very difficult for any of these people to answer.

5 But factual questions about -- based hypothetically, I  
6 suppose either of you could ask if the court were to allow a  
7 grace period for previously filed applications to which notices  
8 had been sent out by the supervisor telling people that it was  
9 incomplete and they'd have to have more information, and the  
10 information came back after the book closing deadline, what  
11 would they have to do to implement it if anything, if that was  
12 the order of the court.

13 That's this record as it poses, this record based on what  
14 Mr. Abt has told me on opening statement. And if I misstate  
15 it, Mr. Abt, I ask you to correct me. But he says that the  
16 plaintiffs are only dealing with or this duty only deals with,  
17 at this point, an application that was filed before any book  
18 closing deadline for which a nothing has been sent to the voter  
19 saying Mr. Jones, it's incomplete and you need to fill in your  
20 date of birth or whatever. And a new form or whatever was sent  
21 to him where this man tried to help the guy get to the --  
22 Mr. Jones, send him whatever he can think of. And that varies  
23 a little bit from county to county.

24 But what the plaintiffs are relying on, they're not  
25 relying on a brand new application that comes in

1 after the present deadline and Mr. Abt is nodding his head.

2 So that's what they're talking about. Once filed before the  
3 book closing, whether the supervisors, in good faith, tried to  
4 help John get his application done right, sent him a new form  
5 or phoned him, saw him in the corner drugstore, says hey look,  
6 you got to put your birthday down or whatever. Whatever it  
7 was.

8 But when that came back after the book closing, which  
9 Supervisor Sweat has said in 2004 he went ahead and let them  
10 vote and handle it. Well, he said what he did.

11 So the question is if the court were to say, as the  
12 plaintiffs are urging, that you can now, if that comes back  
13 from the hypothetical John Jones, good old boy that you know in  
14 Manatee County and he sends it back and you want to help him  
15 and you could -- you -- let's see. I've lost myself.

16 Oh, if the Court said okay, let him do it, you  
17 know, let him do it, then I think that you and Mr. Abt can ask  
18 whether that would have problems, not have problems, what it  
19 would be.

20 But asking him to tell me his recommendation, no, I'll let  
21 you do it with a couple but I should not have because that  
22 just opens it up to whether we get a hundred witnesses on one  
23 side to say one thing and 200 -- we are just taking a poll.  
24 And as popular as that was last night all over the country,  
25 that's not what judges are supposed to be doing, so I shouldn't

1 be taking a poll, as much as I would like to hear whatever  
2 these fine men and women that work hard for our citizens, what  
3 they think. I'm interested in it as a person, but as a judge I  
4 don't think I ought to be taking a poll.

5 MR. ANTONACCI: I'll withdraw the question, Your Honor.

6 THE COURT: Yeah. All right. Anything else?

7 MR. ANTONACCI: Two more.

8 THE COURT: Excuse me?

9 MR. ANTONACCI: Two more questions.

10 THE COURT: Go ahead. Take your time.

11 BY MR. ANTONACCI:

12 Q. With respect to your practice of permitting people with  
13 applications that were late to be put on the rolls, did you  
14 publicize this policy?

15 A. I think you did not state that properly. I do not accept  
16 a late application for registration. I do accept the ones that  
17 had been signed prior to and sent in with information left off.

18 Q. Back in '04?

19 A. Yes, sir.

20 Q. All right. Did you publicize that policy.

21 A. Did we clarify the fact that I don't accept an application  
22 that's -- after the books closed?

23 Q. Yes.

24 A. Okay.

25 Q. Not clarify, publicize.

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1 In other words, did you put that on your web page that you  
2 would accept applications in that category that were filed  
3 after the book closing period?  
4 A. First of all, I'm not going to answer the question until  
5 you clarify the first part of that. Because you said at the  
6 beginning that I accepted applications after the books closed.  
7 I do not do that.  
8 Q. Applications that were filed before the book closing?  
9 A. Okay. Good. Now we've got it.  
10 Q. That were amended after the book closing?  
11 A. I do not advertise that.  
12 Q. Did you advertise that back in '04?  
13 A. No, sir.  
14 Q. Did you advertise it back in the '90s?  
15 A. No, sir.  
16 Q. Do you have experience with third party groups in Manatee  
17 County?  
18 A. Yes, sir.  
19 Q. Describe for the judge your experience with respect to  
20 voter registration application and third party groups in  
21 Manatee County in 2004.  
22 A. Well, the third party groups from Manatee County would be  
23 wonderful. It's the third party groups and fourth party groups  
24 from outside Manatee County that gives us a problem.  
25 They come in -- as much as we try to control and help them

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1 with registering people, they come in, they would register  
2 people, keep the applications in their car for three, four,  
3 five weeks before they turn them in to us. They'll flood us  
4 right at the last minute with some of them that are not  
5 legible. Some of the addresses do not match up with any  
6 database that I have in Manatee County and that does happen  
7 more than I'd like to see.  
8 Q. All right. Did it happen in 2006 as well?  
9 A. I did not have that occur in 2006 hardly at all, except  
10 local voter registration drives, and those people follow the  
11 rules.  
12 Q. So your experience so far has only been with -- the  
13 experience you just described to the judge has been limited to  
14 presidential races?  
15 A. Yes, sir. Primarily.  
16 MR. ANTONACCI: I have no further questions, Your Honor.  
17 THE COURT: All right. Redirect.  
18 REDIRECT EXAMINATION  
19 BY MR. ABT:  
20 Q. You stated on your direct -- I'm sorry.  
21 Mr. Sweat, you stated on your direct examination that 2004  
22 was a very busy election, correct?  
23 A. Yes, sir.  
24 Q. Any reason to believe that 2008 will be any busier or will  
25 be just as busy?

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1 A. Well, 2008 could very possibly be bigger than 2004 because  
2 in 2004 we had an incumbent in office, in 2008 we do not have  
3 an incumbent in office. So that's going to leave it wide open  
4 for both parties to go out and get voter registration. And  
5 controlled getting voter registration is right down my alley.  
6 Q. We discussed the notices that you sent, the 50 notices  
7 that you sent just prior to the close of books. Did you also  
8 send notices, additional notices 30 days prior to the close of  
9 books?  
10 A. I send notices 12 months out of the year if the  
11 application is not filled in correctly.  
12 MR. ABT: Okay. Thank you very much.  
13 THE COURT: Thank you sir. You may be excused. May he be  
14 excused to go home?  
15 MR. ANTONACCI: Yes, sir.  
16 THE COURT: Okay. Thank you, sir, for being with us.  
17 Manatee County helped me out. I'm just sitting here drawing a  
18 blank and that's terrible. I know where it is but Sebring --  
19 THE WITNESS: Right over the Skyway from St. Petersburg is  
20 Bradenton, Manatee County. Greatest fishing in the world.  
21 THE COURT: Okay. I knew where it was. I was just  
22 sitting here figuring that thing out. Thank you, sir. Thank  
23 you very much.  
24 Your next witness.  
25 MR. ABT: The people call Lester Sola. I'm sorry. The

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1 plaintiffs call Lester Sola.  
2 THE CLERK: Sir, please stand and raise your right hand.  
3 LESTER SOLA, PLAINTIFF WITNESS, SWORN.  
4 THE CLERK: Please be seated. Please state your name and  
5 spell it.  
6 THE WITNESS: Lester, L E S T E R, Sola, S O L A.  
7 MR. ABT: Your Honor, may I inquire?  
8 THE COURT: Yes.  
9 DIRECT EXAMINATION  
10 BY MR. ABT:  
11 Q. Mr. Sola, thank you very much for being here today.  
12 A. My pleasure.  
13 Q. Do you currently serve as supervisor of elections for  
14 Miami-Dade County?  
15 A. Yes, I do.  
16 Q. What are your responsibilities generally speaking as  
17 supervisor.  
18 THE COURT: Let me interrupt you just for a moment and can  
19 we --  
20 MR. ABT: Withdrawn, Your Honor.  
21 THE COURT: Perhaps we can save 10 minutes on each  
22 of these people. I presume that their answers will be  
23 generally the same as the other five witnesses who've been  
24 supervisors as far as their general responsibilities and their  
25 good will in trying to enforce them.

1 Is there any problem with agreeing to that and we can move  
2 directly into the factual issues, whatever they may be?

3 MR. ANTONACCI: So long as that rule applies to the  
4 secretary's witnesses as well, because we will have at least  
5 one supervisor testify.

6 THE COURT: In other words, what I'm getting at is any of  
7 the supervisors that come in or deputy supervisors, can we  
8 agree rather than going through again -- we've had four of them  
9 -- I'm sorry. This is the fifth or six witness. This is  
10 witness number six, five prior ones have told in detail what  
11 they do under the law and all that and there hasn't been any  
12 dispute over that general statement.

13 All I'm saying is can we leave that out and I think the  
14 answer is yes. If you need to get back in to it, fine. But do  
15 it later.

16 MR. ABT: My only hesitation, Your Honor, is as to the  
17 foundation for the expert ruling.

18 THE COURT: I'm going to let the supervisors on -- all of  
19 them testify as to their procedures in their office, what they  
20 do factually, how they handle and process this. I'm going  
21 further. So far it appears that they're all pretty much the  
22 same procedure, I believe. So we probably could get an  
23 agreement on that too. But maybe not. But to the extent that  
24 it overlaps in to an opinion about whether or not they believe  
25 they have enough people or don't have enough people, there's

1 some latitude there. But they're not experts on the law,  
2 they're not experts on the statutes, they're not experts on the  
3 opinion of the judge from the northern district and his  
4 opinion.

5 So those questions I'm going to sustain objections to.  
6 You all can argue that to me. You, Mr. Abt and you, Mr.  
7 Antonacci, are the experts on that. I'll listen to you on your  
8 opinions, but not from the witnesses on the law and all that.  
9 So basically let them develop anything you wish about  
10 how they run their offices, what they do, what they did in  
11 these various elections, how they did it, and to the extent  
12 some latitude about generally if they have enough resources or  
13 people or that sort of thing. But not about the  
14 recommendations to the court about what should be done. I  
15 think we understand what we're talking about. Let's see how  
16 far we get. Go ahead, Mr. Abt.

17 MR. ABT: Yes.

18 BY MR. ABT:

19 Q. Mr. Sola, does your office conduct voter outreach or  
20 registration drives?

21 A. Yes.

22 THE COURT: Excuse me one second. I messed you up here.  
23 You told me your name, Mr. Sola. Tell me your position please,  
24 your official position.

25 THE WITNESS: I am the supervisor of elections for

1 Miami-Dade County, Florida.

2 THE COURT: Thank you very much. Now go ahead.

3 BY MR. ABT:

4 Q. Does your office conduct voter outreach or registration  
5 drives?

6 A. Yes, we do.

7 Q. Can you tell the court a little bit about that?

8 A. Well, as part of our responsibilities, we are engaged in  
9 registering as many people as possible to vote. And ultimately  
10 educating those voters in how to use the voting system and how  
11 the process of voting works.

12 Q. And do your voter registration activities include  
13 traditional groups like African Americans or Hispanics?

14 MR. ANTONACCI: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. ABT:

17 Q. You're familiar with the term close of  
18 books?

19 A. Yes, I am.

20 MR. ABT: Your Honor, may I inquire briefly about staffing  
21 or would you like --

22 THE COURT: Anything you wish. Go ahead and I'll -- all I  
23 made was a general suggestion. I think it's about matters that  
24 are not really in controversy, but go ahead, ask anything you  
25 want to. Go ahead, we'll see where we are.

1 MR. ABT: I'll make it very brief.

2 THE COURT: Take your time. I've got all week. Now go  
3 ahead.

4 BY MR. ABT:

5 Q. Does your office maintain adequate staffing to handle  
6 voter registration workload between the close of books and  
7 election day?

8 A. In general terms, I believe the answer to that is yes.

9 Q. During each election cycle does the number of voter  
10 registration applications in your office increase in the  
11 weeks before the close of books?

12 A. Yes, they do.

13 Q. And was that true of the federal elections in 2004 and  
14 2006?

15 A. Yes, it's true.

16 Q. Of the applications submitted before the close of books  
17 in 2004 and 2006, were many of these applications incomplete?

18 A. It's hard to say. A good number of them were.

19 Q. Were many of these applications from people who would have  
20 been eligible to vote except for their incomplete status?

21 A. Could you repeat that question? I'm not so sure I  
22 understand.

23 Q. Yes. Were many of these applications from applicants who,  
24 apart from the fact that they missed something in the  
25 application or put something wrong in the application, would

1 have been eligible to vote?  
 2 A. Yes.  
 3 Q. And approximately how many of these people were there?  
 4 A. I don't know the answer to that question.  
 5 Q. Fair to say hundreds, thousands?  
 6 A. I would say hundreds.  
 7 Q. Given that these people applied just before the close of  
 8 books, were these voters able, in 2004 and 2006, to correct  
 9 their applications and vote in the upcoming election?  
 10 A. No, they were not.  
 11 Q. Okay. Unless there is a change in the law, will this  
 12 phenomenon repeat itself in 2008?  
 13 A. Yes it will, likely.  
 14 Q. Mr. Sola, can you -- withdrawn.  
 15 Mr. Sola, do you know of any instance personally in which  
 16 a voter has intentionally failed to complete their registration  
 17 form correctly?  
 18 A. I'm not aware of any cause.  
 19 Q. So if a voter lets a form -- withdrawn. I'd like to  
 20 direct your attention to Defendant's Exhibit 7 previously in  
 21 evidence. Thank you. The clerk is showing it to you.  
 22 Directing your attention to line four on the form, can you  
 23 describe how an individual is adjudicated mentally  
 24 incapacitated?  
 25 THE COURT: You're asking him his opinion as to how

1 someone is adjudicated mentally incapacitated, is that the  
 2 correct? I didn't want --  
 3 MR. ABT: Yes, Your Honor.  
 4 MR. WINSOR: Objection Your Honor.  
 5 THE COURT: Sustained.  
 6 BY MR. ABT:  
 7 Q. You see on this form where it says "adjudicated  
 8 mentally incapacitated"?  
 9 A. Yes, I do.  
 10 Q. Do you see on the form "restoring competency"?  
 11 A. Yes, I do.  
 12 Q. And directing your attention to lines three and four and  
 13 elsewhere in the document, do you see the term "affirm --  
 14 THE COURT: You're asking him to read the document.  
 15 Please ask your question. Are you familiar with that document.  
 16 THE WITNESS: Yes, I am, Your Honor.  
 17 THE COURT: All right. Just ask him your question,  
 18 whatever it is.  
 19 BY MR. ABT:  
 20 Q. Is it fair to say these are legal terms?  
 21 MR. WINSOR: Objection Your Honor.  
 22 THE COURT: Sustained. You're asking him his opinion now  
 23 about the law. Sustained.  
 24 BY MR. ABT:  
 25 Q. Is Miami-Dade a diverse community?

1 MR. WINSOR: Objection, Your Honor.  
 2 THE COURT: I would have to sustain that objection. I  
 3 think these are matters that you could argue without any  
 4 controversy. I don't think there's any issue about the fact,  
 5 and you could ask me if there is, to take judicial notice of  
 6 the fact that this is a diverse community, yes. I don't think  
 7 there's any -- is there any -- is that an issue in this case  
 8 from the defendant's point of view?  
 9 MR. WINSOR: No. The make-up of Miami County has nothing  
 10 to do with the case, would be the Secretary's position.  
 11 THE COURT: So the objection is the materiality. What is  
 12 the materiality of the diversity with respect to the  
 13 application process.  
 14 MR. ABT: Respectfully, Your Honor, we believe that the  
 15 diversity of the community is relevant to their ability to  
 16 understand certain terminology on the form.  
 17 THE COURT: So you're going to argue that because certain  
 18 people are diverse, that is that we have -- that the objection  
 19 would have to be sustained. It's very broad. I could explain  
 20 my ruling and maybe I should, but the fact that we have in the  
 21 last 15 or so years a population of Catholics that is the  
 22 largest -- now religious denomination in maybe Florida, I don't  
 23 know, but anyway it's grown a lot as opposed to as a boy  
 24 when I was growing up there were very few Catholics. I  
 25 don't see where that has any bearing on or any materiality to

1 the issues here about whether or not the voting registrars are  
 2 properly and constitutionally exercising the composition of the  
 3 books, the voter registration list of voters in a timely  
 4 fashion.  
 5 Anyway, the objection is sustained. You can argue this in  
 6 closing argument if you think it's relevant. Let's move  
 7 forward. I will take judicial notice that this is a diverse  
 8 community with many groups and peoples from all over the world  
 9 and all kinds of diversity in this county. I will just assume.  
 10 You don't need to prove that. Let's go forward.  
 11 BY MR. ABT:  
 12 Q. Mr. Sola, are you familiar with the term "grace period"?  
 13 A. Yes, I am.  
 14 Q. And what do you understand that term to mean?  
 15 A. With respect to the voter registration process?  
 16 Q. Yes.  
 17 A. Well, there is a period by which a grace period would  
 18 be defined that you have a time and come and correct whatever  
 19 deficiencies you may have in whatever process specific to the  
 20 voter registration application would be your application.  
 21 Q. Would the grace period help the voters that we've just  
 22 been discussing previously?  
 23 A. Yes.  
 24 Q. Now, could such -- if this court were to ask Miami-Dade  
 25 County to implement such grace period, could you do that?

1 A. Yes.  
 2 Q. And would implementing a grace period interfere with the  
 3 orderly administration of elections?  
 4 A. It may.  
 5 Q. How so?  
 6 A. Well, the process or the resources allocated or necessary  
 7 to institute a grace period would require a department like  
 8 Miami-Dade County to increase additional resources, means more  
 9 personnel and exponentially that problem does increase when  
 10 you're competing against -- preparing an election at the same  
 11 time.  
 12 Q. Mr. Sola, you've executed a declaration in this case  
 13 previously. In your previous declaration, did you state that  
 14 implementing a grace period would not interfere with the  
 15 orderly administration of elections?  
 16 MR. WINSOR: Objection, Your Honor, to using this  
 17 document.  
 18 THE COURT: Well, just to move it along, did you say that,  
 19 sir?  
 20 THE WITNESS: Yes, I did and I think in answer to your  
 21 question, I believe I used the word potentially. It  
 22 is it going to be cumbersome, yes. It is going to be  
 23 cumbersome, but it's not possible. It is doable at a cost.  
 24 BY MR. ABT:  
 25 Q. And so in your words, a grace period is doable?

1 A. Yes, it is.  
 2 Q. Okay. Now, would a grace period interfere with any other  
 3 election activities that are taking place during the close of  
 4 books?  
 5 A. If the department had the available and necessary  
 6 resources, I believe the answer would be no, it would not  
 7 conflict.  
 8 Q. Do you have any reason to believe that a grace period  
 9 would cause an increase in voter registration fraud?  
 10 A. I don't believe so.  
 11 Q. In December of last year, did your office have to  
 12 implement an injunction in a legal case that was separate and  
 13 apart from this case?  
 14 A. Yes, we did.  
 15 Q. Okay. And --  
 16 MR. ABT: Judge, this is referring to Judge Mickle's  
 17 office.  
 18 THE COURT: Yes.  
 19 BY MR. ABT:  
 20 Q. Can you briefly describe the circumstances surrounding  
 21 that injunction?  
 22 THE COURT: Well, this other case, you can argue the  
 23 merits and the facts of that case in closing argument.  
 24 BY MR. ABT:  
 25 Q. What did you have to do as supervisor of elections for

1 Miami-Dade County to implement that ruling?  
 2 A. Much of what was necessary or needed to be done was really  
 3 done by the state. Since the state is the owner of the  
 4 database, they did a query and figured out which of those  
 5 applicants were dealing with mismatches. The whole case was  
 6 surrounding the mismatching of DMV, Department of Motor Vehicle  
 7 numbers as well as social security numbers.  
 8 And through a weekend, the Department of State ran a query  
 9 and was able to make voters that had mismatched active voters  
 10 so they could go in and vote on election day. The department  
 11 -- the local departments, including Miami-Dade County, we  
 12 waited for the Division of Elections to run that query, execute  
 13 it, then we were in the process of just continuing to enter  
 14 applications into the system.  
 15 So from our prospective, not much was necessary from the  
 16 local offices.  
 17 Q. Very good. Were you quoted as saying "with regard to this  
 18 decision to stop the matching process, I think it's a step in  
 19 the right direction that the state is reinstating these  
 20 individuals"?  
 21 MR. WINSOR: Objection, Your Honor.  
 22 THE COURT: You're leading your witness. This is your  
 23 witness now and you're leading him telling him -- asking him if  
 24 he's quoted someplace without laying a predicate when, where,  
 25 the usual thing. Sustained.

1 MR. ABT: I'm sorry. Withdrawn. Let me try again.  
 2 THE COURT: Ask him what he thinks today. That might --  
 3 well, I don't know how you -- the objection is sustained.  
 4 We'll see your next question.  
 5 BY MR. ABT:  
 6 Q. What, if anything, do you think of the state's decision to  
 7 reinstate these individuals --  
 8 A. I believe it was the right thing to do.  
 9 Q. And why do you think that?  
 10 A. I believe that the process by which matching individuals'  
 11 social security numbers and DMV, really from our prospective,  
 12 didn't provide much value and did create some delays in  
 13 registering people. While it did get better and may have  
 14 gotten faster, initially we had a lot of local frustration with  
 15 the way applications were being matched. It just took a while  
 16 to go through the DMV matching process as well as the social  
 17 security administration as well.  
 18 Q. And also the FVRS system?  
 19 A. FVRS system, so there was a time from our prospective, a  
 20 significant time from which we would enter individuals into the  
 21 system. And it took a while, it took several days for the  
 22 system to go ahead and match that process. And in that time  
 23 period, there was very little that we could do to ultimately to  
 24 make that voter an active voter.  
 25 So in our prospective, when we're looking to maximize the

1 number of registered voters, it delayed our process.  
 2 MR. ABT: Thank you. Nothing further at this time.  
 3 THE COURT: Cross-examination.  
 4 CROSS-EXAMINATION  
 5 BY MR. WINSOR:  
 6 Q. Good afternoon, Supervisor Sola.  
 7 A. Good afternoon.  
 8 Q. I want to follow up on some of the resources that it takes  
 9 from your office, being a large county, to put on an election.  
 10 Can you tell the Court how many employees your office has?  
 11 A. Core staff is 120 employees. For an election, we gear up  
 12 to the neighborhood of around five to 600 employees total.  
 13 Q. The balance being temporary employees?  
 14 A. Yes, that's correct.  
 15 Q. And does that include the poll workers that actually man  
 16 the polls on the election days?  
 17 A. No. If you throw the poll workers in it, you're looking  
 18 at total staffing, nine to 10,000 individuals.  
 19 Q. How many elections does your office put on per year,  
 20 county municipal elections?  
 21 A. On the average, we conduct 30 municipal elections per  
 22 year.  
 23 Q. Do the municipal elections overlap with the general  
 24 elections or statewide primary elections? Are they always  
 25 separate?

1 A. Sometimes they do. We prefer when they do, but for the  
 2 most part, municipalities call their own election days and  
 3 they're more often or not on their own. If it's Tuesday in  
 4 Miami-Dade County, it's election day.  
 5 Q. Means it's always book closing as well?  
 6 A. Yes.  
 7 Q. You mentioned on direct, you said in general terms you  
 8 have adequate staffing to handle all the voter registration  
 9 activities. What did you mean by "general terms"?  
 10 A. We obviously have to balance the need with the resources,  
 11 and I don't think there's any director of any department that's  
 12 going to tell you they have enough resources. You always like  
 13 to do more. There's always a balancing act that you have to do  
 14 between the resources that you have and what are the needs of  
 15 that department.  
 16 Q. And is part of that complicated by not knowing what the  
 17 needs are in advance without knowing the volume?  
 18 A. With regards to registration?  
 19 Q. Yes, sir.  
 20 A. And that is really the unknown. And I will tell you that  
 21 there are many activities going on to pull off an election, an  
 22 event, which is really what it is.  
 23 One of the unknowns is that you're really at the mercy of  
 24 the individuals that bring registrations, third party groups is  
 25 what I like to call them, in the field that bring you

1 registration applications and you don't know when you're going  
 2 to be inundated. People come through the door, it could be one  
 3 box, it could be several boxes.  
 4 So for us, we have to wrap up staff and always kind of  
 5 swim against that current depending on what comes in through  
 6 that door. That's what you're focusing on, getting that done,  
 7 those registration applications done.  
 8 Q. So you know there's going to be a spike of some sort the  
 9 last minute, but you don't know how large it will be?  
 10 A. That is correct.  
 11 Q. And everything that comes in before book closing has to be  
 12 processed in time to allow the timely applications, complete  
 13 applications to vote, right?  
 14 A. That is the rush from anything that comes in. Even on the  
 15 same day or postmarked by book closing, we're in a mad frenzy  
 16 to get those in before early voting begins which is shortly  
 17 right around the corner.  
 18 Q. So even with everything else going on, you've got to make  
 19 that priority to make sure those people are able to vote on  
 20 election day?  
 21 A. That's correct.  
 22 Q. Or on the first day of early voting, right?  
 23 A. Our goal is to get everything taken care of before early  
 24 voting.  
 25 Q. Can you tell me generally how the resources that the

1 county commission -- well first, you get your resources from  
 2 the county commission primarily in terms of funding, right?  
 3 A. Yes, we do.  
 4 Q. Has the county commission been generous with  
 5 your office, would you say?  
 6 A. Yes, they have.  
 7 Q. Do you know why they've been generous with your office?  
 8 A. I think the department and Miami-Dade County and Florida,  
 9 for the most part -- we suffered some embarrassments during the  
 10 2000 and 2002 election cycle, and the county commission has  
 11 made it a priority to ensure that the department has enough  
 12 resources to ensure that that doesn't recur.  
 13 Q. Do you know how your resources, in terms of the factors in  
 14 your size, compare to other counties throughout the state?  
 15 A. I don't believe there's any other county that's comparable  
 16 to Miami-Dade County. I can tell you that Broward County is  
 17 one that's a little smaller than us, about 800,000 registered  
 18 voters, but they're on a consolidated elections calendar which  
 19 means they gain for the benefit of maximizing their resources  
 20 for a few days on a calendar year. Whereas like I mentioned,  
 21 in Miami-Dade County we carry significant amount of staff to  
 22 basically support election days throughout the year.  
 23 Q. Okay. So they have fewer elections in Broward County?  
 24 A. Yeah.  
 25 Q. And fewer registered voters.

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1 How many registered voters do you have in Miami-Dade?  
2 A. We have 1,085,000 registered voters.  
3 Q. Is that the most you've ever had?  
4 A. In my tenure, it's been the highest we've had.  
5 Q. Do you know how many residents Miami-Dade has roughly?  
6 A. My understanding, in the neighborhood of 2.7 million.  
7 THE COURT: Now slow down just a little bit. You're  
8 clipping right on the end of his -- both of you talk rapidly.  
9 She's got to write it down. Let's go back just a little bit.  
10 You say there are 1,085,000 registered voters in  
11 Miami-Dade County, Florida?  
12 THE WITNESS: That's correct, Judge.  
13 THE COURT: And you're telling me the population -- and  
14 what was that please?  
15 THE WITNESS: My understanding, Your Honor, is there's two  
16 2.7 million residents in Miami-Dade County.  
17 THE COURT: There was some other figure that I missed or  
18 maybe that was it.  
19 MR. ABT: I believe that was it, Your Honor.  
20 THE COURT: Okay. Go ahead.  
21 THE WITNESS: I believe I've also mentioned Broward  
22 County's number of registered voters which was in the  
23 neighborhood of 800,000.  
24 THE COURT: 800,000 registered voters?  
25 THE WITNESS: That's correct, sir.

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1 THE COURT: And the general population, if you know.  
2 THE WITNESS: Unfortunately Your Honor, I'm not aware of  
3 that.  
4 THE COURT: Okay. Thank you.  
5 BY MR. WINSOR:  
6 Q. Put on an election with over a million registered voters.  
7 How many precincts do you use?  
8 A. We have, on paper, 749 precincts. But really, you're  
9 really looking at 780 different precincts. So that's the  
10 number that we use.  
11 Q. Okay. Can you tell the court a little bit about the  
12 atmosphere in your office during the 60 days before an  
13 election or before a statewide or federal election, not  
14 counting necessarily municipal elections because I guess you're  
15 always 60 days before some election.  
16 But can you describe the atmosphere 60 days before a  
17 presidential election?  
18 A. It is intense. Obviously you have around 500 individuals  
19 working in the department. Everyone is working towards one  
20 goal, one date. That event is election day, it is inflexible,  
21 you can't postpone it.  
22 But even before election day, you're also gearing up for  
23 early voting, you're gearing up for mailing absentee ballots.  
24 So for us, while election day -- everyone focuses on election  
25 day, our goal and the points -- the milestones we work towards

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1 is really three weeks out before, which is when we like  
2 to mail absentee ballots. Then two weeks out which is when  
3 early voting begins. For us, it is a very stressful situation.  
4 There's a lot of long hours. There's obviously no leave  
5 time. Everyone is working on the weekends, every  
6 weekend, I would say around two months leading out to the  
7 election. It is a very intense atmosphere.  
8 Q. What's taking up your personal time or your time during  
9 this as opposed to your employees. What kind of issues make it  
10 to your level?  
11 A. Well, I like to consider myself someone who is very  
12 engaged. We manage elections as a command center. We  
13 basically -- all of the directors of the departments work out  
14 of one conference room, and we deal with every single event or  
15 every single issue that comes up on election from unable to  
16 secure training sites to making sure that the printer has  
17 printed enough absentee ballots, to the programming of the  
18 actual election.  
19 So I'm engaged in every single event in that election.  
20 Q. Okay. And I guess another thing that you'll be engaged  
21 as we get ready for the next election is replacing all your  
22 voting machines; is that right?  
23 A. That is a huge event for us that we're planning for.  
24 Q. You were on the electronic machines up until, I guess,  
25 last Tuesday; is that right?

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1 A. Well, technically the law is July 1, that's the last  
2 day when the conversion becomes effective. So we still have  
3 municipal elections and we're going to continue using our  
4 touch screen voting equipment until we get a certified system  
5 from the state.  
6 Q. How many of those machines were in use, for example, in  
7 the presidential preference primary last Tuesday?  
8 A. We have in our inventory 7,250 touch screen voting units.  
9 We used in the neighborhood of 5,000 or so units for the  
10 January 29th election.  
11 Q. And the next time you plan to use the new paper ballots  
12 statewide will be the primary in August; is that correct?  
13 A. We don't know. Obviously statutorily we're required to  
14 start using it effective July 1. We don't have any elections  
15 scheduled after July 1 until August 26. So unless we get it  
16 earlier and we're able to test it out on some municipal  
17 elections out of election, we're scheduling for August 26th.  
18 Q. And you're not going to kind of ease your way in to it,  
19 it's going to be one big --  
20 A. We would have liked to have eased into it. We were  
21 promised to have the software which is really the vital  
22 component in the equipment by September 30th of last year.  
23 That time line has come and gone and to date, we don't have a  
24 date of when the division is going to give us that software.  
25 Q. And so I guess a step that you'll need to go through in

1 preparing for the next election is ordering paper ballots  
 2 which is something your office hadn't dealt with in the last  
 3 few elections; is that correct?  
 4 A. We print paper ballots for the absentee ballots  
 5 and we have in the field emergency ballots, which if your  
 6 equipment fails, you can always use paper ballots. But we  
 7 order around 800,000 ballots for a county-wide election. We  
 8 will be ordering for the August 26th election around 4 million  
 9 sheets of paper in order to provide enough ballots for this  
 10 county.  
 11 Q. And you've got to divvy up those 4 million pieces of  
 12 paper across 700 some odd precincts; is that correct?  
 13 A. As well as early voting sites and absentees.  
 14 Q. And you've got to make sure that you have the right number  
 15 in each one of those 700 something precincts, right?  
 16 A. That is correct.  
 17 Q. Make sure you have a sufficient number.  
 18 Talk a little bit about early voting. How many early  
 19 voting sites do you have right now or did you have for the  
 20 primary?  
 21 A. Twenty. We have 20 early voting sites.  
 22 Q. Throughout the county?  
 23 A. Throughout the county.  
 24 Q. How many workers worked at the early voting this year?  
 25 A. At the sites, they're allocated around 250 people. In

1 addition to that, there's a support structure that supports  
 2 activities of those sites, I would say there's about another  
 3 hundred employees that are out in the field supporting those  
 4 facilities.  
 5 Q. Okay. Do you know how many voters, roughly, took  
 6 advantage of the early voting for the presidential preference  
 7 primary?  
 8 A. I believe it's in the neighborhood of 67,000.  
 9 Q. 67,000. What was the total turn out?  
 10 A. 36,000. Historically it's around 25 percent of those  
 11 individuals that exercise the right to vote early.  
 12 Q. About 25 percent?  
 13 THE COURT: Sorry. You're again going awfully  
 14 fast, both of you. It's just your speech. I'm not being  
 15 critical, you do it. But she's got to write it down and this  
 16 is going at warp speed here.  
 17 As a matter of fact, and I meant -- I forgot to tell you  
 18 all this earlier, but at 1:00 today I will have -- at 1:00  
 19 today I have some hearings scheduled for changes of plea in  
 20 one, two, three, four, five criminal cases, five different  
 21 criminal cases. And those lawyers will all be coming through  
 22 that door and about 15 or 20 minutes.  
 23 So I had intended to recess at 12 and come back and give  
 24 you all a longer noon hour and come back after those pleas of  
 25 guilty, and there may be some sentencings also connected with

1 it or may not be.  
 2 But I was going to let you be in recess until about 2:00  
 3 today, but I'm going to have to recess pretty soon. I was not  
 4 trying to push your cross-examination or impact on the  
 5 redirect, Supervisor Scola (sic), but unless we can finish in  
 6 the next four or five minutes, I'm going to really have to  
 7 recess. I have no choice.  
 8 Would you prefer to have Mr. Scola come back, with our  
 9 apologies about the delay, at whatever time  
 10 we resume, 2:00, 2:15?  
 11 MR. ABT: Unfortunately, yes, Your Honor.  
 12 THE COURT: Mr. Scola, you understand my predicament?  
 13 THE WITNESS: Yes, I do, Your Honor.  
 14 THE COURT: I have no choice. We started early, we've  
 15 gone straight through.  
 16 MR. ABT: I'm sorry. May we approach briefly?  
 17 THE COURT: All right. All right. Okay. You can step  
 18 down, Mr. Scola.  
 19 You can just -- I need you to speak so I can hear you. I  
 20 don't have sidebar conferences. Whispering is difficult, but  
 21 if you want, come on -- well, come on up. We'll try to do it  
 22 but we won't -- we can't put it on the record now. We can put  
 23 it on later.  
 24 (Sidebar conference off the record)  
 25 THE COURT: But in any event, gentlemen, we will resume

1 -- let's see. Do this, let's say 2:30. 2:30 this  
 2 afternoon is when we'll resume with somebody. Mr. Scola or  
 3 someone. 2:30 this afternoon in this trial.  
 4 (Recess)  
 5 THE COURT: Thank you. Be seated please. All right.  
 6 Mr. Winsor.  
 7 MR. WINSOR: Thank you, Your Honor. Thank you, Supervisor  
 8 Sola, for bearing with me here.  
 9 BY MR. WINSOR:  
 10 Q. When we finished or when we broke before, we were talking  
 11 about early voting and we were talking about some of the  
 12 numbers involved with early voting this past presidential  
 13 preference primary.  
 14 Can you tell me how many people in Miami-Dade County, if  
 15 you know, took advantage of early voting for the presidential  
 16 preference primary?  
 17 A. Approximately 67,000 individuals.  
 18 Q. 67,000. And what was the total votes counting election  
 19 day, early voting absentee, etcetera?  
 20 A. It was approximately 36 percent of the voting public. So  
 21 you're looking at around basically about 370,000.  
 22 THE COURT: 370,000 total cast votes on the 20th, on the  
 23 whatever date it was?  
 24 THE WITNESS: January 29th, Your Honor.  
 25 THE COURT: Is that correct?

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1 THE WITNESS: That's correct.  
2 BY MR. WINSOR:  
3 Q. Including early voting?  
4 A. Including early voting, election day and absentee.  
5 THE COURT: Wait. Now you got me off track. How many was  
6 it? Tell me again?  
7 THE WITNESS: You had -- well, Your Honor I can break it  
8 out for you.  
9 THE COURT: Never mind. 37,000 people cast votes on  
10 January 29th and I know there's a breakdown. No, you had  
11 67,000.  
12 MR. WINSOR: 370, Your Honor.  
13 THE COURT: Okay. Thank you. Go ahead.  
14 BY MR. WINSOR:  
15 Q. Doing some very rough math here, Supervisor, it looks  
16 like approximately 20 percent of the total votes cast were cast  
17 in early voting?  
18 A. That is correct.  
19 Q. Is that typical in your experience with early voting?  
20 A. Yes. Early voting ranges anywhere between 20 to 30  
21 percent of the electorate.  
22 Q. So the 20 percent was actually on the light end?  
23 A. Yes.  
24 Q. Did the early voting run smoothly this time?  
25 A. We believe so, yes.

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1 Q. You mentioned that your office makes an effort to get all  
2 the voter registration applicants in the new system  
3 promptly before early voting begins; is that right?  
4 A. That is correct.  
5 Q. Does your office rely on the book closing deadline to help  
6 you prepare for early voting?  
7 A. Yes, we do.  
8 Q. Can you tell the court how you rely on that?  
9 A. We know that book closing is 29 days before election day  
10 and that is a milestone in our programming for an election.  
11 And from that point on, we know that whatever has arrived or is  
12 postmarked and arrives in the elections office we must get  
13 processed before the beginning of early voting.  
14 Q. So you know when early voting begins what you're  
15 -- essentially what your universe of voters is going to look  
16 like?  
17 A. Yes.  
18 Q. Do you use that knowledge to help assign workers  
19 to precincts or anything like that?  
20 A. Knowledge of --  
21 Q. Of what your set universe -- what the book closing  
22 statistics are?  
23 A. Yes, it is driven by a formula.  
24 Q. And what are the components of that formula?  
25 A. Well, we basically figure out how many registered

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1 voters are in each precinct to allocate the necessary number  
2 of equipment, as well as poll workers. So we want to have a  
3 comfortable ratio. So when a voter goes to vote at a precinct,  
4 you don't find a shortage of either poll workers or voting  
5 equipment.  
6 Q. Well, you'll use a similar formula or something along  
7 those lines when you switch to paper ballots beginning this  
8 summer?  
9 A. Yes, we will.  
10 Q. In order to prepare to have the right number of ballots  
11 at the precincts?  
12 A. Yes, that is correct.  
13 Q. Okay. Speaking of ballots, Supervisor Sola, with the  
14 electronic machines, the ballot style appears on the screen,  
15 correct?  
16 A. Yes.  
17 Q. And that's generated by the machine?  
18 A. Yes.  
19 Q. When you switch to paper ballots, you'll have different  
20 paper ballot styles for different precincts and different  
21 voters; is that right?  
22 A. That's correct.  
23 Q. How is that going to be addressed? Well, first, how many  
24 ballot -- different ballot styles will you have in Miami-Dade  
25 County or statewide?

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1 A. On the average, for an August type election, you're  
2 looking in the neighborhood of around 260 different ballot  
3 styles, which means there's 260 variations of ballots for the  
4 voters in Miami-Dade County. Depending on what races are on  
5 for election, it could be hire, it could be lower. It  
6 depends.  
7 Q. So for election day purposes, you've got to have  
8 the right number of each one of those 260 ballots styles  
9 or sufficient number in each polling place; is that right?  
10 A. A style is specific to a precinct. So you need to make  
11 sure that you've printed enough ballot stock of that style for  
12 that respective precinct.  
13 Q. Okay. In other words, each precinct doesn't have 260  
14 different styles. But on absentee balloting, can you tell me  
15 with respect to the last election, the January 29th  
16 presidential preference primary, how many people voted by  
17 absentee ballot?  
18 A. I believe the number was close to 170,000.  
19 Q. So that is about another 20 percent of the total turn out.  
20 And is that consistent with your past experience?  
21 A. Yes, it is.  
22 Q. So somewhere in the neighborhood of 60 percent of people  
23 actually vote at the polls, 60 percent of those who vote?  
24 A. That is correct.  
25 Q. Okay. The other 40 percent take advantage of these other

1 mechanisms?  
 2 A. Yes.  
 3 Q. Do you know how many requests for voter for absentee  
 4 ballots you've gotten for the last election?  
 5 A. For the last election, I believe we received about 130,000  
 6 absentee ballot requests.  
 7 Q. Okay. And when do people begin make requests for a  
 8 particular election, absentee ballot requests?  
 9 A. Well, there's two variations. You can have an  
 10 annual list of individuals who request an absentee ballot  
 11 every year, and that makes up around, I would say, about 50  
 12 percent of our absentee ballot requests.  
 13 Then individuals request absentee ballots as they start  
 14 hearing in the news or in preparation for election. So I would  
 15 say for those individuals, the ones that have to actually  
 16 request it, it's in the neighborhood of around 30 days out  
 17 before an election.  
 18 Q. Okay. And could you walk me through the process? When a  
 19 request comes in, I guess the first thing each person would do,  
 20 your staff member, would be to determine if that person is a  
 21 registered voter?  
 22 A. Yes. If I may, it's a little different in Miami-Dade  
 23 County. Miami-Dade County has a local ordinance where you  
 24 can't literally pick up the phone and call the supervisor of  
 25 elections and request a ballot. In Miami-Dade County, you

1 actually have to send in a written form or a letter requesting  
 2 that ballot. We confirm your signature on that ballot and if  
 3 we agree that that is in fact that signature that we have on  
 4 file, then an absentee ballot is mailed to that voter.  
 5 Q. And an absentee ballot that is mailed is one of those two  
 6 260 different ballot styles; is that correct?  
 7 A. That is correct.  
 8 Q. And you have to make sure that you get the right one of  
 9 those 260 to the correct voter; is that right?  
 10 A. Yes.  
 11 Q. And if you had 130,000 ballot requests for this last  
 12 election and if half of them were made in the last 30 day  
 13 period, that means you were going through the process you just  
 14 described some 65,000 times in the last 30 days before the  
 15 election. Does that sound, right?  
 16 A. Yes.  
 17 Q. Is it fair to say that both early voting and absentee  
 18 balloting contribute to the workload in your office?  
 19 A. Yes.  
 20 Q. I want to ask you real quickly, you talked on direct about  
 21 what it took to implement the injunction that we talked about  
 22 in this case from Judge Mickle in the Northern District of  
 23 Florida, and you testified that the state added those voters to  
 24 the rolls remotely through the database; is that right?  
 25 A. That is correct.

1 Q. And did that take place before the book closing for this  
 2 past election?  
 3 A. Yes, it did.  
 4 Q. Okay. You also talked about grace period that the  
 5 plaintiffs seek in this case. I believe you said it was  
 6 potentially doable; is that right?  
 7 A. Yes.  
 8 Q. A lot of things are potentially doable in the elections  
 9 context I suspect; is that right?  
 10 A. Yes.  
 11 Q. With the right amount of resources and the right amount of  
 12 personnel, you could theoretically provide internet  
 13 registration, couldn't you?  
 14 A. Anything is possible with the right amount of resources.  
 15 Q. You could have -- the polls currently close at 7 p.m.,  
 16 correct?  
 17 A. They currently close at 7.  
 18 Q. It would be doable to have them open until 8:30, isn't it?  
 19 A. Yes.  
 20 MR. ABT: Objection, argumentative.  
 21 THE COURT: Well, it's just asking me to agree with what  
 22 you're going to be arguing to the court later. I think you  
 23 covered it when you say that he has discretion about certain  
 24 things. Well, maybe he does not.  
 25 Does the supervisor of elections have discretion as to the

1 hours the precinct polls are open?  
 2 THE WITNESS: On election day, no. Early voting, yes.  
 3 Some discretion.  
 4 THE COURT: Some discretion. How about absentee is just  
 5 mailing. All right. Let's move on from there.  
 6 BY MR. WINSOR:  
 7 Q. Sure. If the plaintiffs -- if there were an order in this  
 8 case to implement a grace period, you don't know what the  
 9 volume of additional work would be; is that right?  
 10 A. That is correct.  
 11 Q. Because you don't know the volume of corrections that  
 12 would come in during the book closing period; is that  
 13 correct?  
 14 A. That is correct.  
 15 Q. And you don't know how third party groups that collect  
 16 these applications would react to such an injunction, do you?  
 17 A. No, we do not.  
 18 THE COURT: If he did, it would be sheer speculation. So  
 19 let's don't even get into it.  
 20 MR. WINSOR: Okay.  
 21 BY MR. WINSOR:  
 22 Q. You don't know what the additional quantum of work would  
 23 do to your staff in terms of morale, do you?  
 24 A. No, I do not.  
 25 MR. WINSOR: If I may have just one moment, Your Honor.

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1 Thank you very much, Supervisor Sola.  
2 I have nothing else, Your Honor.  
3 THE COURT: All right. Mr. Abt, redirect.  
4 REDIRECT EXAMINATION  
5 BY MR. ABT:  
6 Q. Good afternoon, Mr. Sola.  
7 A. Good afternoon.  
8 Q. It's understandable you don't know the number that would  
9 be affected by the grace period for certain for next fall, but  
10 your testimony on direct is that it would be -- you would  
11 estimate it would be hundreds, correct?  
12 A. That is correct.  
13 Q. With regard to now as it stands today without a grace  
14 period, your office currently processes voter registration  
15 applications after the close of books under certain  
16 circumstances; is that correct?  
17 A. That is correct.  
18 Q. You process applications that you receive just after the  
19 close of books?  
20 A. That is correct.  
21 Q. You also process name, address and signature changes after  
22 the close of books?  
23 A. Yes, we do.  
24 Q. With regard to early voting, is your early voting system  
25 what's known as a live system?

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1 A. Yes, it is.  
2 Q. And with a live system, is it possible to make changes to  
3 voter registration information in real-time?  
4 A. Yes, it is.  
5 Q. You said that it's important to early voting to know your  
6 universe of the amount of voters you're dealing with.  
7 Withdrawn.  
8 On cross-examination, you said it's helpful to know the  
9 universe of voters that you're dealing with for planning for  
10 early voting, correct?  
11 A. I believe both for early voting and on election day, I  
12 believe my answer was specific to election day because I was  
13 referring to poll workers, poll workers and how much voting  
14 equipment was going to be on a site.  
15 Q. Okay. It's fair to say that those numbers are changing  
16 slightly all the way up to election day; isn't that true?  
17 MR. WINSOR: Objection to the leading questions, Your  
18 Honor.  
19 THE COURT: Overruled. Answer the question.  
20 THE WITNESS: Those numbers do shift occasionally from the  
21 day of book closing to election day.  
22 BY MR. ABT:  
23 Q. Because voters move in and out of your county; is that  
24 true?  
25 A. Yes.

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1 Q. On cross-examination, you described several of the  
2 challenges that your office face, particularly as you've said  
3 on every Tuesday in Miami it's election day.  
4 But since becoming supervisor, you've maintained an  
5 orderly office; is that true?  
6 A. I believe so, yes.  
7 Q. You've run orderly elections?  
8 A. Yes.  
9 Q. And have you done so election after election?  
10 A. Yes, sir.  
11 Q. And you employ, particularly during the close of books for  
12 busy elections, thousands of worker's; isn't that true?  
13 A. Yes.  
14 Q. So despite all the challenges, your testimony on direct is  
15 that a grace period would be doable.  
16 A. I believe so.  
17 MR. ABT: Thank you.  
18 THE COURT: Thank you. You may step down. Thank you.  
19 Next witness please.  
20 MR. ABT: Plaintiffs call Evan Kolodny.  
21 MS. NORRIS-WEEKS: Your Honor, Burnadette Norris-Weeks.  
22 would like to enter a notice of appearance and I will be here  
23 only for the limited purpose of having Mr. Kolodny's testimony  
24 taken.  
25 EVAN KOLODNY, PLAINTIFF'S WITNESS, SWORN.

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1 THE CLERK: Please be seated. State your name and spell  
2 it.  
3 THE WITNESS: Name is Evan Kolodny, K O L O D  
4 N Y. First name Evan, E V A N.  
5 MR. ABT: Your Honor, may I inquire?  
6 THE COURT: Yes, of course.  
7 DIRECT EXAMINATION  
8 BY MR. ABT:  
9 Q. Good afternoon, Mr. Kolodny.  
10 A. Good afternoon.  
11 Q. Until recently, were you employed with the Broward County  
12 Supervisor of Elections Office?  
13 A. That is correct.  
14 Q. Is Brenda Snipes the supervisor of elections for Broward  
15 County?  
16 A. Yes, she is.  
17 Q. What was your position at Broward County?  
18 A. I was director of registration services.  
19 Q. And what were your responsibilities in that position?  
20 A. My responsibilities were to register voters, also to  
21 process voter registration applications that came in whether it  
22 be by mail or in person. I also was the charge of selling  
23 voter access to voter lists. I was in charge of the intake  
24 department. I was also in charge of the mail room.  
25 Q. How long did you serve in that position?

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1 A. Well, I worked for the office for 21 years, but I did not  
2 serve in that position. But I was always all throughout the  
3 years I was tied to -- my jobs were related to registration,  
4 voter registration.  
5 Q. 21 years experience.  
6 Compared to other counties in Florida, would you describe  
7 Broward County as a large county?  
8 A. Yes. Between Broward County and Dade, went back and forth  
9 as far as voter registration is concerned.  
10 Q. In terms of who was the largest?  
11 A. Numbers, yes.  
12 Q. Approximately how many people does the office employ?  
13 A. I believe it's 81.  
14 Q. Does it also employ part-time or seasonal employees?  
15 A. Yes, it does.  
16 Q. What is the highest number, when you're busiest, that you  
17 employ?  
18 A. Does that include poll workers who work just the one day  
19 or --  
20 Q. Maybe not. Well, let's do poll workers then we'll step  
21 back. Including poll workers.  
22 A. Well, we hire -- I believe we hire anywhere  
23 from eight to 10,000 poll workers alone in various positions.  
24 I can't give you a precise number except it would run -- as far  
25 as temporary employees would probably at least double

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1 our staff. But I'm not sure of the number.  
2 Q. Okay. And does the Secretary of State or the Division of  
3 Elections have any direct role in voter registration in Broward  
4 County?  
5 A. I'm not sure I understand the question.  
6 Q. With regard to your experience in the processing and  
7 registering of voter registration applications, does the  
8 secretary play a direct role?  
9 A. Well, the secretary who was in charge of the Division of  
10 Elections would -- the laws are passed by the State of Florida  
11 that we are to carry out and we also are part of the Florida  
12 Voter Registration System which is the central voter file which  
13 is in Tallahassee.  
14 Q. Is that the FVRS system?  
15 A. FVRS, yes sir.  
16 Q. When you worked there, was the Broward County supervisor's  
17 office committed to registering all eligible individuals who  
18 were eligible and wanted to vote?  
19 A. Yes.  
20 Q. And the office maintained adequate staffing in order to do  
21 that?  
22 A. Yes.  
23 Q. I'd like to turn to the voter registration process at  
24 Broward County.  
25 To your knowledge, has it changed any since you've left?

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1 A. Not to my knowledge, no.  
2 Q. I'd like for you to walk us briefly through the  
3 registration process from the perspective of an individual  
4 application.  
5 When an individual application first comes to the  
6 Broward County office, where does it go?  
7 A. Well, if it comes by mail, it would be delivered to the  
8 mail room and the mail room would stamp, would date stamp any  
9 incoming mail, including all voter registration applications.  
10 Q. And after that one application that we're talking about  
11 was date stamped, where would it go next?  
12 A. It would go to the intake department.  
13 Q. And what happens at the intake department?  
14 A. The intake department would open it. In other words, it  
15 comes folded and sealed, so they would open it up and they  
16 would date stamp it based on the postmark which is on that  
17 application.  
18 Q. And after it's sorted in this way, what  
19 happens next?  
20 A. Well, they would then sort and scrutinize the applications  
21 based on whether it appears it's a new application or if it's  
22 an address change or party change. Or if it's an out of county  
23 application, that would be kept separate also.  
24 Q. And what happens after the applications are sorted?  
25 A. They would go to the data department for entry.

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1 Q. And after -- presumably at that point the information on  
2 the voter registration form is now in the computer?  
3 THE COURT: Well ask him. Is it in the computer at that  
4 point?  
5 THE WITNESS: It has to be entered first.  
6 BY MR. ABT:  
7 Q. Yes. Once it's entered, is it now the information --  
8 A. The information would be in the database, yes.  
9 Q. And where does that information go next?  
10 A. That information is then basically sent to Tallahassee  
11 and they will -- it's basically a pending status. When we  
12 enter it, it's on a pending status and Tallahassee would then  
13 review the application to see if there are -- to match the last  
14 four digits of the social security number or the driver's  
15 license or Florida ID number, whatever the applicant provided.  
16 It also goes through the Florida Department of Law  
17 Enforcement to make sure the applicant is not a convicted  
18 felon. And so it goes through cross-checks through Tallahassee  
19 which generally takes 24 to 72 hours.  
20 Q. And once those various cross-checks are completed, what  
21 information does Tallahassee send back to you?  
22 A. It would send back that it was -- it would show that it  
23 was approved or we get -- we get information from Tallahassee  
24 that it is not -- that the numbers do not match, the driver's  
25 license or social security numbers do not match.

1 Q. If the application was approved, what would happen next to  
2 that application?

3 A. The individual would ultimately mail -- a voter would be  
4 mailed a voter registration card.

5 Q. And if the application was not approved, what would  
6 happen?

7 A. That would then generate a letter to the voter explaining  
8 that the application has not been approved. We would actually  
9 recreate an application with all the information on there,  
10 other than the information that's either wrong or missing and  
11 with that letter, it would be mailed to the voter.

12 Q. And for a single application, how long does it take to  
13 just date stamp that application?

14 A. When it originally comes in?

15 Q. Yes.

16 A. The date stamping itself would be only a matter of  
17 seconds. But it's -- opening the application and all the  
18 effort and making that determination would take a little bit  
19 longer.

20 Q. And let's just go through this step by step. That next  
21 process of opening the application and sorting it,  
22 approximately long would that take? And again, we're just  
23 talking about one individual application.

24 A. Well, I've never sat there with a timer to figure it out,  
25 but I would imagine it would take anywhere -- it would take

1 less than a minute. It might take 30 seconds.

2 Q. Okay. Now, the application is being entered in to the  
3 database. How long does it take to fill out those -- how many  
4 fields are on the form?

5 A. I don't know. I'm not sure. Well, I think there's -- I  
6 believe it's 16 fields.

7 Q. Approximately 16. How long does it take to fill out those  
8 16 forms, fields?

9 A. Well, it's not a matter of just entry. They basically  
10 have to check first to make sure the application is not a  
11 duplication or someone that has already registered within the  
12 county or within the state. So that has to be done first.

13 As far as the entry is concerned, it would probably take  
14 -- a good data entry operator could do it in, without  
15 interruption, probably two to three minutes.

16 Q. And once the information comes back from FVRS and you  
17 have to take whatever information you have and mail it, be it  
18 an incomplete notice or be it a voter registration card, how  
19 long does it take to actually mail that notice out?

20 And again, I know this seems silly, but from the  
21 prospective of a single application.

22 A. Can you be a little bit more precise when you say how long  
23 it would take? Are you talking about the actual -- most of  
24 this is done electronically as far as the voter cards are  
25 concerned, we outsource that. So we basically collect the

1 names on a disk and that would go to a mailing house and they  
2 would send out the cards.

3 Q. That doesn't take any time for your staff?

4 A. Correct. What takes more time would be the incompletes.

5 And because those we produce in-house and the notices are  
6 produced automatically, but then the notices are carried over  
7 to the mail room and somebody has to stuff the notice and match  
8 the card, the recreated voter application, I mean, that we  
9 sent. So that would -- that takes more time.

10 Q. Again, we're talking just for a single application. How  
11 long would it take to carry a bunch of those over and do one of  
12 those?

13 A. I guess it would -- again, if the person is not  
14 interrupted or whatever, they could probably stuff several,  
15 several applications per minute.

16 Q. Okay. So it's fair to say that the processing time for  
17 one application, start to finish, estimate, takes a few  
18 minutes.

19 A. Correct.

20 Q. Okay. Maybe anywhere between two to four minutes; is that  
21 accurate?

22 A. From what point to what point? I'm sorry.

23 Q. From start to finish. From being stamped to being mailed.  
24 And what I mean by that is, the actual time it takes your staff  
25 to physically do these various things.

1 A. When you say stamped, you're not talking about the  
2 original date stamping, you're talking about --

3 Q. No, I do. I mean, from the very first thing you do to the  
4 end.

5 A. I think the time frame would be longer than that.

6 Q. Five minutes?

7 THE COURT: Well, no. You keep giving 20 multiple  
8 choices. How long would it take, once you get back from -- you  
9 said you get it back from Tallahassee, your words, on FVRS, it  
10 comes back and they say it's incomplete. And you start this  
11 process, timestamp, and enter the thing and put in an envelope  
12 and mail, the stuff you just described, roughly, approximately,  
13 your words, how long does it take?

14 THE WITNESS: I guess it would take maybe two to three  
15 minutes. It's difficult. I never sat and measured it so it's  
16 hard to say.

17 MR. ABT: Thank you, Mr. Kolodny.

18 BY MR. ABT:

19 Q. Specifically with regard to data entry with corrected  
20 applications, is it fair to say -- well, let me withdraw that  
21 and ask that in a more in a different way.

22 When you at the data entry stage for a corrected  
23 application, do you input all the information in again or do  
24 you update the application with only the new information.

25 THE COURT: Excuse me just one second. Now we had seven

1 witnesses who have gone through this same process,  
2 answered the same questions and answered them basically the  
3 same way. The time varies a little bit from one to the other  
4 and that's fine, but aren't we -- aren't they all saying the  
5 same thing about the processes?

6 Last question was we know, I know, unless you're trying to  
7 prove that your other witnesses were incorrect that they don't  
8 enter, they just take -- if the incomplete thing was his  
9 birthday and he sent back the birthday, they type in the  
10 birthday. I know that. You've proven it seven times already.  
11 This is the eighth time. I'm sorry. One of them was not a  
12 supervisor. Six times.

13 So I asked you earlier couldn't we just assume that it's  
14 basically done the same way. Now, there might be a difference  
15 in the time and one supervisor might say two, three minutes,  
16 one might say six to seven minutes or eight to ten or four to  
17 five or whatever.

18 But couldn't we just assume and eliminate about 20  
19 witnesses that are going to say the same thing to the same  
20 questions and get a range of whatever it is? Say two minutes  
21 to -- one of them said ten, that seems long to me, two. But  
22 couldn't we just simply stipulate that's what they're all going  
23 to say? Same process, same thing, nobody sits there and types  
24 it over again so far.

25 Do you know of anybody that's going to change

1 that in any way or are all their answers going to be the same?

2 MR. ABT: To my knowledge, that would be the answer. But  
3 that's just my personal knowledge.

4 THE COURT: Well, that's what I mean. What I'm trying to  
5 get at is once you've proven it six straight times, there's no  
6 need to prove it a seventh. I mean, you've got the record  
7 there. As I say, the only difference -- I've been writing this  
8 all down, thinking that there's going to be, you know, a hand  
9 grenade go off here, big explosion and I'm going to find out  
10 that one of these places, he goes in the back room and he  
11 figures out because his cousin is a republican, an independent,  
12 that he's going to label a bunch of them independents or  
13 something. I'm waiting. But that's all the same.

14 You see, in all fairness to you, the other side, I'm not  
15 hearing any difference. So we've got 67 supervisors or  
16 somebody from their office. I know you're not going to call  
17 them all, at least I hope not.

18 Can we just agree this procedure, I can recite  
19 it in my sleep to you, as to what they do so we don't need to  
20 prove it anymore unless they're going to say something brand  
21 new or different that is important to you. If they are, fine.  
22 But right now, this process you've just described after it  
23 comes back with an incomplete or a problem with it, whatever  
24 the problem was, takes two to three minutes,  
25 according to Mr. Kolodny, for them to notify the voter.

1 Now, let's move on from there and let's don't repeat that  
2 anymore unless there's something brand new or different that's  
3 important. Go ahead.

4 MR. ABT: Your Honor, I must tell you that some of the  
5 questions I intend to ask will sound similar from other  
6 witnesses. Broward County of course is a very large and  
7 significant county. Is it possible that I could streamline  
8 this as much as possible with the understanding that you might  
9 actually hear one or two questions that might sound similar.

10 THE COURT: Mr. Abt, if I haven't made myself clear by  
11 now, I don't know what I can do to clarify it any more. You  
12 have the right to ask any question you want to ask. But at  
13 some point the repetitiveness has got to stop. If the other  
14 side was doing the same thing, I would be saying the same thing  
15 to them. I'm not picking on you. But the last seven witnesses  
16 have described this system exactly the same way. Down to the  
17 timestamping. Down to the inputting. Down to words like  
18 depending on whether they're interrupted with a phone call.  
19 They're giving the same answers, and I have to believe the  
20 reason they are is that most of the offices have determined  
21 this is an efficient way to do it, or at least the best way  
22 they can think of and they all do it the same way.

23 Well, go ahead and ask your questions. If there's no  
24 objections we can -- I've got all the rest of the week. Go  
25 ahead.

1 MR. ABT: Judge, I'm going to narrow this considerably.

2 THE COURT: That would be good if you can. Thank you.

3 BY MR. ABT:

4 Q. What happens to corrections in Broward County's office  
5 after if they are received after the close of books.

6 A. We would enter the corrections, but if it's after the  
7 close of books, the person would not be eligible to vote in  
8 that upcoming election.

9 Q. Are those applications identified or flagged in some way?

10 A. Well, when they're entered on to the database, it would  
11 show there is a new registration date that's placed, the date  
12 that the corrections were made and that would be -- and so that  
13 they basically would not be eligible to vote because the  
14 registration date would be after the book closing.

15 Q. So if they have that registration date, the computer holds  
16 those applications?

17 A. Correct.

18 Q. Mr. Kolodny, are you familiar with the term "grace  
19 period"?

20 A. Yes.

21 Q. And what do you understand a grace period to mean?

22 THE COURT: I'm going to sustain the materiality  
23 objection. His understanding of it doesn't matter. Let's find  
24 out what he does know with respect to -- let's move on.

25 Sustained.

1 BY MR. ABT:  
 2 Q. Would a grace period allow more voters to register in  
 3 Broward County?  
 4 A. You're referring to a grace period less than the 29 days?  
 5 Q. Yes.  
 6 A. Yes, it would.  
 7 Q. Could a grace period in Broward County be implemented  
 8 simply by changing this flag and hold procedure that you've  
 9 described?  
 10 A. Yes, sir.  
 11 Q. Would that be a particularly difficult or burdensome thing  
 12 to do?  
 13 A. It would be -- no, not really, no.  
 14 Q. Do you have any reason to believe that doing this would  
 15 cause any type of increase in voter fraud or voter registration  
 16 fraud?  
 17 A. No, I do not.  
 18 MR. ABT: Thank you very much, Mr. Kolodny.  
 19 THE COURT: Any questions of this witness?  
 20 MR. WINSOR: Yes, Your Honor.  
 21 THE COURT: Beg your pardon?  
 22 MR. WINSOR: Yes, Your Honor.  
 23 THE COURT: Go ahead. By the way, none of these people --  
 24 now they've all settled and they're out of this case if I  
 25 understand that, correct? Broward County, Leon County.

1 MR. WINSOR: Leon County was not a defendant. There were  
 2 five county supervisors who were all defendants and they've all  
 3 settled. Broward, Miami-Dade, Palm Beach County,  
 4 Duvall and Orange were the five.  
 5 THE COURT: Well, the relief the plaintiff is seeking is a  
 6 grace period for those who have applied prior in the regular  
 7 -- some time, you know, any time in the year, two years, three  
 8 years or right up to the day of the 29 day period mandated by  
 9 law presently, and if their application is pending, that has  
 10 been marked as irregular by the computer, FVRS or whatever, and  
 11 the process to get it corrected with filling in the birthday or  
 12 whatever comes in after the book closing date, that is what  
 13 we're talking about.  
 14 That group of people, that group of voters, that group of  
 15 applicants. And the plaintiff is saying to the court that  
 16 there should be a grace period to allow that select group of  
 17 voters to have their application to vote corrected, filled in,  
 18 so that it satisfies the computer, and Mr. Kolodny and  
 19 Tallahassee and Governor Crist or whoever has to approve it.  
 20 It satisfies everybody. Then they should be allowed to vote on  
 21 election day. And that that would be a grace period or as I  
 22 discussed with you all yesterday, an exception, an exception to  
 23 the otherwise deadline mandated by law at this point. But 29  
 24 days before election day for books closing. That's what  
 25 they're talking about. That's the relief they want.

1 Now, what have those -- and I want just a yes or no, I  
 2 don't want to get in to settlements and discussions and all  
 3 that, but have these five county commissions that were  
 4 defendants in this case, and I know they were Duvall, Broward,  
 5 I believe Orlando, Orange County, I believe -- I believe Leon  
 6 County?  
 7 MR. WINSOR: No, sir.  
 8 THE COURT: I believe Hillsborough County and there was  
 9 one more.  
 10 MR. WINSOR: Not Hillsborough, Your Honor. Miami-Dade and  
 11 Broward are the other two.  
 12 THE COURT: All right. And they've all settled this case.  
 13 Now, I want just a yes or no.  
 14 MR. WINSOR: Sure.  
 15 THE COURT: And I ask you, not either one of you, anybody  
 16 to volunteer stuff, I don't want to know the details of  
 17 it. But is the settlement one whereby those five counties are  
 18 going to implement and have agreed to implement this  
 19 grace period that the plaintiff is seeking the Court to  
 20 mandate?  
 21 MR. WINSOR: They have not, Your Honor.  
 22 THE COURT: Okay. All right. Because I thought if they  
 23 were, this is the only thing left is the state, and I would  
 24 talk with all of you about that later, but they have not.  
 25 Okay. Well, go ahead then. That's all we can do.

1 MR. ABT: Your Honor, respectfully the Plaintiffs  
 2 Vigorously disagree with that characterization.  
 3 THE COURT: All right. Well, excuse me. I thought -- all  
 4 right.  
 5 Well, let me ask -- just a moment. Let me ask Mr. Abt  
 6 then, and please answer just yes or no, for the obvious reason  
 7 that I don't want to get my mind involved or cluttered up with  
 8 minutia or details of settlements, I don't want to get involved  
 9 -- I know there's no harm in you all telling me and you all  
 10 would have the belief that I have the discretion and to  
 11 handle it whatever is appropriate or fair. I know all that.  
 12 Let's just leave it out so I'm not aware of it.  
 13 Right now I do not know the settlement. If you all have  
 14 told it to me in these three years or four years it's been  
 15 pending, I've forgotten it and I want to leave it that way.  
 16 So having said that, you disagree with what he has just  
 17 said. Let me ask you, and maybe you can answer this one just  
 18 yes or no please. I know you'll have in Duvall County, next  
 19 election, Mr. Jones applies with one of these forms, with one  
 20 of these. He says I want to vote, I want to register to vote.  
 21 He does it six months before the election. Fills it all out  
 22 but he leaves something blank or he makes some minor innocent  
 23 mistake, we've already -- all right. He leaves a blank.  
 24 Now then, of that comes along, and for whatever reason it  
 25 gets held up so that his answer may be Mr. Kolodny and the

1 state and the computer all act very promptly, and mailing a new  
2 form, Mr. Kolodny said he types in the information for him but  
3 you left out the birthday, Mr. Jones. Mails it to him and  
4 Mr. Jones sits on it or he goes on vacation or his wife takes  
5 him off on a vacation to Costa Rica or someplace, and he's  
6 gone. And whatever happens, he doesn't mail it in until after  
7 the 29 days or until it's in that deadline period.

8 Comes back to Mr. Kolodny, Mr. Kolodny says whoops, you  
9 know, can't do anything about it. Now, that's the way it was  
10 in the 2004 or 2006 election, whatever it was.

11 Now if Duvall County, hypothetical Mr. Jones has done  
12 exactly what you've put in your complaint that you feel is a  
13 constitutional deprivation and needs correcting, be done  
14 exactly the way you've laid it out of the  
15 group of people that you would like to see have an exception  
16 made of the current law to go -- to be able to have a grace  
17 period. Some period of time. Okay, a few days, whatever.

18 Now, can -- and this is a yes or no, taking my  
19 hypothetical, could Mr. Jones, under the settlement you've  
20 worked out with Duvall County, present the amended, the new,  
21 the changed, the amended, whatever you want to call it, don't  
22 worry about the title, with that piece of paper when it came  
23 back that Mr. Kolodny's counterpart in Duvall County sent to  
24 him and he comes back and it's got his birthday in and he's  
25 otherwise okay to vote. Except that under the law he might be

1 or is prohibited, your settlement with Duvall County, can  
2 Mr. Jones then go down on election day and cast his ballot  
3 without being told he has to wait?

4 MR. ABT: The answer, Your Honor --

5 THE COURT: Yes or no as best you can. Yes or no.

6 MR. ABT: I'll answer it in one sentence. The answer is  
7 no because the agreement is predicated on the law changing. We  
8 have not asked --

9 THE COURT: Okay. All right. Well, the legislature  
10 changes the law, of course, generally speaking and/or you're  
11 saying depending on this court's ruling, is that it --

12 MR. ABT: Yes, Your Honor.

13 THE COURT: All right. I understand your settlement.  
14 Well, I understand -- I mean, I think I understand the theory  
15 of it. And that's well enough. Let's go ahead then.

16 MR. WINSOR: If I may just point out, it has been filed  
17 with the court if the court wishes to look at it. But it's  
18 essentially an agreement to comply with the court order should  
19 there be one.

20 THE COURT: Well, that's no settlement at all then on  
21 either side. I mean, if you haven't settled anything, you're  
22 just saying we've eliminated some of the parties, we've  
23 agreed to dismiss or drop some of the parties, but that's all  
24 right. I wasn't involved in your settlement, whatever you all  
25 want to do is fine.

1 But well then, basically these people, all these counties  
2 and all these county supervisors and deputy supervisors --  
3 well, that agreement is the same sort of thing that  
4 has just been generally the practice in Florida throughout the  
5 decades. We've got the judge in the northern district, Judge  
6 Mickle, I think you said his name Mickle?

7 MR. WINSOR: Yes, Your Honor.

8 THE COURT: I don't know him personally, but Judge Mickle,  
9 he entered his order and apparently everybody goes and complies  
10 with it. So this is sort of a general practice which is good,  
11 I'm glad that it is that way. But -- yes.

12 MR. ABT: If I may Your Honor, there is one slight  
13 distinction. If this court were to enjoin the statute as to  
14 the grace period, and say that the counties -- that the  
15 counties can now do what they like, these five counties will  
16 then have to do the grace period.

17 THE COURT: I see. Okay. Fine.

18 MR. WINSOR: That's not my understanding at all, Your  
19 Honor, but it's been filed with the court, yes.

20 THE COURT: Pardon me for interrupting, both of you, but  
21 that's fine. I accept it.

22 MR. WINSOR: It's in the file.

23 THE COURT: I accept what both of you are saying and I  
24 recognize that you have a little different interpretation, I'm  
25 not mad at either one of you, you're nice people and you've

1 answered my questions and that's all I want you to do. I  
2 thought there was a way if we could resolve it five times,  
3 let's resolve it six times and all go home. I understand we  
4 can't do that, but hopefully we won't have to call all 67  
5 supervisors, as nice as they are, and as much as I'm enjoying  
6 seeing real people for a change instead of what I usually have  
7 to deal with, cocaine smugglers and alien smugglers. It's  
8 good to see good Americans who are out there trying their best  
9 on all sides to comply with the law and do the best they can  
10 for the people. And so it's good to see them and I'm enjoying  
11 seeing these people who have to run for election and stuff.

12 I think it's good. I'd like to talk to them about their  
13 elections, their own elections some time. All right.

14 Now let's move on.

15 MR. WINSOR: Yes, sir.

16 THE COURT: You're on cross-examination.

17 MR. WINSOR: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WINSOR:

20 Q. Good afternoon, Mr. Kolodny. You started off talking in  
21 the past tense about your employment. Are you no longer with  
22 Broward County?

23 A. That is correct. I retired on November 30.

24 Q. Of 2007?

25 A. Yes.

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1 Q. Congratulations. So you were there for the 2000 November  
2 2006 election. Was this grace period that the plaintiffs are  
3 talking about in effect in 2006 in Broward County?  
4 A. No.  
5 Q. Okay. I want to talk about this idea of corrections  
6 coming in after the close of books.  
7 When a piece of paper comes in, a voter registration  
8 application, you can't always tell if it's a correction to an  
9 old application or whether it's a new application; is that  
10 right?  
11 A. If it's one of the applications that we sent out. In  
12 other words, with the missing -- along with the letter, it's  
13 quite obvious because it's typed in bold print. So that would  
14 be easily recognizable, but that doesn't mean they could --  
15 someone could fill out an application on their own, we would  
16 not know that that was an application that needed to be  
17 corrected or that was deficient originally.  
18 Q. And indeed, a lot of corrections come in on ordinary  
19 forms; is that right?  
20 A. Yes, but I think most people get that mailing. It's a lot  
21 easier to use the form that we provided.  
22 Q. If they have it, if they get it in a timely fashion,  
23 right?  
24 A. Correct.  
25 Q. In other words, someone might submit an incomplete

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1 application two years ago and submit a complete application  
2 tomorrow, correct?  
3 A. Yes.  
4 Q. And in that instance when you're going through the mail  
5 that comes in, you may not be able to tell this is someone  
6 who's applied before, right?  
7 A. Not looking, no. Not until you get into the entry aspect  
8 of it, correct.  
9 Q. You put it in the system and you do some searches to see  
10 if it's someone who has applied before, correct?  
11 A. Yes.  
12 Q. We'll talk about the volume of mail that comes into your  
13 -- as you said, first comes into the mail room then is  
14 distributed to intake; is that correct?  
15 A. Just the voter registration forms. Other mail would  
16 go to the departments or to the -- if it's an address change or  
17 on the back of an old voter card or a letter requesting an  
18 address change, that would go to the registration department.  
19 Q. So a registered voter can change his address by just  
20 sending a letter in?  
21 A. Yes.  
22 Q. He doesn't need to fill out a new form.  
23 A. Correct.  
24 Q. But he may fill out a new form, right?  
25 A. Yes.

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1 Q. And that may function as an address change?  
2 A. Yes.  
3 Q. But just looking at it, you might not be able to tell  
4 whether it's an address change or whether it's a new  
5 application?  
6 A. Well, there's boxes to be checked on top, but the people  
7 are not necessarily accurate in what they check off.  
8 Q. And in fact, your office doesn't necessarily trust those  
9 boxes, right?  
10 A. Correct.  
11 Q. You input everything, see whether it's a new application  
12 or not?  
13 A. That's correct.  
14 Q. Okay. Mr. Abt walked you through what would happen with  
15 one single application, but you don't deal with individual  
16 applications.  
17 In other words, you don't give one application and walk it  
18 through the whole process before moving on to the  
19 next, do you?  
20 A. No.  
21 Q. You deal with thousands of applications?  
22 A. Depending on the time of the year, it could be, as we get  
23 closer to book closing, we could be dealing with thousands of  
24 applications, yes.  
25 Q. It gets higher right before book closing?

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1 A. Yes.  
2 Q. Particularly in presidential elections?  
3 A. Especially, yes.  
4 Q. Did you have over 20,000 applications come in in the last  
5 minute in 2004; do you remember?  
6 A. Yes, we did.  
7 Q. And were those all new applications or were some of them  
8 changes?  
9 A. It was a mixture. They were mostly from third party  
10 groups that had conducted voter registration.  
11 Q. And sometimes third party groups will collect applications  
12 from people who are already registered, right?  
13 A. Yes.  
14 Q. And sometimes they'll collect applications from people  
15 that have attempted to register but have been unsuccessful for  
16 whatever reason?  
17 A. Yes.  
18 Q. And so if you get a box right before book closing, you --  
19 the office that has 20,000 applications in it or probably be  
20 more than one box, if there were that many, of all application  
21 forms, some of them are probably new applications.  
22 THE COURT: Well you know, we can go on and on, the  
23 speculation could go on for hours. I'm sorry, but all these  
24 things are just simply -- you argue this to the court. I mean,  
25 that's what you do, you establish facts from this witness.

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1 Did I hear you say that you got in one grouping or one  
2 bundling, 20,000 applications for registrations at one time?  
3 THE WITNESS: In one day actually.  
4 THE COURT: One day. I thought that's what I heard you  
5 say.  
6 And in proximity in time of the -- near the time, when did  
7 it come in, if you can figure roughly a few days.  
8 THE WITNESS: Book closing day.  
9 THE COURT: Closing day?  
10 THE WITNESS: Book closing day.  
11 THE COURT: Book closing day, you got 20,000 in one day.  
12 And did you get that from basically one group, one third party  
13 collecting group or several or what?  
14 THE WITNESS: Mostly -- well, the vast majority came from  
15 several groups. Can I mention groups or -- ACORN was one of  
16 the -- collected them over a period of time but turned them in  
17 on that one day.  
18 THE COURT: All right. And how do you know they collected  
19 them over a period of time? The dates on them?  
20 THE WITNESS: The dates that the people -- when it asks  
21 for a signature and date, so the handwritten dates indicated  
22 that some of them had been held back for a period of time.  
23 THE COURT: All right. Now then -- okay. And this --  
24 when this 20,000 you're talking about that occurred with  
25 reference to which election, if you recall.

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1 THE WITNESS: The presidential election of 2004.  
2 THE COURT: 2004. Okay. All right. Now, so that's a  
3 fact.  
4 Now, you can argue from that when you argue to me all  
5 these other things about mixed up in there, there's everything  
6 including the M&M wrappers or whatever.  
7 You see, that's argument. But the facts, now you have --  
8 both of you can argue that, however it cuts, whatever it means,  
9 that's a fact that he knew about he can tell us. All right.  
10 BY MR. WINSOR:  
11 Q. Now, when those 20,000 applications came in, you or your  
12 staff had to enter all those into the computer system, correct?  
13 A. We had to hire, bring in temporary workers. We  
14 could not handle it, our office could not handle that volume on  
15 a timely basis.  
16 Q. And how long did it take to enter in those 20,000  
17 applications?  
18 A. Well, we did it within the legal time frame but I think we  
19 had to use the 15 days basically to get all those  
20 applications in.  
21 Q. You used the maximum time allowed by law?  
22 A. The maximum time allowed.  
23 Q. And today the maximum time allowed by law is only 13 days?  
24 A. Correct.  
25 Q. So if you get another 20,000 in 2008 -- withdrawn.

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1 And during that same time period, the 15 days after the  
2 close of books, there's a lot of other stuff going on in the  
3 office, right?  
4 A. Correct. We're handling absentee ballot requests, we're  
5 getting ready to produce the precinct registers, we're getting  
6 a lot of phone calls, the volume of calls increases every day  
7 as we get closer and closer to election day.  
8 Q. What kind of calls are you getting?  
9 A. Calls about where do I vote, I don't have my card, where  
10 can I get information on the candidates, it varies. Where are  
11 my polling places, a lot of inquiries. Just basically related  
12 to the election.  
13 What is the meaning -- they want us to interpret  
14 constitutional amendments that are on the ballot, which of  
15 course we cannot do.  
16 Q. My understanding is that employees in your office work on  
17 the tasks on an as-needed basis; is that right?  
18 A. Yes.  
19 Q. In other words, if there's a bunch of absentee ballots  
20 to go out, they'll go work on that. If there's a bunch of  
21 registration applications to be processed, they'll go work on  
22 that. Mix and match, right?  
23 A. Right. We have to work as a team to get our -- all the --  
24 everything accomplished.  
25 Q. Okay. I'd like to ask about -- we talked about 20,000

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1 coming in before book closing. I wanted to ask about what  
2 comes in after book closing date or during the book closing  
3 period.  
4 I suspect you're getting a volume of mail in during that  
5 time as well; is that right?  
6 A. That is correct.  
7 Q. What kind of things are coming in then?  
8 A. Mostly voter registration applications and changes are  
9 coming in. The 20,000 number I mentioned was basically  
10 people are -- brought into the office. Some of it was mailed  
11 but most of it was actually hand-delivered.  
12 Q. Now, for the things that were received after book  
13 closing, did you tend to those after you dealt with the  
14 20,000?  
15 A. We say book closing would be the postmark because even a  
16 day or two after book closing we're still getting items. But  
17 technically our -- after the 29 days because they're  
18 postmarked, you know, prior to that.  
19 Q. Let me maybe be a little more clear.  
20 Things that were postmarked after book closing deadline  
21 and came in to your office after book closing deadline, what  
22 would you do with those?  
23 A. We would prioritize the book closing things. First off we  
24 would process them, but we would give priority to those --  
25 anything that arrived on or before book closing.

1 Q. So the late arriving things you'd process as you're  
2 available to?  
3 A. Right.  
4 Q. Priority would be the things that came in before book  
5 closing?  
6 A. Yes, sir.  
7 Q. And that's out of necessity, right? Because you've only  
8 got so many days to enter in applications that came in before  
9 book closing?  
10 A. That's correct.  
11 Q. And it's also necessary to make sure that those people who  
12 timely submitted applications are able to vote, right?  
13 A. Correct.  
14 Q. And that's all taken care of before early voting begins,  
15 correct?  
16 A. Yes.  
17 Q. You mentioned on direct that you are -- you deal with  
18 sale of voter data. Can you tell me a little bit more  
19 about that? I say dealt. I understand you're retired.  
20 A. As of today or back at the period of 2004 or -- today it's  
21 a little different.  
22 Q. Well, let's explore that. Let's start with 2004.  
23 A. All right. 2004, anyone who was a candidate, an elected  
24 official or an officer or registered PAC could access voter  
25 information and had to sign an oath that the information was

1 being used for political purposes only.  
2 We sold it at cost, it wasn't free, and it depended on the  
3 number of voters. In other words, there was a set-up charge  
4 and then a cost per thousand voters.  
5 Q. Okay. And that when you say the voter data, these would  
6 be computerized lists; is that right?  
7 A. They could order a list on computer paper, labels,  
8 three-across labels or they could order CD-ROM.  
9 Q. And how has that changed to the way it operates now or the  
10 way it operated shortly before you left?  
11 A. Well, the only difference now is that it's now considered  
12 a public record and that anybody can walk in, as long as they  
13 have the finances, anybody. Even a 12-year-old child could  
14 walk in and access our voter lists.  
15 Q. When did that change take place, if you know?  
16 A. I believe it was January, 2006.  
17 Q. Okay. So now do you have people coming in -- let me take  
18 that back.  
19 Since January 1, 2006, and November 2006 election cycle,  
20 did you have outside groups coming in and making  
21 these public records requests?  
22 A. You mean access to voter lists or public records request?  
23 There's a differentiation there.  
24 Q. Voter data?  
25 A. Voter data, yes. We had people that normally would not

1 have been eligible under the old rules coming in and ordering  
2 voter data.  
3 Q. What kind of volume of those requests would you say you  
4 get?  
5 A. I don't know how to describe. What was the most  
6 voluminous is people were ordering -- candidates -- actually  
7 the toughest thing we had prior to the election was wanted  
8 daily lists of all those people that requested absentee ballots  
9 and we would provide that on a daily basis. Although we e-mail  
10 too, we didn't do that in 2006, but very recently we started  
11 to, we would e-mail this information to candidates if they also  
12 wanted it in that form.  
13 Q. We talked a lot about the book closing deadline. There's  
14 a different deadline for certain members of the military; is  
15 that right?  
16 A. The military still has a 29 day deadline. However, if you  
17 have went been separated from military service or if you're  
18 living overseas and have been separated from service, those  
19 individuals can register the Friday before the election, up to  
20 the Friday before the election. Not all the military.  
21 Q. So it's a different deadline for a certain subset of  
22 military?  
23 A. Correct.  
24 Q. To your knowledge, has anyone ever used that provision in  
25 Broward County to register after the book closing date?

1 A. Not while I was there.  
2 Q. And you were there 20 some odd years?  
3 A. Well, the law recently became -- I mean, up through the  
4 2006 election and all, that had not been utilized.  
5 Q. Okay. Ask you a couple of quick questions about  
6 supplements or amendments to the precinct registers.  
7 When does Broward County first print its precinct  
8 registers?  
9 A. For a major election, we print 10 days prior to the  
10 election.  
11 Q. And after that time, do you update them to remove voters  
12 who have voted early?  
13 A. No, we don't remove people. We go around and once the  
14 registers are printed, obviously we cannot make changes for  
15 people who either voted early or might have voted absentee so  
16 we actually hand-stamp, we have a rubber stamp and we have  
17 staff people that would enter into the precinct registers  
18 before they're delivered anybody who has voted either early or  
19 voted absentee.  
20 Q. They physically stamp?  
21 A. They physically stamp it, yes.  
22 Q. Do you add names to the precinct registers after they're  
23 initially printed?  
24 A. No.  
25 Q. So the only supplements to those stamps removing people

1 who had voted early or absentee?  
 2 A. Well, they're not removed but it's indicated they  
 3 already voted, yes.  
 4 Q. Does your office also have a responsibility to process and  
 5 count voter initiative petitions?  
 6 A. We do that all the time, yes.  
 7 Q. And did you do that for this past election, the  
 8 presidential preference primary, did the office, to your  
 9 knowledge?  
 10 A. Yes.  
 11 Q. And tell me how that works. What do you have to do when  
 12 those petitions come in?  
 13 A. Well, we check -- we would -- if it's a state initiative,  
 14 then it depends. If it's a state initiative, a statewide  
 15 initiative petition, then we just verify, we have a program a  
 16 petition program that people would go in to or the operator  
 17 would go in to and they would look up the name, if that person  
 18 is registered to vote. And if the signature matches, they  
 19 would check the signature against the signature on the  
 20 petition. If the signature matches and everything else  
 21 matches, the information matches, that person would be --  
 22 indicate that person has signed the petition. Which would also  
 23 prevent them from signing a second petition. If that name came  
 24 up again, it would indicate this person has already signed that  
 25 particular petition.

1 Q. Do you have any idea what kind of volume the office  
 2 dealt with, if those petitions -- since February 1st was the  
 3 deadline, wasn't it?  
 4 A. Yes, it was. But I left on November 30, so I don't know  
 5 what kind of volume ultimately was reached.  
 6 Q. But whatever volume it was, the employees of the office  
 7 were dealing with that right up until and actually during the  
 8 presidential preference primary election, right?  
 9 A. I assume so, yes.  
 10 Q. So just another task for them to deal with during the book  
 11 closing period, right?  
 12 A. That is correct.  
 13 Q. Now, when mail comes in shortly before an election, is the  
 14 office always able to process that mail, new voter registration  
 15 applications or amendments before the election?  
 16 A. They're processed but we may have to take a longer -- it  
 17 may not be processed the same day. During a period like now,  
 18 we can be on a day-to-day basis, but it would take a little  
 19 longer.  
 20 Q. Something comes in a week before November presidential  
 21 election, that volume may be such that you can't process it all  
 22 before the election, right?  
 23 A. It may be days before we get to input it.  
 24 Q. It may in some instances take the statutory maximum,  
 25 right?

1 A. It could, yes.  
 2 Q. Depending on volume.  
 3 MR. WINSOR: That's all I have. Thank you very much.  
 4 THE COURT: Redirect.  
 5 MR. ABT: Very briefly Your Honor.  
 6 REDIRECT EXAMINATION  
 7 BY MR. ABT:  
 8 Q. You discussed precinct registers on cross-examination.  
 9 Are precinct registers supplemented after they're initially  
 10 printed?  
 11 A. Could you define what you mean by supplemented?  
 12 Q. Do you print amendments or updates?  
 13 A. No.  
 14 Q. The precinct register that is printed eight to 10 days  
 15 before the election is not the exact same one that is used on  
 16 election day, is it?  
 17 A. Yes, it is.  
 18 MR. WINSOR: Objection, Your Honor. The testimony was 10  
 19 days before the election.  
 20 MR. ABT: 10 days.  
 21 THE COURT: Whatever. Ask whatever your question is.  
 22 BY MR. ABT:  
 23 Q. Do you print additional precinct registers?  
 24 A. No, we do not.  
 25 Q. Do you print out or submit any type of new information

1 related to a precinct register after the precinct register is  
 2 printed, something maybe once or twice before the election or  
 3 on election day the morning of, is there anything like that?  
 4 Am I -- maybe we're talking past one another, I don't know.  
 5 A. I'm not sure what you're asking me.  
 6 THE COURT: Well, he can rephrase the question. Rephrase  
 7 it so he can understand it.  
 8 BY MR. ABT:  
 9 Q. You stated on cross-examination that the precinct register  
 10 is marked with various -- is marked to update it on various --  
 11 with various information.  
 12 A. It is updated only in terms of whether people have already  
 13 voted or not.  
 14 Q. Okay.  
 15 A. Have already voted I should say.  
 16 Q. And how often does that happen?  
 17 A. We attempt as late as possible to update the register  
 18 before they're actually delivered. They are picked up the  
 19 Friday before the election by the clerks of the precincts.  
 20 However, I believe we also hand the clerks a list since we  
 21 cannot -- we have to have these ready for pick up, that at the  
 22 very last moment we will also hand the clerks a list of  
 23 additional people who voted so they could update the registers.  
 24 And even on election day we send people around, special  
 25 deputies go around and they go precinct to precinct and update

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1 the registers as necessary when we're getting -- you know, the  
2 absentee ballots are in.  
3 MR. ABT: Thank you, Mr. Kolodny. That is what I was  
4 trying to get at. Thank you very much.  
5 THE COURT: Thank you. Thank you, sir. Thank you, you're  
6 excused.  
7 Next witness please. All right. Who's your next  
8 witness?  
9 MS. NOLAN: Your Honor, we'd like to call John Sullivan.  
10 THE COURT: Thank you, sir. Come forward, sir. Have a  
11 seat. Show him where to sit. Thank you.  
12 Swear him in.  
13 THE CLERK: Please raise your right hand.  
14 JOHN SULLIVAN, PLAINTIFF WITNESS, SWORN.  
15 THE CLERK: Please be seated. State your name and spell  
16 it please.  
17 THE WITNESS: My name is John J. Sullivan, S U L L I V  
18 A N.  
19 MS. NOLAN: Your Honor, may I inquire?  
20 THE COURT: Yes.  
21 DIRECT EXAMINATION  
22 BY MS. NOLAN:  
23 Q. Good afternoon, Mr. Sullivan.  
24 A. Good afternoon.  
25 Q. How are you employed?

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1 A. I am the associate general counsel of the Service  
2 Employees International Union.  
3 Q. What are your responsibilities with regard to voter  
4 registration?  
5 A. As associate general counsel, I'm assigned to advise the  
6 government affairs department that includes, among other  
7 things, the politics department and within the activities that  
8 the politics department engages in would include election  
9 protection, voter registration and a variety of questions  
10 concerning the voting process.  
11 Q. How long have you had these responsibilities with regard  
12 to voting registration?  
13 A. Since 2000.  
14 Q. What is the Service Employees International Union?  
15 A. It is a labor organization, it has 1.9 million  
16 members. It represents workers across a broad spectrum of  
17 occupations, primarily in health care, property  
18 services and public employment.  
19 Q. How many affiliated local unions do you have in Florida?  
20 A. I'm not exactly sure. I think about five or six.  
21 Q. How many members do you have in Florida approximately?  
22 A. Sure. As of the end of 2007, which is the latest numbers  
23 that I'm familiar with, we have 29,000 members.  
24 Q. Are many of your members immigrants who have become  
25 citizens?

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1 A. Yes.  
2 MR. ANTONACCI: Objection, Your Honor, based on the same  
3 ruling the court gave before with regards to the diversity  
4 question that has been raised.  
5 THE COURT: Well, let me see now. The question is are  
6 they United States citizens. Is that your question? Are all  
7 29,000.  
8 MS. NOLAN: Have recent --  
9 THE COURT: Pardon me, counsel, both of you. I just need  
10 to find out, let me read it here. I want to see what the  
11 question was.  
12 The objection is materiality, it's sustained.  
13 BY MS. NOLAN:  
14 Q. Does SEIU's mission include registering its members to  
15 vote?  
16 A. Yes.  
17 Q. Why?  
18 A. SEIU believes that in order to best serve the interests  
19 of its members and working people generally, they should become  
20 active in the political process. And SEIU, to fulfill that  
21 goal, spend considerable resources to register not only members  
22 and their families, but individuals in the communities in which  
23 those members live and work.  
24 Q. How about nonmembers?  
25 A. We focus considerable attention to registering and

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1 engaging nonmembers in the political process as well.  
2 Q. Why is that?  
3 A. Because we have 29,000 members in Florida, but they're  
4 -- in order to have an impact, it's important to organize  
5 people who look like our members, who share common interests,  
6 traditions, who live in the same communities, work in the same  
7 kind of occupations, who share a common bond both in terms of  
8 their background and in terms of what their aspirations  
9 are.  
10 Q. Does SEIU's mission include encouraging its members to  
11 vote?  
12 A. Yes.  
13 MS. NOLAN: May I approach, Your Honor?  
14 THE COURT: Yes.  
15 MS. NOLAN: I'd like to show the witness Plaintiffs' 16.  
16 THE COURT: Yes.  
17 BY MS. NOLAN:  
18 Q. Do you recognize this document?  
19 A. Yes, I do.  
20 Q. What is it?  
21 A. It is the constitution and bylaws of the Service Employees  
22 International Union.  
23 MS. NOLAN: Your Honor, at this time I'd like to offer  
24 this Plaintiffs' Exhibit 16 into evidence.  
25 MR. ANTONACCI: No objection.

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1 THE COURT: Plaintiffs' Exhibit 16 is admitted into  
2 evidence.  
3 (Plaintiffs' Exhibit 16 in evidence)  
4 BY MS. NOLAN:  
5 Q. Is SEIU's mission reflected in this document?  
6 A. Yes.  
7 THE COURT: Excuse me one second. Could you please pull  
8 the microphone down a little bit? It's pointed at the ceiling.  
9 If the face of it is pointed towards your face, it picks  
10 it up better.  
11 I'm sorry to have interrupted you, but I was trying to  
12 wait.  
13 Now, your last question was the SEIU mission reflected in  
14 the document, he says yes.  
15 BY MS. NOLAN:  
16 Q. Okay. Now, we've talked about your mission. Before the  
17 2004 general election, did SEIU in fact play a role in  
18 registering its members to vote in Florida?  
19 A. Yes, it did.  
20 Q. Describe that role.  
21 A. Prior to the 2004 election, we drafted a comprehensive  
22 plan leading up to the 2004 election for Florida where we  
23 identified certain goals we wanted to achieve both within our  
24 membership and within the communities in which they live.  
25 An integral part of that plan was the registration of

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1 voters in Florida, both nonmembers -- well, members and  
2 nonmembers.  
3 Q. Were there particular voters that you sought to register?  
4 A. Outside of our membership, we focused on communities --  
5 MR. ANTONACCI: Excuse me, Your Honor, objection to this  
6 answer.  
7 THE COURT: The objection is materiality, what is the  
8 materiality? One could assume that they're an organization  
9 that had a good motive in trying to register people to vote and  
10 -- but their reasons, you know, whether it was support a  
11 particular candidate or to support union or whatever, that's  
12 all -- I don't see that that has any materiality beyond showing  
13 that it was a good motive which I'm willing to assume it was.  
14 MS. NOLAN: Okay. We'll move on.  
15 BY MS. NOLAN:  
16 Q. Approximately how much did SEIU spend on voter  
17 registration in Florida in 2004?  
18 A. We did not break out the expenses associated with  
19 that particular aspect of our overall political plan for 2004.  
20 I can say that the overall plan, nationally we spent \$60  
21 million.  
22 Q. Do you have an estimate for how much you spent in Florida  
23 in 2004, rough estimate?  
24 A. Three to \$5 million. That would -- in all of our  
25 activities in Florida, including voter registration activities.

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1 Q. How many SEIU staff were involved in voter registration  
2 in Florida in 2004?  
3 A. There were a total number of staff throughout the campaign  
4 Between 325 and 350 full-time members and staff. All of  
5 those members and staff were involved in some way at some point  
6 in the process in voter registration activity. They were  
7 involved in a number of other activities as well, but given the  
8 importance of voter registration, each of them were involved in  
9 that process at some point.  
10 Q. Were each of these members paid for their involvement?  
11 A. Yes. We paid the salary and benefits they would have  
12 received from their regular employment, but we also made sure  
13 that -- that was at least \$600 a week, and we also provided  
14 health care for all the members who would not otherwise  
15 had access to health care in their regular employment.  
16 Q. So these were members of your union that left their jobs  
17 to engage in voter registration; is that correct?  
18 A. Yes, among other things.  
19 Q. Okay. What role did the local affiliates play in 2004 in  
20 voter registration in Florida?  
21 A. Well, many of these members came from local affiliates and  
22 in addition, staff people from the local affiliates who would  
23 have the regular jobs of working as a union staff person  
24 representing members in contract negotiation, what have you,  
25 during this period, they left their regular assignment as well

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1 to work on the overall program including voter registration  
2 efforts.  
3 Q. Can you tell me roughly the number of people you  
4 registered in Florida in 2004?  
5 A. Our program not only involved our own efforts, but our  
6 contributions of money and in-kind contributions to other voter  
7 registration organizations.  
8 But based upon all the support that we gave for the effort  
9 in Florida, we estimated having been involved in the  
10 registration of between 2,000 and 300,000 individuals.  
11 Q. Please describe generally the process for registering your  
12 members.  
13 A. With respect to members, the customer practice is to  
14 identify members in the workplace who are not themselves  
15 registered. To either assign staff people or shop  
16 Stewards in the workplace to contact those members directly.  
17 To give them a voter registration application. To assist them  
18 in filling out the voter registration application and where  
19 possible, filing that application with the appropriate  
20 supervisor of elections.  
21 Q. Please describe the process for nonmembers if it's  
22 different.  
23 A. Nonmembers is different because rather than contacting  
24 them in the workplace, we would customarily contact in them in  
25 public places. At events or very often at their homes and we

1 refer to that as a residential canvass. We would actually send  
 2 members to knock on their doors.  
 3 Q. Do you provide training for people who engage in voter  
 4 registration on your behalf?  
 5 A. Yes, we do.  
 6 Q. What does that training entail?  
 7 A. The training mostly deals with how to speak with a  
 8 stranger about the importance of voting and the importance of  
 9 registering. To sort of give that individual the information  
 10 they need so they can complete the voter registration  
 11 application, to determine as a threshold issue, in many cases  
 12 whether or not in fact they're eligible to register, then  
 13 acquainting the member who's doing the voter reaching activity  
 14 with the requirements of the form and how to fill out the form.  
 15 Q. Do you encourage your members who are assisting people in  
 16 registering to encourage them to fill out the form completely?  
 17 A. Yes. Obviously that is the best case where the member and  
 18 the potential voter fill out the form together at the doorway  
 19 of their home. That isn't always what happens, but that's  
 20 clearly the preferable way of doing it.  
 21 Q. And do you also train them to submit the form promptly?  
 22 A. Yes.  
 23 Q. In 2004, did SEIU check on the status of the applications  
 24 of people that you assisted in registering?  
 25 A. Not individually. At one point in 2004 we became aware

1 through press reports of a large number of voter registration  
 2 applications that were sitting in supervisors' offices being  
 3 unprocessed or being held by the supervisors of elections.  
 4 This caused a great concern within SEIU because the counties  
 5 where this was being reported were the areas where we were  
 6 focusing much of our voter registration activity.  
 7 Q. Did you take any steps in response to these reports?  
 8 A. We contacted the supervisors in Miami-Dade, Broward County  
 9 and Palm Beach counties, asking them if there was anything we  
 10 could do to assist them in trying to resolve these pending  
 11 voter registration applications. And we got a favorable  
 12 response from the Miami-Dade supervisor.  
 13 Q. And what did you do then?  
 14 A. Well, the Miami-Dade supervisor permitted us to send in  
 15 members into the offices to assist in going through the  
 16 thousands of voter registration applications that were being  
 17 held by the supervisor.  
 18 Q. How many people did you send to do this?  
 19 A. At any one time, there were between five and seven members  
 20 who were in the offices. They weren't always the same five to  
 21 seven members because of scheduling and trying to get as many  
 22 members there as possible to assist.  
 23 So while there's no more than five to seven at any one  
 24 time, we think there may have been as many as 10 or 15  
 25 individuals who were directly involved.

1 Q. And how did they assist once they were in the office?  
 2 A. Well, they were taken -- shown a room by a member of the  
 3 supervisor staff and shown the voter registration applications  
 4 that were being held and they would go through the applications  
 5 to attempt to contact the voters to inform them that there was  
 6 a problem with their application, and that they would be  
 7 receiving some information from the supervisor to permit them  
 8 to provide the additional information so that they could  
 9 perfect their application.  
 10 Q. And when in 2004 did this effort occur?  
 11 A. It happened towards the middle, going towards the end of  
 12 September, over a two week period.  
 13 Q. And did there come a time where this was completed or  
 14 stopped?  
 15 A. It was stopped, it wasn't completed by any means, but it  
 16 became clear that given the book closing date, that further  
 17 efforts would not produce a favorable result.  
 18 So we reassigned those staff people to their normal work  
 19 as part of the political program.  
 20 Q. Did this effort in Miami-Dade have an impact on SEIU's  
 21 goals for the 2004 election cycle?  
 22 A. Well, it's hard to quantify, but essentially the five to  
 23 seven people at any one day who work in the supervisor's office  
 24 were taken away from other activities.  
 25 As you go toward the end of a political come campaign,

1 it's a very critical period. You're trying to identify voters  
 2 who support your candidate, you're trying to identify voters  
 3 who need additional information to help them to decide.  
 4 In Florida with early voting, we oftentimes try to  
 5 identify voters who want to early vote and then make  
 6 arrangements for transportation to polling  
 7 places.  
 8 The union also was active in encouraging individuals  
 9 to apply for absentee ballots, and all of this work took place  
 10 during that period.  
 11 Q. Thank you. Now we've talked about 2004. How about 2006?  
 12 A. Two in 2006, the international union who I represent and  
 13 whose activities I've been describing wasn't directly  
 14 involved in a political campaign in Florida. In the sort of  
 15 off years, that kind of activity is taken care of by the local  
 16 unions themselves.  
 17 However in 2006, there was a dispute regarding a new law  
 18 restricting the activities of so-called third party voter  
 19 registration groups and that had a considerable impact upon the  
 20 local efforts to register voters.  
 21 Q. And how about 2008? Do you plan to engage in voter  
 22 registration activity in 2008?  
 23 A. Yes, we do. We have a budget and several of the  
 24 activities we've budgeted are making a contribution of \$200,000  
 25 to an organization of Mi Familia Vota as a voter rights and

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1 voter registration group which focuses on the Latino community  
2 in Florida.  
3 MR. ANTONACCI: Objection on materiality grounds, Your  
4 Honor.  
5 MS. NOLAN: Your Honor, he's describing what  
6 they plan to do for 2008.  
7 THE COURT: The dollar amount has no materiality, and I'd  
8 have to grant that and strike that. But the fact they're  
9 planning to work he can state and that part of the answer  
10 stands.  
11 THE WITNESS: Shall I continue?  
12 BY MS. NOLAN:  
13 Q. Were you finished? Please continue.  
14 A. Putting aside the amount of money we intend to contribute,  
15 we intend to support the activities of a coalition of  
16 Organizations that are attempting to register felons or felons  
17 who have completed their sentence who, as a result of actions  
18 by the governor, are now eligible to register and vote for the  
19 first time. And we're supporting the work of organizations who  
20 are trying to register those individuals.  
21 In addition, we intend to put approximately 150 members on  
22 the ground in Florida to do a variety of political activities  
23 including the registration of voters.  
24 Q. Do you plan to recruit your members to assist like you did  
25 in 2004?

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1 A. Yes. We're currently estimating recruiting 150 members to  
2 do that in Florida.  
3 Q. And will you pay those members as you did in 2004?  
4 A. Yes, we will.  
5 Q. Does SEIU plan to train people to check the status of --  
6 withdrawn. Sorry.  
7 Will the SEIU train its members who conduct voter  
8 registration in 2008?  
9 A. Yes, we will.  
10 Q. Do you plan to take steps to check the status of  
11 applications that you submit in 2008?  
12 A. I'm not exactly sure, but I would imagine -- well, I think  
13 they would be well-advised by their attorney, being me, to  
14 check the application they submit given past experience with  
15 voter registration here in Florida.  
16 Q. And you mentioned this law earlier in regard to 2006. Why  
17 will that not prevent registration in 2008?  
18 A. I think there's an ongoing litigation regarding that case  
19 and I think that there has been an effort to resolve that case.  
20 I'm not entirely sure of the current status of it, but we're  
21 optimistic that favorable resolution of the challenge can be  
22 worked out to permit us to do the voter registration  
23 activities.  
24 Q. Okay. Thank you. Has the prohibition of corrections to  
25 voter registration applications after the close of books

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1 affected your union and its members?  
2 A. It has in the past.  
3 Q. How?  
4 A. Members who have submitted voter registration applications  
5 have been denied the ability to vote because of omissions or  
6 mistakes with their voter registration applications.  
7 Q. How would the benefit of a grace period affect the union  
8 and its members?  
9 A. Well, in 2004 there was a process for correcting those  
10 applications, and if there were greater time to permit the  
11 supervisors to gather the information and to correct the voter  
12 registration applications, that would ensure that a greater  
13 number of people would have access to the vote.  
14 MS. NOLAN: That's all I have. Thank you.  
15 THE COURT: Mr. Antonacci, she would like to change her  
16 paper and get -- before you start, she'd like to do that.  
17 It's 4:13. Why don't we take a 10 minute recess before  
18 you start cross.  
19 You may step down and be at ease. Thank you. Don't  
20 discuss your testimony with any of the lawyers, you're in the  
21 middle of your testimony, but step down and be at ease.  
22 (Brief recess)  
23 THE COURT: Thank you. Be seated please. All right.  
24 Cross-examination, Mr. Antonacci.  
25 CROSS-EXAMINATION

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1 BY MR. ANTONACCI:  
2 Q. Good afternoon, Mr. Sullivan.  
3 A. Good afternoon.  
4 Q. With respect to your international union, I presume your  
5 goal is to win elections?  
6 A. Yes, sir.  
7 Q. And that is the underlying basis of all the voter  
8 registration that -- registration activity that goes on  
9 nationwide?  
10 A. Yes, sir.  
11 Q. And you are much more active in presidential years than  
12 you are in off years as we call in it the elections business?  
13 A. At the federal level I think that's true. We oftentimes  
14 become very much involved in gubernatorial elections and maybe  
15 off cycle elections.  
16 Q. And in 2006, you weren't involved in the gubernatorial  
17 election here in Florida at all?  
18 A. No, we were not.  
19 Q. All right. Do you know what the word ACORN means with  
20 respect to voter registration?  
21 A. Yes, sir. I believe it's an acronym, Association of --  
22 I'm not sure what the acronym means, but it is an organization  
23 which I understand engages in voter registration activity,  
24 among other things.  
25 Q. And does your international union underwrite ACORN?

1 A. We make contributions to ACORN from time to time and  
 2 oftentimes for specific projects.  
 3 Q. And do your state affiliates make contributions to ACORN  
 4 as well in Florida?  
 5 A. I don't know that for a fact, I wouldn't be surprised, but  
 6 I don't know.  
 7 Q. All right. Now, I'm trying to understand from your point  
 8 of view as the general counsel, you're not actually involved in  
 9 the grass roots deployment of any voter registration strategy,  
 10 are you?  
 11 A. As part of my regular duties, I've advised the  
 12 international political program, so I will for instance review  
 13 and help draft training manuals for members who are asked to  
 14 engage in voter registration activities. I will consult with  
 15 individuals regarding how these people are to be paid, how they  
 16 are deployed, what regulations may govern their activity, so I  
 17 am at least at that level directly involved.  
 18 Q. Your job is legal advice or --  
 19 A. Yes, sir.  
 20 Q. You're not a strategist or tactician in  
 21 the voter registration world, are you?  
 22 A. I directly advise strategists and tacticians.  
 23 Q. Okay. But you are not one of those?  
 24 A. No, sir, I'm not.  
 25 Q. To the extent that you know about the following, please

1 tell the court.  
 2 Can you describe in advance of an election, let's  
 3 say six months out, five months out, four months out, three  
 4 months out, two months out, you know, as we get closer to the  
 5 election, can you advise, based on your experience of  
 6 advising strategists and tacticians, what sort of things  
 7 go on six months out from an election.  
 8 A. Okay.  
 9 THE COURT: That's an awfully broad question that I don't  
 10 think really anybody can answer. It could deal with -- you're  
 11 talking about whether or not, oh, I don't know, a particular  
 12 candidate is going to win or this -- you see, that question --  
 13 MR. ANTONACCI: I'll limit it to voter registration, Your  
 14 Honor.  
 15 THE COURT: voter registration and specifically -- well,  
 16 if he can understand the question he can answer it. Go ahead,  
 17 or you can rephrase. If you don't understand what he's talking  
 18 about, you can ask him to rephrase it. If you do, why then do  
 19 your best to answer it.  
 20 THE WITNESS: I don't think there's a one-size fits all  
 21 model for voter registration activity. I think in my  
 22 direct testimony, I referred to the effort to register  
 23 individuals who are convicted of felonies and now as a result  
 24 of actions by the governor are now permitted to register.  
 25 That was unforeseen and sort of falls outside the standard

1 campaign plan. So I think each election or each election cycle  
 2 has its own sort of unique characteristics, and voter  
 3 registration, I think, is at times affected by unique factors  
 4 as well.  
 5 BY MR. ANTONACCI:  
 6 Q. Okay. The overseen elements aside, and the uniqueness of  
 7 every state aside, would it be accurate to say that voter  
 8 registration begins heating up in intensity of activity on  
 9 behalf of the union 120 days out from an election and becomes  
 10 progressively more active as the cycle closes down  
 11 towards the election.  
 12 A. We very often like to begin campaigns with a voter  
 13 registration effort. However, that activity usually runs  
 14 through the entire campaign, and I think you're correct, that  
 15 as an election approaches, people become more interested in the  
 16 election. And for those individuals who are not registered,  
 17 are not currently registered, they become more interested in  
 18 learning how they can register in order to be able to vote.  
 19 Q. I think my question was more directed at what your  
 20 organization does activity-wise as the election day becomes  
 21 closer and closer.  
 22 A. I'm sorry. I misunderstood your question.  
 23 The activity will involve identifying potential voters,  
 24 what their attitudes or concerns are, trying to educate them on  
 25 the issues, trying to identify whether or not they'll support a

1 particular candidate and if they're leaning on the fence, just  
 2 sort of give them information which would permit them to decide  
 3 one way or the other for what candidates they support.  
 4 And as the election approaches, to begin either asking  
 5 them if they want an absentee ballot, making arrangements for  
 6 early voting, determining whether or not they know where their  
 7 polling place is, making arrangements for them to be  
 8 transported to the polls, if they need help in that regard.  
 9 Q. And you've been involved in hundreds of elections, is that  
 10 fair to say, as an advisor to strategists and tacticians?  
 11 A. I haven't counted them, but I've been pretty much involved  
 12 since 2000.  
 13 Q. You have 50 states and you're involved in all 50  
 14 states, correct?  
 15 A. Yes.  
 16 Q. All right. And it would be fair to say that as the  
 17 election grows closer, people begin to feel more strongly about  
 18 it, more energy is expended, people are more enthusiastic about  
 19 it, and likewise for your union, more energy, more enthusiasm  
 20 as election day draws closer?  
 21 A. I think that's a fair statement.  
 22 Q. All right. Now, are you familiar with the book closing  
 23 statutes of all the other states?  
 24 A. Not off the top of my head. But your question assumes  
 25 that there are book closing statutes in all the other states

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1 and there are not. I know that for a fact.  
2 Q. There was no assumption there, Mr. Sullivan.  
3 A. All the other states, I assumed, was an assumption, sir.  
4 Q. Book closing practice is different from state to state.  
5 A. Yes, it is.  
6 Q. All right. And in each of those states, the training  
7 manuals that you review on your -- on behalf of your  
8 strategists and tacticians help train your people about the  
9 book closing practices of each state; is that correct?  
10 A. Yes.  
11 Q. And why is that important for your strategists and  
12 tacticians to know about the book closing practices of each  
13 state.  
14 A. Well, in our training manuals, it's often referred to, as  
15 voter registration deadlines, and the reason why it's expressed  
16 that way is we want to tell people when they have to have the  
17 voter registration applications in in jurisdictions that have  
18 such deadlines. Not all do. And those deadlines differ from  
19 state to state.  
20 Q. And you train your people exactly what the practice is in  
21 that state so that they know what to do with respect to  
22 registering voters, correct?  
23 A. Yes.  
24 Q. And that is important for obvious reasons. Is that not  
25 correct. Or let me rephrase the question.

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1 Why is that important from the point of view of the union.  
2 A. Because it is a point in time in which no new  
3 applications will be accepted by the various election  
4 authorities.  
5 Q. And it helps you increase the number of voter  
6 registrations in that particular jurisdiction, correct? It  
7 should?  
8 A. It tells us when we have to have that process complete.  
9 Q. And the purpose of that is to enhance the number of people  
10 that do complete, correct?  
11 A. Yes.  
12 Q. All right. Now, with respect to your current plan that  
13 you testified about on direct, your current political plan for  
14 the 2008 presidential cycle in Florida, all right, did I  
15 understand you correctly that you have a plan?  
16 A. Yes.  
17 Q. And that you have approved that plan from the point of  
18 view of your legal advice?  
19 A. Yes. The plan may change, but we currently have a plan,  
20 yes sir.  
21 Q. What are the elements of that plan. With respect to voter  
22 registration activity.  
23 A. There are, I think, two essential elements. The activity  
24 directed at members and the activity directed at members of the  
25 general public or nonmembers.

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1 Q. Those are the same activities that you testified about on  
2 direct?  
3 A. Yes, sir.  
4 Q. All right. Are there any additional activities that are  
5 contemplated in your plan?  
6 A. With voter activity registrations?  
7 Q. Only with respect to voter registration.  
8 A. Well, elements would include making contributions to other  
9 organizations that are engaged in voter registration.  
10 Q. Such as ACORN?  
11 A. I'm not sure whether ACORN -- I think ACORN is a  
12 member of the coalition that is seeking to register  
13 former felons in Florida. I'm not sure of all the members of  
14 it. I think the ACLU is also active in that coalition as  
15 well.  
16 I am more familiar with Mi Familia Vota which is  
17 another organization which we intend to make considerable  
18 contributions to for their voter registration activities.  
19 Q. And the basic elements of your plan are going to take  
20 place either with a grace period as you understand it -- you  
21 understand what we're talking about today about grace periods?  
22 you're familiar with the pleadings in this case, the complaint  
23 and the answer?  
24 A. Yes, I am.  
25 Q. All right. So your organization is going to fund the same

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1 activities whether or not there is a grace period. Isn't that  
2 true?  
3 A. Yes.  
4 Q. Now, are you familiar with the change in our public  
5 records law in Florida with respect to inspecting voter  
6 registration applications?  
7 A. Not currently, no.  
8 Q. If Florida has a liberal policy about inspecting voter  
9 registration applications at any time by anybody, is that  
10 something that you would seek to advantage yourself with with  
11 respect to making sure people sign up to vote. Or register to  
12 vote. Excuse me.  
13 A. I'm sorry. I'm not sure I understand the question.  
14 Q. If you have access to hard copy voter registration  
15 information, does it make sense that you will try to inspect  
16 that information to make sure that your members and your other  
17 people you're trying to sign up to vote, actually do sign up to  
18 vote.  
19 A. I'm not sure. We already have access to information  
20 regarding who is registered. We receive --  
21 Q. I'm not talking about applicants.  
22 A. Right. Well, I'm sorry. I don't understand the question.  
23 Q. All right. Do you -- did you in 2004 seek to verify  
24 whether or not some of your members applications were acted on  
25 by the supervisors?

1 A. No, we didn't.  
 2 Q. Did you testify on direct that you had union members in  
 3 supervisors' offices going through applications to make sure  
 4 that the supervisors responded.  
 5 A. Right. But I didn't specify that that activity was  
 6 limited to seeking to determine whether or not individual  
 7 members' applications had been acted upon. I think I testified  
 8 we learned in the media that large numbers of voter  
 9 registration applications were not being acted upon and we  
 10 sought to assist the supervisors in whatever way we could to  
 11 get those done not related to our members.  
 12 Q. For everyone, not just your members?  
 13 A. Yes.  
 14 Q. And that is something that you can do as well in 2008; is  
 15 that correct?  
 16 A. It was at considerable cost and disruption to our program  
 17 to do that.  
 18 Q. Back in 2004?  
 19 A. Yes, it was.  
 20 Q. All right. And a change in the public records law may --  
 21 you don't know, you're not sure what the change is, right? In  
 22 the public records law?  
 23 A. Right.  
 24 Q. And if you have easy access to information with regard to  
 25 incomplete applications, you, of course, will take advantage of

1 that; is that correct?  
 2 A. Right. Well, we did have access to that information in  
 3 the Miami-Dade supervisor's office. We actually had the  
 4 applications in our hand and because of the book closing date,  
 5 there wasn't a lot we could do after a certain point of time.  
 6 Q. I'm directing myself to your plan for 2008. In your plan  
 7 for 2008, if you have easy access in all 67 counties to voter  
 8 registration information, in hard copy, of course you will seek  
 9 to use that information for the purposes of increasing the  
 10 number of people who are registered to vote, members or  
 11 nonmembers.  
 12 A. I'm not sure we would consider it a useful expenditure of  
 13 resources to double-check what the supervisors should be doing.  
 14 We submit voter registration applications, we assume they'll be  
 15 acted upon by the supervisors. We don't -- at least in our  
 16 plan, don't feel the need to sort of double-check to make sure  
 17 that they did their jobs unless we become aware that there's a  
 18 problem.  
 19 Q. So it is not your practice or plan to make sure that the  
 20 people who you are trying to sign up are accurately signed up  
 21 and registered to vote in 2008.  
 22 A. Unless we're made aware that there's a problem, we would  
 23 assume that the supervisors would perform their obligations to  
 24 process the applications that we submit to them.  
 25 Q. And you don't feel any need in your current plan to check

1 that or verify it.  
 2 A. I haven't considered it.  
 3 Q. Is there a verification element of your current plan?  
 4 MS. NOLAN: Objection, Your Honor. Asked and answered.  
 5 THE COURT: I don't think he's answered it. It has been  
 6 asked. I'll ask him to answer it if he knows. Thank you.  
 7 THE WITNESS: Based upon my understanding of the current  
 8 plan, there is no such plan to double-check the applications  
 9 after they've been submitted.  
 10 BY MR. ANTONACCI:  
 11 Q. And with respect to the individuals in 2004 who you were  
 12 unable to register to vote during that time frame because you  
 13 abandoned the project, do you recall testifying about that?  
 14 A. Well, I'm not sure I would say abandoned the effort to  
 15 register them. In our view they were registered. There was a  
 16 problem with the supervisor's office regarding the processing  
 17 of those applications and we sought to assist the supervisors  
 18 in completing the process of registration for those individuals  
 19 who we learned through the press were having their applications  
 20 held.  
 21 Q. And you said you abandoned this process in mid-September  
 22 of 2004; am I correct in that?  
 23 A. Yes, sir.  
 24 Q. What did you do after mid-September of 2004 to make sure  
 25 those incompletes were properly processed and registered to

1 vote, if you know?  
 2 A. Aside from filing this lawsuit?  
 3 Q. You filed a lawsuit. That was your answer?  
 4 A. We understood that this was a problem that could not be  
 5 remedied and we, along with other groups, participated in the  
 6 filing of this lawsuit.  
 7 Q. So you didn't call your members to tell them to get down  
 8 to register to vote for future elections? Did you call your  
 9 members in November and December of 2004 and urge them to vote  
 10 -- to register to vote, these people that you had left behind  
 11 in September?  
 12 A. Well first of all, as I indicated --  
 13 Q. The answer is yes or no then you can explain.  
 14 A. Could you repeat the question?  
 15 Q. What did you do in November and December of 2004 to  
 16 register the people that you had left behind in September of  
 17 2004 that were not yet registered.  
 18 A. We did not attempt to contact those individuals in  
 19 November or December of 2004.  
 20 MR. ANTONACCI: Thank you, Your Honor. That's all I have.  
 21 THE COURT: Thank you. Redirect.  
 22 MS. NOLAN: No further questions. Thank you.  
 23 THE COURT: All right. Thank you, Mr. Sullivan.  
 24 Off the record.  
 25 (Discussion off the record).

1 THE COURT: All right. Your next witness please. You  
2 didn't put all that nonsense down? Judge Fay, he'd think I  
3 lost my mind. He'd forgive me, but he wouldn't understand  
4 that.

5 Mr. Antonacci.

6 MR. ANTONACCI: Thank you, Your Honor. After this  
7 witness, if we could have just a brief moment of your time to  
8 talk about scheduling along the lines of the next two days.

9 THE COURT: You can do it right now if you wish. Anything  
10 you wish to do whenever you wish to is fine. The witness can  
11 just have a seat in the courtroom. They're going to talk about  
12 some scheduling. Go ahead.

13 MR. ABT: Plaintiffs expect that we should be able to  
14 finish our case in the late afternoon, mid to late afternoon  
15 tomorrow. We wanted to bring that to the court's attention.

16 THE COURT: Good. Fine.

17 MR. ABT: And with one exception, Judge. We've asked the  
18 secretary, who has very courteous, agreed to take two union  
19 members out of order on Friday morning who can't be here  
20 tomorrow. They will be very brief witnesses.

21 THE COURT: I've already indicated to you I think that you  
22 all can bring these witnesses between you anyway, as long as  
23 you don't -- as long as the parties are not feeling some  
24 tactical maneuver to get one -- you know, as long as you all  
25 are in agreement, I don't care. I think I can hold on to my

1 memory until Friday. And beyond that, I don't promise you  
2 anything, but I'll be able to keep them sorted out I think.  
3 Even though they're called out of turn or whatever.

4 I encourage you to do that, if it represents the witnesses  
5 fine that's good. Don't worry about that. But we'll take them  
6 whenever they can get here, both sides.

7 MR. ANTONACCI: That being the case, Your Honor, the  
8 secretary will likely call three witnesses, perhaps two, but  
9 likely three. And it may take most of the day Friday in  
10 conjunction with the two witnesses that the plaintiff has, and  
11 the question of practice comes and that is, is it this court's  
12 practice to receive closing arguments in a nonjury trial from  
13 the parties or --

14 THE COURT: Oh sure, absolutely. Excuse me for  
15 interrupting you. And it's only because it's late in the day,  
16 but you've heard me saying for two days that a great deal of  
17 what you've been asking is the type of questioning and comments  
18 and argument that I need and desire and want in closing  
19 argument. I want your respective interpretations. Your  
20 opinions, your analysis. Your evaluation of the evidence  
21 saying, look judge, anybody would know that it would be  
22 difficult to process -- I'm making this up because I think it's  
23 without dispute, anybody knows that it's a burden to process  
24 10,000 applications if it's on the last day. Once I was going  
25 to say therefore we need additional time, you should do this

1 and that. The other side will say no, that's a reason not to  
2 do whatever. But that's the type of thing that you all -- I'm  
3 relying on the lawyers to analyze this record and tell me all  
4 your theories. You see, all this stuff, you can't get in to  
5 that is hearsay in a newspaper clipping, just picking something  
6 out of thin air, that the rules of evidence won't let you bring  
7 in.

8 But a lot of it is that that you've been going in to both  
9 sides, or your theories and that sort of thing. And fine, yes.  
10 So your closing argument, yes, I expect it to be thorough and  
11 well-prepared, and I expect it to be, in all probability, it  
12 may well indeed be lengthy. I hope not unreasonably so, but I  
13 allowed the lawyers last Thursday and Friday in that criminal  
14 case. I gave them whatever they -- I said how long do you  
15 need, they told me -- they ended up with about five and a half  
16 hours. It's an awfully long time. I don't suggest --

17 MR. ANTONACCI: I think we can stipulate to less than  
18 that, Your Honor.

19 THE COURT: Well, what I'm saying is I'm not -- don't be  
20 concerned that you're going to be limited in some fashion where  
21 you will walk out of here feeling you didn't get to reasonably  
22 go in to whatever you thought was important.

23 MR. ANTONACCI: One additional matter of inquiry, Your  
24 Honor. Is it this court's practice to accept post trial  
25 proposed findings of fact and conclusions of law as is the

1 practice in some state courts and some administrative venues?

2 THE COURT: For most of my career I've felt that it was  
3 somewhat of an imposition on counsel to require that in every  
4 case. Particularly in advance. Because you don't know what  
5 the -- you don't know completely what the evidence is going to  
6 be. What the record is going to be. You have a good idea of  
7 what it all is, but you each have your theory and sometimes  
8 your theories about what a judge in a given case, in Utah  
9 or Miami or somewhere else, Minneapolis, will admit or will  
10 not admit doesn't quite work out the way you thought it would.  
11 So preparing in advance that sort of thing, I think, is very  
12 difficult for lawyers to do.

13 Then the question comes, do we want to take time and  
14 effort and try to do that. We're talking about a brief and all  
15 that, after the record is complete. Well, the difficulty with  
16 that is that frequently, the lawyers feel that they need the  
17 transcript. Or whatever or want or is desirable to have a  
18 transcript. Well, that takes time in a busy district which of  
19 course this is, reasonably busy district in spite of the fact  
20 the cases have fallen off so dramatically. But the court  
21 reporters certainly are busy. So that takes time.

22 So I balance against the advantage of having your written  
23 analysis of the record against the time that it's going to take  
24 for a transcript to be prepared so that you can make page  
25 citation references and all that against the value of it. And

1 frequently I say well, let's just go ahead without it, without  
2 you all. Two things were accomplished, takes the burden of  
3 work off you, and it gets -- enables us to go forward right at  
4 the end of the case.

5 And lastly, the third element is whether or not I  
6 will dictate my findings of fact and conclusions of law in open  
7 court at the conclusion of your argument. Something that I do  
8 frequently or not infrequently. In fact, it is the unusual,  
9 I'm talking generally now, I'm not talking about your specific  
10 case which has more complications -- well, it hasn't really.  
11 It's when in doubt once you start to listen to these people and  
12 understand the problems that both sides have of getting people  
13 registered and the process the supervisors have in dealing with  
14 trying their best to comply with existing laws and all that, it  
15 all fleshes out.

16 This case is a lot more -- a lot clearer to me in the last  
17 two days or three days, whatever it's been, than it has been in  
18 the last two or three years where you all are telling me, well,  
19 in Utah a judge said A B C, X Y Z and that was his theory. And  
20 I kept saying to you well, were the facts of that case they  
21 either were fleshed out or they weren't fleshed out in the  
22 opinion.

23 And I'm rambling a bit, but you see it helps to understand  
24 and listen to these witnesses. And here in a case like this,  
25 it's not a matter of credibility of witnesses, I think it's

1 safe to say that every person that has testified before me has  
2 been a truthful person, has told this court and done their  
3 dead-level best to answer both side's questions as best they  
4 could with absolute truth. I don't know that anybody has --  
5 any of the witnesses have come in here with any perception,  
6 misperception in their mind that they're going to lie to the  
7 court or try to mislead the court about what is happening out  
8 there or about voter registration. Unlike what we may have or  
9 what happens sometimes in criminal cases where people have --  
10 which I understand the great impetus to mislead the court on a  
11 point or this or that, their lives are at stake. I don't say  
12 it critically, it just happens.

13 Here, this case is unlike all those. So here it's just a  
14 matter of sorting out what is taking place, what the law says  
15 and requires and what is taking place and whether or not the  
16 plaintiffs have established that the restrictions placed on  
17 voter registration by the Florida legislature and the  
18 regulations promulgated thereunder are an unreasonable burden  
19 on the constitutional rights of people to vote.

20 And I haven't attempted to outline your whole theory,  
21 Mr. Abt. But my point is that I don't know here that  
22 it's going to -- I would seem -- I would hope that we would go  
23 forward at the conclusion of the evidentiary phase with the  
24 arguments, I would hope to be able to give you whatever time  
25 you wanted, assuming and believing that it's going to be a

1 reasonable request. And that at the conclusion of that, I  
2 would hope that I might be able to do what I do in most of my  
3 cases, non-jury, and that is go ahead and announce my decision  
4 and dictate findings of fact and conclusions of law in  
5 open court, with all of you here, all of you hearing what I  
6 say.

7 I'm not expecting everybody to agree with everything I'm  
8 saying or not, but telling you my evaluation of it as I see it.  
9 Now, that's maybe an overly ambitious objective on my part.  
10 You've been down here, some of you are from -- certainly Mr.  
11 Antonacci I know, Mr. Winsor, you may be from out of town. Are  
12 you, sir, local?

13 MR. WINSOR: Your Honor, I'm in Tallahassee as well.

14 THE COURT: I'm looking at these -- Mr. Abt, are you?  
15 You're from out of town?

16 MR. ABT: Yes, I am, sir.

17 THE COURT: Yeah. And I know Ms. Nolan is so because  
18 she's been here before. Some of you I know, some of you I  
19 don't.

20 All I'm saying is that I know you've been here, some of  
21 you from out of town. It's a great sacrifice, inconvenience,  
22 so I don't know whether we can achieve this or not, but that  
23 would be what I would be pointing toward and striving for. But  
24 again, it all depends. There may be a massive amounts of  
25 material that you all are going to bring forth in the next --

1 tomorrow and the next day or whatever it is, I don't know.

2 I ramble too much. Didn't mean to do all that. But  
3 that's generally what I try to do. Given whatever, at the end  
4 of the case I tell everybody my decision and I don't do it,  
5 okay, the plaintiff wins and the defendant loses, I don't mean  
6 that. I try to dictate findings of fact and conclusions of law  
7 relying on the legal research you all have done and the cases  
8 you told me about in closing argument, relying on the facts and  
9 that's what I usually do.

10 Whether I can do that in this case or not, I don't know.  
11 I may say to you I'm going to have to think about this, I'm  
12 going to have to go read some of these cases again or over  
13 again, I have reviewed your pleadings in this case, I am, I  
14 think, familiar to some extent with the applicable law that you  
15 all have been citing to me over the last three years.

16 I don't know whether we can do that or not. That's where  
17 -- you asked where we're headed. Now if this creates problems  
18 given particularly the time frame that we're doing all this on,  
19 we're ending up with this on a Friday afternoon late in the day  
20 when you all have worked very hard all week, I don't know  
21 whether that's reasonable to try to do. If not, then we'd be  
22 looking at coming back here or bringing you all back or holding  
23 you over.

24 I don't wish to, I don't plan, I don't usually -- I used  
25 to 20 years, 15, ten years ago, but I'm not going to hold you

1 here on Saturday and all that. And certainly you're free to go  
2 home and if you -- if that means coming back at 10:00 on Monday  
3 or 12 or 11, I mean, in other words, I will work with you on  
4 schedules, flights, whatever.

5 I do want to finish the case, I don't want to come back  
6 here two weeks, two months from now and all that.

7 MR. ABT: Your Honor, would it -- given that Friday may be  
8 a somewhat full trial day --

9 THE COURT: Sure.

10 MR. ABT: -- I think the parties would be prepared,  
11 whatever you decide, but would you prefer us to close at the  
12 end of the day on Friday or on Monday morning?

13 THE COURT: What is your preference? See, I take that  
14 into consideration. What all of you, after a hard trial week,  
15 prefer to wind it up on Friday afternoon, if we hopefully  
16 finish the evidence, whatever time we finish the evidence on  
17 Friday and go home and come back here either on a Monday or a  
18 Tuesday or a Wednesday.

19 You see, I can be flexible about this. And I've got two  
20 other cases that need to be tried, they're both short, but I  
21 could bring one of them in here on a Monday. I think you  
22 showed me that earlier, Marleen, one is a criminal case jury,  
23 short, and the other one is civil, very short. I don't know.  
24 I think.

25 So we could do that and come in fresh on a morning, a

1 given morning the following week and listen to closing  
2 arguments. Then we're all better apt to achieve the goal I  
3 talked about of being able to listen to you and then perhaps  
4 take an hour's recess or something and then tell you the  
5 decision. Or maybe not. I don't know. I continue to say that  
6 I just don't know. That all depends on how much I can  
7 assimilate these notes that I've made.

8 I don't have any real secret about this. As I go along, I  
9 listen to somebody like Mr. Sullivan and where he has testified  
10 to certain things, I can make a little note or underline  
11 something and it's a finding of fact, you see. I don't have to  
12 go back and read a transcript to know that Mr. Sullivan is a  
13 very significant -- I can tell you in a moment by looking at  
14 his exact title, he's an important legal counsel and I would  
15 have I could -- dictate the union and that sort of thing.  
16 That's a finding of fact.

17 Now you all may come along and prove that no, no, they  
18 slipped him in here and he's really the, you know, the  
19 navigator on that last boat that went to Cuba that I talked  
20 about and he's not a lawyer at all. See what I'm getting at?

21 The point is that there's a lot of stuff in what's been  
22 developed, there are findings of fact that you can tentatively  
23 make as you go along. At the end of the day, flip through  
24 these notes, reconsider them in light of the argument and the  
25 law or whatever. But the facts, see, are pretty well set.

1 When you finish the law as it applies to those facts now is  
2 subject to different interpretations and that sort of  
3 thing. But my experience, the law falls into place once you  
4 know what the facts are. The facts control it.

5 MR. ABT: Plaintiffs would be happy to close on Monday.

6 MR. ANTONACCI: Morning or afternoon on Monday would be  
7 perfect.

8 THE COURT: On a Monday. The following Monday? I didn't  
9 hear you.

10 MR. ABT: The following Monday.

11 THE COURT: Okay. So you're saying --

12 MR. ABT: This coming Monday. I'm sorry.

13 THE COURT: So we finish up whatever time we did.

14 Hopefully some of you will be able to come home and come back  
15 and do it on the following Monday.

16 Do you want to do it that way or allow yourself time on  
17 Monday to travel back and then do it like on a Tuesday morning?  
18 You see what I'm getting at?

19 MR. ANTONACCI: Tuesday would be perfectly okay for the  
20 secretary, Your Honor.

21 MR. ABT: Plaintiffs would prefer Monday because we'll  
22 most likely, since some of us are travelling long distances,  
23 we'll stay. So for us --

24 THE COURT: All right. If you're staying, then  
25 obviously it's just a matter of accommodating the flights from

1 Tallahassee.

2 MR. ANTONACCI: I'll be staying as well, Your  
3 Honor.

4 THE COURT: Oh you will? Then fine. I certainly don't  
5 want to waste another day. We would do it Monday. If you  
6 were planning to leave and come back, then it would make sense  
7 to do it like on a Tuesday.

8 MR. ANTONACCI: Thank you for the consideration.

9 THE COURT: All right. That's good. That's what we'll  
10 do. We'll see how all this works out. And then we can  
11 approach it fresh on Monday, Monday morning.

12 And if you have time since you're staying and if you have  
13 access to a computer or typewriter or whatever, secretarial  
14 help, any help you can give me on a written brief about what  
15 you think is the applicable law -- and don't worry about the  
16 pages or not, but you know, just -- well, based on what  
17 Mr. Sweat said and assuming that -- I'm picking his name out of  
18 thin air, but assuming that, and frankly I haven't seen so far  
19 any real dispute between the process that is used in these  
20 different offers about the applications and what they do and  
21 the computer and all that. Seems to be everybody is saying  
22 basically the same thing. Some people say that it takes two to  
23 three minutes per application, some people say it takes --  
24 well, I think one person said -- well now, you know, I may  
25 have read that rather than heard it, about 10 minutes, 15

1 minutes. I don't know.

2 But in any event, you all will enlighten me on that. But  
3 basically there's no real dispute on what takes place  
4 factually so then it's how I suppose the law would apply. So  
5 anything you can give me, if each of you can give me a 10 or  
6 15 page, eight page, six page, I don't care what, memo on  
7 the law that you think applies to the evidence that you have  
8 this week sure. Would that be helpful? Yes. Then --

9 MR. ANTONACCI: Can you give us --

10 THE COURT: I get here usually early. So if you could, we  
11 could make some arrangement for that, whatever you did over  
12 the weekend, to be delivered Sunday night or somehow left. We  
13 can figure out something here. I think they've got a marshal  
14 downstairs all night, don't they? Do either of you ladies  
15 know? They've got 24 hour people down there. We can make --  
16 we could tell you someplace that it could be delivered here at  
17 the courthouse.

18 MR. ANTONACCI: We could e-mail it to your chambers, Your  
19 Honor.

20 THE COURT: Well, it won't do me any good because I can't  
21 work that computer. So I don't ask these folks to come in when  
22 I get here, but what I'm telling you is I'm usually here around  
23 7. So if I had it Sunday night, if I had a copy, then I could  
24 read it from 7 to 9 or 7 to 9:30 or something like  
25 that. You see, that would be helpful.

1 But if not, you're going to make your argument, then I'll  
2 take a little recess for a couple of hours and read it. So it  
3 would be helpful if we could get a memorandum of some sort here  
4 delivered to the courthouse on a Sunday night and you can also  
5 e-mail it through just in case. One of my law clerks, both of  
6 them actually get in early. One of them is usually here a  
7 around 7:30 and she can work the e-mail thing. But if there's  
8 a glitch somewhere, then I don't -- well anyway, we'll work all  
9 that out later on. We'll tell you a place where you can  
10 deliver, the front door or there's a side door, we'll check  
11 with the marshals and make sure -- are the marshals here  
12 they're 24 hours a day, do you know?

13 COURT SECURITY OFFICER: We are, sir. We are here 24  
14 hours.

15 THE COURT: They're down in that office right off the  
16 lobby. So that's the side door, the east door of the  
17 courthouse, right? This building right here we're in, there is  
18 a US Marshal downstairs 24 hours a day. There would be  
19 somebody here Sunday evening 6, 7:00 at night.

20 COURT SECURITY OFFICER: There's always at least two  
21 people here, sir.

22 THE COURT: Fine. We'll tell you where and all that. If  
23 you can drop off, just shove it through a door or knock on a  
24 door, we'll make arrangements. That's easy.

25 Then I would be able to look over that, look it over on

1 Monday morning when I get here and that would be helpful.

2 I'm wasting a lot of your time. It's now 5:15. Let's --  
3 that will be our schedule then. We'll wind it up Friday  
4 afternoon, whatever time, 3:00 or midnight. Whatever time,  
5 we'll wind it up, then Monday we'll have closing argument.

6 MR. ANTONACCI: At what time, Your Honor?

7 THE COURT: Whatever time you all want to come. Why don't  
8 we say start at about 9:30.

9 As far as I'm concerned, take basically the time you want.

10 Can you give me a rough estimate of what time you might want?  
11 You both get the same amount of time, so whatever it is it is.

12 MR. ABT: I think an hour a piece would be fine.

13 THE COURT: You're making it very easy. That's fine.  
14 That's no problem at all. All right. An hour a piece.

15 Then we could say 9:30 or something like that, that would give  
16 you a little time, that would give me a little more time to  
17 read whatever you submitted. Good. Say 9:30, be through by  
18 10:30. You can -- the plaintiff can divide his time up any way  
19 you want to. You open and close. All right.

20 MR. ABT: The closing. The plaintiff will open then have  
21 rebuttal.

22 THE COURT: The plaintiff opens, then the defendants make  
23 their full -- you take if -- you took 45 -- I'm making this  
24 up, 45 minutes, reserve some time, they make their hour, then  
25 you got some rebuttal to whatever it is you wish to rebut. So

1 probably you'd want like 45 minutes, what I call opening, and  
2 then say 10 or 15 minutes, if you don't need it or want it,  
3 fine. If they want, they don't want their hour, fine. They  
4 take 30 minutes and sit down, whatever they want. But you get  
5 the same hour that you're talking about. They've got one  
6 opportunity to argue. You've got two opportunities. All  
7 right?

8 MR. ANTONACCI: Thank you, very much.

9 THE COURT: Can the witness we're dealing -- we're about  
10 to call, is it inconvenient to call that person in the morning  
11 or is this a supervisor or what? Who is the next witness  
12 please.

13 MR. ABT: The next witness is Deborah Dion and we  
14 believe it would -- the witness is available for tomorrow  
15 morning.

16 THE COURT: Is she a supervisor like the others?

17 MR. ABT: No. She is a representative of one of the  
18 plaintiff unions. Not a member.

19 THE COURT: Like Mr. Sullivan, similar to Mr. Sullivan?

20 MR. ABT: Similar to Mr. Sullivan, Your Honor.

21 THE COURT: All right then, fine. Is she from -- are you  
22 -- is she from out of town?

23 THE WITNESS: I live in Miami.

24 THE COURT: In Miami. So the time we start would not be a  
25 big problem for you then?

1 THE WITNESS: I live in Doral, so the 836.  
 2 THE COURT: Doral, that's not far. Some of these people  
 3 live in Fort Lauderdale. So whatever.  
 4 Well, we've been starting at 9, but if you want to start  
 5 earlier, that's all right with me. Whatever you want to do  
 6 tomorrow. What day is tomorrow, Thursday or Friday?  
 7 MR. ANTONACCI: Thursday.  
 8 MR. ABT: I think 9 would be fine for us, Your Honor.  
 9 MR. ANTONACCI: 9 would be acceptable.  
 10 THE COURT: Good. Let's say a few minutes before 9, we'll  
 11 start promptly at 9:00. And thank you for your patience, young  
 12 lady. We're sorry we didn't get to you tonight but I think it  
 13 was good to discuss these things and we'll get our procedure  
 14 organized. All right?  
 15 You all can leave everything just where it is or whatever  
 16 you want to do, nobody will disturb it. It will be locked up  
 17 tonight, nobody will be in until you all arrive in the morning.  
 18 9:00 in the morning. Thank you. 5:20 p.m.  
 19 (See Volume 3, page 473 for continuation)  
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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

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