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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

IN THE MATTER OF THE CONTEST
OF GENERAL ELECTION HELD ON
NOVEMBER 4, 2008 FOR THE
PURPOSE OF ELECTING A UNITED
STATES SENATOR FROM THE
STATE OF MINNESOTA,

FILED
Court Administrator

APR 29 2009

By WJ Deputy

CULLEN SHEEHAN AND NORM COLEMAN,

CONTESTANTS,

VS.

FILE NO.
62-CV-09-56

AL FRANKEN,

CONTESTEE.

VOLUME NO. 5

JANUARY 30, 2009

ORIGINAL

REPORTED BY: JAMES M. TRAPSKIN
RPR, CM, CALIF. CSR 8407, ILL. CSR 084-004584

1 THE AFOREMENTIONED court session took place on
2 the 30th day of January, 2009, before the Honorable Judges
3 Elizabeth A. Hayden, Kurt J. Marben and Denise D. Reilly
4 at the Minnesota Judicial Center, 25 Rev. Dr. Martin
5 Luther King Jr. Boulevard, St. Paul, Minnesota 55105, and
6 reported by James M. Trapskin, a Notary Public and
7 Registered Merit Reporter.

8 * * * * *

9 A P P E A R A N C E S

10 FOR THE CONTESTANTS:

11 JOSEPH F. FRIEDBERG CHARTERED
12 Suite 320
13 150 South Fifth Street Towers
14 Minneapolis, Minnesota 55402
15 (612) 339-8626

16 BY: MR. JOSEPH F. FRIEDBERG

17 TRIMBLE & ASSOCIATES, LTD.
18 Suite 130
19 10201 Wayzata Boulevard
20 Minnetonka, Minnesota 55305
21 (952) 797-7477

22 BY: MR. ANTHONY P. TRIMBLE
23 MR. MATTHEW W. HAAPOJA

24 DORSEY & WHITNEY LLP
25 Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402
(612) 340-2600

BY: MR. JAMES K. LANGDON
MR. JOHN ROCK

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KNAAK & KANTRUD, P.A.
Suite 800
3500 willow Lake Blvd.
Vadnais Heights, Minnesota 55110
(651) 490-9078

BY: MR. FREDERICK KNAAK

FOR THE CONTESTEE:

PERKINS COIE MARKS
suite 800
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011
(202) 628-6600

BY: MR. KEVIN J. HAMILTON
MR. MARC E. ELIAS

FREDRIKSON & BYRON P.A.
200 South Sixth Street
suite 4000
Minneapolis, Minnesota 55402
(612) 492-7000

BY: MR. DAVID LILLEHAUG

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C O L E M A N E X H I B I T I N D E X

EXHIBIT NO.	OFFERED	RECEIVED
C-204	54	--
C-205	50	50
C-209	97	97
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C-260	83	83
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1 FRIDAY JANUARY 30, 2009 9:00 A.M. 6
 2 JUDGE REILLY: The panel has found the
 3 courtroom extremely hot and we're trying to work on
 4 that, right, Mr. Channing?
 5 THE CLERK: Yes, Your Honor, we are.
 6 JUDGE REILLY: So we're even thinking of
 7 keeping the back door propped open.
 8 And, Mr. Rock, ready to proceed?
 9 MR. ROCK: We are, Your Honor, with
 10 Mr. Mansky still on the stand.
 11 JUDGE REILLY: Mr. Mansky, if you'd take
 12 the stand again, and I'll remind you that you're
 13 still under oath.
 14 CONTINUED DIRECT EXAMINATION
 15 BY MR. ROCK:
 16 Q. Good morning, Mr. Mansky.
 17 A. Good morning.
 18 Q. When we finished yesterday, we were on the topic of
 19 registration SVRS. One thing I want to follow up,
 20 you mentioned the inactive status.
 21 If a person is listed as inactive, what do they
 22 need to do to become an actively registered voter
 23 again?
 24 A. Again, just taking a half step back, people become
 25 inactive by not voting for a four-year period of

1 absent from your precinct on election day, that you⁸
 2 have a known disability which prevents you from going
 3 to your polling place on election day, that you have
 4 a religious observance which prohibits you from
 5 voting in person on election day, or that you are one
 6 of our election judges and we have you serving in a
 7 precinct other than your own. If you fall into one
 8 of those four classes, you then fill out an absentee
 9 ballot application. They're fairly widely available.
 10 We have them, the secretary of state has them on all
 11 of our web sites.
 12 But frankly, you don't really need to use an
 13 official application form. To be honest, you can
 14 take a piece of notebook paper and just write out
 15 there by hand your name, your address, the address to
 16 which you want us to mail the ballot, the reason that
 17 you're going to need an absentee ballot and then you
 18 sign it. We can also take that as an application for
 19 an absentee ballot.
 20 Q. And in that last example, does the county then
 21 maintain that handwritten request, that application?
 22 A. We do, because what we do with the application is
 23 that when we get your return envelope back containing
 24 your voting ballot within it, we are required to
 25 compare the information on the return envelope with

1 time. 7
 2 If you were in that category, all you have to do
 3 is fill out another voter registration card. If you
 4 do so before the election day you, either submit it
 5 to us in person over by mail. If you do it on
 6 election day, you do it with the documentary proof of
 7 residence. That makes you an active voter again.
 8 Q. Is there any other way to become active again? For
 9 instance, simply by applying for an absentee ballot,
 10 would that be sufficient?
 11 A. If you are not currently registered to vote at the
 12 address indicated on your absentee ballot
 13 application, we will search the Statewide
 14 Registration System, see if you are registered.
 15 If we find you are not, we will send you both
 16 the absentee ballot and the voter registration card
 17 so that you can do both of those acts simultaneously.
 18 Effectively what you're doing is registering on
 19 election day.
 20 Q. I'd like to start off now and give us a brief
 21 explanation of how a person applies for an absentee
 22 ballot.
 23 A. Okay. I think as you know, there are four reasons in
 24 Minnesota that you can legally use to apply for an
 25 absentee ballot, which are that you are going to be

1 the information that you provided us on the 9
 2 application.
 3 Q. So there would be no way to get an absentee ballot
 4 without first providing an application of some sort,
 5 is that correct?
 6 A. That is correct.
 7 Q. Are you familiar with the concept of early voting?
 8 A. Yes.
 9 Q. What is that?
 10 A. Early voting, as that term is understood in other
 11 states, is the opportunity to come into a -- into an
 12 election official's office or into something called a
 13 vote center, which would be some sort of a
 14 consolidated polling place, and actually get the
 15 ballot and put it into a ballot box, into a ballot
 16 counter prior to the nominal election day.
 17 So, for example, if we had early voting in
 18 Minnesota and the legislature authorized us to do
 19 this during the 15 days before election day, you
 20 could come into our office or into the Maplewood city
 21 clerk's office or into the Blue Earth County
 22 auditor's office any time during that 15-day period,
 23 be issued a ballot, vote on it, and then place it
 24 directly into a ballot box or into a ballot counter.
 25 Currently -- or technically speaking, we don't

1 have early voting in Minnesota, but I think as we all¹⁰
 2 have now figured out, early voting is occurring here
 3 in, in some form.
 4 Q. So there's not early voting as provided by law, is
 5 that your understanding?
 6 A. That is correct.
 7 Q. But the fact is early voting is going on?
 8 A. I can tell you that on the day before election day in
 9 our office alone, our, our county election office
 10 where we are doing the absentee voting for primarily
 11 the City of St. Paul that we had nearly 1,200 people
 12 vote in person that day, which was about twice the
 13 number we had at the previous presidential election
 14 in '04.
 15 Having personally looked at the number of people
 16 standing in line that day, I think it is fairly safe
 17 to assume that most of the people standing in that
 18 line were, in fact, engaging in early voting.
 19 Q. Now, back to the absentee ballot process, you
 20 described how the person gets the absentee ballot,
 21 the voter gets the absentee ballot.
 22 What do they do after they receive that in the
 23 mail?
 24 A. Okay, you receive this package from us in the mail.
 25 And what it includes is the ballot, obviously, a

1 have them linked as documents in our Statewide Voter¹²
 2 Registration System.
 3 And I think as you have seen in a number of the
 4 exhibits here, you'll notice that there is a bar code
 5 and label placed on the envelope. When we get your
 6 return envelope back, we wand the bar code and that
 7 then brings up your record in the Statewide Voter
 8 Registration System where we can then see the
 9 transaction data and a copy of your scanned
 10 application.
 11 What we then do is verify, first of all, as is
 12 provided in the state law, that the name and address
 13 on the application is the same as on the return
 14 envelope, that the signatures are the same, that it
 15 has been properly witnessed. And we at least make an
 16 attempt to determine whether there's a voter
 17 registration card inside the envelope, but at least
 18 at this point we are not opening the envelopes in our
 19 office.
 20 Q. You are not opening either the return envelope or the
 21 secrecy envelope, is that correct?
 22 A. That is correct.
 23 Q. And who is it that's actually checking the
 24 information on the return envelopes?
 25 A. As I mentioned to you yesterday, we have an absentee

1 secrecy envelope into which you are supposed to place¹¹
 2 the, the voted ballot when you are done with it, a
 3 set of instructions and what we call the return
 4 envelope. And the return envelope has a certificate
 5 on the back of it that has a place for you to put
 6 your name and address, for you to sign it and for
 7 your witness to sign.
 8 What you're required to do then under our law is
 9 you find a witness. You show the witness your, your
 10 ballot and, in fact, it is completely blank before
 11 you start. And then in secrecy you mark the ballot
 12 as, as you desire.
 13 You take the ballot, fold it up, place it inside
 14 the secrecy envelope, place the secrecy envelope then
 15 inside the return envelope. And then what you do,
 16 then, is you sign the envelope in the space provided,
 17 and then your witness puts his or her name and
 18 address and signature in the place provided for the
 19 witness.
 20 At that point you then return the ballot to us
 21 either in person or by mail.
 22 Q. And then what does the county do after they receive
 23 that ballot?
 24 A. When we receive those ballots, at least here in
 25 Ramsey County, we scan all of the applications and we

1 ballot board in St. Paul. And what we are doing is¹³
 2 we bring in a group of 10 to 12, 14 election judges.
 3 And working in pairs, they will take the
 4 envelopes, bring them the applications and they will
 5 do this physical comparison of the information on the
 6 application with the information on the return
 7 envelope.
 8 Q. And this is occurring days and weeks prior to
 9 election day?
 10 A. Yes. We actually -- the schedule that we were
 11 working on this year, which is fairly typical for a
 12 state election, we, we have some limited ability to
 13 print ballots in our office. And so in late
 14 September we maybe mail it to all of our overseas
 15 military voters.
 16 On the fifth Friday before the election, we open
 17 up our office for in-person absentee voting. And
 18 then on day 28, which is four days -- or four weeks
 19 before the election, we start bringing in our
 20 election judges to do the, what we call the accepting
 21 or rejecting. And by that I mean this comparison of
 22 the names, addresses and signatures of the voter and
 23 any information provided by the witness.
 24 Q. What happens, let's say, for example, 25 days prior
 25 to election, the ballot board does the comparison

1 that you just described and they determine that the¹⁴
 2 voter did something incorrectly on the return
 3 envelope, what happens then?
 4 A. Under our law, we do have a remedy if you make a
 5 technical error, and that is, for example, say you
 6 forget to sign the envelope, or you forget to have it
 7 witnessed, or your witness doesn't give us an address
 8 so we can't determine whether this person is a
 9 Minnesota registered voter or not. As long as we
 10 have the absentee ballot board operating and we get
 11 your ballot at least five days before the election,
 12 the remedy is that we send you a replacement ballot
 13 and you get another chance at voting.
 14 Q. Now, you indicated that the law allows you to do
 15 that.
 16 Is there anything that the county requires to do
 17 that?
 18 A. As long as you are operating an absentee ballot board
 19 and you are doing it for the period before the fifth
 20 day before the election, you are then required to
 21 send out replacement ballots.
 22 If we have no absentee ballot board or if we do
 23 not convene the absentee ballot board until the last
 24 five days, we would not be able to take advantage of
 25 that remedy.

1 we have gotten all of our mail for the day. And at¹⁶
 2 least here in St. Paul the, the post office is done
 3 processing mail at about 11:30 in the morning.
 4 We then do the accepting and rejecting for the
 5 mail that came in that day. We put those ballots in
 6 the right precinct with everything else that was
 7 processed prior to election day.
 8 And then using our -- the appraisers from our
 9 property tax department, we send them out to all our
 10 polling places and they will then drop the absentee
 11 ballots belonging to that precinct. This year we
 12 were are talking three, four, 500 absentee ballots
 13 going to individual precincts that day.
 14 We would also need to make, as we did this year,
 15 a second run later on in the day, because what we --
 16 we have what we call agent delivery occurring until
 17 3:00 in the afternoon.
 18 Q. And what does that mean?
 19 A. And an agent is someone who is authorized by a voter
 20 to, to take the -- to pick up the ballot from our
 21 office, bring the ballot to the voter and have the
 22 voter vote on it and then have the agent return it to
 23 our office as a messenger.
 24 The people who are eligible to use an agent are
 25 people who are in hospitals, nursing homes or who are

1 Q. And some counties do not have an absentee ballot¹⁵
 2 board, is that correct?
 3 A. That's correct. And as I mentioned yesterday, not
 4 every city does, either.
 5 Q. And is it true then that even the cities or counties
 6 that do have absentee ballot boards, sometimes those
 7 don't convene until just a few days prior to the
 8 election?
 9 A. That is correct. Some of our smaller cities do not
 10 convene their absentee ballot board until Friday or
 11 Saturday before the election. Again, at which point
 12 they have now lost the ability to provide the voter
 13 with a remedy.
 14 Q. Now in Ramsey County, after the absentee ballot board
 15 has reviewed the return envelope, what happens next
 16 with that return envelope?
 17 A. Once the, the envelopes have been examined, and the
 18 overwhelming majority, obviously, are accepted
 19 because they are all complying with the law, they are
 20 then stored by precinct in preparation for election
 21 day.
 22 And then on election day here is the basic
 23 process. We check the post office several times
 24 during the day, once at about 8:30 in the morning,
 25 again at about 11:30 in the morning to make sure that

1 ill or disabled at home and can find someone that¹⁷
 2 they know to come down to our office to pick up the
 3 ballot for them, bring it to them, have them vote on
 4 it and then bring it to us. So we have that activity
 5 going on until 3 p.m. on election day, at which
 6 point, if necessary, we make a second run out to, to
 7 all of our polling places with any additional
 8 absentees that come in.
 9 Q. So by approximately 5 or 6:00, all the absentee
 10 ballot return envelopes have been delivered to the
 11 appropriate precincts?
 12 A. You know, generally speaking that is true. I will
 13 have to tell you although this year that the, the
 14 number of absentees was so great that we were
 15 processing later in the day than we normally do. We
 16 had some precincts that we did not get their
 17 absentees delivered until 7, 7:30 at night.
 18 Q. Then what happens with those ballot return envelopes
 19 once they arrive at the precinct?
 20 A. Okay. At the precinct, what the election judges then
 21 do is then they will take this group of return
 22 envelopes. They will separate them into two groups,
 23 the group for people who are already registered and
 24 then the group of people who need to register. And
 25 they know that simply by looking at the outside of

1 the envelope. 18
 2 And if you look at the certificate on the
 3 back -- and I'm sure it's one of your exhibits -- are
 4 in both of these classes. The envelopes that are
 5 printed all the way from top to bottom are the
 6 envelopes that go out to people who need to register
 7 that day. The information on the bottom has the, the
 8 document that was used as the proof of residence.
 9 So the first thing the judges do is they will
 10 separate the ballots into those two classes. They'll
 11 then put them in alphabetical order and starting
 12 with -- let's assume they start with the
 13 preregistered roster -- they will then go through,
 14 starting with A going through Z, they will find the
 15 people in the roster, whoever submitted those
 16 accepted absentee ballots, and mark them with the
 17 letters A, B that we saw yesterday.
 18 Once they're done with that, they will then turn
 19 to the election day roster and essentially do the
 20 same thing. They will note the people who, who
 21 submitted an absentee ballot.
 22 Once that entire activity is done, then what
 23 they will do is they will open up the return
 24 envelope, inside of which is then the secrecy
 25 envelope.

1 The one additional thing that happens with the 20
 2 envelopes for people who need to register is -- that
 3 the judges are looking for, a voter registration
 4 card. Generally speaking, the voter will put the
 5 voter registration card outside the secrecy envelope
 6 but occasionally it will come in the ballot -- with
 7 the ballot in the secrecy envelope. And if it is,
 8 it's generally fairly easy to figure out whether
 9 that's the case, just given the weight and the feel
 10 of the envelope with two things in it rather than
 11 one.
 12 Q. But on that issue, Ramsey County does not -- if
 13 there's no registration card outside the secrecy
 14 envelope, Ramsey County does not open up the secrecy
 15 envelope to see if there's a registration card
 16 contained within that, is that correct?
 17 A. We do not do that as a normal matter of practice.
 18 Q. Let me ask you this way. The ballot return envelopes
 19 that are delivered to precincts, are those all
 20 ballots that have been determined to be accepted?
 21 A. That is correct. And remember, as part of the
 22 accepting process, we have that four-stage process I
 23 think you're familiar with. The part of the
 24 accepting process that we do in our office is we can
 25 compare the name and address of the voter, the

1 They would then remove all of the secrecy 19
 2 envelopes. By doing that they have -- obviously they
 3 have rendered the ballots secret. Once they're
 4 separated from the envelope that has their name and
 5 address on it, we don't know whose ballot it is
 6 anymore.
 7 At that point, then, they open up the return
 8 envelope, take all the ballots out, initial the
 9 ballots. And then at least here in Ramsey County, we
 10 have a voting system that we use, they will then take
 11 what's called an absentee ender card. They will
 12 insert it into the ballot counter and then run the
 13 absentee ballots through.
 14 What the ender card is doing is it's telling the
 15 ballot counter that all the ballots I'm now feeding
 16 in are absentee ballots. And that's how -- when you
 17 see the tape, as we saw yesterday, it will say
 18 nonabsentees and absentees.
 19 The way the ballot counter knows it's an
 20 absentee ballot is that we are inserting this ender
 21 card, putting the absentees in, and at the conclusion
 22 of the absentees, running what we call the polling
 23 card which puts the ballot counter back on its normal
 24 status. At that point the absentee ballot activity
 25 is over.

1 signature of the voter because we have the 21
 2 information that we can compare with the application.
 3 We can also determine whether the witness has
 4 been proper, which is to say that we have someone
 5 with a name and, and an address in Minnesota, or we
 6 have someone who has put their name and indicated
 7 that they are an official who is authorized to
 8 administer an oath, like a notary or a judge or a
 9 figure account clerk somewhere. That's the part we
 10 can do in our office.
 11 The part that has to be done in the polling
 12 place is the determination, number one, of the people
 13 who need to register whether there is, in fact, a
 14 properly completed voter registration card in the
 15 return envelope.
 16 And number two, a determination of whether that
 17 person has already voted in person before the
 18 absentees are processed, or whether that person has
 19 sent us more than one absentee ballot.
 20 Q. Now, I want to ask you about those voters whose
 21 absentee ballots get rejected either on election day
 22 or one to three days prior to election or four days
 23 prior to election day.
 24 Are they ever notified that their ballots were
 25 rejected?

1 A. They are not. The only thing that happens with them²²
 2 is they do get credit for voting for purposes of
 3 preventing them from being, from being made inactive
 4 for not voting for four years. Other than that,
 5 there is no statutory requirement for us to notify
 6 someone that their ballot has been rejected.
 7 And to be honest, given the, given the logistics
 8 of what we were doing the last five days, it -- it's
 9 just not practical for us to, to be doing that.
 10 Q. In your role as election director, do you train
 11 people on how to make a decision of whether or not to
 12 accept or reject an absentee ballot?
 13 A. Yes.
 14 Q. How do you do that?
 15 A. Very simply what we do is as we are getting the
 16 incoming envelopes in, we, you know, obviously show
 17 them how to use the State Voter Registration System.
 18 And then we walk through this process of
 19 implementing Section 203B.12, namely, are the name
 20 and address on the application the same as we have on
 21 the return envelope. Are the signatures on the
 22 application the same as on the return envelope. Has
 23 the witness provided a name and, and the address in
 24 Minnesota, and has the witness signed it. And if
 25 they have done all that, then we are prepared to

1 2,000 absentee ballots in eight and a half hours.²⁴
 2 And the result of that is that our staff is trained
 3 that when they look at the return envelope, if there
 4 is no signature on the signature line or close enough
 5 to the signature line that, that it's fairly easy to
 6 tell, our instruction to them is to reject it.
 7 The same thing with, with the witness. If we
 8 don't have a clear indication that the person is
 9 either authorized to administer an oath or we can't
 10 determine that the person is a registered voter, and
 11 frankly, even though we're not required to do this,
 12 if their name is on there and their signature is on
 13 there but the witness hasn't supplied an address,
 14 we'll use the Voter Registration System to look them
 15 up. If we can determine that they're registered,
 16 we'll go ahead and accept that even if the witness
 17 has not provided the information on the envelope.
 18 But beyond that, we just -- we don't have the
 19 means to, given the amount of activity that we have
 20 and the short time available, we don't have the means
 21 to search all over the envelope for the information
 22 we're looking for.
 23 Q. Now, you brought up Mr. Anderson. It sounds like
 24 you've reviewed his, his envelope and his application
 25 since.

1 accept it, at least to the extent that we can do that²³
 2 in our office.
 3 Q. Do you, when instructing or training the absentee
 4 ballot board or the election judges themselves, do
 5 you discuss what sort of standards should be applied
 6 in making their decision?
 7 A. We do. And generally speaking, given the amount of
 8 traffic that we have, we need to adhere, you know, to
 9 a somewhat narrow but not inflexible standard.
 10 So, for example, if a person has not signed the
 11 envelope, given the fact that we are getting a very
 12 large number of absentees coming and going on any
 13 given day, we're not going to spend a lot of time
 14 looking for the signature on an envelope.
 15 If I can use the example of Mr. Anderson from
 16 the other day, clearly his signature is on the
 17 envelope. And I think it's also fairly clear that it
 18 matches up with his signature on the application.
 19 But the fact that it was not in the right place,
 20 it wasn't in the place that we were looking for.
 21 And I happen to know this because I looked this
 22 up when we came in here. I actually pulled his record
 23 up.
 24 His absentee ballot came back on the Friday
 25 before election day. That day we processed over

1 Would you agree that his should be accepted upon²⁵
 2 further review?
 3 A. You know, it's, it -- it's an interesting situation,
 4 and so I have to give you two answers. Not that I'm
 5 talking out of both sides of my mouth because I'm
 6 not.
 7 But put yourself in our shoes. Let's say the
 8 court here is my absentee ballot board. And their
 9 assignment for today, today is October 31st, 2008
 10 which is the Friday before election day. My
 11 assignment to them for the day is that I want you --
 12 and these are the actual numbers that we had -- I
 13 want you to, number one, I want you to work our
 14 counter for part of the day because we're going to
 15 have about 550 people come in and vote. And then I
 16 want you to do accepting or rejecting for about
 17 another 950 people whose ballots came in in the mail.
 18 And then I want you to mail out another 550 ballots
 19 to people whose applications are still coming in, and
 20 I want you to e-mail a few ballots to people who are
 21 overseas so they get a shot at voting.
 22 Q. Mr. Mansky, you're working these people too hard.
 23 A. I understand, but that's what we have to do. That's,
 24 that's the bottom line here.
 25 Given that situation, we have probably 15 or 20

1 seconds per return envelope to look at the ²⁶
 2 information, compare the information with what we
 3 have on the application and to make a determination
 4 whether the name and address are the same, the
 5 signature is the same and the witnessing has been
 6 done properly.
 7 You know, in, in a better world, if we had this
 8 galaxy of highly trained attorneys working for me and
 9 I had the ability to go out and get affidavits from
 10 people, et cetera, we probably would never reject
 11 half the stuff that we do. But the reality is I
 12 don't have those resources available to me before the
 13 election.
 14 So unfortunately the, the standard that we have
 15 to use is, because we have maybe 15 or 20 seconds to
 16 make the decision, if we don't see the information on
 17 or near the place we are looking for, we're going to
 18 reject those.
 19 Having said all that, if I had the information
 20 available then that I have now, and I think it's very
 21 clear that, that, that Mr. Anderson has nominally met
 22 the requirements of the state law, which is to say
 23 his signature is on that envelope somewhere, and that
 24 it does match up with the signature that's on his
 25 application.

1 MR. HAMILTON: Objection, Your Honor, ²⁸
 2 responsive.
 3 JUDGE REILLY: Sustained.
 4 BY MR. ROCK:
 5 Q. How does your desire, Ramsey County's desire to apply
 6 the liberal standard, how does that compare with
 7 guidance you received from the secretary of state?
 8 A. Again, I, I think that that is the guidance that had
 9 been going out, not just today but when I worked
 10 there as well.
 11 Q. Is there a difference between the absentee voter
 12 versus the voter that shows up at the poll on
 13 election day as far as the opportunity to get their
 14 mistakes corrected?
 15 A. Obviously that -- that's exactly the case. The
 16 person voting absentee does not have the opportunity,
 17 number one, to be standing in front of either one of
 18 our officials in our office or our election judges at
 19 the polling place. And so if they do make a mistake,
 20 the effects can be catastrophic, because given the
 21 time and the distance involved, there may be no --
 22 there may be no viable remedy to deal with any errors
 23 that they make.
 24 Q. In your experience, are mistakes sometimes made in
 25 deciding whether or not to accept or reject an

1 Q. And don't misconstrue my question, I was not trying ²⁷
 2 to put blame on anyone.
 3 But what I hear you saying is that as a matter
 4 of process, you have -- the first time through you
 5 look at things pretty narrowly, is that correct?
 6 A. Yes. And I think the best way to do that, if I could
 7 address the members of the court here, put yourself
 8 in our shoes. It's now four days before the
 9 election. You have this envelope in front of you,
 10 you have a copy of the application. You have a whole
 11 stack of applications to go through before I will let
 12 you leave for the day.
 13 What would you do? How much time are you
 14 prepared to spend on that to determine whether or not
 15 the person has nominally met the legal requirements?
 16 Q. And I take it that was a rhetorical question.
 17 A. Yes, I do not require an answer.
 18 Q. You will agree, though, that when given more time,
 19 the goal is to enfranchise the voters?
 20 A. Absolutely. I think that very clearly is our track
 21 record here in Minnesota. It is the clear language
 22 of our law.
 23 When I was working for the secretary of state
 24 for the 15 years I was there, the consistent advice
 25 that I was given over the years --

1 absentee ballot? ²⁹
 2 A. Yes.
 3 Q. How many absentee ballots were cast in Ramsey County
 4 this year?
 5 A. This year a little under 31,000.
 6 Q. And when I say "this year," of course I mean the 2008
 7 general election.
 8 A. That is 2008.
 9 Q. I'm sorry, 31,000?
 10 A. A little under 31,000.
 11 Q. How does that compare with previous years?
 12 A. Countywide, that is our all-time record. It was
 13 31 percent higher than it was in the '04 presidential
 14 election.
 15 In St. Paul, which is what I'm working with
 16 directly, it was our -- also a record absentee voter
 17 turnout for the City of St. Paul, just a little over
 18 15,000.
 19 Q. Do you know what the rejection rate was in Ramsey
 20 County?
 21 A. I want to say it was about 5 percent of the total.
 22 Q. And do you know how that compares with previous
 23 years?
 24 A. A little higher than we have had in previous years.
 25 Q. What do you attribute that to?

30

1 A. You know --

2 MR. HAMILTON: Objection, Your Honor, calls

3 for speculation.

4 JUDGE REILLY: Sustained.

5 BY MR. ROCK:

6 Q. Do you have any knowledge of what might have caused

7 that higher rate issue?

8 A. I don't have, I don't have any factual information.

9 All, all I could do is, is speculate as to the cause.

10 Q. Based on your experience, what's your opinion as to

11 why this happened?

12 A. My opinion would be, number one, we did have a lot of

13 new voters this year, people who had never voted

14 before. And given the amount of, of absentee traffic

15 that was being encouraged by both of the presidential

16 campaigns, a lot of people who had never voted by

17 absentee ballot before.

18 Q. Does the sheer volume affect the potential mistake

19 rate?

20 A. I think that it does. Given -- again, given our

21 staffing levels, given the limited time available to

22 do the -- to do the work. Given the very large

23 number of people either coming in or mailing

24 applications, especially during the last week to 10

25 days before election day, I have no doubt that that

32

1 Q. So those original absentee ballots are segregated

2 somewhere in Ramsey County, is that correct?

3 A. That's correct, they are all in our office.

4 Q. And I assume they all have -- they are unopened and

5 the ballots remain in them?

6 A. That's correct.

7 Q. Has the list, the list of rejected absentee ballots,

8 has that been updated to reflect those that were

9 opened on January 3rd by the canvassing board?

10 A. Of course those ballots are now gone, they're in the

11 custody of the Secretary of State.

12 Q. And let me back up. You do have a list of the

13 rejected absentee ballots, a spreadsheet or something

14 like that?

15 A. You know, I don't know that we have a spreadsheet for

16 all of those. We did have a spreadsheet for the ones

17 that were, that were in that fifth pile.

18 Q. Do you know approximately how many absentee ballots

19 were rejected statewide?

20 A. You know, I don't know the -- I don't know what the

21 number is.

22 Q. Do you have any reason to believe that some of the

23 absentee ballots that remain rejected in Ramsey

24 County are improperly rejected and should be opened?

25 A. Clearly there is a small group we did present at our

31

1 is a contributing factor this year.

2 Q. Would it be fair to say that with -- for each of the

3 cities within Ramsey County that each of them had a

4 higher volume of absentee ballots this year?

5 A. Yes.

6 Q. Do you know what the rejection rate was by city?

7 A. I don't know right off. My impression is it probably

8 is the about the same as our county audit rate, about

9 5 percent of the total submitted.

10 Q. Do you know if the rejection rates from city to city

11 within Ramsey County, if they varied at all?

12 A. You know, I, I don't know that right offhand.

13 Q. Do you have -- are those statistics available?

14 A. We have -- obviously we have all of the rejected

15 material. And again, if the court desires, we can

16 generate those statistics without too much

17 difficulty.

18 Q. Does Ramsey County keep a -- or does it create a list

19 of the rejected absentee ballots?

20 A. We have all of the absentees separated out by

21 category; for example, where there's no signature or

22 a witness problem, et cetera. And those were -- that

23 was the basis on which we made the so-called fifth

24 pile last December. And those are copies that we

25 provided to both of the campaigns.

33

1 meeting on December 31st under the Supreme Court

2 order. We did present 133 ballots to the two

3 parties. They were only able to come to a meeting of

4 the mind on 71 on them, so we still have another 62

5 at a minimum that we believe were improperly rejected

6 and should be counted.

7 Q. And, in fact, both of the campaigns also provided

8 additional lists or names of absentee voter ballots

9 that they believe should be opened as well, is that

10 correct?

11 A. That is correct.

12 Q. And have you reviewed or your staff reviewed any of

13 those absentee ballots?

14 A. We did look at some of the information that was

15 provided, and did indicate to both of the parties

16 that given our, our interpretation of the supreme

17 court order, that even though we did not disagree

18 with them, that, that mistakes probably have been

19 made on them and that they probably should be

20 counted. We did not think that we had any authority

21 under the court's order to consider those in that,

22 that activity on December 31st.

23 Q. Now, you said that you have the rejected absentee

24 ballots, the originals unopened.

25 Are all counties by law required to keep those?

34

1 A. In someplace or another. Many counties have them
 2 all, as we do, at the county office. There's some
 3 counties like Hennepin, there may be others, where
 4 those materials actually reside at the city halls, at
 5 the city where they were voted on.
 6 Q. I'd like you to turn to Exhibit 210 which would be in
 7 the large white binder, I believe.
 8 Now, Exhibit 210, this is an exhibit Mr. Snyder
 9 showed you during your deposition, correct?
 10 A. Yes.
 11 Q. I want to turn your attention to the last page. What
 12 is that last page?
 13 A. This is a copy of her return envelope.
 14 Q. Going backwards here, the next page in front of that,
 15 the return envelope, what is that?
 16 A. And that is her application.
 17 Q. And the page in front of that?
 18 A. This is a, a list provided by us that indicated the,
 19 the absentees that were rejected.
 20 Q. And then the page before that, I believe would be
 21 fourth from the end.
 22 A. And this is some extracted information from the, From
 23 the State Voter Registration System.
 24 MR. ROCK: Now, I would offer Exhibit C-210
 25 without the first three pages. It seems those are

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1 Q. And why was it rejected?
 2 A. Because the signatures did not match up, or, in fact,
 3 there was no signature on this, on this ballot.
 4 Q. And, in fact, if we look at the -- towards the top
 5 there's an accepted and rejected box, is that
 6 correct?
 7 A. That is correct.
 8 Q. The rejected box is checked?
 9 A. Correct.
 10 Q. And what does it say after that?
 11 A. It looks like it says, "No signature."
 12 Q. Now, it also appears that Ms. Cowan's address sticker
 13 has been placed on this return envelope, correct?
 14 A. That is correct.
 15 Q. And who would have put that signature there?
 16 A. This came from the City of Roseville.
 17 Q. So an election official or city official from
 18 Roseville would have placed that sticker.
 19 A. That's correct.
 20 Q. And what did they cover up with that sticker?
 21 A. They covered up actually several things. Number one,
 22 the place where the voter would write their name and
 23 address. Or, in fact, what we permit them to do, the
 24 fact that the sticker is on is there, we would not
 25 require them to put their name and address.

35

1 probably not proper to offer.
 2 MR. HAMILTON: I have no objection to the
 3 entire exhibit, and actually would suggest that the
 4 entire exhibit be admitted intact.
 5 JUDGE REILLY: Do you object to that?
 6 MR. ROCK: I don't think so.
 7 JUDGE REILLY: Then the entirety of C-210
 8 is received.
 9 BY ASKING ATTORNEY:
 10 Q. Now, Mr. Mansky, I ask you to go back to the last
 11 page, the return envelope.
 12 My first question is, how big is the return
 13 envelope, can we tell from just looking at this page?
 14 A. It's a little -- actually, this is a little shrunk
 15 down a little bit. It's a little bigger than the
 16 piece of paper.
 17 Q. This is an 8 1/2 by 11 piece of paper, correct?
 18 A. That is correct.
 19 Q. The return envelope, is it more than 8 1/2 inches
 20 wide?
 21 A. I'm going to say it's actually not that wide. It's
 22 about 4 1/2, 5 inches wide and it's about 12 inches
 23 long, a little longer than a normal sheet of paper.
 24 Q. Now, this ballot was rejected, is that correct?
 25 A. That is correct.

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1 But more importantly, it also includes a
 2 certification statement that indicates that, that
 3 the -- you need to sign the back of this envelope.
 4 Q. Would you agree that by placing the sticker in this
 5 case over the certification that that would be
 6 considered a mistake or an error by the city
 7 official?
 8 A. Yes.
 9 Q. Would you, in light of that, agree that this ballot
 10 should be counted?
 11 A. Yes.
 12 Q. As you noted, there's no signature on it.
 13 A. That is correct.
 14 Q. Now, I'd like you to turn in the smaller binder to
 15 Exhibit C-251. Mr. Mansky, Exhibit C-251, what is
 16 that?
 17 A. This is also an absentee ballot return envelope.
 18 Q. Was this one accepted or rejected?
 19 A. This one was rejected also.
 20 MR. ROCK: Your Honor, I would offer
 21 Exhibit C-251.
 22 MR. HAMILTON: Your Honor, I object on
 23 relevance grounds, that this is beyond the 654
 24 ballots that Mr. Rock looked at. Maybe he could tell
 25 us what --

1 MR. ROCK: I don't know yet. 38
 2 JUDGE REILLY: The objection is overruled
 3 on that basis and the exhibit is received.
 4 BY MR. ROCK:
 5 Q. What is the reason given for this absentee ballot
 6 being rejected?
 7 A. Also missing signature.
 8 Q. And again, the, the address sticker was placed in an
 9 improper location, correct?
 10 A. That is correct.
 11 Q. And this sticker appears to be covering up part of
 12 the certification?
 13 A. That is correct.
 14 Q. It's also covering up the language that says, "To be
 15 completed by voter," correct?
 16 A. Yes.
 17 Q. In fact, there is no voter signature here on the
 18 ballot, correct?
 19 A. That is correct.
 20 Q. Is this a ballot that should be accepted?
 21 A. Yes.
 22 MR. HAMILTON: Object to the question, it
 23 calls for a legal conclusion. It is the ultimate
 24 question for the Court.
 25 JUDGE REILLY: Overruled.

1 or that there is a signature on one document but not⁴⁰
 2 on another, as long as they can determine it's not
 3 one of those situations, then we instruct them to go
 4 ahead and accept it.
 5 Q. Do you provide any other principles or general rules
 6 of instruction they should consider in making a
 7 decision on the signature?
 8 A. Not really because it's really difficult to do that.
 9 It's, it -- you know, it's really hard to instruct
 10 someone to compare one signature to another. It -- I
 11 think for the average person that you can tell by
 12 glancing at them that they either appear to be alike
 13 or they don't. And if, if the judge's conclusion is
 14 that they are clearly different people, those are the
 15 ones we want them to reject.
 16 If they have any questions about them, I have
 17 them bring them to me and I take a look at it. And
 18 not that I know anything more about signature
 19 comparison than they do, but this is another
 20 opportunity for somebody else to take a look at them.
 21 And I only have to look at a very small number in any
 22 given year.
 23 Q. In Ramsey County, do you try to give the voters wide
 24 latitude on the signatures?
 25 A. Yes.

1 BY MR. ROCK: 39
 2 Q. In reaching that decision, did you need to look at
 3 anything else other than this return envelope?
 4 A. No. I, I think the fact that the label was placed in
 5 such a fashion that the voter was unable to see the
 6 instructions on the envelope that say, number one,
 7 that it was required to be completed by the voter,
 8 and number two, the certification that they were
 9 making, I think we -- by doing that you have
 10 prevented the voter from getting the information
 11 necessary that would lead them to the conclusion that
 12 they had to sign this at all.
 13 Q. You mentioned one of the considerations that the
 14 absentee ballot voter or in some cases the election
 15 judges have to make is determining whether the
 16 signature is a genuine signature of the voter, is
 17 that correct?
 18 A. Yes.
 19 Q. How do you train the absentee ballot voters (sic) to
 20 determine that the signature is the voter's genuine
 21 signature?
 22 A. You know, that's a very difficult thing to do because
 23 none of us are signature experts. But our general --
 24 our general instruction to them is that if the two
 25 signatures are not clearly from two different people

1 Q. Turning to the next exhibit, which is C-52, please.⁴¹
 2 I'm sorry C-252. There are two pages in this
 3 exhibit. What's the first page?
 4 A. The first page is a copy of the absentee ballot
 5 return envelope.
 6 Q. And what's the next page?
 7 A. The next page is the application that would go along
 8 with it.
 9 Q. Was this one accepted or rejected?
 10 A. It appears it had been rejected.
 11 Q. Is there a reason given?
 12 A. It looks, looks like the judges wrote --
 13 MR. HAMILTON: Objection, Your Honor, the
 14 document hasn't been received yet.
 15 JUDGE REILLY: Sustained.
 16 BY MR. ROCK:
 17 Q. We'll come back to that, Mr. Mansky. What's the
 18 second page?
 19 A. I'm sorry, the second page is the absentee ballot
 20 application.
 21 MR. ROCK: We'll offer Exhibit C-252.
 22 MR. HAMILTON: No objection.
 23 JUDGE REILLY: Exhibit C-252 is received.
 24 BY MR. ROCK:
 25 Q. What's the reason given?

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1 A. It appears that the election judges wrote "No
2 signature."
3 Q. Was that right?
4 A. It doesn't appear to be. It looks like there is a
5 signature on both of these documents, and at least on
6 a cursory examination appears to be signed by the
7 same person.
8 Q. If you had to make that decision today, would you say
9 this is one that should be accepted?
10 A. Yes.
11 Q. Now, if you'll turn to Exhibit 253, C-253. Take a
12 moment just to look at each page, and I'll ask you
13 what this -- what's included in this exhibit.
14 A. And this also is a copy of an absentee ballot return
15 envelope and the, the application for -- that is
16 associated with it.
17 Q. And then if you turn to the next page, there's
18 another envelope from another voter, correct?
19 A. That is correct.
20 Q. And the fourth page?
21 A. Is the, the absentee application for that voter.
22 Q. And the fifth page?
23 A. Is another absentee ballot return envelope.
24 Q. And the last page.
25 A. The, the application that is associated with that.

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1 Q. In comparing those two signatures, is this one that
2 should be accepted in your opinion?
3 MR. HAMILTON: Objection, Your Honor. The
4 witness is being asked to second-guess the original
5 election judges. He wasn't the one that reviewed
6 these initially and I object to it on that basis.
7 JUDGE REILLY: Overruled.
8 THE WITNESS: You know, this is a closer
9 call. I was looking at these two signatures. They
10 don't appear to be exactly alike, but I don't know
11 that they are so dissimilar that, that they would
12 need to be rejected on that basis.
13 BY MR. ROCK:
14 Q. Now, there's no requirement that the signatures be
15 exactly alike, correct?
16 A. There is not.
17 Q. So if you were reviewing this one on election day or
18 prior to election day, what would you do?
19 A. I would probably accept this.
20 Q. Now, I'd like you to turn to the next page, which
21 appears to be the return envelope of a Claudia
22 Sajevic.
23 How does it appear that she signed the voter
24 envelope there?
25 A. On the envelope, she, she signed it. This was the

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1 MR. ROCK: I'll offer, Your Honor,
2 Exhibit C-253.
3 MR. HAMILTON: If I might have a moment.
4 JUDGE REILLY: You may.
5 MR. HAMILTON: Your Honor, we object to the
6 extent this is not within the range of 654.
7 JUDGE REILLY: And that objection is
8 overruled and the exhibit is received.
9 BY MR. ROCK:
10 Q. The first page of Exhibit C-253 appears to be the
11 return envelope of Deanna M. Parks, is that correct?
12 A. Yes.
13 Q. Was this one accepted or rejected?
14 A. This one was rejected.
15 Q. And what was the reason?
16 A. And it looks like that it was on some signature
17 issue.
18 Q. Now, she did sign the envelope and the voter
19 signature, correct?
20 A. That is correct.
21 Q. And the next page is Ms. Parks' application, is that
22 right?
23 A. That is correct.
24 Q. Did she sign that?
25 A. She did.

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1 first initial of her first name and then here, her
2 last name. And on the application, she actually
3 spelled out her first name and her last name.
4 Q. Is there any requirement that when a voter signs the
5 application and then when they sign the return
6 envelope that they do it exactly the same as far as
7 full name, initial or full name without initial, is
8 there a requirement in those regards?
9 A. As best I can I determine, that there's no, no direct
10 statutory requirement that the two signatures be --
11 have exactly the same information.
12 Q. Would you agree with me that at least the portion of
13 the signature that contained Ms. S's last name --
14 A. I think it's Sajevic.
15 Q. Sajevic. Would you agree that those appear to be
16 similar?
17 MR. HAMILTON: Objection, leading.
18 JUDGE REILLY: Sustained.
19 BY MR. ROCK:
20 Q. If you were asked to review this return envelope and
21 the application to make a decision whether or not the
22 return envelope should be accepted or not, what would
23 be your opinion?
24 A. I would probably accept this. And, and looking at
25 all the information available, it is clear that the

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1 two signatures are a little different. But if you
 2 look at the way that she printed out her name on both
 3 the envelope and the application, they both look to
 4 be fairly close.
 5 Q. And then staying in Exhibit C-253, if you'll turn to
 6 the return envelope for Thomas Weaver, what's your
 7 opinion on whether or not this return -- well, first
 8 of all, was this one accepted or rejected?
 9 A. This one was rejected.
 10 Q. And why is it rejected?
 11 A. And the judges have indicated that the signatures do
 12 not match.
 13 Q. If the judges brought this one to you with the
 14 application and asked for your opinion, what would
 15 your opinion be on whether or not to accept or reject
 16 this ballot envelope?
 17 A. You know, on this one I, I might go along with them
 18 that the two signatures here, I think, are
 19 sufficiently different. It's not clear to me it's
 20 the same person.
 21 And again, unfortunately because this is one of
 22 the ballots coming from Roseville, because they
 23 placed the sticker on the place where you would
 24 normally write your name and address, we don't have
 25 any other additional information that might help us

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1 handwriting, it is possible for someone to, to assist
 2 that person by either completing the application or
 3 writing their name.
 4 Q. So if the voter is unable to write their name, they
 5 can ask somebody to sign their name for them, is that
 6 correct?
 7 A. That is correct.
 8 Q. Is there any way for the absentee ballot voter
 9 election judges to know whether or not a person was
 10 unable to sign their name and instructed somebody
 11 else to sign for them?
 12 A. Only if they tell us. And to the extent that we talk
 13 to them before they apply, our advice to people who,
 14 who are elderly or on disability would be to indicate
 15 on the application either someone is going to help
 16 them sign it or that the same person both complete
 17 the application and the return envelope so that the
 18 signatures would, in fact, match up.
 19 Q. So you instruct -- you would instruct a voter unable
 20 to sign their name to have, say, somebody else sign
 21 their name for them, to have the same person do it so
 22 that it looked like the signatures match, correct?
 23 A. Yes.
 24 Q. Do county officials have the opportunity to have that
 25 discussion with every person who applies for an

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1 determine definitively who this person was.
 2 Q. Now, in this case the sticker is covering the part
 3 that says "To be completed by voter," correct?
 4 A. Yes.
 5 Q. How does that affect your analysis?
 6 A. And again, on, on that basis as I indicated earlier,
 7 my inclination would be, on that basis alone, to
 8 accept it.
 9 Q. Now, I want to turn your attention to the last page
 10 of this Exhibit C-253 which appears to be
 11 Mr. Weaver's application, correct?
 12 A. Yes.
 13 Q. Are absentee voters who apply -- or voters who are
 14 applying for an absentee ballot, are they required to
 15 sign the application themselves?
 16 A. In most cases, yes. However, there are some
 17 situations where the voter signature is not required.
 18 The first being anyone who applies and who is either
 19 serving in the armed forces or residing overseas,
 20 they can have another person, namely, the parent,
 21 spouse, child, sibling complete and sign the
 22 application for them.
 23 It's also possible for someone who has -- who is
 24 unable to write their name using the -- an
 25 instruction to us in the cannons of construction for

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1 absentee ballot?
 2 A. Unfortunately no.
 3 Q. Are there any written instructions to the applicants
 4 indicating how they should handle if they do not sign
 5 for themselves?
 6 A. There are not.
 7 Q. So in those cases, there's nothing for the absentee
 8 ballot board or the election judges to compare to if
 9 they've got the return envelope signature and then
 10 they've got the application signed by someone else,
 11 is that correct?
 12 A. That is correct.
 13 Q. Can voters make a mark, such as an X, to indicate
 14 signature?
 15 A. They can.
 16 Q. In those cases, how do you instruct the election
 17 judges to compare signatures?
 18 A. In those cases, again, we're looking for some
 19 consistency between both the application and the
 20 return envelope. So that if the -- if this was a
 21 person who had some sort of an injury or disability
 22 and was able -- was unable to write, or as opposed to
 23 somebody who was illiterate, that as long as they
 24 made the same marks on the application and return
 25 envelope, then I, I think that would, that would be

1 enough for us to conclude that it was completed by⁵⁰
 2 the same person.
 3 Q. So if there was an X on the application and an X on
 4 the ballot return envelope, that would be sufficient?
 5 A. Yes.
 6 Q. Now, let's turn back to a larger book to
 7 Exhibit C-205, please.
 8 What is this document -- I'm sorry, I'll give
 9 you a moment.
 10 A. This is also a copy of an absentee return envelope.
 11 Q. And the second page?
 12 A. Is the application that is associated with it.
 13 Q. And this one was shown to you during your deposition,
 14 correct?
 15 A. Yes.
 16 MR. ROCK: We'd offer Exhibit C-205.
 17 MR. HAMILTON: Same objection, Your Honor
 18 this is not within the range of 654.
 19 JUDGE REILLY: On that basis, the objection
 20 is overruled and the exhibit is received.
 21 MR. HAMILTON: Your Honor, may I have a
 22 continuing objection with respect to all of those?
 23 JUDGE REILLY: You may, if you could just
 24 indicate which ones they are.
 25 MR. HAMILTON: All right. Thank you.

1 A. Yes, it was -- it was the -- it's the name of a⁵²
 2 person who apparently signed this on behalf of the,
 3 the actual applicant.
 4 Q. Is that improper?
 5 A. It is, given the documents that they used to submit
 6 the application on.
 7 And as I mentioned before, had this person --
 8 and who knows, maybe the person was overseas. If
 9 this person was overseas or serving in the armed
 10 forces, it would have been proper for this person,
 11 assuming this person is the voter's spouse or child
 12 or sibling, it would be proper for another person to
 13 apply for and sign the application.
 14 And hypothetically it would have been proper to
 15 do this if there is an indication that Mr. Vedi was
 16 unable to sign the application. But, but in -- in
 17 the absence of either of those two situations, it
 18 would not be proper for another person to apply for a
 19 ballot for somebody else.
 20 Q. Now, you don't know one way or the other whether
 21 Mr. Vedi was able to sign his name or not.
 22 A. No, we do not.
 23 Q. What if the person who signed the application wrote
 24 that note, what if that note had not been there, how
 25 would you recommend this ballot be handled in that

1 BY MR. ROCK:⁵¹
 2 Q. Was this absentee ballot accepted or rejected?
 3 A. It was rejected.
 4 Q. For what reason?
 5 A. That the signatures did not match up.
 6 Q. Now, there appears to be a signature of Mr. Vedi on
 7 the application, correct?
 8 A. That is correct.
 9 Q. I'm sorry, if I may, let me restate that.
 10 It appears to be Mr. Vedi's signature on the
 11 return envelope.
 12 A. That is correct.
 13 Q. And then if we turn to the application, there's a
 14 signature there?
 15 A. That is also correct.
 16 Q. And you agree that those signatures don't appear to
 17 match?
 18 A. Yes.
 19 MR. HAMILTON: Objection, leading.
 20 JUDGE REILLY: Sustained.
 21 BY MR. ROCK:
 22 Q. Do those signatures match?
 23 A. Not in my opinion.
 24 Q. On the application, can you read the handwriting
 25 below the signature?

1 case?⁵³
 2 A. Again, since they -- the signatures are fairly
 3 clearly from different people, I think we would
 4 probably recommend that this one be rejected.
 5 Q. You wouldn't have assumed that the signature on the
 6 application was directed there by the voter and the
 7 signature on the return envelope was the voter
 8 themself?
 9 MR. HAMILTON: Objection, leading.
 10 JUDGE REILLY: Sustained.
 11 BY MR. ROCK:
 12 Q. Would you have made any assumptions related to
 13 whether or not the person did sign for themselves?
 14 A. I think absent any other information that we would
 15 not have -- we would not have come to that
 16 conclusion.
 17 Q. But there's no written instruction to Mr. Vedi or to
 18 any voter that they need to provide an explanation
 19 for why somebody else would sign for them, right?
 20 A. That is correct.
 21 MR. HAMILTON: Objection, leading.
 22 JUDGE REILLY: Sustained.
 23 BY MR. ROCK:
 24 Q. Now, if you'll turn back to Exhibit 204, another
 25 document that was shown to you in your deposition.

54

1 What is this document?

2 A. It's also an absentee return envelope.

3 MR. ROCK: We'll offer Exhibit C-204.

4 MR. HAMILTON: May I voir dire the witness,

5 Your Honor?

6 JUDGE REILLY: You may.

7 MR. HAMILTON: Mr. Mansky, can you identify

8 the handwriting markings in the upper right-hand

9 corner of this document?

10 THE WITNESS: The -- are you talking about

11 the number of the official, Number 57?

12 JUDGE HAYDEN: Mr. Hamilton, could you

13 approach the microphone, please. Thank you.

14 MR. HAMILTON: Can you identify the

15 handwriting in the upper right-hand corner of the

16 document without reading into the record? Do you

17 know who put that there?

18 THE WITNESS: We, we did not know.

19 MR. HAMILTON: And in the lower right-hand

20 corner, the handwriting on that there, did you put

21 that handwriting there?

22 THE WITNESS: No. And, and for what it's

23 worth, I think this is an envelope from Dakota

24 County.

25 MR. HAMILTON: So you don't know about the

56

1 envelope but they do not sign where it says "Voter

2 signature"?

3 A. Again, this would be a repeat of my previous

4 comments. Given the volume of activity that we have,

5 our instruction to the judges is if they don't see

6 the information in the place where it nominally

7 belongs that we want them to reject that.

8 Q. Now, that's in the first instance.

9 What if they determine that the signature is

10 somewhere else?

11 A. If by chance they had examined this envelope and had

12 come to the conclusion that -- and I think it's

13 fairly obvious here --

14 MR. HAMILTON: Well, objection, Your Honor.

15 Now the witness is testifying as to the contents of a

16 document that is not in evidence and I object to

17 that.

18 JUDGE REILLY: Sustained.

19 BY MR. ROCK:

20 Q. I'm going to ask the question and not ask you to

21 refer specifically to this document.

22 What if the election judge finds the signature

23 somewhere else on the envelope?

24 A. If that's the case, our instruction to them would be

25 to accept it.

55

1 processing of this envelope and it's from a different

2 county.

3 THE WITNESS: That's correct.

4 MR. HAMILTON: Your Honor, we would object

5 to this document. I think we have a probable

6 redaction that we've discussed earlier in this case.

7 And as well, this witness doesn't have any knowledge

8 of a document coming from different county.

9 JUDGE REILLY: Mr. Rock?

10 MR. ROCK: I would request that we admit

11 this conditionally, assuming that the original or a

12 copy of the original can be received.

13 JUDGE REILLY: It's my understanding that

14 Inver Grove Heights is not in Ramsey County.

15 MR. ROCK: I don't disagree with that at

16 all, Your Honor.

17 JUDGE REILLY: I'm going to sustain the

18 objection.

19 MR. ROCK: I would ask for permission to

20 use it as demonstrative and not put it into evidence.

21 JUDGE REILLY: We'll see what you're going

22 to do with it. Ask your questions.

23 BY MR. ROCK:

24 Q. Mr. Mansky, you touched on this earlier. In Ramsey

25 County, what do you do if the voter signs the

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1 Q. And what about if it's witness information that's on

2 the envelope but it's somewhere else and they see

3 that as well?

4 A. Again, as long as the information is, is readily

5 available to us that -- that we would go ahead and

6 accept that.

7 Q. I'd like you to turn now back to the small binder,

8 Exhibit C-254. What's this first page of

9 Exhibit C-254?

10 A. The first page is a copy of an absentee ballot return

11 envelope.

12 Q. And the next page?

13 A. And the next page is the application that is

14 associated with it.

15 Q. And the third page?

16 A. And the third page is another absentee ballot return

17 envelope.

18 MR. ROCK: Your Honor, I offer

19 Exhibit C-254.

20 MR. HAMILTON: I object to the extent this

21 document is not within the range of 654.

22 JUDGE REILLY: Overruled on its face.

23 Exhibit C-254 is received.

24 BY MR. ROCK:

25 Q. The first page of Exhibit C-254, can you tell if this

1 absentee ballot was accepted or rejected? ⁵⁸
 2 A. This appears to be rejected.
 3 Q. For what reason?
 4 A. And the judges indicated that there was an incorrect
 5 driver's license.
 6 Q. And does that matter?
 7 A. It does not. The state law does not require the
 8 witness to put their driver's license number, or the
 9 voter for that matter, the driver's license on the
 10 return envelope.
 11 Q. And the reference there is to the section entitled
 12 "Proof of residency by voter," is that correct?
 13 A. Yes.
 14 Q. What's the purpose of that section and check boxes
 15 that are below that?
 16 A. The, the purpose of having this information here is
 17 to give the election judges some idea of the document
 18 that the voter showed the witness, because remember,
 19 effectively what the voter is doing is registering on
 20 election day.
 21 And the idea here is that the witness would be
 22 seeing the same residence document that the voter
 23 would have shown the election judges had the voter
 24 registered in person at the polling place.
 25 Q. Now, this particular envelope we're looking at, this

1 that has the Ramsey County absentee ballots and the ⁶⁰
 2 first column is listed alphabetically by town. And
 3 it's actually the last page that contains Ramsey
 4 County voters.
 5 And do you see the reference in the middle of
 6 that page to Michael Arnold and then it says,
 7 "Witness used incorrect driver's license" --
 8 A. Yes.
 9 Q. -- number." Do you see that number?
 10 A. I do.
 11 Q. What do you understand that to mean, then, regarding
 12 Mr. Arnold's ballot?
 13 A. I presume that what happened was the -- that when the
 14 election judges opened up this envelope, they
 15 probably looked at the voter registration card and
 16 saw a different driver's license number on the voter
 17 registration card than is listed here on the absentee
 18 envelope.
 19 Q. It appears, though, that his ballot had been opened
 20 and counted, correct?
 21 A. At least this would have -- this envelope would have
 22 been opened in order to get the card out, yes. It,
 23 it's not -- we don't know from this, since it was
 24 rejected, we assume that the secrecy envelope was not
 25 opened.

1 is an envelope for a nonregistered absentee voter, ⁵⁹
 2 that correct?
 3 A. That's correct.
 4 Q. And on this particular envelope, the Minnesota
 5 driver's license box is checked.
 6 A. Yes.
 7 Q. What if there's no number printed on the line or
 8 written on the line behind the Minnesota driver's
 9 license box?
 10 A. That, in and of itself, would not make this
 11 defective.
 12 Q. Now, you can keep your -- keep Exhibit C-254 opened.
 13 I'd like to turn your attention to C-245 which I
 14 believe is a loose document on the witness stand in
 15 front of you. It might be the other one.
 16 Exhibit C-245.
 17 MR. ROCK: Your Honor, let me know when
 18 you're ready to proceed. Ready, Your Honor?
 19 JUDGE REILLY: Yes.
 20 BY MR. ROCK:
 21 Q. Exhibit C-245 was offered through Mr. Gelbmann a few
 22 days ago, I believe. It is a list of the absentee
 23 ballots that were opened by the canvassing board on
 24 January 3rd, 2009.
 25 I'd like you to turn to the section of the list

1 Q. This list, Exhibit C-245, is a list of ones that were ⁶¹
 2 open and counted on January 3rd.
 3 A. Okay.
 4 Q. Now back to Exhibit C-254, I'll ask you to turn to
 5 the third page. This appears to be the absentee
 6 ballot envelope of Madeline Hall, is that correct?
 7 A. Yes.
 8 Q. Was this one accepted or rejected?
 9 A. This one was also rejected.
 10 Q. For what reason?
 11 A. The judge indicated there was no driver's license
 12 number.
 13 Q. Was that a proper reason to reject?
 14 A. Again, it was not. Again, there's no statutory
 15 requirement to put the driver's license number on the
 16 envelope.
 17 Q. Now, turn your attention back to Exhibit C-245, which
 18 is the list from January 3rd. And I'll ask you to
 19 take a moment to see if you see her Ms. Hall's name
 20 on this list.
 21 A. I do not see it right offhand.
 22 Q. Now, if you'll turn to Exhibit C-255. What's the
 23 first page of Exhibit C-255?
 24 A. This is the copy of an absentee ballot return
 25 envelope.

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1 Q. All right. And the next page?

2 A. Is also an absentee ballot return envelope.

3 Q. And the third page -- I'm sorry, let's go back to the

4 second page. What did you say the second page is?

5 A. The second page is actually the application for the

6 first envelope.

7 Q. Okay. And then the third page?

8 A. The third page is another absentee return envelope.

9 Q. And the fourth page?

10 A. Is the application.

11 Q. The fifth page?

12 A. The fifth page is also an absentee return envelope.

13 Q. And then the sixth page?

14 A. And the sixth page is the application for it.

15 MR. ROCK: Your Honor, I offer

16 Exhibit C-255.

17 MR. HAMILTON: Your Honor, we object to the

18 extent the document is not within the 654.

19 JUDGE REILLY: Overruled on that basis and

20 Exhibit C-255 is received.

21 BY MR. ROCK:

22 Q. Mr. Mansky, what does it mean when the reason for

23 rejection given is no registration card?

24 A. What that means is that the application came into

25 either the county or the city election office and

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1 Q. So in that case your staff in Ramsey County, they did

2 not check the SVRS system again to see if they're

3 actually registered, is that correct?

4 A. That's correct.

5 Q. Do they check to see if the person has otherwise

6 registered in the last week or weeks?

7 A. We do not. Again, just using the documents at hand,

8 if the, if the envelope coming back is the one that,

9 that has the information on it, that would instruct

10 the judges to look for the voter registration card.

11 If they don't find one within, then they will reject

12 that.

13 Q. The secrecy envelope, though, is not opened, is that

14 correct?

15 A. That is correct. The secrecy envelope does not get

16 opened until the, the ballot travels to the polling

17 place.

18 Q. If the registration card is in the secrecy envelope,

19 is that okay then for the voter? Has the voter done

20 what they need to do and should their vote be

21 counted?

22 A. The voter is not prohibited from putting the voter

23 registration card in with the secrecy envelope. And

24 even though they're not instructed to do that, in my

25 opinion, that, that would not invalidate the voter's

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1 they inspected the Voter Registration System to

2 determine whether this person was registered. If

3 they could not find the name or in some other fashion

4 determine that person either was not registered at

5 all or was registered and different than that shown

6 on the application, then they would have sent a voter

7 registration card along with the ballot, and they

8 would have included the, the envelope that looked a

9 little different than this one.

10 Q. Would election officials check any other -- in the

11 case of a nonregistered absentee ballot envelope,

12 would they check any other sources of information to

13 determine if that voter was registered?

14 A. Again, when the application comes in, the, the only

15 thing they have available to check is the Voter

16 Registration System.

17 When the return envelopes come in, the

18 presumption on the part of the election judges is

19 that these materials were properly sent out to the

20 voter, that they correspond with the registration

21 status of the voter. And that if they see from the,

22 from the type of envelope sent that there was no card

23 within it or the card was not filled out properly,

24 they would then conclude that this person was not

25 properly registered.

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1 ballot.

2 Q. So for the envelopes, the three envelopes that are in

3 Exhibit C-255, you don't know for sure that the

4 registration card is not in the secrecy envelopes for

5 these three individuals?

6 MR. HAMILTON: Objection, calls for

7 speculation.

8 JUDGE REILLY: Sustained.

9 BY MR. ROCK:

10 Q. For these three individuals, do you know if the

11 registration card is in their secrecy envelopes?

12 MR. HAMILTON: Same objection.

13 JUDGE REILLY: Sustained.

14 MR. ROCK: Can I ask him if he knows?

15 JUDGE REILLY: Yes or no, yes.

16 BY MR. ROCK:

17 Q. Do you know if the registration card for any of these

18 three individuals is in the secrecy envelope?

19 A. I do know.

20 Q. You do know?

21 A. Yes.

22 MR. ROCK: Can I have him explain?

23 JUDGE REILLY: I guess so.

24 BY MR. ROCK:

25 Q. Please explain, Mr. Mansky.

1 A. Not that I'm a wizard or anything, but if I can hold⁶⁶
 2 this --
 3 Q. And you're looking at the first page of
 4 Exhibit C-255?
 5 A. Correct. If I compare these two envelopes, the
 6 envelope printed all the way top to bottom is an
 7 envelope that would have been given to someone who
 8 the county auditor or city clerk had concluded were
 9 not registered or not currently registered at the
 10 address on the application.
 11 Q. Let me stop you, Mr. Mansky. I think you're holding
 12 up -- what's the exhibit number?
 13 A. Let's see, 204. Yeah, 204.
 14 Q. 204.
 15 A. Right. This is an envelope that would have been
 16 given to someone not registered to vote.
 17 This envelope -- in fact, all three in this
 18 exhibit would have been given to someone who, when
 19 the examination of the Voter Registration System was
 20 done, that the county auditor or city clerk would
 21 have concluded was registered to vote. Hence, there
 22 would have been no reason to send a voter
 23 registration card out to these voters. So the,
 24 the --
 25 MR. HAMILTON: Objection, Your Honor, it's

1 THE WITNESS: Your Honor, I, I think under⁶⁸
 2 those circumstances we likely would have asked why
 3 this other person was, was signing the return
 4 envelope. Or perhaps a better way of stating it, who
 5 applied for the ballot. Why is the signature
 6 different on the application.
 7 And perhaps by illustration, the, the only time
 8 that someone new would come into contact with someone
 9 in person is someone voting in person at our counter
 10 or one of the city counters. They would have filled
 11 out the application in front of us, so we would have
 12 known that it was the same person.
 13 The only other way we would have gotten the
 14 ballot back from a person would have been from an
 15 agent, but that would have been an envelope that was
 16 all sealed up. There would have been no reason to
 17 question the agent.
 18 JUDGE HAYDEN: Would that information have
 19 been noted in any way on any documents?
 20 THE WITNESS: Your Honor, if a person other
 21 than the voter signed the application, we would not
 22 know that, unless, number one, the application
 23 clearly came in under the -- there's something called
 24 Federal Postcard Application which is used by people
 25 applying under the federal law. When we get that

1 nonresponsive and I move to strike. ⁶⁷
 2 The question was, can you tell if there's a
 3 registration card in the envelope. It's leading.
 4 JUDGE REILLY: Overruled.
 5 BY MR. ROCK:
 6 Q. The three envelopes in Exhibit C-255, each of those
 7 are registered voter return envelopes, correct?
 8 A. Correct.
 9 JUDGE REILLY: Before you go on, I'm
 10 looking at the first document in C-255 at the top
 11 where it says, "For office use only." It looks like
 12 accepted was initially marked and then rejected. I
 13 cannot read what the reason is.
 14 THE WITNESS: Your Honor, I think the
 15 writing for the judges is "Name not in roster."
 16 JUDGE REILLY: Thank you.
 17 Mr. Rock, I think we'll take our morning recess.
 18 Judge Marben has a question.
 19 JUDGE MARBEN: Mr. Mansky, what do you do
 20 in a situation where you have a signature on the
 21 application and a signature on the absentee ballot
 22 envelope and the signatures don't match but an
 23 election official from the county witnessed the
 24 voter's signature on the ballot envelope? How do you
 25 treat that?

1 type of an application, it is not unusual to see ⁶⁹
 2 somebody else's signature on there.
 3 Lacking that, unless someone tells us on the
 4 application that they are applying on somebody else's
 5 behalf, or if they are signing because the other
 6 person is unable to sign, we would not know that
 7 simply by looking at that document.
 8 JUDGE HAYDEN: Thank you.
 9 MR. ROCK: Your Honor, can I ask one
 10 follow-up question on the topic?
 11 JUDGE REILLY: Is it one?
 12 MR. ROCK: I could do it after the break,
 13 but I thought it was on the topic.
 14 BY MR. ROCK:
 15 Q. Using C-255, the first page, as an example, what if
 16 the witness indicated that they were a city clerk or
 17 a deputy auditor?
 18 A. And they can because they are authorized to
 19 administer the oath.
 20 Q. And in that case --
 21 MR. ROCK: I'm sorry, the second question,
 22 Your Honor.
 23 BY MR. ROCK:
 24 Q. In that case, what if there's a concern or
 25 discrepancy about the signatures between the

1 application and the voter return envelope? 70
 2 A. Again, not knowing exactly what situation we might be
 3 contemplating, remember that in-person voting is
 4 occurring where the person voting has filled out the
 5 application in front of us or has presented it to us.
 6 We then have the opportunity almost instantly to
 7 determine whether the two signatures match up.
 8 JUDGE HAYDEN: One question. Do you know
 9 if that's the same process followed in other
 10 counties?
 11 THE WITNESS: Your Honor, I suspect that it
 12 is.
 13 JUDGE REILLY: Thank you. We will be in
 14 recess for 15 minutes.
 15 (A recess was taken.)
 16 JUDGE REILLY: Mr. Rock.
 17 MR. ROCK: Thank you, Your Honor.
 18 BY MR. ROCK:
 19 Q. Mr. Mansky, picking up where we left off, in cases
 20 where a registered absentee ballot return envelope
 21 comes into Ramsey County, the election officials
 22 presume that that voter is registered, correct?
 23 A. Yes.
 24 Q. Do they do any additional checking in relation to
 25 that person's registration?

1 we'll, we'll look them up on the Voter Registration 72
 2 System. And if we can determine that person is
 3 registered, we'll accept it even though they didn't
 4 provide the address on the envelope.
 5 Q. Is that standard procedure in other counties?
 6 MR. HAMILTON: Objection, calls for
 7 speculation; foundation.
 8 JUDGE REILLY: Lay more foundation, if you
 9 can.
 10 BY MR. ROCK:
 11 Q. First of all, the procedure that you just described
 12 related to checking a witness address, is that
 13 required by state law?
 14 A. The process for checking the address is not a
 15 requirement. The, the requirement simply is that the
 16 person is registered to vote in the state.
 17 Q. This is a question that requires a yes or no answer.
 18 Do you know if other counties handle the process the
 19 same as Ramsey does related to checking the witness
 20 address information?
 21 A. No, I don't know that.
 22 Q. Referring to Exhibit C-257, please. Do you have
 23 that?
 24 A. I do.
 25 Q. What is the first page?

1 A. No. 71
 2 Q. Now, it doesn't matter whether it's a registered or
 3 nonregistered return envelope. There's a witness
 4 section on all return envelopes, is that correct?
 5 A. Yes.
 6 Q. What's the purpose requiring the witness and the
 7 witness' address?
 8 A. The -- obviously the purpose of the witness is to
 9 make sure that no one other than the voter has
 10 actually marked or influenced the voter while he or
 11 she was marking the ballot.
 12 And the purpose for the, for the addresses is
 13 our state law requires a witness to either be
 14 registered to vote in Minnesota or an official who is
 15 authorized to administer an oath.
 16 Q. So if the witness is a notary, for instance, do they
 17 have to put their address down?
 18 A. They do not, but they would either indicate the
 19 office they held or, or in many cases they'll --
 20 we'll see the notary stamp on the envelope.
 21 Q. What is Ramsey County's practice as far as checking
 22 the witness address information?
 23 A. Generally if there is a Minnesota address, we just
 24 presume that the person is registered to vote.
 25 If we do not have an address for the witness,

1 A. The first page is the absentee ballot return 73
 2 envelope.
 3 Q. And the second page?
 4 A. The second is the application that goes along with
 5 it.
 6 MR. ROCK: Your Honor, I would offer
 7 Exhibit C-257.
 8 MR. HAMILTON: Your Honor, I object. This
 9 is not within the scope of the 654.
 10 JUDGE REILLY: Overruled on that basis.
 11 The exhibit is received.
 12 BY MR. ROCK:
 13 Q. The first page of Exhibit C-257, can you tell if this
 14 one was accepted or rejected?
 15 A. This one was rejected.
 16 Q. And for what reason?
 17 A. And the reason indicated is that the witness was not
 18 registered to vote.
 19 Q. There is witness address information filled in,
 20 though, is that correct?
 21 A. That is correct.
 22 Q. Do you know why this one was rejected?
 23 A. You know, offhand I do not, but I suspect --
 24 MR. HAMILTON: Objection, speculation.
 25 JUDGE REILLY: Sustained.

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1 BY MR. ROCK:

2 Q. Under Ramsey County's procedures for checking the

3 witness address information, what are the possible

4 reasons for which this could have been determined to

5 be a nonregistered witness?

6 A. Under the procedures that we use, simply by looking

7 at the address, which clearly is an address in

8 St. Paul and which also appears to be an address in

9 the same precinct as the voter, simply based on the

10 face of the envelope, we would not have rejected it

11 in our office for that purpose.

12 Q. First of all, does it appear that there are initials

13 near the rejected box?

14 A. Yes.

15 Q. Do you know whose initials those are?

16 A. I do not.

17 Q. In Ramsey County who is it that marks rejected and

18 then initials?

19 A. If the, if the rejection is made in our office, it

20 would be by the judges or absentee ballot board.

21 If the rejection occurs at the polling place, it

22 would be by the election judge that was there who

23 examined the ballot.

24 Q. Now, this is following on an earlier discussion, but

25 when the absentee ballot board determines that

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1 there's no reason to reject it, do they mark the

2 ballot accepted before it goes out to the precinct?

3 A. Yes, if the, if the name, address, signature and the

4 witnessing information is all present and matches up

5 with the application, our, our judges in the office

6 will mark this accepted.

7 Q. Now, if you'll turn to Exhibit-- well, one further

8 question. The registration cards that are with the

9 nonregistered return envelopes, you've discussed

10 those. Are those always on card stock?

11 A. Any of the ones that come from our office or from an

12 election official would be on card stock.

13 Q. Are there instances where they might not be on card

14 stock?

15 A. The only possibility where that might be the case is

16 if one of the -- one of the ballots was e-mailed to a

17 person who is either in the armed forces or is

18 residing overseas, but to apply for an absentee

19 ballot using the state process rather than the

20 federal process.

21 Q. Now, if you'll turn to Exhibit C-258. What is the

22 first page?

23 A. The first page is an absentee ballot return envelope.

24 Q. And the second page?

25 A. The second is the corresponding application.

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1 Q. And then the third page?

2 A. The third, again, is another absentee ballot return

3 envelope.

4 Q. How about the fourth page?

5 A. And the fourth is -- it's the corresponding

6 application.

7 Q. And what's the fifth page?

8 A. The fifth is also an absentee return envelope.

9 Q. And the sixth page?

10 A. And the sixth page looks to be the application.

11 MR. ROCK: Your Honor, I'd offer

12 Exhibit C-258.

13 MR. HAMILTON: Your Honor, same objection.

14 Not one of these sets is within the 654 contained in

15 the notice.

16 JUDGE REILLY: Overruled on that basis.

17 C-258 is received.

18 BY MR. ROCK:

19 Q. The first page of Exhibit C-258, what is this?

20 A. Again, this is an absentee ballot return envelope.

21 Q. Can you tell if this one was accepted or rejected?

22 A. This one was marked accepted.

23 Q. Does that mean it was opened and counted?

24 A. That is my presumption, yes.

25 Q. Now, if you'll -- keeping Exhibit C-258 open, if

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1 you'll turn back to C-245, which is the January 3rd

2 list from the secretary of state, I'm going to ask

3 you if you see Amanda Johnson's name listed here.

4 A. I do.

5 Q. That would be on the page that has the list of Ramsey

6 County voters?

7 A. Yes, that's correct.

8 Q. Using the information from these two exhibits, what

9 does that tell you about whether or not Amanda

10 Johnson's ballot was opened and counted election day?

11 A. Apparently, even though it was marked accepted, it,

12 it must not have been opened and counted.

13 Q. Would you agree it should have been?

14 A. Based on the examination of the two materials here,

15 yes.

16 Q. And then the same Exhibit C-258, which are the return

17 envelopes, the next return envelope is that of Joseph

18 Scimeca.

19 Do you see that one?

20 A. I see his return envelope, yes.

21 Q. And is that one marked accepted or rejected?

22 A. Also marked accepted.

23 Q. Do you see his name on Exhibit C-245?

24 A. Yes, I do.

25 Q. What does that tell you about whether or not his

1 absentee ballot was opened and counted on election⁷⁸
 2 day?
 3 A. And apparently this also, even though it was marked
 4 and accepted, it was also not opened and counted.
 5 Q. Do mistakes like this sometimes happen on election
 6 day related to absentee ballots?
 7 A. They do.
 8 Q. Now, the last return envelope in Exhibit C-258, this
 9 is the return envelope of John Pistotnik.
 10 Do you see that?
 11 A. Yes, I do.
 12 Q. Was that marked accepted or rejected?
 13 A. This is also marked accepted.
 14 Q. Now, I'll ask you to compare that with Exhibit C-245
 15 and tell me if his name appears on Exhibit C-245.
 16 A. And I also see it on this exhibit.
 17 Q. Now in Exhibit C-245, it appears that his last name
 18 is misspelled by one letter, correct?
 19 A. Ah. . .
 20 Q. D-O instead of D-I?
 21 A. That's correct.
 22 Q. But the reason that's given on Exhibit C-245 matches
 23 with the reason that's given in Exhibit C-258, is
 24 that right?
 25 A. That is correct.

1 A. I think in, in these cases were we to get some sort⁸⁰
 2 of message from the election judges that, that this
 3 person may have been registered, for example, that we
 4 would not -- we would treat it as an absentee ballot
 5 coming back from a registered voter and not from a --
 6 not from someone who we gave it to register to vote.
 7 Q. Turning to Exhibit C-259, what's the first page?
 8 A. The first page is an absentee ballot return envelope.
 9 Q. And second page?
 10 A. And the second is the application associated with it.
 11 MR. ROCK: Your Honor, I offer
 12 Exhibit C-259.
 13 MR. HAMILTON: Same objection, Your Honor.
 14 It was not included in the 654.
 15 And in addition, in response to Interrogatory
 16 Number 9 that was served on the Contestants, we asked
 17 specifically for the identification of these
 18 individuals and the answer failed to identify this
 19 individual.
 20 JUDGE REILLY: Overruled. It's received.
 21 BY MR. ROCK:
 22 Q. Exhibit C-259 appears to be the return envelope for
 23 Jason Berger, correct?
 24 A. That is correct.
 25 Q. Can you tell us if this was accepted or rejected on

1 Q. Now back to Mr. Pistotnik's return envelope, what⁷⁹
 2 type of return envelope is this, registered or
 3 nonregistered?
 4 A. This would have been for a nonregistered voter.
 5 Q. I want to call your attention to the handwriting to
 6 the -- the handwriting in the section right below "To
 7 be completed by witness."
 8 Do you see that?
 9 A. Yes, I do.
 10 Q. Can you read that?
 11 A. It says, "Previously registered." And then there's
 12 the date "10/7/08."
 13 Q. What do you understand by that?
 14 A. I assume what this means is --
 15 MR. HAMILTON: Objection, Your Honor,
 16 speculation and foundation. He didn't write that.
 17 MR. ROCK: I'm asking for his
 18 understanding, Your Honor.
 19 JUDGE REILLY: I'm going to sustain that.
 20 The document speaks for itself. This one I can read.
 21 BY MR. ROCK:
 22 Q. How do you train your absentee ballot voter election
 23 judges to deal with a note like this that says
 24 "Previously registered" on a nonregistered absentee
 25 return envelope?

1 or prior to election day?⁸¹
 2 A. From the face of the envelope, it's not clear that it
 3 was either accepted or rejected.
 4 Q. The materials that are in Exhibit C-259, can you make
 5 a determination as to whether or not this ballot
 6 should be accepted or rejected?
 7 A. It looks like this should have been accepted.
 8 Q. And then I'll turn your attention back to
 9 Exhibit C-245, which is the January 3rd list.
 10 Do you see Mr. Berger's name on this list? I'll
 11 turn your attention to the first full -- the page
 12 that has all Ramsey County names.
 13 A. Yes, I do see his name.
 14 Q. So this one was ultimately opened on January 3rd,
 15 correct?
 16 A. Apparently, yes.
 17 Q. If an election judge or the absentee ballot board
 18 rejects a return envelope, are they required to mark
 19 rejected on it?
 20 A. Yes.
 21 Q. And if they don't, is there a presumption to be made
 22 by the election officials?
 23 MR. HAMILTON: Objection, Your Honor. I'm
 24 sorry, could you repeat the question?
 25 MR. ROCK: I won't repeat it. I'll

82

1 rephrase it, how's that?

2 MR. HAMILTON: Thank you.

3 BY MR. ROCK:

4 Q. If the return envelope is neither marked accepted nor

5 rejected, do you instruct -- what do you instruct the

6 election judges to do with that ballot?

7 A. We don't have any specific instructions along those

8 lines because we presume that, that each of our

9 officials will, will mark the ballot one way or the

10 other. My, my assumption in this case would have

11 been that.

12 MR. HAMILTON: Objection, Your Honor,

13 speculation.

14 JUDGE REILLY: Sustained.

15 BY MR. ROCK:

16 Q. The precinct election judges only receive ballots

17 that are already accepted by the absentee ballot

18 board of Ramsey County, is that correct?

19 A. Again, for the, the judges in St. Paul, they're

20 receiving them from our absentee ballot board. In

21 the suburban cities, they would get them from, from

22 their own, yes.

23 Q. Now, if you'll turn to Exhibit C-260, what is the

24 first page?

25 A. The first page is an absentee return envelope.

84

1 A. I do not.

2 Q. And if we go full circle, this one as well, if we

3 return to Exhibit C-245, Mr. Whitlock's name does

4 appear on this list, correct? It would be the last

5 page of the Ramsey names toward the top.

6 A. Yes, that's correct.

7 Q. So it was initially rejected but then ultimately

8 counted on January 3rd, correct?

9 A. Yes, that's correct.

10 Q. Do voters ever get sent the wrong precinct -- do

11 absentee voters ever get sent the wrong precinct

12 ballot?

13 A. Yes.

14 Q. How does Ramsey County handle that situation where

15 the absentee voter receives the wrong precinct ballot

16 but fills it out and returns it anyway?

17 A. Our instructions, where, where this becomes -- where

18 it's made available to us, or we get information that

19 this occurred, we then inform the election judges to

20 prepare a duplicate ballot and to duplicate the votes

21 for all the offices for which the voter was eligible

22 to vote.

23 Q. Would those offices include the office of the U.S.

24 Senate?

25 A. Yes.

83

1 Q. And the second page?

2 A. And the second page is the application associated

3 with it.

4 MR. ROCK: Your Honor, I offer Exhibit

5 C-260.

6 MR. HAMILTON: Same two objections, Your

7 Honor, not in the contest petition and not in

8 discovery responses.

9 JUDGE REILLY: Overruled. Exhibit C-260 is

10 received.

11 BY MR. ROCK:

12 Q. This one is marked "Rejected," correct?

13 A. That is correct.

14 Q. Is there a reason given?

15 A. Yes, there is.

16 Q. What's the reason?

17 A. It looks like, it says that the letters are -- or

18 appear to be "MN" and then "AA," apparently.

19 Q. Do you know what those letters mean?

20 A. Well, I do not.

21 Q. Are those initials of anybody on the absentee ballot

22 board?

23 A. It could be the initials of the two judges.

24 Q. With the two documents in Exhibit C-260, do you see

25 any reason to reject this absentee ballot?

85

1 Q. Turn to Exhibit C-261, please. What's the first page

2 of this document?

3 A. The first page is the absent absentee ballot return

4 envelope.

5 Q. And the second page?

6 A. The second is the application that goes along with

7 it.

8 Q. What's the third page?

9 A. The third is a postal verification card for this

10 voter.

11 Q. And the fourth page?

12 A. And the fourth is also an absentee ballot return

13 envelope.

14 Q. For another voter?

15 A. For another voter.

16 Q. And the last page?

17 A. And the fifth is the application that is associated

18 with, with that envelope.

19 MR. ROCK: Your Honor, I offer

20 Exhibit C-261.

21 MR. HAMILTON: Your Honor, may I voir dire

22 the witness?

23 JUDGE REILLY: You may.

24 MR. HAMILTON: Mr. Mansky, looking at the

25 first page of Exhibit C-261, there's some handwriting

86

1 at the bottom of the document.

2 Do you recognize that handwriting?

3 THE WITNESS: Not, not personally.

4 MR. HAMILTON: So you don't know if that

5 was on the original document or added later.

6 THE WITNESS: I do not.

7 MR. HAMILTON: Okay. And looking at the

8 very last page of the document, again without reading

9 the contents in the upper left-hand corner, there's

10 handwriting there.

11 Can you identify that handwriting?

12 THE WITNESS: The number 24?

13 MR. HAMILTON: Yes, that.

14 THE WITNESS: That I, I cannot identify.

15 MR. HAMILTON: So you don't know if that

16 was on the original document or added later by

17 someone else?

18 THE WITNESS: I do not.

19 MR. HAMILTON: Okay. And returning, again,

20 to the first page of the document, you see on the

21 upper right-hand corner where it says "Rejected" on

22 the form?

23 THE WITNESS: Yes.

24 MR. HAMILTON: And just to the right there

25 appears to be some obliteration of something on the

88

1 this.

2 MR. HAMILTON: Your Honor, if I may just

3 for the record --

4 JUDGE REILLY: Yes.

5 MR. HAMILTON: -- would like to also

6 indicate that neither of these were on the 654 list,

7 and we object as well to the entire exhibit on the

8 grounds of best evidence.

9 JUDGE REILLY: Thank you.

10 MR. HAMILTON: Thank you, Your Honor.

11 JUDGE REILLY: Mr. Rock.

12 BY MR. ROCK:

13 Q. Exhibit C-261, Mr. Mansky, the first page, can you

14 determine if this one was accepted or rejected?

15 A. This appears to have been accepted.

16 Q. And I'll give you a little bit of help here. Let's

17 turn to Exhibit C-245.

18 A. And I do see her name on this list, also.

19 Q. What does that tell you about whether or not

20 initially it was accepted or rejected?

21 A. Apparently it was -- it was rejected.

22 Q. Can you determine from these documents why it was

23 originally rejected?

24 A. Apparently this was a person who received a ballot

25 other than the precinct in which they reside.

87

1 copy.

2 Do you see that?

3 THE WITNESS: Yes, as if something were

4 laid on top of it.

5 MR. HAMILTON: Yes. Do you know if that

6 blank space appears in the original or is that a

7 duplication error?

8 THE WITNESS: You know, without seeing the

9 original envelope, I would not be able to tell you

10 that.

11 MR. HAMILTON: Or seeing an accurate copy

12 from your office.

13 THE WITNESS: That's correct.

14 MR. HAMILTON: Thank you.

15 Your Honor, we do object to this document. It

16 appears to be additions and redactions that the

17 witness can't identify.

18 JUDGE REILLY: Not to be doing the lawyer's

19 work, but I do see that Ms. Schill appears on the

20 list of votes to be counted, so with regard to her,

21 the objection is overruled.

22 And I will -- does Mr. Titus appear?

23 MR. ROCK: Mr. Titus does not appear, Your

24 Honor, on the list for 1,3.

25 JUDGE REILLY: I will provisionally receive

89

1 Q. And if that's the reason for rejection, I understood⁸⁹

2 your testimony to be that it should not have been

3 rejected, is that correct?

4 A. That's correct.

5 Q. How should it have been handled?

6 A. In this case, the election judges should have made a

7 duplicate ballot.

8 And the difference between the offices in Mounds

9 View and New Brighton, which apparently from the note

10 are the, the two communities in question here, would

11 be the city offices that were on the ballot in, in

12 Mounds View this year.

13 And I want to say that is probably the only

14 difference on this ballot. I, I -- the other

15 difference would have been Mounds View is also in one

16 of the regional hospital districts.

17 Q. Now, I want you to look at the witness information on

18 Exhibit C-261, the first page of Exhibit C-261,

19 Ms. Schill's return envelope.

20 What is included in the witness information

21 there?

22 A. Just the signature of the witness.

23 Q. Is that enough?

24 A. It would be if this ballot were, were cast in person

25 and if this person, for example, was one of the city

90

1 clerks or deputy city clerks.

2 Q. And do you know whether or not this person was a

3 deputy city clerk or a city clerk?

4 A. Right offhand I, I do not know that, but it does have

5 the deputy registrar's stamp on there, which would

6 lead me to conclude that this, in fact, was one of

7 the deputy city clerks.

8 MR. HAMILTON: Objection, speculation, Your

9 Honor.

10 JUDGE REILLY: Overruled.

11 BY MR. ROCK:

12 Q. Now, the third page, just give us a brief explanation

13 of the purpose of this card that's on the third page.

14 A. Yes, as I mentioned yesterday, this is what we call a

15 postal verification card. And these cards are sent

16 by nonforwardable mail to anyone who submits a voter

17 registration card.

18 Q. The next page appears to be the return envelope of

19 Jack Titus.

20 A. That is correct.

21 Q. Can you tell from this whether or not his ballot was

22 accepted or rejected?

23 A. And this also appears to have been rejected.

24 Q. For what reason?

25 A. According to the judges, he also received the wrong

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1 either accepting or rejecting the, the absentee

2 ballot.

3 Q. So if a return envelope came into Ramsey County and

4 the date behind the voter's name did not match with

5 the date and witness' name, it would not be rejected

6 for that reason.

7 A. That is correct.

8 Q. I want to switch gears here now. At some point did

9 Ramsey County become involved in the process of

10 reanalyzing rejected absentee ballots?

11 A. Yes, we did.

12 Q. How did your county get involved in that?

13 A. There was a district court ruling here in Ramsey

14 County related to access -- public access to all of

15 the rejected absentee ballots.

16 Q. Are you familiar with the term "the fifth pile"?

17 A. Yes, I am.

18 Q. What does that mean as used in the last couple of

19 months?

20 A. As I understand it, that, that term was meant to

21 describe a, a ballot that was rejected by the

22 election judges but not for one of the four reasons

23 provided in Section 203B.12.

24 Q. What steps were taken by Ramsey County to create that

25 fifth pile?

91

1 ballot.

2 Q. And would it be fair to say from your previous

3 testimony that his ballot should have counted?

4 A. Yes.

5 Q. I'll ask you to look at Exhibit C-245. Can you tell

6 me if you see his name?

7 To help you out, I didn't see it, but take as

8 much time as you need.

9 A. I do not see it as well.

10 Q. How do you train your election judges to handle a

11 situation where the voter signs the return envelope

12 but does not date behind his signature?

13 A. The -- dating the return envelope is not a

14 requirement of the state law, so it would not be one

15 of the criteria that we would even mention in the

16 training.

17 Q. What about if the witness signed but does not date

18 it?

19 A. Similarly, the, the state law does not require the

20 witness to put the date on there.

21 Q. What about the case where both the voter and the

22 witness have included dates but the dates don't

23 match?

24 A. Again, that's information that the state law does not

25 require. We would not look at it for purposes of

93

1 A. At that point, we then did have our staff review all

2 of our rejected absentee ballot materials, and we did

3 determine that some of the rejections were improper.

4 Q. How exactly did your office do that?

5 A. We had staff members again accumulate all of the

6 rejected absentee return envelopes. We then matched

7 them up with the applications that were associated

8 with them, determined whether or not the, the names

9 and the addresses on the application and the envelope

10 were the same.

11 Q. Let me interrupt just for a moment. Who actually did

12 the matching and did the analyzing?

13 A. The members of our staff.

14 Q. Your staff at your county office.

15 A. That is correct.

16 Q. Did any precinct election judges participate in this?

17 A. They did not.

18 Q. Okay. Go ahead. You were talking about the matching

19 of signatures. What else?

20 A. So what we would do is we would take the envelopes

21 and the applications and determine that the name and

22 address envelopes were the same, that the voter

23 signature was the same, that the persons were, were

24 properly witnessed -- or the envelopes were properly

25 witnessed, and that these individuals had not already

94

1 voted.

2 Q. So in doing that analysis, your staff people looked

3 at the face of the return envelope --

4 A. That is correct.

5 Q. -- is that correct? And they looked at the

6 application?

7 A. That is correct.

8 Q. Did they look at anything else?

9 A. We also had -- obviously at that point had access to

10 polling place rosters from the polling places, so at

11 that point we could determine whether or not those

12 individuals had, in fact, voted in person.

13 Q. Did your staff do that for every one of the rejected

14 absentee ballots, did they go through and look at the

15 polling rosters?

16 A. Yes.

17 Q. Did you check the applications in all situations?

18 A. Yes.

19 Q. Did your staff look at the reason for rejection?

20 A. Yes, we did.

21 Q. And what was the purpose for looking at that reason

22 for rejection?

23 A. We were trying to get some clue from the election

24 judges on what they thought was wrong with the return

25 envelope.

96

1 BY MR. ROCK:

2 Q. And it could have been determined from the face of

3 the return envelope.

4 A. That's correct.

5 Q. What if the reason given for rejection was that there

6 was no signature but the signature was actually

7 somewhere else on the return envelope, would any

8 other documents be needed in that situation?

9 A. They would not.

10 Q. What if the reason given was wrong driver's license

11 number, would any other documents be needed?

12 MR. HAMILTON: Same objection, Your Honor.

13 JUDGE REILLY: Overruled.

14 THE WITNESS: They would not.

15 BY MR. ROCK:

16 Q. Can you think of any other improper reason for

17 rejection that could be determined to be improper by

18 just looking at the face of the return envelope?

19 A. No, I think we've covered all of them here today.

20 Q. The ones we've discussed by example.

21 A. That's correct.

22 Q. Now, the campaigns, both the Franken campaign and the

23 Coleman campaign asked your office to consider

24 additional ballots, rejected absentee ballots to go

25 into the fifth pile, is that correct?

95

1 Q. Now, if there were any instances where the return

2 envelope was rejected because there was no date

3 behind the signature and that was the reason given,

4 would it have been necessary to look at any other

5 documents other than the face of the return envelope?

6 A. No.

7 MR. HAMILTON: Objection, Your Honor, calls

8 for speculation, and obviously there's other reasons

9 for rejecting, not just that.

10 MR. ROCK: It's a hypothetical, Your Honor.

11 MR. HAMILTON: It's an incomplete

12 hypothetical.

13 JUDGE REILLY: Overruled.

14 THE WITNESS: No.

15 BY MR. ROCK:

16 Q. What if the reason given for rejection was that there

17 was no signature but the sticker, as in some of the

18 examples we looked at earlier, was covering the

19 certification or the instructions?

20 A. Again --

21 MR. HAMILTON: Same objection.

22 JUDGE REILLY: Overruled.

23 THE WITNESS: Again, in that case we would

24 have determined that that also would have been one of

25 these improperly rejected absentees.

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1 A. That's correct.

2 Q. And how were those requests handled by your office?

3 A. After consulting with the county attorney, we

4 determined that those requests were outside the, the

5 Supreme Court's order for further activity.

6 Q. I'd like you to turn to Exhibit C-209 in the large

7 white binder.

8 Do you have Exhibit C-209?

9 A. I do.

10 Q. What is this document?

11 A. This was an e-mail that I sent to Mr. Trimble after

12 we had completed our review of the improperly

13 rejected absentees on which both of the campaigns had

14 agreed as provided in the Supreme Court order.

15 Q. Let me stop you there, Mr. Mansky.

16 MR. ROCK: We would offer Exhibit C-209.

17 MR. HAMILTON: No objection.

18 JUDGE REILLY: Exhibit C-209 is received.

19 BY MR. ROCK:

20 Q. What was the purpose of your sending this e-mail to

21 Mr. Trimble?

22 A. I was requested by the staff from the Coleman

23 campaign to attend and participate in the review that

24 day, to simply indicate to Mr. Trimble in writing

25 that our view was that consideration of additional

1 materials was beyond our, our understanding of the⁹⁸
 2 Supreme Court's order.
 3 Q. I believe you already stated, though, that you
 4 believe that there remains some improperly rejected
 5 absentee ballots in the universe of rejected absentee
 6 ballots in Ramsey County, is that correct?
 7 A. Yes.
 8 Q. Are you opposed to having those opened?
 9 A. We are not.
 10 MR. HAMILTON: Objection, Your Honor,
 11 irrelevant. His personal observation is irrelevant.
 12 JUDGE REILLY: Overruled.
 13 BY MR. ROCK:
 14 Q. Can the same type of examination that your staff did
 15 on rejected absentee ballots, can that be done in
 16 court?
 17 A. Again, that's something that people are trained to
 18 do, yes.
 19 Q. And the training would be what?
 20 A. Again, in going through exactly the same kind of
 21 information that we would cover with the judges from
 22 our absentee ballot board on how to compare the
 23 application and the absentee return envelope, and the
 24 instruction on how to apply Section 203(B).12.
 25 Q. And ultimately, though, those instructions are

1 than the full ballot, and I'll refer to those as¹⁰⁰
 2 people getting what we call federal ballots or the
 3 presidential ballot.
 4 Q. Let's take a moment to describe those because those
 5 are different than the full ballots. Explain the
 6 difference.
 7 A. The federal ballot is a ballot, again, authorized
 8 under the federal law to provide voting rights for
 9 persons who have left the United States indefinitely
 10 but who still retain voting rights for the three
 11 federal offices, namely president, vice president,
 12 U.S. senator and U.S. representative.
 13 Q. Are those the same as the UOCAVA ballot?
 14 A. Not necessarily. They are a subset of the UOCAVA
 15 ballot. The UOCAVA ballots are any ballots applied
 16 for -- again using the federal application that I
 17 mentioned earlier -- for people who are overseas --
 18 who are living overseas or serving in the armed
 19 forces. Most of them do qualify for the full ballot
 20 because they are only away from the United States
 21 temporarily.
 22 But we have a smaller subset of people who only
 23 qualify for the federal ballot because they are
 24 indefinitely away from the United States.
 25 Q. Now, after the election judges determine that a

1 designed to line up with the law on accepting or⁹⁹
 2 rejecting absentee ballots, is that correct?
 3 A. That's correct.
 4 Q. How many recounts have you been a part of since you
 5 got into this business in 1984?
 6 A. The number is so high I can't count that high.
 7 Q. You can't even recount the number of recounts you've
 8 done?
 9 A. I cannot recount the number of recounts I've been a
 10 part of.
 11 Q. I want to take a step back and ask you about the
 12 handling of original and duplicate ballots. Briefly
 13 give us some background on the reason that duplicate
 14 ballots sometimes need to be made.
 15 A. Duplicates are required really for two different
 16 situations. First of all, absentee ballots that come
 17 back to us that are torn or mutilated or, or stained
 18 and in that condition cannot pass through our ballot
 19 counter need to be duplicated so that the ballot and
 20 the votes on it can, in fact, be counted by the
 21 ballot counter.
 22 The second group of ballots requiring
 23 disqualification are a family of ballots that either
 24 are e-mailed to people in the armed forces or a
 25 person residing overseas or who are eligible to less

1 duplicate needs to be made, how are they supposed to¹⁰¹
 2 do it?
 3 A. We take two election judges of different parties.
 4 One of the judges will take the original ballot and
 5 label it original number one. The other judge will
 6 take a blank ballot from the ballot judge and mark it
 7 duplicate number one.
 8 The election judge with the original will then
 9 read off the votes on the original ballot. The judge
 10 with the duplicate will then mark the appropriate
 11 votes on the duplicate ballot.
 12 The original ballot then gets placed in an
 13 envelope that is labeled ballots for which duplicates
 14 have been made. The duplicate ballot then gets sent
 15 into the ballot counter.
 16 Q. Does the duplication process, does that always occur
 17 on election day at the precincts?
 18 A. Yes.
 19 Q. Now, I want to turn to the recounts that occurred
 20 after the general election. Describe for us how the
 21 recount was actually conducted in Ramsey County.
 22 A. What we did was set up eight teams of recount
 23 officials. Each one of these teams consisted of
 24 either a member of my staff or one of the suburban
 25 city clerks, and that person would have been the

1 person who actually separated the ballots into the ¹⁰²
 2 piles that I mentioned yesterday, each pile for an
 3 individual candidate.
 4 We then had two or three election judges from
 5 St. Paul who were assigned to each one of these
 6 teams, and the election judges' duties were then to
 7 count out the ballots in the piles in the groups of
 8 25 in the manner that is required by the state law.
 9 Q. So did one of those -- were they called election
 10 judges or table officials? What was the title given
 11 to them?
 12 A. I think the, the secretary of state's -- I think
 13 their terminology was that the person doing the
 14 sorting was a table official. Again, in our, in our
 15 case, that could be a staff member or one of the, the
 16 city official, and then one of our election judges
 17 actually did the counting of the ballots into groups
 18 of 25.
 19 Q. So the official paper ballot, you look at the section
 20 for the senate race, correct?
 21 A. Correct.
 22 Q. And then did they make a call for who the vote's for?
 23 A. That is correct.
 24 Q. So, for instance, did they say vote for Franken?
 25 A. They wouldn't say that out loud, but by putting it in

1 labeled ballots for which duplicates have been made. ¹⁰⁴
 2 And then on the request of the -- either one or
 3 both of the, of the campaigns' observers, that
 4 envelope would be opened so that the duplicates made
 5 could be compared to the originals.
 6 Q. During the initial sorting, were the duplicate
 7 ballots separated out?
 8 A. They were not, unless one of the campaign officials
 9 indicated that they wanted to do that.
 10 Q. So it sounds like that didn't -- duplicates were not
 11 separated out for every precinct during the recount
 12 in Ramsey County?
 13 A. I think it's fair to say that, that depending on
 14 which, which campaign officials were, were sitting at
 15 a particular table that they may or may not have
 16 asked to see the duplicate ballots.
 17 Q. So in most cases, which ballots were actually
 18 counted, the duplicates or the originals?
 19 A. The duplicates.
 20 Q. Was that consistent with the guidance from the
 21 secretary of state?
 22 A. Yes. As I understand the instructions from the
 23 secretary of state, the duplicates were counted,
 24 unless there was some question about whether the
 25 duplicates had, in fact, been made properly, in which

1 one of the two or three piles, it became evident as ¹⁰³
 2 to what the call was.
 3 Q. So there was a specific area on the table set up for
 4 votes for Franken or votes for Coleman or votes for
 5 someone else, is that how it occurred?
 6 A. That's correct.
 7 Q. When the recount official made the call as
 8 Mr. Gelbmann used that term yesterday, did the
 9 recount official know for sure how the machine had
 10 called that ballot?
 11 A. Not necessarily. In most cases, that is self-evident
 12 where a target is filled in with, with an appropriate
 13 pen or pencil. But there are some ballots where it
 14 is clear that the ballot counter would not have
 15 counted, and then there are some ballots where it is
 16 not clear whether or not the ballot counter would
 17 have consistently counted that mark or the candidate
 18 indicated.
 19 Q. Were there some duplicate ballots made in Ramsey
 20 County on election day?
 21 A. There were.
 22 Q. How were original and duplicates handled during the
 23 recount in Ramsey County?
 24 A. During the recount, each table was supplied with the,
 25 the envelope that I mentioned earlier that was

1 case the deference would have been made to the ¹⁰⁵
 2 original ballot.
 3 Q. Are you familiar with Rule 9 of the recount
 4 procedures?
 5 A. Basically yes.
 6 Q. What was your understanding of Rule 9?
 7 A. Again, where there was some question about the, the
 8 accuracy with which duplicate ballots were made or if
 9 the duplicates could not be properly identified that
 10 the, the original ballots would, in fact, be counted.
 11 Q. Did you have any concerns about the counting of
 12 originals versus duplicates?
 13 A. I will tell you that the recounts I have done, we
 14 have, we have never counted the originals. We made
 15 the originals available to the, the candidates or
 16 their legal representatives, but that our practice
 17 was to count the duplicate ballots. Reserving,
 18 obviously, the opportunity for either of the two
 19 candidates to, to raise in an election contest the
 20 issue of whether the duplicates had, in fact, been
 21 made in a fashion that accurately represent --
 22 resembled the original ballot.
 23 Q. Did you presume that duplicates had been made?
 24 A. I think any time that we see ballots in the original
 25 envelope we have to assume that the election judges

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1 made duplicates for them.

2 Q. Based on your experience, are there any particular

3 problems that can arise during a recount when the

4 county uses the original ballots instead of the

5 duplicate ballots?

6 A. Again, if you are looking at the originals and you

7 determine that it is necessary to count them, you

8 also need to go back to some of the things I was

9 talking about yesterday, about the parallel audit

10 trail, because at the end of the day we want to make

11 sure that the number of voters squares up properly

12 with the number of ballots. And that if there is

13 some question about whether the election judges made

14 duplicate ballots at all that it should be possible

15 the determine that by examination of the number of

16 ballots counted versus the number of people who

17 voted.

18 Q. Now, I want to explore that with you. I'm just going

19 to give you some easy, round numbers to work with.

20 Let's assume that in a precinct in Ramsey County

21 where the officials decided that they wanted to match

22 up the originals and the duplicates and they wanted

23 to count the originals, did that happen on occasion?

24 A. You know, in one case I was requested by, by the

25 candidates to contact the secretary of state just to,

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1 BY MR. ROCK:

2 Q. If that situation had arisen in Ramsey County where

3 original ballots were challenged because a matching

4 duplicate could not be found and then the originals

5 were counted, how would you determine whether or not

6 double-counting occurred?

7 MR. HAMILTON: Same objection, Your Honor.

8 it's a question of how we're going to apply Rule 9.

9 MR. ROCK: Your Honor, Rule 9 I think in

10 this situation has no match.

11 MR. HAMILTON: It was the rule under

12 which -- and the reason he's asking about how it was

13 applied.

14 JUDGE REILLY: That's my understanding, so

15 sustained.

16 BY MR. ROCK:

17 Q. Under Rule 9, assume that there were originals that

18 no corresponding marked duplicate could be found for

19 them, and that there were 10 of those and that they

20 were challenged during the recount by one or both of

21 the parties, and assuming everything else was handled

22 according to Rule 9, how would you now at this time

23 conduct an audit to determine if double-counting

24 occurred?

25 A. If I were faced with that situation, I would, first

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1 to verify the fact that they did want the originals

2 counted in deference to the duplicates where there

3 was some issue, again, about the, the number of

4 ballots that we were counting in, in a particular

5 precinct.

6 Q. Now, if everybody agreed or determined that they

7 would count the originals, what should have been done

8 with the duplicates?

9 A. The duplicates would have been set aside and, and not

10 made a part of that count.

11 Q. So the duplicates would have been sorted out.

12 A. That is correct.

13 Q. Now, I want you to assume that there were originals

14 that were either marked as originals or clearly

15 originals but no marked duplicates could be found.

16 Assume that situation, and that there were 10 of

17 those, 10 of those that were challenged by either

18 party.

19 How would you determine if double-counting

20 occurred in a recount in that situation?

21 MR. HAMILTON: Objection, it's an

22 incomplete hypothetical. I'm not clear whether he's

23 asking for an application of Rule 9 or some other

24 rule as to how he would like to have it done now.

25 JUDGE REILLY: Sustained.

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1 of all, determine how many ballots are now in the

2 transfer case or in the resealed envelope that has

3 the ballots for which duplicates were made, and I

4 would compare that number to a count of the number of

5 people who voted in the precinct, which, as you

6 recall from yesterday, we can determine by counting

7 either the signatures in the polling place roster or

8 the voter receipts and the accepted absentee

9 envelopes.

10 Q. Which would include the UOCAVA voters as well from

11 the UOCAVA roster?

12 A. That is correct.

13 Q. So the first thing we'd have to determine is the

14 total number of recount ballots, is that a fair way

15 of restating that?

16 A. That is correct.

17 Q. And the next number you'd have to determine is the

18 number of voters recorded in that precinct.

19 A. That is also correct.

20 Q. And I want you to assume that there were 10

21 challenges for two original ballots for which

22 duplicates, marked duplicates could not be found.

23 There were 10 of those.

24 If you did your audit and found that there were

25 110 recount ballots, and continuing with your audit

1 you determined that there were 100 voters in that ¹¹⁰
 2 precinct, what does that tell you?
 3 MR. HAMILTON: Objection, calls for
 4 speculation, Your Honor. There's multiple
 5 explanations for that scenario. This calls -- asks
 6 the witness hypothetically to speculate.
 7 JUDGE REILLY: Overruled. And I'm sure you
 8 will explore those other possibilities --
 9 MR. HAMILTON: Yes, I will.
 10 JUDGE REILLY: -- in cross.
 11 MR. HAMILTON: Thank you, Your Honor.
 12 THE WITNESS: If we, if we assume -- or if
 13 that's not an improper term here -- if we assume the
 14 judges or the recount officials in this case, as
 15 instructed by the secretary of state's guidelines,
 16 counted the original ballots when, in fact, the
 17 duplicates had been made but were not labeled as
 18 such, that would be one plausible explanation for why
 19 there would be 110 ballots, only 100 voters, and that
 20 there were 10 ballots in this envelope for which
 21 duplicates were apparently made.
 22 Q. Double-counting would be one plausible explanation?
 23 A. In this case, yes.
 24 Q. Now, why does the number of ballots in the envelope
 25 that says originals for which duplicates were made,

1 overseas, and many of those are either the federal ¹¹²
 2 ballots or a much smaller set of circumstances these
 3 presidential ballots.
 4 You could reasonably assume that if you found a
 5 ballot in a transfer case that was marked only for
 6 presidents or marked only for the federal offices and
 7 that it squared up with original ballots that there's
 8 at least some likelihood that that was the duplicate
 9 for the original ballot, even though it was not
 10 labeled as such.
 11 Q. And if you've already identified the originals
 12 through the challenge process for which no marked
 13 duplicates were found, you could just subtract those
 14 originals out, correct?
 15 MR. HAMILTON: Objection, leading.
 16 JUDGE REILLY: Sustained.
 17 BY MR. ROCK:
 18 Q. If you knew which ballots were challenged, which
 19 original ballots were challenged for not having
 20 duplicates, how else could you fix the problem?
 21 A. Using the -- using the documents that we have
 22 available to us that we have supplied, our election
 23 day paper trail, remember that we have the original
 24 tape from election day, and then that's the record of
 25 the ballots that traveled through the ballot counter.

1 why does that matter? ¹¹¹
 2 A. That matters because that number should square up
 3 with the number of duplicates that ended up in the
 4 sealed transfer case which, again, as we talked about
 5 yesterday, are the ballots that actually traveled
 6 through the ballot counter.
 7 Q. Under the assumptions that you've just made, are
 8 there any other plausible explanations?
 9 A. For why we have 110 ballots and only 100 voters? In
 10 the recount scenario, it would seem the likely
 11 explanation would have been that, that duplicates
 12 were made, that they were counted because they went
 13 into the ballot box and into the transfer case, and
 14 that the original ballots were then added to that
 15 total.
 16 MR. HAMILTON: Objection, Your Honor,
 17 nonresponsive.
 18 JUDGE REILLY: Overruled.
 19 BY MR. ROCK:
 20 Q. How would you fix that?
 21 A. One possible method would be to review the ballots
 22 again in the transfer case and to, to look for
 23 ballots which resembled the originals.
 24 As I mentioned earlier, most of the ballots to
 25 be duplicated are ballots coming in for -- from

1 We then have the ballots that were set aside ¹¹³
 2 because they were marked in a fashion that either
 3 definitively or possibly might not have been counted
 4 by the ballot counter on election day.
 5 By adding those numbers into the appropriate
 6 candidate piles, we could then isolate the, the
 7 number that was over, and then proceed to look for
 8 them if, if that was possible.
 9 Q. And if you can't find them because in a precinct
 10 where there might be thousands of ballots and there
 11 might be many who have the same votes throughout the
 12 balloting, how would you solve the problem then?
 13 A. Well, of course, we have a statutory remedy for what
 14 we call excess ballots. And in those circumstances
 15 where the election judges determine there are a
 16 greater number of ballots than there are voters,
 17 their instruction is to put the ballots back into
 18 the, into the ballot box and at random withdraw the
 19 number of ballots required to reduce the number to
 20 the total voting.
 21 MR. ROCK: Just a moment, Your Honor. May
 22 I check with my co-counsel?
 23 JUDGE REILLY: You may. Do you have much
 24 more?
 25 MR. ROCK: Less than five minutes.

1 BY MR. ROCK: 114
 2 Q. Tell me about that statutory provision you're
 3 referring to.
 4 MR. HAMILTON: Objection, Your Honor. This
 5 is irrelevant to the statutory provision applicable
 6 on election day and is irrelevant to the election
 7 contest. It's not a claim.
 8 JUDGE REILLY: Sustained. It's easy, I
 9 think we can read the statutes.
 10 MR. ROCK: No further questions. Thank
 11 you, Mr. Mansky.
 12 JUDGE REILLY: Mr. Hamilton, how long is
 13 your cross-examination?
 14 MR. HAMILTON: I suspect it will be two to
 15 three hours, Your Honor.
 16 JUDGE REILLY: I think we'll recess for the
 17 day, then, and ask Mr. Mansky to be back here at 9:00
 18 on Monday.
 19 We are having motions this afternoon on a number
 20 of significant issues, Mr. Nauen's clients' motions
 21 for summary judgment and the intervention motion as
 22 well. We'll resume at 1:30 on the motions.
 23 We would like to see all the trial counsel back
 24 in the conference room to talk about further
 25 scheduling issues.

1 Court that asks that the errors and omissions be 116
 2 corrected so their absentee ballots can be opened and
 3 be added to the totals in this U.S. Senate race in
 4 the State of Minnesota.
 5 And under Rule 56 of the Minnesota Rules of
 6 Civil Procedure and in compliance with this Court's
 7 orders, my clients filed a motion for summary
 8 judgment last week. And they also submitted some
 9 additional materials yesterday in support of their
 10 motion.
 11 And those materials show that they have --
 12 there's no genuine issue of material fact and no
 13 issue of law that would prohibit their vote from
 14 being counted, that the evidence is individualized
 15 and it's extrinsic to show that they indeed have the
 16 right to vote in this election. So under Rule 56 of
 17 the Minnesota Rules of Civil Procedure, I ask that
 18 this panel grant the motion of my clients.
 19 Now, just some very brief facts and procedural
 20 background as it relates to this petition. There are
 21 two categories of petitioners. They all add up to 61
 22 but they're in two categories.
 23 Group Number 1 are those that submitted
 24 affidavits or other admissible evidence as part of
 25 the administrative recount that supported that they

1 (A lunch recess was taken.) 115
 2 JUDGE REILLY: We are going to handle these
 3 motions in the order that they were filed, which
 4 means that, Mr. Nauen, we'll start with your motion
 5 for summary judgment.
 6 MR. NAUEN: Thank you, Your Honors. May it
 7 please the Court, Judge Reilly, Judge Marben, Judge
 8 Hayden.
 9 JUDGE HAYDEN: I don't believe that
 10 microphone is on.
 11 MR. NAUEN: Is that better?
 12 JUDGE REILLY: It is.
 13 MR. NAUEN: Thank you, Your Honors.
 14 If I could, before I begin I'd like to introduce
 15 some of my clients who are here today. Jordan
 16 Brandt, Roxanna Saad, and Mr. and Mrs. Joan and
 17 Gerald Ratzlaff all are petitioners in this matter
 18 before originally the Minnesota Supreme Court and now
 19 this Court.
 20 I represent not only these voters but 57 other
 21 Minnesota voters, 61 in total, who in this historic
 22 election want their votes counted. And they stood up
 23 for themselves and they took matters in their own
 24 hands, and they did that by filing a petition under
 25 Minnesota Statute 204B.44 with the Minnesota Supreme

1 were indeed entitled to vote in this election. There 117
 2 are 48 who submitted affidavits, four submitted
 3 admissible evidence from the Secretary of State's Web
 4 site that showed that they were registered for the
 5 2008 election.
 6 The second category are those petitioners who
 7 were identified by the counties as having had their
 8 ballots improperly rejected, and despite that, those
 9 ballots were objected to by Coleman representatives
 10 so they weren't counted as part of the 933 back in
 11 early January.
 12 Now, originally there were 18 counties that were
 13 respondents in addition to the secretary of state,
 14 another party. There are really only 17 right now
 15 because one of the petitioners from Morrison County,
 16 the only petitioner from Morrison County, we learned,
 17 once we got the list of the 933, had had his vote
 18 counted. And that and two other petitioners have
 19 been removed from this petition and that's why
 20 there's 61 rather than the original 64.
 21 Now, the procedural posture of this matter, Your
 22 Honors, the petitioners filed their petition on
 23 January 13th with the Minnesota Supreme Court. And
 24 on the 16th, the Minnesota Supreme Court referred
 25 this to -- this matter to this panel.

1 We filed our summary judgment on the 21st ¹¹⁸
 2 pursuant to this Court's order, and then we filed
 3 additional material and served and filed our
 4 affidavit of service on all of the respondents both
 5 on the 21st and on the 29th.
 6 The only responses that we have gotten to our
 7 summary judgment motion have been twofold. One, we
 8 got material from the Secretary of State and the
 9 Attorney General's office identifying three of the
 10 petitioners who, in fact, had their votes counted as
 11 part of the 933. And we've removed those, that's our
 12 notice of withdrawal of those three voters.
 13 Number two, we got a letter from Lake County
 14 saying that they had found the application for an
 15 absentee ballot of Ida Nelson and saying in a letter
 16 that her vote should be counted. We already
 17 presented her own evidence of declaration to that
 18 effect, but we got that response from Lake County.
 19 And then finally we got a memorandum from the
 20 Coleman -- the Contestant, if you will, Norm Coleman,
 21 in which he said he didn't object to her motion. He
 22 certainly didn't present any facts or laws to suggest
 23 that the motion shouldn't be granted.
 24 Now, with all that in mind, let me just again
 25 briefly, I hope, discuss what the law is and then

1 And I note that Justice Page in his dissent in ¹²⁰
 2 the first decision in this matter said that this was
 3 one method for voters to bring to the court their own
 4 votes to make sure that they are counted. All right?
 5 Number two, in the order from the Supreme Court
 6 they made that even clearer when they referred it to
 7 this panel. They stated in the second paragraph that
 8 "The relief sought in this petition requires a
 9 determination whether the absentee ballot submitted
 10 by each petitioner complied with the legal
 11 requirements it felt and was therefore improperly
 12 rejected by the local election officials."
 13 Each petitioner. And that is why in our summary
 14 judgment motion we brought to this court
 15 individualized evidence, affidavits or other
 16 extrinsic evidence that responded to the reasons
 17 given by the counties why the votes weren't counted,
 18 and supported that these votes were, in fact,
 19 legitimate for the 2008 election.
 20 So that's the difference. We're not talking
 21 about categories, Your Honors, we're talking about
 22 individual voters and their individual circumstances.
 23 Now, we did list some examples. They've been
 24 kind of grouped together a little bit, but all of
 25 them involved bringing evidence. Originally we

1 what the facts are. ¹¹⁹
 2 JUDGE REILLY: I'm going to stop you right
 3 there and ask the Contestants' attorneys if they do
 4 object to your motion for summary judgment.
 5 MR. LANGDON: We do not object, Your Honor,
 6 but it's conditioned with the understanding that in
 7 addition to having all these voters' votes count and
 8 the remainder of the 57 that all similarly situated
 9 votes should count as well.
 10 As Your Honor knows, we submitted a lengthy list
 11 and we think that approximately 3,500 of the people
 12 on our list fall into the same categories as Mr.
 13 Nauen's clients.
 14 JUDGE REILLY: Thank you.
 15 Mr. Nauen, you may continue.
 16 MR. NAUEN: Thank you. And I will respond
 17 to that, but I'll respond in two ways to that issue
 18 because that's different than what the petitioners
 19 presented to the Supreme Court and to this panel for
 20 consideration.
 21 First of all, under 204B.44, it's clear that
 22 that statute applies to individuals. It applies to
 23 individuals who bring evidence to a court stating
 24 that there has been an error or mistake made, and
 25 that is plain from the language of 204B.44.

1 brought the evidence to the counties because we ¹²¹
 2 thought that was clear that the votes should have
 3 been counted, and now we brought the evidence to this
 4 court.
 5 For example, nonmatching signatures between an
 6 application and a ballot envelope. Well, we have
 7 affidavits by many of our folks saying that those
 8 were my genuine signatures on both the application
 9 and the ballot envelope, or not signing a return
 10 envelope. Again, we have affidavits or declarations
 11 from our individual petitioners, my clients, saying
 12 that if there wasn't a signature, it's only because
 13 they voted in person at a city clerk or a county
 14 auditor, and they followed all the directions at that
 15 time, and everything was done, application and ballot
 16 all at one point.
 17 Or not registered. We brought the Secretary of
 18 State Lookup rules for each individual ones, and
 19 usually we also had the other extrinsic evidence
 20 saying that I live in the same precinct, I may be in
 21 a different apartment number or may be down the
 22 street, but I still live in the same precinct and as
 23 such I'm entitled to vote in this election.
 24 Now, obviously the Court is familiar with the
 25 requirements of Minnesota Statute 203(B).12 and I

1 won't even list them for you now, but the four ¹²²
 2 requirements, and the statute makes clear, that there
 3 is no other reason to reject an absentee ballot. And
 4 that is why these ballots should be accepted, because
 5 none of them fall within those four reasons, all of
 6 them should be counted.
 7 And I'm happy to go through all of them. I'll
 8 take them one at a time. Not as long as some of
 9 these other proceedings, I'll say that. And I'm
 10 happy to answer any questions about some particulars.
 11 But what I'd like to do is just briefly give you some
 12 examples from the high points of the petitioners as
 13 to their circumstances.
 14 The first example is that of Shirley Van Dyke
 15 who was a voter from Cass County. She has Lou
 16 Gehrig's disease and she finds it hard to sign her
 17 signature. So on the application she had her
 18 daughter sign her name to it so she could get her
 19 absentee ballot. But she made very sure that she
 20 herself signed the ballot envelope that contained her
 21 vote.
 22 Now, Cass County looked at those circumstances
 23 and originally rejected it. But as part of the
 24 administrative recount they reconsidered and said,
 25 you know what, that vote should have been counted and

1 County, submitted her envelope and affidavit. She ¹²⁴
 2 originally was rejected, but then as part of the
 3 process that was ordered by the Minnesota Supreme
 4 Court and then entered into by all the parties, they
 5 changed their mind and said no, no, that was an
 6 improperly rejected ballot. And a Coleman
 7 representative objected to that, so her vote was not
 8 part of the 933. And she did everything right in her
 9 affidavit and the envelope shows that.
 10 And finally Jordan Brandt from Hennepin County
 11 at Tab 27 of my affidavit. His ballot envelope is
 12 marked "Voted" on election day and he has a signed
 13 declaration. He's sitting right here in court today
 14 to say he did not vote. He knows what he did on
 15 November 4th, 2008. He did not vote, go into a
 16 precinct and vote. The only vote he cast was to the
 17 absentee ballot that he submitted properly without
 18 any problems at all, but yet it's marked that he
 19 voted on that day. So we presented facts in evidence
 20 for his right to have his vote counted.
 21 Now, originally I hoped that someone from Ramsey
 22 County would be here, but unfortunately she could not
 23 make it. But Ramsey County is an example too, Your
 24 Honors, because there's something additional in
 25 Ramsey County in addition to all the facts that we

1 yet was objected to by Coleman representatives. ¹²³
 2 So we have an affidavit signed by Shirley
 3 Van Dyke, and we have, of course, the materials at
 4 Tab 5 of my affidavit that sets out all the facts
 5 that supports that, and there has been no response
 6 from anybody that suggests that that vote should not
 7 be counted.
 8 Second and third examples are the Ratzlaffs
 9 sitting here in the courtroom. They're from Dakota
 10 County. Their materials are at Tab 20 and Tab 21 of
 11 my affidavit.
 12 Why was their vote not counted? Because there
 13 was no application, and yet in the declaration from
 14 both of them in both tabs, they make very clear that
 15 they went to -- I think it was Eagan or St. Paul.
 16 They followed all the directions given to them. The
 17 did the application and the ballot. They submitted
 18 them, and only later did they learn that what they
 19 had done in front of a city clerk was not correct.
 20 Now, they complied with everything under the
 21 law, and they should have their votes counted. And
 22 again, there's no objection or no facts or law cited
 23 by anybody from Dakota County or anybody else that
 24 would suggest otherwise.
 25 Roxanna Saad sitting back here, also Dakota

1 presented to support the individuals' privilege and ¹²⁵
 2 right to have their vote counted.
 3 There was also an e-mail from Mr. Mansky who has
 4 been here, I know, and testifying in this trial
 5 today, I think, and yesterday, in which he said that
 6 two of them should have been included, and yet they
 7 weren't part of that group in Ramsey County that was
 8 even, you know, part of the 933 or the larger 1,300
 9 group because they weren't added. Despite his
 10 statement 29 the administrative recount was included,
 11 they should have been in that group.
 12 And there was also deposition testimony taken,
 13 and some testimony, too, about some of my clients,
 14 some of the petitioners. I think that Ursula Cowan
 15 came up yesterday or today and many others, and we've
 16 given that testimony to this court at Tab 49.
 17 And in that testimony, Mr. Mansky says those
 18 votes should have been counted. I mean, I'm
 19 summarizing. There's a lot of specifics, I'm not
 20 trying to say exactly what he said, but we do have
 21 testimony. We gave you an example of the kind of
 22 extrinsic evidence that we have provided in support
 23 of our Ramsey County petitioners.
 24 So with that in mind, Your Honors, I ask that
 25 petitioners' motion for summary judgment be granted.

1 And I do have a slightly different form of order¹²⁶
 2 that I thought would be maybe more appropriate. I
 3 prepared an order that rather than just have the
 4 basic motion granted, rather an order that lists all
 5 61 petitioners so they're in the order and there
 6 won't be any confusion about who they are.
 7 And to the extent the Court has any issues or
 8 questions of anyone in particular, I also have a Word
 9 version with me that I will submit to the clerk. I
 10 think I have that right here.
 11 JUDGE HAYDEN: Mr. Nauen, I do have a
 12 question about one of the petitioners.
 13 MR. NAUEN: Yes, Your Honor.
 14 JUDGE MARBEN: And it's at Tab 19, it's
 15 Charles Quinn.
 16 MR. NAUEN: Okay.
 17 JUDGE HAYDEN: And I see on his envelope
 18 tab there is no signature by him at all but that his
 19 voting was apparently witnessed by a city official.
 20 MR. NAUEN: Yes, Your Honor.
 21 JUDGE HAYDEN: Why do you feel that's
 22 appropriate for summary judgment when the election
 23 envelope or the ballot envelope was not signed at
 24 all?
 25 MR. NAUEN: This is why, Your Honor. For

1 declarations.
 2 So to the extent you have to prove the universe,
 3 that's been done by specific evidence admissible in a
 4 Rule 56 context for the support. And, you know,
 5 that -- there it is. I mean, they have said under
 6 oath that they complied and they should have their
 7 vote counted.
 8 But number two, we are in a Rule 56 contest. We
 9 are operating under the Minnesota Rules of Civil
 10 Procedure, as the Supreme Court has referred this
 11 matter to this panel, and nobody has presented any
 12 contrary facts at all to any of them.
 13 Now, that is an obligation of the respondent.
 14 And we were very careful to serve electronically,
 15 serve by paper, we answered every question. The only
 16 response we got from any county was the Lake County
 17 response which, when they got our motion, they
 18 searched around and they found that application that
 19 had previously been missing.
 20 I think under the circumstances and the rules
 21 set up by this Court and in typical circumstances
 22 under the Rules of Civil Procedure, that is enough.
 23 There's no contrary evidence that's been presented,
 24 no requests for further investigation or anything
 25 like that.

1 Mr. Quinn and for a couple others in the group, he¹²⁷
 2 went to the city to both have his application
 3 finalized and his vote witnessed. And he relied on
 4 it, the city officials, or in some cases county
 5 officials, to make sure it was accurate and complete.
 6 He submitted it, there was no issues, no questions
 7 raised. It's very similar, Your Honor, to a voter
 8 voting at the, at the poll, if you will, and then
 9 given a chance to correct an issue.
 10 But I submitted evidence to support that he was
 11 there and that he relied on the city clerk. There
 12 was no issue raised at the time he completed this
 13 packet, and that is why we believe that vote should
 14 be counted, Your Honor.
 15 And his declaration, I might add, is at
 16 Exhibit 19B, which is part of that same tab, Your
 17 Honor. That is the reason.
 18 JUDGE HAYDEN: Mr. Nauen, how can the panel
 19 be confident that the reasons stated in your petition
 20 and the documentation that was found yesterday
 21 contained the only reasons for those rejections?
 22 MR. NAUEN: Well, this is why. Number one,
 23 virtually all of these petitioners have submitted
 24 declarations under penalty of perjury, and they
 25 address each issue in their right to vote in those

1 And that's -- when I say that we're not talking¹²⁹
 2 about categories, Your Honor, we're talking about
 3 individual voters. We presented this to the world to
 4 be analyzed and no one said there's anything wrong.
 5 We think it's not in the declaration, but certainly
 6 you can read it implicitly as a no response that my
 7 clients, the petitioners, should have their votes
 8 counted.
 9 JUDGE HAYDEN: Thank you.
 10 MR. NAUEN: If there's nothing else, I have
 11 nothing else. Thank you very much.
 12 JUDGE REILLY: I see some representatives
 13 from governmental agencies here and I'll start with
 14 Ms. Eller, perhaps, on behalf of the Attorney General
 15 and I assume the Secretary of State, and I'll just
 16 work my way down that row.
 17 MS. ELLER: Your Honor, my name is Christie
 18 Eller, I'm a deputy attorney general.
 19 The secretary of state submitted two affidavits
 20 with respect to the information that they had
 21 relative to these voters and the ballots in question
 22 and the petitioners have withdrawn those votes
 23 because three of the people apparently had voted.
 24 Beyond that, all of the stories that
 25 Mr. Gelbmann testified about the ballots, that

1 information rests with the local election officials ¹³⁰
 2 and with the voters themselves, so the secretary has
 3 nothing more to add in that regard. The consistent
 4 position of the secretary of state has been that
 5 particularly those voters who were identified by
 6 local election officials as having had their ballots
 7 improperly rejected, that those votes should be
 8 counted.
 9 And that's all I have to say. If there's any
 10 questions, I'll be glad to address them.
 11 JUDGE REILLY: Thank you.
 12 MS. KUGLER: Karen Kugler, Assistant Ramsey
 13 County Attorney.
 14 On or 29 election day, the position of Ramsey
 15 County with the information available at that time,
 16 the Ramsey County election officials did what was
 17 appropriate and properly identified what votes should
 18 be counted. Through some of their testimony there
 19 may have been an error with a couple of those
 20 ballots. However, Ramsey County is taking no
 21 position and leaving it to the Court to determine
 22 whether or not it is appropriate to consider
 23 subsequent information at this time.
 24 JUDGE REILLY: Thank you.
 25 MR. DIAMOND: Your Honor, my name is Pat

1 information that would be probably best characterized ¹³²
 2 as extrinsic to the review that would ordinarily take
 3 place by an election judge in either an election
 4 itself or in an administrative recount of that
 5 election; things like affidavits about who signed
 6 what and so forth. For also matters relating to
 7 whether somebody's change in address happens to be in
 8 the same precinct as they previously resided.
 9 Those things, I -- it's Hennepin County's
 10 position that this Court is going to have to wrestle
 11 with how to handle that sort of extrinsic evidence.
 12 We have no way of being able to verify it in any
 13 election process. It's not really the kind of
 14 process where you can bring in witnesses, take their
 15 testimony under oath. And I think the Court's
 16 opinion from December 18th and 24th basically
 17 acknowledges that.
 18 The final point that Hennepin County would make
 19 is that the cities in Hennepin County, plus the
 20 county, identifies 329 ballots as improperly
 21 rejected. Some of those ballots, in the review
 22 process that the Supreme Court ordered, were
 23 determined to be presidential race only ballots.
 24 Ultimately I believe the number really at stake was
 25 325. Sixty-nine of those ballots were objected to by

1 Diamond, I'm a Deputy Hennepin County Attorney. ¹³¹ And
 2 I'm also here today making an appearance on behalf of
 3 the Crow Wing County's Attorney Don Ryan who has one
 4 ballot identified in the petitioners' motion.
 5 First as to Hennepin County as a respondent,
 6 we're in a little different position, and I'm not
 7 sure it matters in terms of the relief that's
 8 requested here, but 45 -- the 45 cities in Hennepin
 9 County actually conduct election under authority
 10 delegated from Hennepin County to them. So at this
 11 time, for example, the vast majority of election
 12 materials that exist are in the custody of those
 13 cities and not in the custody of the counties.
 14 In terms of the review that was undertaken of
 15 rejected absentee ballots, that's by and large the
 16 work of the city election officials and not of
 17 Hennepin County officials with the exception of some
 18 overseas ballots that came into Hennepin County and
 19 were processed by Hennepin County directly.
 20 Like Ramsey County, it is Hennepin County's
 21 position that the judgments that the city officials
 22 made and that Hennepin County made were accurate and
 23 continue to be accurate based on the information that
 24 we had available at the time.
 25 We've been presented throughout the process with

1 one campaign or the other. ¹³³
 2 Now, if we move to the petition that we're
 3 talking about here today, there are 64 ballots -- now
 4 61 -- in that petition. Of those, I believe 16 are
 5 Hennepin County ballots, one is a Crow Wing County
 6 ballot. Of the 16, four of those 16 were identified
 7 by the cities of Hennepin County as having been
 8 improperly rejected.
 9 If my math is -- and 12 of those were not
 10 identified by the cities as having been improperly
 11 rejected. And if my math is correct, that leaves 65
 12 ballots that Hennepin County election -- or city or
 13 county election officials believe were improperly
 14 rejected where one -- where a campaign has objected
 15 that are not the subject of this motion. And I think
 16 it's appropriate as county attorney representing the
 17 citizens of Hennepin County to bring those ballots to
 18 the Court's attention. Thanks.
 19 JUDGE REILLY: Anything on behalf of Crow
 20 Wing County?
 21 MR. DIAMOND: No, Your Honor.
 22 JUDGE REILLY: Any other local officials?
 23 Okay, Mr. Langdon.
 24 MR. LANGDON: You know, Your Honor, I won't
 25 take much longer than I did standing up just a few

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1 minutes ago.

2 We don't object. We think all these votes

3 should be counted, and we think all the rejected

4 absentee ballots throughout the state that are just

5 like these should be counted as well.

6 We've submitted various categories to you in the

7 summary judgment motion, and it would appear that

8 from those categories approximately 3,500 people

9 share the same characteristics, one or more, with

10 these 61. And so our view is that all of them should

11 be opened.

12 It remains our position that you can make this

13 decision based on the face of the ballot or in some

14 instances registration information and application

15 information and you don't need more than that. And

16 so we're happy to have these opened.

17 JUDGE REILLY: Thank you.

18 MR. LANGDON: Nothing further.

19 JUDGE REILLY: Anything on behalf of the

20 Contestee?

21 MR. ELIAS: We do not oppose the motion.

22 JUDGE REILLY: Mr. Nauen. If you'd come

23 forward again.

24 MR. NAUEN: Yes, Your Honors.

25 JUDGE HAYDEN: In the documents you

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1 was at the Maple Grove Government Center and

2 submitted a declaration setting out exactly what she

3 did and how she relied on the folks there.

4 Let's see if there's any others. This is not

5 exact but Phyllis Mathiowetz -- I'm sure I got that

6 pronunciation wrong -- also Hennepin County, same

7 situation. Showed up in Hopkins City Hall, relied on

8 them and did everything at once, and there wasn't a

9 signature on the application and it was rejected for

10 that reason. That was county identified and then

11 objected to by the Coleman representatives.

12 Here's one out of -- Hubert Redepenning, the

13 signatures don't match. He said they were genuine.

14 He's got an eye problem. It was county identified

15 and yet it was objected to. Lac Qui Parle County.

16 I think that's it. It's possible there were

17 some in Ramsey County, Mansky deposition. Not county

18 identified but in deposition testimony there may have

19 been some, too, because there was some signature

20 mismatches in Ramsey County.

21 JUDGE MARBEN: Thank you.

22 MR. NAUEN: Yes, thank you, Your Honor.

23 JUDGE REILLY: Thank you.

24 MR. NAUEN: Thank you, Judges.

25 JUDGE REILLY: Now we'll turn to what we

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1 provided, you listed all the petitioners and reasons

2 that their ballots were rejected.

3 For those that involved improper signatures, how

4 many of those were eventually determined by the

5 counties to be wrongfully rejected and still remain

6 unopened, and how many were initially determined to

7 be wrongfully rejected, do you know?

8 MR. NAUEN: Let me make sure I have that

9 straight, then, Judge.

10 JUDGE MARBEN: I asked it poorly.

11 All those where the signature is at issue,

12 Hennepin County has determined that many of those

13 were wrongfully rejected.

14 MR. NAUEN: The only difference -- well,

15 I'll stop here.

16 Shirley Van Dyke was an example of that. This

17 is not exactly the same situation but it touches on

18 one 29, invalidity out of Dakota County, was county

19 identified and improperly rejected. She did not sign

20 the envelope but she there, Apple Valley City Hall,

21 and relied on the local folks to make sure she did

22 things right.

23 Marilyn Borgen was out of Hennepin County; she

24 was identified by the county as improperly rejected

25 on the basis of signature application. Again, she

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1 call the Kennedy petition.

2 If you could state your appearance for the

3 record, please.

4 MR. KENNEDY: I will. I'm Bruce Kennedy

5 and I'm representing seven voters who seek to

6 intervene in this proceeding, and I'm here with

7 co-counsel as well, Mark Priore.

8 I'll be brief. We wish to intervene in this

9 proceeding to have our seven votes counted. The

10 Coleman attorneys have lodged no objection to our

11 intervention.

12 The Franken attorneys have objected. They posed

13 six questions regarding our intervention: Does

14 Chapter 209 preclude interventions under Rule 24 of

15 the Minnesota Rules of Civil Procedure. Should we

16 have filed a 204B.44 or a separate election contest.

17 Do we have an interest in the subject. Is our

18 interests adequately represented by existing parties.

19 Were our pleadings proper, and was our intervention

20 timely.

21 The answers to these questions are no, no, yes,

22 no, yes, yes. Thank you.

23 JUDGE REILLY: Thank you.

24 MR. KENNEDY: That's a little too brief,

25 perhaps. The Chapter 209 references the Rules of

1 Civil Procedure and there's nothing in it that 138
 2 precludes interventions.
 3 As far as the 204B.44, we started along that
 4 path and we concluded that we would be reverted to
 5 this contest. That, in fact, is what happened with
 6 Mr. Nauen.
 7 Also filing a separate election contest, a
 8 parallel proceeding, would have made no sense. We
 9 are, in fact, just trying to have our votes counted
 10 within this contest. Therefore, it was appropriate
 11 to file an intervention.
 12 Obviously we have an interest in having our
 13 votes counted in this election and having impact.
 14 Are our interests adequately represented by the
 15 existing parties? I would like to think they are. I
 16 would hope that they are. It would be our goal to
 17 sit back and do nothing in this case and allow the
 18 campaigns to put forth the evidence of our voters,
 19 our ballots and show and persuade the Court that
 20 these ballots should be counted. And if that
 21 happens, I'll be more than happy to sit back and not
 22 say a thing. It's not my goal to jump into the arena
 23 like I did the other day. I would prefer to do
 24 nothing at all, but I do have concern.
 25 We have seven voters who -- some were -- all of

1 requests for relief that a pleading has. We just 140
 2 called it a notice of intervention, and I don't think
 3 a separate pleading is required.
 4 Is it timely? It certainly is timely. We
 5 intervened 29 this trial started and we didn't
 6 prejudice any parties in any way with the timeliness
 7 of our intervention. Thank you.
 8 JUDGE REILLY: Thank you.
 9 Mr. Langdon, anything you want to say?
 10 MR. LANGDON: Just briefly, Your Honor.
 11 First we agree that these voters should have their
 12 votes counted, no matter who they voted for. We
 13 think this case has come to be about the voters'
 14 interest and not either campaigns' interest at this
 15 point.
 16 Secondly, I agree with Mr. Kennedy that
 17 procedural wrangling between lawyers makes no sense
 18 at this point. He could walk over tomorrow, actually
 19 walk downstairs tomorrow and file a petition in the
 20 Supreme Court and they would immediately transfer it
 21 here, so all this fighting about whether they were
 22 procedurally correct and what they did and what
 23 Mr. Elias has talked to you about seems to me to make
 24 no sense.
 25 The third point I would point out is that like

1 whom filed absentee ballots, all of them were 139
 2 initially rejected by the election officials but
 3 subsequently found to be valid by the election
 4 officials. All these folks received a letter from
 5 the secretary of state's office saying that their
 6 ballot did not count, that they could take some legal
 7 action. And I was contacted to represent them.
 8 My concern is that some of these folks were
 9 rejected by the Coleman campaign, some of them were
 10 rejected by the Franken campaign.
 11 I don't know who these people voted for. I did
 12 not ask them, I'm not going to ask them. But even
 13 though there's been an expression that the goal is
 14 full representation of the franchise, I and my voters
 15 are not fully confident that each one of our voters
 16 will have the same amount of persuasion put behind
 17 them, since there's already been, in my opinion, a
 18 certain amount of profiling as to how they may vote
 19 as, as represented by what happened to their votes
 20 29. So that's why I feel that their interests are
 21 not adequately represented by the existing parties.
 22 Our pleading was proper. We called it a notice
 23 of intervention. If we had called it notice of
 24 intervention and intervention, then it would have
 25 been fine. It had all the allegations and the

1 Mr. Nauen's clients, these fall into the same types 141
 2 of categories that we're talking about that involve
 3 thousands of other voters. That's all.
 4 JUDGE REILLY: Thanks.
 5 Mr. Elias.
 6 MR. ELIAS: Thank you. I'll try to be
 7 brief and I'll also, despite the introduction, try to
 8 make sense.
 9 The procedures matter for a number of reasons.
 10 First and foremost, the difference between the Nauen
 11 parties and these seven voters is not whether or not
 12 their votes should be counted. We are not opposing
 13 the counting of their votes. The question is whether
 14 or not this matter needs another party to it.
 15 Mr. Nauen proceeded under 203B.44 for a discrete
 16 purpose, not to join the entire litigation but rather
 17 to correct errors and omissions under a very narrow
 18 statute that permits that.
 19 And Mr. Langdon's correct, the courthouse doors
 20 remain open for these seven voters to follow that
 21 process and seek errors and omissions represented by
 22 the evidence that has been presented here.
 23 They chose not to proceed that way; instead,
 24 have now sought to actually intervene in the election
 25 contest itself. The election contest, as Your Honors

1 know, is a statutory creation that has very strict ¹⁴²
 2 timelines associated with it.
 3 If intervention were allowed outside of those
 4 timelines, outside of the timelines that would have
 5 been applicable for these seven individuals to file a
 6 contest themselves, then the entire statutory
 7 deadline regime would have been an issue because,
 8 indeed, as long as one contest was filed on time,
 9 Senator Coleman couldn't wait. A stalking horse
 10 could have been filed within the seven-day period
 11 only to have other parties join later.
 12 The statutory regime that we operate under
 13 presumes that this process is going to move
 14 expeditiously and in an orderly fashion. And the
 15 addition of parties to the contest itself after the
 16 seven-day period we argue is incorrect.
 17 If you look at Rule 8101A -- or 81.01A, it makes
 18 clear that the rules do not cover pleadings, practice
 19 and procedures in statutory and other proceedings
 20 that are in Appendix A insofar as they are
 21 inconsistent or in conflict with the rules.
 22 The statutory proceeding, this contest is in
 23 Appendix A and it's there for a reason, which is to
 24 allow these deadlines to be adhered to and the
 25 process to move forward.

1 correct, Your Honor. We have -- I have -- I made ¹⁴⁴
 2 note of that because it was not my understanding
 3 coming in that that was the case.
 4 May I have a moment, Judge, to confer?
 5 JUDGE REILLY: You may.
 6 MR. ELIAS: We don't believe so, but we're
 7 trying to confirm that, and we'd be happy to present
 8 something to the Court further very briefly just
 9 indicating whether or not that is the case, Your
 10 Honor.
 11 JUDGE REILLY: And Mr. Langdon, do you have
 12 that understanding?
 13 MR. LANGDON: I accepted what Mr. Kennedy
 14 said on its face. We know for a fact that at least
 15 two were and we don't know about the others.
 16 MR. ELIAS: Right. We have two, we believe
 17 two voters without Mr. Happe and Mr. Markman, we are
 18 trying to confirm the others.
 19 JUDGE REILLY: Thank you.
 20 We'll get an order out and we'll stand in recess
 21 until Monday, then.
 22 (The trial was adjourned.)
 23 * * * *
 24
 25

1 So this is not a question of whether or not ¹⁴³
 2 those seven voters are considered by this Court or
 3 not considered by this Court. Our opposition has to
 4 do with the question of whether or not we need
 5 another table with another set of parties, and
 6 whether or not the intervention to the contest is the
 7 correct process for them to have followed.
 8 Finally, I will add only briefly that I think
 9 the Court having now had a week of testimony by the
 10 two parties, a week of testimony and arguments by the
 11 two parties, knows that there is vigorous advancing
 12 of, of voter issues on both sides. Indeed, we've
 13 already heard testimony from one of Mr. Kennedy's
 14 clients brought by Mr. Coleman's campaign.
 15 So I think that it is fair to say that the
 16 interests of these seven voters will be adequately
 17 represented by the lawyers who are vigorously
 18 presenting cases on both sides. So I don't think
 19 there's any question that these -- that there will
 20 not be a vigorous advocacy for the interest that
 21 these seven voters seek to have represented here.
 22 JUDGE REILLY: Did you agree with
 23 Mr. Kennedy's statement that his seven clients were
 24 included in the 1,346 that the election officials --
 25 MR. ELIAS: I don't believe that is

