

1 probably -- not probably, but certainly the most  
 2 contentious election that I had been involved in helping  
 3 to run. And because of that, we really redoubled our  
 4 efforts to make sure that everything the Secretary of  
 5 State's office did, the county auditors did, poll workers  
 6 did, was going to be done properly for that election.  
 7 And because of that, the amount of communication that we  
 8 had and the amount of training that we had for that  
 9 election was -- was greater than normal.

10 Q Do you remember talking to the "Argus Leader" about your  
 11 concerns with absentee -- with early voting, absentee  
 12 voting, that was being proposed by Four Directions?  
 13 A Not specifically, but --  
 14 Q Generally?  
 15 A -- generally I talked with the "Argus Leader" about a  
 16 whole lot of different issues.  
 17 Q Generally about absentee balloting?  
 18 A No, not specifically.  
 19 Q You don't remember a single conversation between you and  
 20 the "Argus Leader" regarding absentee balloting during  
 21 the 2004 election cycle?  
 22 A Not specifically. I mean we're -- that's eight years  
 23 ago.  
 24 Q Do you remember any conversation with the "Argus Leader"  
 25 during the 2004 election cycle regarding absentee voting?

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1 during the 2004 election cycle?  
 2 A I don't recall.  
 3 Q Did you go to any meetings during the August, 2000 -- or  
 4 during the 2004 election cycle to Shannon County  
 5 regarding early voting?  
 6 A I don't recall going to Shannon County on that issue.  
 7 What I did do, and what I specifically remember, and I  
 8 don't know if it was August or September, but I know that  
 9 I traveled to each of the county auditor offices that  
 10 served Indian Country in South Dakota, and spent at least  
 11 two hours with each of those auditors reviewing the  
 12 election procedures and their preparations for the  
 13 general election to make sure that everything worked  
 14 properly on election day.  
 15 Q Do you remember during the August, 2004 election cycle  
 16 doing a -- crediting Four Directions with increased voter  
 17 turnout in Shannon County when you spoke to the "Argus  
 18 Leader"?  
 19 A I don't recall that, but if you were to ask me today  
 20 if -- if I believed that to be true, the answer would be  
 21 yes.  
 22 Q Why do you think there is -- do you think there is a  
 23 reciprocal relationship between the number of early  
 24 voting days and voter turnout in Shannon County?  
 25 A No. I think the impact of Four Directions was the fact

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1 A Not specifically. I'm certain I talked to the "Argus  
 2 Leader" a number of times on a number of topics, but  
 3 whether that was one of them, I don't recall.  
 4 Q All right. Did you question the legality of early voting  
 5 locations during the 2004 election cycle, early voting  
 6 locations in Shannon County and Todd County?  
 7 A Not that I recall.  
 8 Q You don't remember a conversation with Bret Healy  
 9 regarding those locations in Shannon County?  
 10 A I remember conversations with Bret Healy, but I don't  
 11 recall conversations about locations. Now, not to say it  
 12 didn't happen, but I don't recall those conversations.  
 13 Q You didn't have any authority as Secretary of State, did  
 14 you, on whether or not an early voting location was --  
 15 could be approved in Shannon County or Todd County; that  
 16 was a DOJ issue?  
 17 A You are correct in that I didn't have authority, but the  
 18 authority lied with the county commission in those  
 19 counties.  
 20 Q Right. They had to request that approval, didn't they,  
 21 from Department of Justice?  
 22 A That's correct, yes.  
 23 Q All right. Did you ever represent to anyone that it was  
 24 your decision or you had any involvement in the decision  
 25 for early voting locations in Shannon or Todd Counties

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1 that they were actively encouraging Native Americans in  
 2 Shannon and Todd County, impressing upon them the  
 3 importance of that particular election to Native  
 4 Americans, and encouraging them to go vote.  
 5 Q You don't think there is a reciprocal relationship  
 6 between the number of early voting days and voter turnout  
 7 in either Shannon or Todd Counties?  
 8 A I don't think there is a direct relationship, no.  
 9 Q Do you think there is an indirect relationship? Do you  
 10 think it's easier to get more Indians to the polls in 32  
 11 days than one day?  
 12 A If you use that specific example, 32 versus one, the  
 13 answer is yes.  
 14 Q How about 31 versus one?  
 15 A See, that is where you start -- I don't know what -- it  
 16 probably is, but how much more, I don't know. I can't  
 17 quantify that. I don't know.  
 18 Q When -- when does it, in your opinion -- when doesn't the  
 19 amount of early voting days -- when isn't that a  
 20 reciprocal relationship with Indian voter turnout? When  
 21 doesn't that matter?  
 22 A I don't know the answer to that question. Here is what I  
 23 do know. The primary driver of turnout is not early  
 24 voting days. The primary driver of turnout is interest  
 25 in the election and in the candidates. I mean I've

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1 A And let me be clear, you --  
 2 Q That was the general or primary or both?  
 3 A Both.  
 4 Q Forty-two days each?  
 5 A Correct. You have used the term "early voting"  
 6 frequently. That is not a term that is in our state  
 7 statutes. The statute is "absentee voting."  
 8 Q I will use the term "absentee voting." Do you remember  
 9 how many days of early voting Shannon County received,  
 10 absentee voting, before -- before the 2004 primary  
 11 election?  
 12 A No, I don't.  
 13 Q No idea?  
 14 A No idea.  
 15 Q Did you ever check on it?  
 16 A I probably would have known at the time, but that was  
 17 eight years ago, and I don't recall.  
 18 Q How did you remember 42 days?  
 19 A Because that was set in state law, and it was the state  
 20 law that I administered for 20 years.  
 21 Q Right. Was it 42 actual days of early voting before the  
 22 election?  
 23 A It was a six-week period, yes.  
 24 Q All right.  
 25 A Absentee voting begins six weeks before a primary or

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1 general election.  
 2 Q Did folks vote on the weekend?  
 3 A Depending on whether an office was open or not.  
 4 Q What offices do you know during the 2004 election that  
 5 were open during weekend hours?  
 6 A I don't recall.  
 7 Q All right. Do you remember any?  
 8 A I don't recall. There may have been. I know that at  
 9 times county auditors would open up on weekends, but  
 10 whether they did in that election and what counties, I  
 11 don't recall.  
 12 Q Which county auditors do you remember having weekend  
 13 voting in any election?  
 14 A I know Minnehaha County did it regularly. But whether  
 15 they did it in 2004, I don't know.  
 16 Q How do you know they did it regularly?  
 17 A That was something that was communicated as part of  
 18 conversations with the auditor.  
 19 Q Who was the auditor that you communicated with?  
 20 A Sue Roust.  
 21 Q All right. So during the -- during the six-week cycle,  
 22 most of the weekends had early voting on the weekends?  
 23 A No. My recollection is that in Minnehaha County they  
 24 would open up the Saturday prior to the election.  
 25 Whether they did other Saturdays, that I don't recall.

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1 Q Did anyone ask you if that was okay, or they just told  
 2 you they were doing it?  
 3 A There is nothing that would have prohibited it. So  
 4 whether I was ever asked, I don't know.  
 5 Q You don't know if you were ever asked --  
 6 A No.  
 7 Q -- in your tenure as Secretary of State --  
 8 A No.  
 9 Q -- whether or not -- wait until I'm done. -- whether or  
 10 not it was ever okay to go ahead and do weekends?  
 11 A I don't recall if I was asked, but if I would have been  
 12 asked, I would have said it was permissible certainly.  
 13 Q Why would you say it's permissible?  
 14 A There would be nothing in the statute that would prohibit  
 15 it.  
 16 Q And that was Saturdays in Minnehaha?  
 17 A That is my recollection, yeah.  
 18 Q Do you remember the hours on a Saturday?  
 19 A I don't.  
 20 Q All right. Do you remember the number of hours of early  
 21 voting in the counties? I know there's 66 counties.  
 22 Other than Todd or Shannon, do you remember if there was  
 23 any regular work -- regular hours for voting?  
 24 A Exactly. The county auditor's office would be open for  
 25 absentee voting during normal courthouse hours. In some

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1 counties, that is 8:00 to 5:00. Sometimes they're closed  
 2 over noon, sometimes they're not. Some counties it's  
 3 8:30 to 4:30. It all depends on the county. It would be  
 4 during normal courthouse hours.  
 5 Q But the latest that you knew that the hours started  
 6 anywhere in the state was 8:30?  
 7 A I believe so, yes.  
 8 Q And the earliest that the hours would end for early  
 9 voting or absentee voting was 4:30?  
 10 A I believe so, yes.  
 11 Q All right. What about holidays? Was that included?  
 12 A Well, that -- there may be holidays that fall within that  
 13 42-day period, certainly. But would they normally be  
 14 open on holidays; no.  
 15 Q So as long as the courthouse declared a holiday, there  
 16 wouldn't be early voting that day?  
 17 A Correct. Just like there wouldn't be on Sundays or  
 18 Saturdays unless they chose to open up.  
 19 Q When you were talking about the Title II and Title III  
 20 requirements, that the money that was in HAVA went ahead  
 21 and it was given to different counties based upon the  
 22 number of registered voters?  
 23 A Right.  
 24 Q Why wasn't it need based?  
 25 A Because that frankly wasn't even a consideration that I

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1 recall. We were simply looking for what we thought was  
 2 the fairest way to allocate that money, and it appeared  
 3 to us that the number of registered voters that a county  
 4 serves would probably be the best way to allocate that.  
 5 Q Okay. But a county like Lincoln County doesn't have the  
 6 need that Shannon County does or Todd County does, right,  
 7 for early voting costs?  
 8 A I don't know that the costs would be any different. And  
 9 realizing when this formula was put together, early  
 10 voting or absentee voting wasn't part of the equation or  
 11 discussion whatsoever. This was simply focused on  
 12 meeting Title III requirements. And -- yeah. And so  
 13 absentee early voting, Lakota language assistants, none  
 14 of that was even contemplated at that time.  
 15 Q Why not?  
 16 A Because they weren't Title III requirements. At that  
 17 point our sole focus was on making sure that we met the  
 18 Title III requirements of HAVA. And that was the  
 19 singular focus at that point. And then, as I mentioned,  
 20 once we had accomplished that statewide -- and we were  
 21 one of the first states in the country to do that -- we  
 22 applied to the EAC for permission to use those Title II  
 23 dollars for other purposes.  
 24 Q So could any Title I money be utilized for costs  
 25 associated with absentee voting in Shannon or Todd

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1 the administration of a federal election. And so if  
 2 counties would approach us with new ideas or things that  
 3 they thought that they could do that would improve the  
 4 administration of a federal election, something new, we  
 5 would consider that.  
 6 And sometimes we would agree with them and say, yes,  
 7 you can use your Title II monies for that purpose. And  
 8 sometimes we would say, no, that's not something that is  
 9 going to improve the administration of a federal  
 10 election, or, no, it looks like all you are trying to do  
 11 is supplant what has been paid for with county funds in  
 12 the past. That is not the purpose of the federal money,  
 13 and we would say no. But that's the evaluation that we  
 14 would use.  
 15 Q All right. So could any of the money from Title II be  
 16 utilized for early voting?  
 17 A We authorized Shannon and Todd County to utilize their  
 18 Title II money for absentee voting in those two counties.  
 19 Those are the only two counties that we authorized to do  
 20 that.  
 21 And the reason we did that is understanding that  
 22 because they didn't have courthouses located in their  
 23 counties, that they would have additional expenditures  
 24 over and above what the other counties would, and we felt  
 25 that reimbursing those costs would be something that

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1 County?  
 2 A I don't think so, but I would have to review that to say  
 3 for certain. I don't think so.  
 4 Q Did you ever research that?  
 5 A No.  
 6 Q Why not?  
 7 A That wasn't a question that was posed to me.  
 8 Q You knew they needed money for early voting down in  
 9 Shannon County. Why wouldn't you research whether or not  
 10 Title I of the HAVA funds could be used to supplement  
 11 that?  
 12 A Because we chose to authorize Shannon and Todd County to  
 13 utilize Title II monies for those expenses.  
 14 Q Never even checked on Title I, though, whether or not  
 15 that could be used for early voting --  
 16 A No.  
 17 Q -- in your eight years?  
 18 A Correct.  
 19 Q All right. Title II monies, was there any restriction on  
 20 Title II monies being utilized for early voting in either  
 21 Shannon or Todd County?  
 22 A Title II monies can be used for Title III expenditures.  
 23 And then after we got certified by the EAC, we could use  
 24 it for -- and I'm going to try to quote the federal law  
 25 language as best I can -- for those things that improve

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1 would improve the administration of the federal election.  
 2 Q Are there any restrictions on Title II money for absentee  
 3 balloting in Shannon or Todd County?  
 4 A My recollection of what we told the counties was they  
 5 could use that to reimburse for their actual  
 6 expenditures, but not use it to supplant things that  
 7 would normally be paid for with county funds. The one  
 8 thing I can think of in particular would be regular staff  
 9 time. But for expenses over and above their regular  
 10 office staff time, I believe that we reimbursed for those  
 11 things.  
 12 Q Right. My question, under Title II, besides your  
 13 requirement that they submit receipts -- pay the expenses  
 14 first, submit receipts, and then we will reimburse --  
 15 your reimbursement policy, besides that were there any  
 16 restrictions on Title II funds being utilized for early  
 17 voting in Shannon or Todd?  
 18 A And are you referring to restrictions in federal law or  
 19 what -- I'm not understanding what you are looking for.  
 20 Q Yes. Title II, federal law. That's a federal law,  
 21 right?  
 22 A Right.  
 23 Q That's what I'm asking about. Are there any restrictions  
 24 on Title II being utilized for early voting in Shannon or  
 25 Todd Counties, sir?

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1 A Once we received certification to use that money for  
 2 those things that improve the administration of a federal  
 3 election, at that point it's my understanding the  
 4 decision on how to use those is left with the Secretary  
 5 of State. And I have told you how we chose to implement  
 6 that.  
 7 Q You told me how you exercise your discretion?  
 8 A Correct.  
 9 Q So there were no restrictions to your knowledge under  
 10 Title II on those HAVA monies being used for early voting  
 11 in Shannon or Todd?  
 12 A The only other issue that -- and you will find that  
 13 discussed in some of the e-mails, was a term called  
 14 maintenance of effort. And for a number of years the  
 15 EAC, Election Assistance Commission, was telling states  
 16 that, whether it be a state or a county, you had a  
 17 maintenance of effort requirement. And to boil that down  
 18 is basically you couldn't use federal money to supplant  
 19 what you were already expending in county or state funds.  
 20 Frankly, we opposed that, and a number of states  
 21 opposed that. And I believe the last year I was in  
 22 office the EAC finally backed off of that, and  
 23 acknowledged that there wasn't a maintenance of effort  
 24 requirement that boiled down to the county level. And we  
 25 thought that was an appropriate decision on their part.

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1 recall. I know you'll find it in the e-mails.  
 2 Q Do you know if it was during the '04 election cycle?  
 3 A I don't.  
 4 Q Do you know, when the HAVA monies first started coming in  
 5 after you were Secretary of State, how it was determined,  
 6 how it got to that number of registered voters or how we  
 7 got to the formula for distribution? Do you know how  
 8 that was created?  
 9 A That was something that we determined. And I'm not sure  
 10 whether the HAVA task force was involved in that. They  
 11 must have been. But that -- you know, I don't recall the  
 12 exact discussions and how we arrived at that, but I'm  
 13 guessing it was between the task force and myself.  
 14 Q Is there a -- was there action taken by the task force or  
 15 a memorandum that says this is how we are going to  
 16 determine how much goes to each county?  
 17 A My recollection -- and one of the things you asked me for  
 18 was each of the task force plans, I believe, which I  
 19 don't have because I didn't take it with me from the  
 20 Secretary's office. My recollection is that that  
 21 distribution formula probably was included in the first  
 22 task force plan, but I can't say that for certain.  
 23 Q This pro rata -- pro rata or --  
 24 A Right.  
 25 Q -- the number of registered voters?

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1 But for a number of years, we were concerned about how  
 2 they were going to apply that concept also.  
 3 Let me clarify one other thing that you asked in your  
 4 question. You talked about us requiring receipts for  
 5 reimbursement. Initially when the program was set up, we  
 6 didn't require any receipts whatsoever. Counties simply  
 7 filled out their reimbursement, sent it in to us, and we  
 8 would send them the money.  
 9 After a state audit of our procedure, it was  
 10 recommended to us that we should audit -- and I'm not  
 11 recalling if it was five or ten percent of the requested  
 12 receipts. I think it was ten percent. And so at that  
 13 point then we put in a procedure to identify basically  
 14 every tenth line that was submitted to us for  
 15 reimbursement. Then we would contact that county and  
 16 say, okay, for this line on this reimbursement, we need  
 17 the documentation so that we have it for the auditors  
 18 here.  
 19 Q Okay. So the -- you went off the registered voter list  
 20 to determine how much money each county was allocated of  
 21 HAVA funds beginning when?  
 22 A And how much they would have to put in for their match  
 23 because, remember, they have got a five percent match.  
 24 And so we used that pro rata for both the match and how  
 25 much money they got out. When that was done, I don't

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1 A Right.  
 2 Q So that was used in all the plans from 2003 until you  
 3 left office?  
 4 A No. That was used for the initial distribution of those  
 5 funds.  
 6 Q In 2004?  
 7 A I don't recall. 2003, 4, '5, whenever we got that first  
 8 money.  
 9 Q When did it change? **When did that factor change for**  
 10 **allocating money to counties?**  
 11 **A Then there was some additional money that was coming from**  
 12 **the feds. And I don't remember if that was 2006 or '7 or**  
 13 **'8. At some point in there there was additional money.**  
 14 **And what we had observed as we watched counties utilize**  
 15 **their Title II monies and draw down those monies, we**  
 16 **realized that there were a number of fixed costs that**  
 17 **were roughly the same for every county; primarily**  
 18 **programming of voting machines, maintenance of voting**  
 19 **machines, those types of things. And that the smaller**  
 20 **counties that obviously had gotten less money, had drawn**  
 21 **down all their Title II dollars. They were gone. The**  
 22 **larger counties had drawn down some, but they still had**  
 23 **pretty large pots of money left.**  
 24 **So we determined -- after consultation with the**  
 25 **county auditors, we talked this through with them and**

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1 said, you know, we believe at this point the best method  
2 would be an even distribution, same dollars for each  
3 county because we have observed that these counties have  
4 these fixed costs that are roughly the same that  
5 everybody has to incur. And so for the succeeding  
6 distributions -- there was probably two or three of  
7 those -- we utilized that methodology of the same dollars  
8 for every county.

9 Q What year was that?  
10 A Like I said, it was 2006, '7, '8, someplace in there.  
11 Q So from 2003 to around 2006, it was -- HAVA funds were  
12 distributed to counties according to the number of  
13 registered voters?  
14 A There was only one distribution. That was on the initial  
15 pot of money. The initial Title II dollars that came in,  
16 we utilized that methodology. For the succeeding dollars  
17 that came in, and that was in the last half of that  
18 decade, then we switched the methodology, and it was same  
19 dollars per county.  
20 Q All right. But that was 2003 to 2006?  
21 A Roughly.  
22 Q It was the number of registered voters, that is how you  
23 did the distribution?  
24 A Realizing that that distribution was only done one time.  
25 Q For that whole period --

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1 portions of Title II monies to each of the counties in  
2 the State of South Dakota?  
3 A Yes. As new money came in -- as new money came in, we  
4 distributed evenly, and their match money was put up  
5 evenly.  
6 Q Okay. Do you remember the distributions approximately  
7 for the 2004, 2008, 2010 election cycles?  
8 A I don't.  
9 Q Do you remember what the surpluses were for 2004 of HAVA  
10 funds?  
11 A And what do you mean by surplus? Surplus where?  
12 Q Money you didn't use from the HAVA funds, carryover to  
13 the next election.  
14 A No, I don't.  
15 Q All right. Remember for the 2008 election?  
16 A No.  
17 Q 2010 election?  
18 A No.  
19 Q All right. Again, my question then, so from 2006 until  
20 you left office, why was it fair to you that Lincoln  
21 County, who has a great tax base, and Shannon County that  
22 is one of the poorest, if not the poorest county in the  
23 state, why should they both get the same amount of money  
24 of HAVA funds?  
25 A Because the distribution has nothing to do with tax base.

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1 A Right.  
2 Q -- 2003?  
3 A When the money came from the federal government, we did  
4 the distribution one time, allocated it to the counties,  
5 and done.  
6 Q Okay. And then in 2006 you went ahead and said instead  
7 of going by registered voters, we are just going to  
8 divide it by 66?  
9 A Correct. 2006, '7, '8, someplace in there, yes.  
10 Q So from 2006 until you left office, all counties got an  
11 equal portion of HAVA funds --  
12 A Correct.  
13 Q -- from Title II?  
14 A Correct.  
15 Q What about Title I?  
16 A Title I was a single payment that only came once. And  
17 so -- and that was never distributed to the counties.  
18 That was used to buy voting machines that were given to  
19 the counties. And we went through a pretty expensive  
20 process of determining what do you, county, need for a  
21 voting -- vote counting machine. Obviously Minnehaha  
22 County got bigger and more machines than Stanley County  
23 did. But we bought the machines and just gave them to  
24 the counties.  
25 Q So from 2006 until the 2010 election, you did equal

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1 It has to do with meeting the Title III requirements of  
2 HAVA. Remember, this is federal money that was given to  
3 states to meet the requirements of a federal law, Title  
4 III. And one of those is that essentially each county  
5 has to have an optical scan type machine so that they can  
6 use the AutoMARK ballot marking device. That requires  
7 programming of those machines, that requires maintenance  
8 on those machines, insurance on those machines.  
9 And as I have explained, a lot of those fixed type  
10 costs were, I would say, disproportionate to the smaller  
11 counties. And, therefore, we chose to split that money  
12 evenly to assist the smaller counties in meeting their  
13 Title III requirements.  
14 Q But a county like Shannon that is almost broke most of  
15 the time or a county like Todd that is broke almost, you  
16 know, most of the time, why not give them a bigger -- a  
17 bigger chunk of the HAVA?  
18 A Because -- I mean that's not -- I don't think HAVA  
19 contemplated that.  
20 Q Making voting easier for minorities?  
21 A HAVA laid out requirements that had to be met. HAVA gave  
22 us dollars to meet those requirements. And that's the  
23 methodology that we chose to allocate those to meet those  
24 federal requirements.  
25 Q Is it your position that HAVA funds weren't intended to

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1 go ahead and pay for minority voting on reservations like  
2 in South Dakota, like Shannon or Todd Counties?  
3 A That's a very broad question.  
4 Q You can answer it broadly.  
5 A HAVA dollars were intended for two things. Actually  
6 three things. One, is to meet the requirements of Title  
7 I. Secondly, is to meet the requirements of Title III.  
8 And then as I have explained, once those requirements  
9 were met by a state, you could apply to the EAC for  
10 permission to use it for other things that advance the  
11 administration of a federal election.

12 And there are a number of things that we have done  
13 under that umbrella, but two that I can think of that get  
14 at your question are the reimbursement for absentee  
15 voting in Shannon and Todd County that we have  
16 authorized. My decision, as I looked at that situation,  
17 was those two counties did not have a courthouse,  
18 therefore I felt it would advance the administration of a  
19 federal election to allow them to use their Title II  
20 monies for those absentee voting purposes.

21 Q Did you --

22 A The second thing that we did specifically is authorize  
23 those counties that are under Section 203, minority  
24 language requirements, to utilize Title II monies to meet  
25 their obligations under 203 of the Voting Rights Act, and

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1 A Correct.

2 Q All right. So why didn't you say here, Shannon County,  
3 here is a hundred thousand dollars to pay for early  
4 voting?

5 A My determination was that I would authorize them to use  
6 their Title II dollars to pay for early absentee voting.  
7 I authorized that.

8 Q How much?

9 A Whatever their actual expenditures were, actual  
10 out-of-pocket expenditures for that purpose.

11 Q All right. And I need to hear you right on this. So you  
12 told Shannon County for the 2006 election cycle that  
13 whatever early voting costs is, put in a reimbursement  
14 form, and I'll pay for it with HAVA?

15 A My recollection was that began in 2008, but I would have  
16 to go back and look at the exact date that we did that,  
17 but I don't know that it was in effect for 2006.

18 Q All right. In 2008 you told the county auditor -- or you  
19 wrote a letter to the county auditor that said any early  
20 voting costs that you incur, put in the reimbursement,  
21 and we will pay for it with HAVA funds?

22 A Actual expenditures, yes.

23 Q Who did you tell that to?

24 A That was communicated to the county auditors. And they  
25 have done that. That's occurred.

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1 counties have done that.

2 Q Did you ever request the EAC approval for early voting on  
3 anything specific to early voting?

4 A No.

5 Q Why not?

6 A Once we had the approval from the EAC to use Title II  
7 monies for those other things that improved the  
8 administration of a federal election, at that point I  
9 believe it was within my discretion to determine how that  
10 was to be done. I don't believe that I needed to ask the  
11 EAC for determinations on each type of expenditure.

12 Q So if you wanted to in 2004, you could have written  
13 Shannon County a check from HAVA funds for \$100,000 and  
14 said go do early voting, go do absentee voting like the  
15 rest of the folks in the state, same number of days?

16 A No. And the reason is in 2004 we didn't have approval to  
17 use those Title II dollars for those other things to  
18 improve administration of federal elections.

19 Q And you --

20 A That came, I'm guessing, in 2006 or 2007. It was later.

21 Q Why didn't you request it for 2004?

22 A Because we hadn't met all the requirements of Title III  
23 yet that I can recall.

24 Q 2006, why didn't you request it? You didn't need to  
25 because you already had approval, right?

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40

1 Q 2004, you don't know how many days of early voting there  
2 were in Shannon County?

3 A No, I don't.

4 Q All right. Do you have any idea how much early voting  
5 cost for the 2004 election cycle?

6 A Where?

7 Q Shannon County or Todd County.

8 A No, I don't.

9 Q 2006 election cycle?

10 A I don't.

11 Q 2008 election cycle?

12 A I don't.

13 Q 2010 election cycle?

14 A I don't.

15 Q Did you ever research it; how much does early voting cost  
16 in Shannon or Todd County? Did you ever research that?

17 A When those two counties put in for their reimbursement  
18 for their early voting expenses, and my recollection is  
19 that it was for 2008 and 2010, they certainly would have  
20 submitted those numbers to us. Do I remember -- well, I  
21 wouldn't even have reviewed those. The staff person  
22 would have reviewed those and made sure the reimbursement  
23 got out. So I don't have those numbers off the top of my  
24 head. But would they have been submitted to our office;  
25 yes.

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1 Q You don't remember Shannon County even making a request  
 2 for HAVA funds for absentee voting on -- in Shannon  
 3 County for the 2004 election?  
 4 A I don't recall that, no.  
 5 Q You don't know if they did or didn't?  
 6 A I don't recall, no. I don't know.  
 7 Q Do you remember if they asked you for money, Shannon  
 8 County, for the 2006 election --  
 9 A I don't --  
 10 Q -- for early voting and --  
 11 A I don't recall.  
 12 Q 2008 you remember, though?  
 13 A I believe it was in 2008 that we determined that we would  
 14 use those dollars or allow them to use those dollars for  
 15 that, yes. And in the e-mails you will find -- you will  
 16 find that exact date.  
 17 Q All right. So in the 2004 election cycle, approximately  
 18 how many days of actual early voting, absentee voting, in  
 19 their respective county did South Dakotans get for the  
 20 primary?  
 21 A The absentee voting period would have been six weeks  
 22 minus weekends and holidays.  
 23 Q Same question for the general election in '04.  
 24 A Be six weeks minus weekends and holidays.  
 25 Q Do you know how many days of absentee voting in Shannon

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1 need, that that all happens properly, that that happens  
 2 smoothly. I remember that being my concern. And then  
 3 obviously the outcome of that was Shannon and Todd County  
 4 had by far the greatest turnout of any election that they  
 5 have ever had in those counties.  
 6 Q My question, was that fair to you that they only got 15  
 7 days and the rest of the state got 32 days of early  
 8 voting before the general in-county? What was your  
 9 opinion?  
 10 A My opinion was that that was the number of days chosen by  
 11 their elected county commission, and my job was to give  
 12 whatever assistance the county auditor needed to make  
 13 sure that they -- that it got done right.  
 14 Q Was that fair to you that they got 15 days, the rest of  
 15 the state got 32 or more days?  
 16 A That wasn't -- that wasn't a determination that I made.  
 17 Q You didn't even think about it, whether or not that was  
 18 fair or not?  
 19 A No. No. My concern was whatever their county commission  
 20 choose, that I could give the county auditor whatever  
 21 advice, encouragement, assistance, to make sure it got  
 22 done properly. That was, as I recall, kind of a new  
 23 thing for the county auditors to have to go from their  
 24 courthouse out to a -- you know, find an office, find a  
 25 location, do all the things they needed to do to get it

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1 County that Shannon County voters got in 2004?  
 2 A No, I don't.  
 3 Q Did you know they only got 15 days before the general  
 4 election in 2004?  
 5 A I would have known that at the time, but I didn't recall  
 6 that today.  
 7 Q But you knew that at the time?  
 8 A I would have known it at the time.  
 9 Q Was that a big deal to you; they only get 15 days, the  
 10 rest of the folks in the state get 32 or so?  
 11 A That was the number of days that their county commission  
 12 determined was appropriate for their county.  
 13 Q I'm asking what you thought about it as Secretary of  
 14 State. Did you think that was right; they got 15 days  
 15 before the general of actual early voting in the county,  
 16 the rest of the state gets 32 before the general?  
 17 A You know, that's a decision that our state legislature  
 18 left to those county commissions, and it wasn't something  
 19 that it was in my purview to second-guess.  
 20 Q What did you think? Is that okay? They get less than  
 21 half the days before the general that the rest of the  
 22 state gets?  
 23 A I remember my concern was that as that happened, that it  
 24 be done properly; that when they are out there doing the  
 25 absentee voting, that they have the materials that they

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1 set up, to conduct that. And so my concern was giving  
 2 them the assistance that they needed to make sure that  
 3 that was done properly.  
 4 Q Today do you think it's fair Shannon County got 15 days,  
 5 all the rest of the folks in the state got 32 days before  
 6 the general? Or no opinion yet today?  
 7 A No opinion yet today because I respect the decision of  
 8 their elected county commission.  
 9 Q Whether it's right or wrong, you are going to follow what  
 10 they want?  
 11 A Correct. That's -- because that's the policy that the  
 12 legislature has established; that those county  
 13 commissioners make that decision.  
 14 Q If you think the county commissioner is screwing up, they  
 15 are making a mistake, they are doing something that is  
 16 unfair, what is your responsibility as Secretary of  
 17 State?  
 18 A If it's illegal, that's something that I would choose to  
 19 visit with their state's attorney about to try to get  
 20 them back on the right track.  
 21 Q Did you talk with anyone about them only getting 15 days  
 22 of early voting before the 2004 general election? Did  
 23 you talk to anybody?  
 24 A I'm sure I had a number of conversations about the early  
 25 voting, but whether we talked about the number of days --

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1 I'm sure I was aware of it, but I don't recall me ever  
 2 weighing in on the issue of number of days.  
 3 Q Why are you sure you were aware that they only received  
 4 about 15 days?  
 5 A I didn't say that I was aware of 15 days. I would have  
 6 been aware of it at the time. I didn't recall it today.  
 7 Because I remember that being a big deal; that issue of,  
 8 you know, how do we get -- how can we do absentee voting  
 9 in those counties, who is going to pay for it, who is  
 10 going to staff it, and how do we make sure that it's done  
 11 properly. I remember that being a big deal.  
 12 Q Besides conforming to the technical requirements for  
 13 absentee voting, why didn't you go ahead and say, hey,  
 14 Shannon County, Fall River County, you need to give those  
 15 folks in Shannon County the same number of days of early  
 16 voting, absentee voting, that the rest of the state gets?  
 17 Why didn't you do that?  
 18 A Because that would have been usurping the authority of  
 19 their elected county commissions.  
 20 Q You didn't consider it illegal at the time?  
 21 A No.  
 22 Q Do you consider it illegal now to give those folks less  
 23 days?  
 24 A No.  
 25 Q And it's not your decision on whether it's fair or not?

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1 A Sure. I'm one of those. I prefer to vote at my polling  
 2 place. That's my preference as opposed to voting  
 3 absentee.  
 4 Q But the reason you never researched the cost for Shannon  
 5 County residents for early voting, for driving to Hot  
 6 Springs, was because they could mail it in and it was the  
 7 cost of a stamp?  
 8 A Certainly.  
 9 Q Is that your answer?  
 10 A That is one of the considerations, certainly. That  
 11 applies not just to those counties, but anywhere in the  
 12 state. That -- everyone in this state has access to  
 13 absentee voting for 42 days.  
 14 Q You knew Shannon County is kind of poor, right?  
 15 A Yes.  
 16 Q And for some people filling up a tank and driving to Hot  
 17 Springs, that is a considerable cost?  
 18 A Yes.  
 19 Q You knew that, right?  
 20 A Certainly.  
 21 Q But you never went out to research driving distances or  
 22 costs associated for the Shannon County residents to  
 23 drive from their house to Hot Springs and back?  
 24 A No.  
 25 Q And did you ever know what the hours were for early

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1 A Correct.  
 2 Q Did you know there were no days of early voting in  
 3 Shannon County before the 2004 primary election?  
 4 A I'm sure I would have been aware of it at the time, but I  
 5 don't recall that today. But understand, again, you are  
 6 still using the term "early voting" which is not  
 7 something that is used in our state law. But absentee  
 8 voting was available to every registered voter in both of  
 9 those counties for the entire 42-day period.  
 10 Q If they wanted to travel to Hot Springs, correct?  
 11 A Or --  
 12 Q Put something in the mail?  
 13 A Put something in the mail, yes.  
 14 Q All right. Did you ever go ahead and investigate the  
 15 costs of driving from locations in Shannon County to Hot  
 16 Springs? Did you ever check that out?  
 17 A No.  
 18 Q Why not?  
 19 A I am not sure that that was something that I would have  
 20 been concerned with. What I do recall is -- and this  
 21 applies not just to those two counties, but anywhere in  
 22 the state. If somebody wants to absentee vote, it's the  
 23 cost of a stamp. And, you know, that's what I do know.  
 24 Q Do some people like to vote in person rather than licking  
 25 a stamp?

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1 voting in the Hot Springs courthouse?  
 2 A It would have been their normal courthouse hours, but I  
 3 can't tell you what those are.  
 4 Q Somewhere between 8:00 and 5:00 probably?  
 5 A Probably, yes.  
 6 Q All right. So if someone was working in Pine Ridge at  
 7 the tribal headquarters, they would have to take off work  
 8 to go -- to go do early voting?  
 9 A They could send an application in the mail.  
 10 Q Oh, they could do the mail-in.  
 11 A Yeah.  
 12 Q But if they wanted to vote in person, they would have to  
 13 get a car, correct, get some mode of transportation to  
 14 get over to Hot Springs, correct?  
 15 A If they wanted to vote in person, they have two choices.  
 16 They could either go to Hot Springs or they could go to  
 17 their neighborhood polling place on election day. Those  
 18 are the two in-person choices. But the question really  
 19 is how can they get their ballot in the box and get it  
 20 counted. And there is a third option, and that's the  
 21 send in an application.  
 22 Q Right. But -- and that's your reasoning. They could go  
 23 ahead and vote on election day, the folks in Shannon  
 24 County, they could mail in their -- mail in, request a  
 25 ballot, and vote that way --

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1 replace Janklow?

2 A I didn't recall that. You've told me that it was zero,  
3 but I didn't recall that, no.

4 Q Did you know they didn't get any days before the general  
5 election in replacing Janklow, no days of early voting in  
6 Shannon County?

7 A For which election?

8 Q The -- before the -- the primary in 2004 and the special  
9 election to replace Janklow.

10 A Those were the same election.

11 Q Right. Zero days?

12 A Right. I wouldn't have recalled that, but that is what  
13 you have told me.

14 Q You don't remember?

15 A No.

16 Q You don't have any idea how many days of early voting  
17 there was in Shannon County during the 2004 election  
18 cycle?

19 A No. Not -- I would have known at the time, but that's  
20 not something I remember.

21 Q All right. Do you remember the length of the voting day  
22 during the -- those limited number of days of early  
23 voting in Shannon County during the 2004 election cycle?

24 A No.

25 Q Do you remember discussions that there was no overtime?

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1 A I don't recall.

2 Q In 2004, you don't remember?

3 A I don't recall that, but that would have been something,  
4 again, that would have been under the purview of the  
5 county commission. Whatever the locally elected county  
6 commission determined they wanted it in their county,  
7 that would have been their purview.

8 Q All right. You didn't have an opinion on it?

9 A I don't recall talking about it, no.

10 Q Do you have an opinion on it today? Should the folks in  
11 Shannon County have the same number of hours per day to  
12 cast their vote in person in their county like everybody  
13 else?

14 A That is something that is under the discretion of the  
15 county commission.

16 Q You have no opinion on how that discretion is exercised?

17 A I don't.

18 Q Did you know that there was private sources that paid for  
19 early voting in 2004?

20 A Yes.

21 Q What did you think of that?

22 A I thought that was very commendable on their part.

23 Q Why?

24 A Because that allowed -- and the private sources were  
25 concerned -- they specifically wanted in-person absentee

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1 The folks left Shannon County -- or left Hot Springs at  
2 8:00 o'clock and drove over to Pine Ridge, and then they  
3 were back by quitting time at 5:00. Do you remember  
4 those conversations?

5 A Yes. I do.

6 Q What do you remember?

7 A I remember exactly what you have laid out.

8 Q So how many days -- how many hours per day, of those  
9 limited number of days, did early voting occur in Shannon  
10 County?

11 A I don't know what the hours were at those offices.

12 Q No idea?

13 A No, I don't, other than, you know, what you have told me.

14 Q Was it about four hours?

15 A I don't know.

16 Q Do you know what the travel time from Hot Springs to Pine  
17 Ridge is?

18 A Probably about an hour.

19 Q Were you involved in any of the discussions? Did you  
20 ever say, Shannon County, you need to go ahead and give  
21 the Shannon County folks the same number of hours per day  
22 of early voting that everyone else gets?

23 A I don't recall being involved in any of those  
24 conversations.

25 Q Did you ever tell anyone that?

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1 voting for whatever reason. And if, you know, they were  
2 willing to pay for that, I thought that was fine. I do  
3 recall asking the Attorney General's Office if that was  
4 something that was legal because we had never had that  
5 type of offer before. And the determination was made  
6 that it was. And at that point I had no problem with it.

7 Q When did you know that early voting was legal, early  
8 voting locations, satellite locations, in Shannon County?

9 A Please repeat the question.

10 MR. SANDVEN: Can you read it back.  
(Last question read back by the reporter.)

11 A I don't recall. Are you asking when did I know that the  
12 private payment was legal or that the locations were  
13 legal?

14 Q What did you request for -- what did you ask from the  
15 Attorney General's Office?

16 A We became aware that the private organization was  
17 offering to provide the county with money to pay for the  
18 cost of early voting locations. And my request, as I  
19 recall, to the Attorney General was is that something  
20 that is legal. And they came back and said, yes. And  
21 that was the end of the discussion as far as I recall.

22 Q When did you first learn that a satellite location or an  
23 early absentee voting location in Shannon County could be  
24 set up? When did you first learn that was okay?

25

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1 A Well, it was always okay based on the determination of  
 2 the county commission.  
 3 Q And DOJ approval?  
 4 A And DOJ approval, right.  
 5 Q So since you took office in 2003, you knew that there  
 6 could be early voting locations in Shannon County?  
 7 A Yes.  
 8 Q And Todd County?  
 9 A Yes.  
 10 Q In your eight years of Secretary of State, did you ever  
 11 go ahead and research the costs of early voting in  
 12 Shannon County?  
 13 A Not that I recall, no.  
 14 Q And in your eight years as Secretary of State, you never  
 15 looked at the -- did a study or anything on the burden on  
 16 Shannon County residents for driving to Hot Springs?  
 17 A I did not, no.  
 18 Q And you don't remember Shannon County asking you for any  
 19 money in 2004 for absentee voting in Shannon County?  
 20 A I don't, no.  
 21 Q Do you remember how much money Shannon County asked you  
 22 for in 2006?  
 23 A No.  
 24 Q Did you ever have any conversations with Shannon County  
 25 commissioners regarding early voting in 2004?

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1 Q If what?  
 2 A If I hadn't previously deleted the e-mails.  
 3 Q Okay. Were you aware of the preclearance in 2004? Did  
 4 you have any involvement in that issue with early voting  
 5 locations in Shannon County?  
 6 A I was aware of it, but I don't believe that we were  
 7 involved in submitting that.  
 8 Q Did over a third of the voters participate in early  
 9 voting in the 2004 election cycle in Shannon County?  
 10 A I don't recall.  
 11 MR. SANDVEN: All right. Can we take five minutes?  
 12 (Recess at 9:14 a.m.)  
 13 BY MR. SANDVEN:  
 14 Q Have you got Exhibit 45 in front of you?  
 15 A Yes.  
 16 Q 46?  
 17 A Yes.  
 18 Q 47?  
 19 A Yes.  
 20 Q 48?  
 21 A Yes.  
 22 Q 49?  
 23 A Yes.  
 24 Q 50?  
 25 A Yes.

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1 A Not that I recall.  
 2 Q How about Fall River commissioners?  
 3 A No. They wouldn't have had anything to do with it.  
 4 Q How about the county auditor?  
 5 A I may have.  
 6 Q Do you remember any communication with her?  
 7 A No. I don't remember anything specific, no.  
 8 Q Do you remember if you communicated with her  
 9 electronically? Did you use a lot of e-mail back in  
 10 2004?  
 11 A I'm sure, yeah, we communicated by regular mail, e-mail,  
 12 and telephone.  
 13 Q All right. For your e-mail system when you were South  
 14 Dakota Secretary of State in 2004, what was your e-mail  
 15 address then?  
 16 A Chris.Nelson@state.sd.us.  
 17 Q It was that e-mail address for your eight years --  
 18 A Yes.  
 19 Q -- as Secretary of State? All right. When you did a  
 20 search for the records that we were asked to subpoena  
 21 today, how far back did you go in your system?  
 22 A 2003.  
 23 Q All right. And records are maintained back to 2003 in  
 24 your electronic system?  
 25 A If I hadn't previously deleted them, yes.

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1 Q 51?  
 2 A Yes.  
 3 Q 52?  
 4 A Yes.  
 5 Q From those exhibits, can you determine during the 2004  
 6 election cycle how many folks participated in early  
 7 voting?  
 8 A How many participate in absentee voting, yes.  
 9 Q What is that percent?  
 10 A Statewide, 23.96.  
 11 Q In Shannon County?  
 12 A 36.78.  
 13 Q That was a total of how many voters?  
 14 A 1,573 in Shannon County.  
 15 MR. WILLIAMS: You are referring to Exhibit 45?  
 16 THE WITNESS: Correct.  
 17 Q Okay. Then during the 2006 election cycle, what percent  
 18 of folks in Shannon County voted early, absentee?  
 19 A Well, I'm referring to Exhibit 47. It doesn't clarify if  
 20 this is for the primary or general, but I am assuming  
 21 it's the general election. And 2.81 percent.  
 22 Q So that is a drop of how much between the '04 and '06  
 23 elections, sir?  
 24 A Roughly, a drop of 34 percentage points.  
 25 Q And the number of voters declined from what to what for

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1 absentee voting in Shannon County?  
 2 A 1673 to 69.  
 3 Q Did the rest of the -- percentage of people in the rest  
 4 of the state go up for absentee voting?  
 5 A Yes.  
 6 Q All right. Any ideas on why absentee voting collapsed in  
 7 Shannon County in the 2006 election?  
 8 A I'm not sure I can comment on why it collapsed in 2006,  
 9 but I can tell you why it was phenomenal in 2004.  
 10 Q No. My question is specific to the change from 2004 to  
 11 2006. You got any opinion on why it went -- it dropped  
 12 over 30 percent and went from 1673 to 69 votes?  
 13 A Yes. The reason is we didn't have the number two Senate  
 14 race in the entire country in 2006. We didn't have  
 15 intense focus. We didn't have a lot of private groups  
 16 that were promoting voter participation in 2006 like we  
 17 did in 2004. There was just a -- a complete lack of  
 18 focus on that election by campaigns and by private groups  
 19 compared to what we had in 2004.  
 20 Q Do you know how many days of early voting or absentee  
 21 voting in Shannon County occurred before the 2006  
 22 primary?  
 23 A Well, they had the 42 days that everyone in the state  
 24 had, but so far as within the county, in person, I don't  
 25 recall.

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1 Q Right. Explain to me the relationship between the number  
 2 of private groups and the number of days of absentee  
 3 balloting in Shannon County. What do you mean, sir?  
 4 A What I -- what I recall -- I'm going to have to refer  
 5 back to 2004 because that is much clearer in my mind. It  
 6 was the focal point of the election. But with those  
 7 early voting days, I think a lot of the private groups  
 8 saw that as an opportunity to get their supporters,  
 9 supporters of whoever their candidate was, to the ballot  
 10 box and get them voted early. That is a campaign  
 11 strategy irregardless of where you are at. You want to  
 12 get your supporters voted early, get that ballot in the  
 13 box however you have to do it.  
 14 With that early voting site in 2004, a lot of those  
 15 private groups, campaigns used that as an opportunity to  
 16 bring people physically to that location to get them  
 17 voted early.  
 18 Q All right. So it's easier to go ahead and get folks to  
 19 the polls over a 20-day period than if it's in a single  
 20 day period?  
 21 A Yes.  
 22 Q An election day.  
 23 A Yes.  
 24 Q Why is that?  
 25 A Well, it gives you more days to -- if -- if you are a --

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1 Q Did you know it was zero?  
 2 A I did not recall that, no.  
 3 Q Do you know how many days of early -- of absentee voting  
 4 in Shannon County occurred before the general election in  
 5 2006?  
 6 A I don't recall.  
 7 Q You didn't know that was zero?  
 8 A I would have known it at the time, but don't recall  
 9 today.  
 10 Q Do you think that had anything to do with the decrease in  
 11 voter participation in Shannon County?  
 12 A It wasn't certainly the primary driver, no.  
 13 Q Do you think it was a secondary driver?  
 14 A It may have had something to do with the percentage that  
 15 voted absentee. But do I think that it impacted the  
 16 overall voter turnout in Shannon County, the answer is  
 17 no.  
 18 Q Why do you think it may have affected the number of folks  
 19 that voted absentee?  
 20 A In 2004 there were a lot of efforts to bring people to  
 21 the early voting site. I recall that. I mean that was  
 22 an intense -- there was just a lot of private groups that  
 23 were involved in doing that. In 2006, that wasn't there  
 24 that I recall. And so therefore the turnout was -- of  
 25 absentee was much, much lower.

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1 if you are a campaign or you are a private group that is  
 2 interested in voter turnout, you have X amount of  
 3 resources. And if you can spread those resources out  
 4 over 20 days as opposed to focusing on one day, obviously  
 5 you are going to get more people to the polls.  
 6 Q During the 2008 election cycle, do you remember how many  
 7 days of early voting there were in Shannon County before  
 8 the primary?  
 9 A No.  
 10 Q Did you know it was two?  
 11 A No. I probably -- I might have known at the time, but I  
 12 don't recall.  
 13 Q Did you know how many days of absentee voting there were  
 14 before the general in 2008?  
 15 A There would have been 42, but how many were in person --  
 16 Q In Shannon County.  
 17 A -- I don't, no.  
 18 Q Do you remember two days?  
 19 A I don't recall.  
 20 Q All right. Could you get registered to vote during those  
 21 two days right before the election?  
 22 A No.  
 23 Q Why not?  
 24 A Regular -- well, you could register, but not for that  
 25 election because the cutoff for registering for an

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1 election is 15 days prior.  
 2 Q In the rest of the state during your three elections --  
 3 how many elections did you oversee; '04, '06, '08, and  
 4 '10, four of them?  
 5 A Yes. And then as election supervisor, starting in 1990,  
 6 and all the way through 2002. Well, through 2000. In  
 7 the 2002 primary, then I backed out of that position.  
 8 Q Between 2004 and 2010, what were the rules for  
 9 registering at an early voting location or an absentee  
 10 voting location?  
 11 A You could register to vote as long as it was at least 15  
 12 days before the election.  
 13 Q At any of those locations?  
 14 A Yes.  
 15 Q All right. So in Shannon County, all right, if they  
 16 didn't have that location, they would have to find  
 17 another place to get registered early?  
 18 A Correct.  
 19 Q Were you aware of the satellite in Wall?  
 20 A I know that Pennington County has done something in Wall,  
 21 but I don't know the particulars. And it may have  
 22 something to do with the city finance office, but, again,  
 23 I don't know the particulars.  
 24 Q Could absentee balloting occur in Wall?  
 25 A I think that is the purpose, but that is a county level

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1 A I remember being at a meeting. I don't recall the exact  
 2 date.  
 3 Q Do you remember ACLU being there and Department of  
 4 Justice?  
 5 A I remember the Department of Justice. I am not sure if I  
 6 remember the ACLU, but I remember the Department of  
 7 Justice was there.  
 8 Q Remember President Two Bulls from Oglala Sioux Tribe  
 9 being there?  
 10 A Yes.  
 11 Q Remember what she was asking for?  
 12 A I don't.  
 13 Q You don't remember why she was there?  
 14 A She was there generally I think to advocate for absentee  
 15 voting site in Shannon County.  
 16 Q Why didn't you just say we have HAVA money, we can help  
 17 with this?  
 18 A I had already said that. I already authorized the county  
 19 to use their HAVA money for that.  
 20 Q Did you have any limits on the amount of HAVA money that  
 21 could be utilized by Shannon County during the 2010  
 22 election cycle?  
 23 A Whatever they had in their county -- or in their both  
 24 county and state held accounts, whatever amount of money  
 25 was allocated to their county, it was at their discretion

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1 deal. All I remember is some comment by the county  
 2 auditor that they were cooperating with the -- I believe  
 3 the finance office to do something over there.  
 4 Q Do you know what the costs of early voting in Wall were?  
 5 A No.  
 6 Q In 2008, how many of the Shannon County folks voted  
 7 absentee?  
 8 A 2008 general election in Shannon County, 448 voters,  
 9 which was 13.1 percent of the vote cast in Shannon  
 10 County.  
 11 Q And that was with two days before the primary and two  
 12 days before the general in Shannon County?  
 13 A Again, I don't remember what those numbers were.  
 14 Q Do you remember in 2010 how many days of absentee  
 15 balloting in Shannon County occurred?  
 16 A I don't, no.  
 17 Q You don't remember if it was 22 partial days before the  
 18 general election?  
 19 A That sounds right. I remember there being a big concern  
 20 about that. I actually traveled to Fall River -- to Hot  
 21 Springs several times to work on that issue. But the  
 22 exact number of days that ended up happening, I don't  
 23 recall.  
 24 Q All right. You were at the September 24th, 2010 meeting  
 25 in Shannon County? Do you remember that?

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1 whether to use it on that purpose or not.  
 2 Q You had discretion to transfer fund money that wasn't  
 3 designated or allocated to their account, didn't you?  
 4 A Yes.  
 5 Q Did you say, hey, I have got more money over here besides  
 6 what has already been allocated to you, Shannon County,  
 7 that I can transfer over?  
 8 A No, I did not.  
 9 Q Why not?  
 10 A Because in my mind that would not have been fair to  
 11 allocate additional monies to that one particular county  
 12 as opposed to every other county.  
 13 Q Even though the need was greater in Shannon County than  
 14 anywhere else?  
 15 A Correct. I did not.  
 16 Q I don't understand. If you knew the need was greater in  
 17 Shannon County than anywhere else, you knew that they  
 18 couldn't fund the early voting locations there, why  
 19 couldn't you just designate additional monies?  
 20 A My recollection was that they had 30, 40, 50 thousand  
 21 dollars already. I'm thinking it was in the \$50,000  
 22 range in their account. They had monies.  
 23 Q That wasn't just for absentee voting, was it? That was  
 24 for conducting all elections, all election expenditures,  
 25 wasn't it?

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1 A Well, the Title III election expenditure, correct. But  
 2 that was certainly adequate money. And at the end of  
 3 2010, I transferred additional monies into each county's  
 4 account -- I believe \$10,000 -- to help replenish to  
 5 prepare for the next election.  
 6 Q So you thought they had plenty of money, they just had to  
 7 ask you for more if they needed it?  
 8 A They had sufficient money to conduct absentee voting in  
 9 Shannon County and to pay for their Title III  
 10 requirements, yes.  
 11 Q Did they have sufficient money to pay for 32 days of  
 12 actual early voting, the full eight hours, before the  
 13 primary and before the general?  
 14 A I believe they did. But I have not -- my recollection is  
 15 they had about \$50,000 in their account.  
 16 Q All right. It's your testimony here today they had  
 17 sufficient money to do absentee voting in Shannon County,  
 18 correct, at that time for 2010?  
 19 A Yes.  
 20 Q But I thought earlier you didn't know how much absentee  
 21 voting cost?  
 22 A I don't, but -- I can't tell you specifically, but I know  
 23 that 50,000 certainly would cover their Title III  
 24 requirements for that election and whatever possible  
 25 expenditures they would have for absentee.

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1 have more than one staff person there at the box if  
 2 things are slow, correct?  
 3 A Correct. Yeah. That's entirely at the discretion of the  
 4 county auditor and the county commission.  
 5 Q But there is no legal requirement that I have two county  
 6 officials or --  
 7 A No.  
 8 Q Is there a minimum requirement over who sits at the box?  
 9 Do you have to have the county auditor or could it be a  
 10 clerk?  
 11 A It could be a deputy county auditor, yes.  
 12 Q All right. What do those folks get paid most of the  
 13 time?  
 14 A I don't know.  
 15 Q No idea? You don't know what the range is for --  
 16 A I don't.  
 17 Q -- deputy clerks?  
 18 A No, I don't.  
 19 Q And then you -- then you would need a location, correct?  
 20 A Yes.  
 21 Q And what are the minimum requirements for the location?  
 22 A I'm not sure that there is a minimum requirement other  
 23 than it be handicap accessible.  
 24 Q Little bit of parking, make sure people can get in and  
 25 out, right?

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1 Q You know elections better than I will ever know them.  
 2 You have been doing them a lot of years. Why do you  
 3 think \$50,000 would cover 32 days of absentee voting in  
 4 Shannon County and 32 days before the general and  
 5 primary? Explain.  
 6 A Because I can't imagine it costing more than that.  
 7 Q Why? How much should staff cost? How many folks do you  
 8 need at a location, minimum?  
 9 A So far as staffing, I think it depends on where you are  
 10 at in the election cycle. If you are talking -- if you  
 11 were to start 42 days out, one staff is going to be  
 12 probably sufficient because there is not going to be a  
 13 lot of interest at that point. As you get closer to the  
 14 election, you may need more.  
 15 It's also going to depend on the type of election. A  
 16 2004-type election, you are going to need more staff. If  
 17 you go to a 2006-type election where you don't have that  
 18 intense focus, you are not going to need as many staff.  
 19 But I can't put specific numbers to your question. I  
 20 wish I could. If we could go back and look at the  
 21 reports that are sitting in the Secretary of State's  
 22 office for what they have asked for reimbursement, we  
 23 could nail that down. But generally, I can't imagine  
 24 those expenditures being more than \$50,000.  
 25 Q Right. And you would -- there is no requirement that you

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1 A Right.  
 2 Q Did you ever research how much or have any idea how much  
 3 it cost to rent a space like that in Pine Ridge, South  
 4 Dakota?  
 5 A No, I didn't.  
 6 Q Then what would the travel costs be?  
 7 A That I don't know.  
 8 Q Is it just the state rate?  
 9 A I don't know what their arrangements are with those  
 10 counties.  
 11 Q Do you know what the state rate for mileage is?  
 12 A Thirty-seven cents.  
 13 Q That is about 60 miles or so one way from Hot Springs  
 14 over there? Yes?  
 15 A Generally, yes.  
 16 Q So what are the miscellaneous costs that go along with  
 17 conducting an election? What else would they need there  
 18 that they would have to pay for that you have got to  
 19 figure into a budget?  
 20 A They -- depending on what they had for, you know,  
 21 computer equipment. They would certainly need access to  
 22 the voter registration list. They may need to do that  
 23 electronically. I'm not sure how they are set up to do  
 24 that down there. So there may be some -- some computer  
 25 cost. But generally I think it's going to be, you know,

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1 hiring that person, the mileage, and the rent for the  
 2 location.  
 3 Q Do you need a poll book there to go ahead and do this  
 4 absentee voting?  
 5 A No.  
 6 Q Why do you say, no, sir? I don't understand.  
 7 A Because the -- the names of people that vote absentee are  
 8 entered into the poll book on election day when absentee  
 9 ballots are processed. So you don't need one when they  
 10 absentee vote. You need a registration list, but not a  
 11 poll book.  
 12 Q Okay. Any other special requirements for the early  
 13 voting location other than those that you have just  
 14 described?  
 15 A Not that I can think of, but, again, I have never done  
 16 it. I'm not the county auditor that has actually got the  
 17 experience doing it, but I can't think of any others.  
 18 Q All right.  
 19 A I'm sure when you talk to them they will say, well, that  
 20 Nelson doesn't know because he has never done it, but I  
 21 can't think of it.  
 22 Q But as far as -- as far as costs or the budget, that is  
 23 why you think it would be less than \$50,000 for an entire  
 24 election cycle to do six weeks of early voting before the  
 25 primary and the general?

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1 clear what our reimbursement arrangements would be.  
 2 Q You said we have got money over here, you just have got  
 3 to -- you've just got to go ahead and submit this form?  
 4 A I don't know exactly what I said, but that certainly is  
 5 what we would have conveyed.  
 6 Q Any -- any feedback from the commission or the county  
 7 auditor? What was the feedback?  
 8 A My recollection was they had a very good understanding  
 9 that -- I mean here's the thing. And it applies not just  
 10 to that county, but every county. And this -- this also  
 11 is really what drove -- what kind of drives a lot of my  
 12 decisions from day one with HAVA.  
 13 The federal HAVA law, the requirements of that law  
 14 are going to be in place probably forever. They are not  
 15 going away. The cost to meet those requirements aren't  
 16 going away. I know that, the counties know that. They  
 17 pay for them this year. Two years down the line, they  
 18 have got them again.  
 19 My recollection was that those county commissioners  
 20 and -- I mean they have got as tough a job as any county  
 21 commissioner in this state because of the financial  
 22 difficulties down there. I mean they know that those  
 23 requirements are going to continue. And they know that  
 24 they have got to have the money to pay those requirements  
 25 down the road. If they spent everything in their pot

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1 A Correct. Along with their other Title III expenditures  
 2 that they are going to have anyway.  
 3 Q So if -- so that is only a little over \$12,000 -- I'm  
 4 sorry, over -- less than 50 an election cycle, or  
 5 allocate \$25,000 a year because you don't have an  
 6 election every year normally, right?  
 7 A I don't know what the exact cost is. Again, I just -- I  
 8 can't imagine it being greater than 50,000, but I'm not  
 9 prepared to get into what exact dollar it's going to be  
 10 per election.  
 11 Q Right. That is why I'm going off the high end. At the  
 12 most a county would -- Shannon County would need to go  
 13 ahead and set aside \$50,000 every two years or \$25,000 a  
 14 year to go ahead and prepare for, pay for absentee  
 15 balloting for the full six weeks before the general,  
 16 before the primary in Shannon County?  
 17 A Along with their normal Title III expenditure. I can't  
 18 imagine it being more than that.  
 19 Q Okay. Did you hear any financial concerns at the  
 20 September 24, 2010 meeting at Shannon County that you  
 21 attended? Did they say we can't afford to pay for this  
 22 early voting, this absentee voting over there?  
 23 A Yes.  
 24 Q What did you say?  
 25 A I don't recall exactly what I said, but I know we made

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1 today, they are not going to have the money to pay for  
 2 the requirements two years down the road. And I think  
 3 they were evaluating that and trying to be judicious in  
 4 how they spent and at what rate they spent their HAVA  
 5 funds.  
 6 Q All right. You knew in 2004 that there weren't the same  
 7 number of absentee voting days in Shannon County as the  
 8 other counties?  
 9 A Yes.  
 10 Q All right. So why didn't you get that fixed before 2006?  
 11 Because it happened again. It was worse in 2006. It was  
 12 zero days before the primary, zero days before the  
 13 general.  
 14 A Because those days are determined by the local county  
 15 commission, not by the Secretary of State.  
 16 Q Did you ever have any communication with anyone between  
 17 the '04 and '06 election and say, here, what are we doing  
 18 here so this doesn't happen again?  
 19 A I don't recall if I did.  
 20 Q You don't remember anything?  
 21 A No, I don't.  
 22 Q All right. And then in 2006 -- and we talked about the  
 23 early voting numbers collapsing 30 plus percent. Did you  
 24 ever have any conversations between the '06 and the '08  
 25 election and say look at what happened in '06 where they

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1 had zero days over there? We have got to do better this  
 2 time in 2008.  
 3 A No. I don't recall having any of those conversations.  
 4 Q Why not? Why didn't you have those conversations?  
 5 A Because, again, those determinations are something made  
 6 with the -- by the county commission and the county  
 7 auditor.  
 8 Q But if you know that there is problems in a county, why  
 9 wouldn't you intervene and go ahead and say, here, I can  
 10 help you out? We have got millions of dollars of HAVA  
 11 money. There is no way this cost more than \$50,000 every  
 12 two years. Let's figure this out together. Why didn't  
 13 you do any of that?  
 14 A I viewed my role as helping counties comply with the  
 15 election law. If there is something that's going on that  
 16 is illegal, that is not according to the law, we do  
 17 everything we can to help the counties get that  
 18 straightened out. But when it comes to things that are  
 19 up to the county discretion, I typically didn't step on  
 20 that discretion. That's just the way I operate.  
 21 Q Have you ever had any involvement of any kind in  
 22 promulgating rules regarding absentee voting?  
 23 A Yes.  
 24 Q Let's go through them. What's the first time you had  
 25 something to do with promulgating absentee voting rules?

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1 promulgating rules regarding absentee balloting other  
 2 than those just described?  
 3 A No, I don't.  
 4 Q Okay. So you took those rules, you were the -- as the  
 5 Secretary of State you would put that on the agenda and  
 6 go in front of the election commission, correct?  
 7 A The election board, yes.  
 8 Q And under the statute, they have the authority to  
 9 promulgate rules to carry out those election  
 10 responsibilities?  
 11 A Yes.  
 12 Q Why did you think it was necessary to go ahead and  
 13 promulgate a rule regarding absentee balloting? Why did  
 14 you have to go through that process? The state  
 15 legislature already said do it, so why did you need to go  
 16 through the rule-making process?  
 17 A Well, the state legislature specifically gave us  
 18 authority to promulgate forms and language on forms for a  
 19 lot of different things regarding elections, not just  
 20 absentee voting, but all of the forms that you deal with.  
 21 And so they gave us that specific authority, and then we  
 22 followed through with that and put those forms together  
 23 and made changes.  
 24 Q Did you do anything besides change the form? Did you put  
 25 together a little procedure or was the procedure

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1 What year, sir?  
 2 A I don't recall, but, again, I began as election  
 3 supervisor in 1989, so it could have been any time after  
 4 that.  
 5 Q As election supervisor, I know that was a significant  
 6 period of time, that you served in that capacity for a  
 7 long number of years. But what do you remember during  
 8 that part of your career in elections being involved in  
 9 promulgating rules regarding absentee balloting?  
 10 A Generally the rules that are promulgated for absentee  
 11 voting involve forms and language. What does the  
 12 application look like. What does the envelope look like  
 13 that you mailed the ballot out. What does the envelope  
 14 look like that you mail the ballot back.  
 15 During those 20 some years I was involved in  
 16 elections, we'd periodically make changes to those forms  
 17 to make them easier to use, easier to understand. Prime  
 18 example would be after 2003 when the legislature removed  
 19 the excuses or the reasons, we'd go in and promulgate a  
 20 new form to remove that. Later when there were some new  
 21 federal requirements for military absentee voting, we  
 22 would go back in and put that kind of language in to  
 23 comply with those statutory changes. Generally that is  
 24 what I recall.  
 25 Q Any other -- do you recall any other involvement in

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1 delineated right in the form itself?  
 2 A Procedure is primarily delineated in statute. And so did  
 3 we do anything procedurally in administrative rule, I  
 4 don't recall that we did.  
 5 Q But you considered the absentee balloting process a  
 6 procedure, didn't you, an election procedure?  
 7 A Yes.  
 8 Q And what are all the aspects that comprise absentee  
 9 balloting? What did you talk about before? It was the  
 10 mailings, correct?  
 11 A Yes.  
 12 Q That had its own form?  
 13 A Yes.  
 14 Q A mail -- a mailing to request a ballot, correct?  
 15 A Yes. There is one singular application. It doesn't  
 16 matter if you are sending it in through the mail, if you  
 17 are filling it out, giving it to somebody, a campaign or  
 18 a private group to take it in, if you are at the  
 19 auditor's office, if you're at an absentee site. Doesn't  
 20 matter. One application is used for all of those things.  
 21 How much of that application you fill out depends on  
 22 your method -- what you are trying to accomplish. If you  
 23 are applying for an absentee ballot through the mail,  
 24 then there is a section that says give us your mailing  
 25 address where you want us to send the ballot to.

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1 Obviously, if you are doing it in person, you don't fill  
 2 out that portion. So there is, you know, some different  
 3 options on that application. But one form for all  
 4 purposes.  
 5 Q Why didn't you promulgate a rule or process for the  
 6 number of days of absentee balloting in a county?  
 7 A Because that was already established by statute.  
 8 Q You had this -- you had these two very unique situations,  
 9 right, where Todd and Shannon don't have a courthouse?  
 10 A Correct.  
 11 Q So why didn't you promulgate a rule and say it's  
 12 different over there, they don't have a courthouse.  
 13 Everywhere else in the state, they go ahead and vote, can  
 14 vote at their courthouse in their county. We need to do  
 15 a special rule for these two counties over there. How  
 16 come you never did that?  
 17 A Because the legislature had already done that and  
 18 promulgated a specific statute that applied to those two  
 19 counties.  
 20 Q You are talking about the contracting for services  
 21 provision, correct?  
 22 A No. I'm talking about the statute that gives the county  
 23 commission the authority to determine how many days of  
 24 in-county absentee voting occur in each of those  
 25 counties.

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1 two counties can determine the number of days.  
 2 A Might I have a moment with Mr. Williams?  
 3 Q Is that your attorney?  
 4 A That's my attorney.  
 5 MR. SANDVEN: I think -- Richard, are you his  
 6 attorney?  
 7 MR. WILLIAMS: Yes.  
 8 Q If you don't know, you don't know.  
 9 A I don't know, but I can clarify it if I can look at the  
 10 election code for a moment.  
 11 Q Yeah. I don't want you asking him.  
 12 A No, no.  
 13 Q I'm not deposing him. If you want to say give me the  
 14 book, go ahead.  
 15 THE WITNESS: Would you like to share the book with  
 16 me?  
 17 MR. WILLIAMS: Take a look at the book if you like.  
 18 A 12-19-53.  
 19 Q And what does that say, sir?  
 20 A "If a county contracts for the services of a county  
 21 auditor from another county, that county auditor shall  
 22 make absentee ballots available in the contracting county  
 23 if the contracting county requests that absentee ballots  
 24 be provided. The contracting county shall reimburse the  
 25 county auditor for the costs incurred pursuant to this

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1 Q What statute are you referring to?  
 2 A I don't have that off the top of my head.  
 3 Q You think there is a specific statute that was passed by  
 4 South Dakota that refers to -- that gives the county the  
 5 discretion to go ahead --  
 6 A Yes.  
 7 Q -- and determine the amount of days of early voting in  
 8 Shannon and Todd County?  
 9 A Yes.  
 10 Q Do you know when that was enacted?  
 11 A In the 1990s.  
 12 Q Is that -- are you sure that is not a rule that was  
 13 promulgated --  
 14 A Yeah.  
 15 Q -- or is it a statute?  
 16 A It's a statute. I apologize. If you were asking me this  
 17 two years ago, I would have had it off the top of my  
 18 head. But I don't have that today.  
 19 Q Okay. Are you sure you are not just referring to the  
 20 statute that goes ahead and addresses -- that goes ahead  
 21 and addresses that auditor services can be contracted by  
 22 those counties? I just -- I just want to make sure I'm  
 23 hearing you right.  
 24 What I'm hearing from you is that there is a law that  
 25 goes ahead and says that the county commissions in those

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1 section."  
 2 Q But it's your reading as Secretary of State that that  
 3 gives the county commission the discretion to determine  
 4 how many days of early voting there should be?  
 5 MR. WILLIAMS: I'm going to object. It calls for a  
 6 legal conclusion. You may answer if you can.  
 7 A That is how I interpreted it, yes; that it gave the  
 8 county commission the discretion of determining how many  
 9 days they would contract to have someone located  
 10 physically within their county to conduct absentee  
 11 voting. That is exactly how we interpreted it, yes.  
 12 Q Where did you get that from?  
 13 A That is what this language says to me.  
 14 Q That it gives the county the discretion to determine how  
 15 many days of early voting they can do?  
 16 A No. How many days they have someone physically located  
 17 in their county. Everybody gets 42 days. That is set  
 18 elsewhere in the statute. But determining how many days  
 19 a county auditor or deputy is located within that county  
 20 is up to the purview of that county commission pursuant  
 21 to this statute.  
 22 Q Okay. This is a two-sentence statute, right, and you are  
 23 getting that from which sentence?  
 24 A The first one. The county auditor shall make absentee  
 25 ballots available in the contracting county, be

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1 physically located within, if the contracting county,  
 2 being the county commission, requests that absentee  
 3 ballots be provided.  
 4 Q And that was done in 1992?  
 5 A Correct.  
 6 Q And that's what -- that's what you think goes ahead and  
 7 says the county only has to do -- they could do less days  
 8 of early voting, absentee voting in-county than the  
 9 neighboring county?  
 10 A Correct. And if you go back to the legislative history,  
 11 that is what you're going to find. That was the  
 12 discussion when this was passed.  
 13 Q What was the discussion? What are you referencing?  
 14 A My recollection -- granted this is 20 years ago -- but my  
 15 recollection was that it was -- it was just that; that it  
 16 was the legislature authorizing those county commissions  
 17 to make specific requests to have absentee ballots  
 18 located within their county, to make that request of  
 19 their contracting auditor.  
 20 Q Right. But there was no discussion regarding the number  
 21 of days; you can do less to the Indians over there than  
 22 you can anybody else, right?  
 23 A I don't recall that, whether that was part of it or not.  
 24 I don't know.  
 25 Q Right. You are not aware of anything enacted anywhere

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1 Q Anything else you are basing that opinion on besides what  
 2 you just cited or what --  
 3 A No.  
 4 Q -- you just walked through in the statute?  
 5 A No. That is -- that is the sole statute.  
 6 Q Have you ever talked with anyone about this?  
 7 A I've quoted it frequently, but have I ever sought a legal  
 8 opinion or attorney general's opinion on it, no.  
 9 Q When have you quoted it frequently? Who did you share  
 10 this with?  
 11 A Whenever this discussion comes up is -- you know, what  
 12 are the requirements for Shannon and Todd County. This  
 13 is the statute that gives their county commissioners the  
 14 authority to determine what they want.  
 15 Q So you as -- while you were Secretary of State, you  
 16 suggested to county officials, you don't have to do the  
 17 same number of days in-county as everywhere else?  
 18 A I would suggest to them that that decision is up to the  
 19 county commission, correct.  
 20 Q But you have told them that they have the discretion to  
 21 contract for less days than other counties have for --  
 22 for absentee voting in their county?  
 23 A I don't know the exact language that I used, but I  
 24 certainly would have communicated to them that my belief  
 25 was that this statute gave the county commission the

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1 that states you can do less days of in-county absentee  
 2 voting to Shannon County folks than anybody else? That  
 3 is not stated anywhere, is it?  
 4 A This gives the discretion to make that decision to the  
 5 county commission of those counties.  
 6 Q Okay. And you have had that opinion for how long?  
 7 A Probably since 1992.  
 8 Q And that's why it wasn't a big deal to you that Shannon  
 9 County got less days of in-county absentee voting than  
 10 anywhere else?  
 11 A Correct. Because it was -- the legislature gave that  
 12 discretion to the county commission.  
 13 Q But when you say the discretion to contract, but not to  
 14 contract it equally, right, unequally?  
 15 A It gives the county commission the discretion as to how  
 16 to write that contract and what they want the contract  
 17 for.  
 18 Q Is it your opinion that the county commission can  
 19 contract for less days, Shannon County can contract for  
 20 less days of in-county absentee voting than  
 21 neighboring -- than neighboring counties?  
 22 A Neighboring counties don't have to contract. But is it  
 23 my opinion that Shannon County Commissioners could choose  
 24 to contract for less than, you know, the 42 days, the  
 25 answer is yes.

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1 authority to determine how many days they wanted within  
 2 their county.  
 3 Q And you never got a legal opinion on that?  
 4 A No.  
 5 Q That was your opinion?  
 6 A That was my opinion.  
 7 Q When is the first time you told Shannon County that?  
 8 A I don't recall, other than as new election statutes are  
 9 passed, it would have been our normal course to provide  
 10 those new statutes to all the county auditors. So when  
 11 this statute was passed in 1992, I'm certain that we  
 12 would have provided that to all of the counties. They  
 13 would have been aware of it at that point.  
 14 Q Right. This really became a big deal in 2004, didn't it,  
 15 when you didn't need a rule or a reason for absentee  
 16 balloting, you didn't need a specific reason?  
 17 A I think the reason it became a big deal in 2004 was,  
 18 again, the intensity of the campaign that was going on at  
 19 that time. I mean that was -- that campaign was  
 20 unprecedented in South Dakota history, at least in the 20  
 21 years that I have been working in elections.  
 22 Q Before you went ahead and told county auditors -- and you  
 23 must have told the Fall River County auditor that she  
 24 could contract for less days, less than 42 days of early  
 25 voting in Shannon County?

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1 with one of the councilmen, and then he had some other  
 2 folks from the headquarters that came in and met.  
 3 Q So in your tenure as South Dakota Secretary of State, you  
 4 met with the Rosebud Sioux Tribal Council one time in  
 5 formal session?  
 6 A Yes.  
 7 Q And you met an individual Cheyenne River Tribal Council  
 8 person with some folks around, not in formal session?  
 9 A Correct.  
 10 Q Did you ever meet with Shannon County -- the Oglala Sioux  
 11 Tribal Council in formal session?  
 12 A No. They did not respond to my offer to come out.  
 13 Q In ten years, did you ever meet with them regarding  
 14 anything to do with elections, the tribal council?  
 15 A No.  
 16 Q Why not?  
 17 A They -- one time I made an offer, they didn't -- didn't  
 18 accept my offer to come down.  
 19 Q So you made the offer in 2003?  
 20 A If I -- my guess is it was 2006, but I don't recall  
 21 specifically.  
 22 Q But you're running around the state meeting with all  
 23 these other folks. Why not -- why not go meet with the  
 24 tribal council down at Pine Ridge?  
 25 A Oh, I would have been happy to. We just didn't have

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1 A Correct.  
 2 Q All right. And that's one of the things I was wondering  
 3 when I read this report. "Secretary of State Nelson  
 4 launched an aggressive voting education campaign,  
 5 educating voters on voting procedures." You traveled  
 6 South Dakota, starting in March until the June primary.  
 7 Correct?  
 8 A Correct.  
 9 Q You went to service organizations?  
 10 A Correct.  
 11 Q You went to clubs and the media?  
 12 A Correct.  
 13 Q And then in August again you hit the road, making the  
 14 circuit to educate voters for the November general  
 15 election?  
 16 A Correct.  
 17 Q And your expenses to educate South Dakota voters were  
 18 paid in the '04 fiscal year.  
 19 A Yes.  
 20 Q But you couldn't go to Shannon County?  
 21 A I could have, certainly.  
 22 Q But you didn't?  
 23 A I don't recall, no.  
 24 Q And you never did during your eight years?  
 25 A I don't recall that I did. Not for election reasons. We

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1 the -- have the opportunity to.  
 2 Q And you are saying you never had the opportunity during  
 3 your eight years as South Dakota Secretary of State  
 4 because you -- you sent them one letter in 2006 and they  
 5 never replied?  
 6 A Correct. And I will -- I will tell you, I mean I am open  
 7 to go and meet with anybody, anywhere, anytime, and I  
 8 would have accepted any invitation to go down and visit  
 9 with anybody.  
 10 Q But you needed to be invited?  
 11 A Certainly.  
 12 Q Okay. Did you ever invite them up to South Dakota  
 13 Secretary of State land here in Pierre --  
 14 A I did not.  
 15 Q -- and say -- why not?  
 16 A Wasn't something that occurred to me.  
 17 Q Did you ever do any training on the Pine Ridge Indian  
 18 Reservation, Shannon County, on any voting issues?  
 19 A I don't recall ever doing any in Shannon County.  
 20 Q Why not, in your eight years?  
 21 A Typically training of election officials or training of  
 22 precinct workers is all done by the county auditor.  
 23 Q How many times did you go down there to educate voters?  
 24 A None.  
 25 Q In your eight years, not one time?

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1 did for -- when we worked with them on developing their  
 2 Uniform Commercial Code. I went to Shannon County to  
 3 work on that issue.  
 4 Q But in your eight years as South Dakota Secretary of  
 5 State, you never once visited Shannon County for the  
 6 purposes of educating any voter?  
 7 A No.  
 8 Q Or going ahead and dealing with any voting issue with the  
 9 elected leadership?  
 10 A That is correct.  
 11 Q All right. But in September of 2004, you worked with the  
 12 Kids Voting, joined forces to help registered voters,  
 13 correct?  
 14 A Correct.  
 15 Q There were 81,000 "Dear Parent" letters sent home with  
 16 school-age children?  
 17 A Correct.  
 18 Q None of those at Shannon County?  
 19 A I don't know because Kids Voting handled the distribution  
 20 of that. I know that Kids Voting had a -- had an  
 21 emphasis on election education in tribal areas, but I  
 22 don't know if Shannon County was part of that. And I  
 23 can't tell you the extent of it. I just know they were  
 24 involved in it.  
 25 Q You never checked on how far the voter education efforts

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1 went down there in Shannon County?  
 2 A No, I did not.  
 3 Q Why not?  
 4 A Well, number one, Kids Voting is not something I'm  
 5 responsible for. That is a private -- private  
 6 organization. They simply asked us would you be willing  
 7 to provide us with voter registration forms that we can  
 8 distribute to the parents of children involved in the  
 9 program. And we were happy to do that.  
 10 Q But as South Dakota Secretary of State you didn't need  
 11 Kids Voting folks' to go ahead and encourage voter  
 12 education in Shannon County, did you?  
 13 A Correct. No, I did not.  
 14 Q Is there any other counties you did not visit besides  
 15 Shannon County in your attempts to educate voters in the  
 16 State of South Dakota?  
 17 A Yes.  
 18 Q What other counties did you miss?  
 19 A I am not sure I can list all of them, but I probably  
 20 didn't visit Harding County. I can't tell you all of  
 21 them, but there's -- I certainly didn't hit all of them.  
 22 Q Can you tell me what counties here today you did not  
 23 visit?  
 24 A No, I can't.  
 25 Q All right. And then you said in the last paragraph that

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1 A The requirements of HAVA apply equally to every county.  
 2 Q Do you have an opinion on the question that I just asked?  
 3 A Every county is under the same HAVA requirements.  
 4 Q Right. Now you can answer my question. My question is  
 5 is there a county -- are you aware of any county in the  
 6 State of South Dakota that has a greater need for HAVA  
 7 funding than Shannon County?  
 8 A There is probably no county whose county finances are as  
 9 tight as Shannon County. That I would agree with.  
 10 Q What are you basing that upon?  
 11 A The discussions that I had with their county commission  
 12 back in September of 2010.  
 13 Q Did you know how poor it was down there before 2010?  
 14 A Certainly it's generally understood the poverty levels in  
 15 that area, but I don't know that I fully grasped how  
 16 tight their county budgets were.  
 17 Q So 2010 was the first time you, as South Dakota Secretary  
 18 of State, knew that things were tight for funding  
 19 elections in Shannon County?  
 20 A I knew that they were tight, but that is the first time  
 21 that I was ever exposed to some of the actual numbers in  
 22 their budget.  
 23 Q When is the first time you knew that things were tight  
 24 for funding elections in Shannon County?  
 25 A I don't know.

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1 with this money "in September, a mailing was sent out to  
 2 nearly 250, 300 business and organizations on voting  
 3 changes in '04." Remember doing that?  
 4 A No, not specifically. I'm sure we did, but I don't  
 5 recall it.  
 6 Q What business and organizations on voting changes did you  
 7 send to Shannon County?  
 8 A I don't know.  
 9 Q You can't think of a single one here today?  
 10 A No. Of the 250 and 300, I couldn't name a single one  
 11 because I don't recall what list we used. I don't know.  
 12 Q But you don't remember doing a single mailing to Shannon  
 13 County?  
 14 A I don't know what was included in the 300. I don't know.  
 15 Q Next sentence, "This flyer was posted in many businesses  
 16 throughout the state to educate workers and patrons of  
 17 the business on voting changes..." Do you remember even  
 18 one business in Shannon County where you went ahead and  
 19 did that?  
 20 A I don't know who was included in this mailing. I don't  
 21 know if there were businesses or organizations in Shannon  
 22 County. I don't know if any of them posted within their  
 23 organizations or businesses.  
 24 Q Is there a county in the State of South Dakota that has  
 25 greater need for HAVA funding than Shannon County?

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1 Q You don't remember what year?  
 2 A No, I don't.  
 3 Q Was it before 2005?  
 4 A I don't know.  
 5 Q Before 2007?  
 6 A I don't know.  
 7 Q Before the 2008 election?  
 8 A I don't know.  
 9 Q Why don't you know the need down there during that period  
 10 for funding elections?  
 11 A Funding of elections is a county responsibility. It was  
 12 solely a county responsibility until the time of HAVA.  
 13 Upon the implementation of HAVA, there were new mandates,  
 14 new requirements. Then obviously the state got involved  
 15 in passing through federal monies to pay for some of  
 16 those.  
 17 Q Can you look at Exhibit 154, sir.  
 18 A Yes.  
 19 Q Do you remember submitting this amended report on  
 20 February 7, 2007?  
 21 A Not specifically, no.  
 22 Q Is this your signature?  
 23 A Yes.  
 24 Q You submitted this report?  
 25 A Yes.

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1 Q So this is the authorities of the state Board of  
 2 Elections to promulgate rules, correct?  
 3 A Correct.  
 4 Q Looking at Subsection 4, the Uniformity of Election  
 5 Procedures --  
 6 A Yes.  
 7 Q -- there wasn't uniformity of election procedures in  
 8 these two counties, was there?  
 9 A When?  
 10 Q Before the 2012 primary.  
 11 MR. WILLIAMS: I'm going to object. Calls for a  
 12 legal conclusion. You can answer it.  
 13 A During the 2012, I believe everything was followed.  
 14 Before that there are numerous stories about laws not  
 15 being followed.  
 16 Q Let's hear about "numerous stories about laws not being  
 17 followed." Numerous stories, number one, from where?  
 18 A I don't know. Your three letters.  
 19 Q Okay. That is stories about laws not being followed?  
 20 A I guess.  
 21 Q That is what you consider them to be, stories about laws  
 22 not being followed? These are your words, not mine.  
 23 A Yeah.  
 24 Q Okay. Take me back there. Wasn't I alleging there  
 25 wasn't uniformity in the election procedures?

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1 A I am not responsible for the Shannon County election.  
 2 Shannon County is.  
 3 Q So it wasn't even on your priority list to go ahead and  
 4 intervene and go ahead and deal with early voting in  
 5 those two counties?  
 6 A No.  
 7 Q All right. But if you were sitting as the chair of the  
 8 state Board of Elections, you were supposed to have  
 9 uniformity in election procedures. You have two counties  
 10 that have to run to another county for early voting.  
 11 That is not uniformity, is it?  
 12 A The state law is uniform. Everyone has to do the same  
 13 thing.  
 14 Q Everyone has to run to another county to cast their early  
 15 vote?  
 16 A Absentee voting either happens at the courthouse or a  
 17 satellite location. Like in the June, 2012, they had a  
 18 satellite location in Pine Ridge.  
 19 Q All right. So you are saying that you provided for  
 20 uniformity in the election procedures after this  
 21 litigation was commenced, you provided the funding for  
 22 the 46-day period?  
 23 A I provided the additional funding based off the March 1  
 24 request.  
 25 MR. SANDVEN: Okay. Want to break for lunch for an

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1 A There is uniformity in our election laws. Nothing is  
 2 carved out for one county or another.  
 3 Q Nothing is -- nothing is in our election laws to go ahead  
 4 and deal with counties without courthouses, correct,  
 5 except you can contract out services?  
 6 A Right.  
 7 Q All right. So why didn't you carve out or why didn't you  
 8 promulgate some kind of rules to go ahead and make sure  
 9 those two counties were taken care of in early voting?  
 10 A If memory serves, those two counties haven't had a  
 11 courthouse for many, many years. You would have to  
 12 ask -- I don't know; 1970s, 1960s.  
 13 Q Why prior administrations didn't go ahead and deal with  
 14 this?  
 15 A Yeah.  
 16 Q So when you came in as the new Secretary of State, you  
 17 have got a big laundry list of all the things you need to  
 18 get done?  
 19 A Yes.  
 20 Q Okay. And one of those things was not -- was not early  
 21 voting?  
 22 A One of those things to get done --  
 23 Q It wasn't a priority for you to go ahead and provide  
 24 early voting in Shannon and Todd Counties at physical  
 25 locations there?

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1 hour?  
 2 MR. WILLIAMS: Sure.  
 3 (Lunch recess at 11:54 a.m.)  
 4 BY MR. SANDVEN:  
 5 Q Exhibit 131 in front of you, sir.  
 6 A Yes.  
 7 Q All right. Go to Page 7. Does this indicate how much  
 8 interest has been earned off HAVA funds for the State of  
 9 South Dakota since they begin receiving HAVA funds?  
 10 A Yes.  
 11 Q How much is that?  
 12 A \$3,014,695.  
 13 Q And the first distribution of HAVA funds was in 2003?  
 14 A I have to look at the plan.  
 15 Q Not sure?  
 16 A Not sure.  
 17 (Deposition Exhibit Number 132 marked for  
 18 identification.)  
 19 Q Do you know how much HAVA funds South Dakota received --  
 20 or Shannon County received in 2008?  
 21 A No.  
 22 Q Does this form indicate -- this is a reimbursement form,  
 23 correct?  
 24 A Yes. This is the reimbursement form. Looks like around  
 25 10,200.

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1 A 100. I believe your question was when Jennifer Jacobson  
 2 started as HAVA coordinator. This indicates that she  
 3 will start, it appears, in either late April or early May  
 4 of 2003. And this e-mail is dated April 22nd, 2003, and  
 5 indicated that we had just gotten the Title I money.  
 6 Q Okay.  
 7 A The answer is, no, I don't see anything in these e-mails  
 8 that talks about conversations with Shannon County  
 9 regarding absentee voting, early absentee voting.  
 10 Q And this is all correspondence before Title II?  
 11 A Yes.  
 12 Q So jumping back to Exhibit 157, do you have any idea when  
 13 this \$11 million plus Title II distribution occurred to  
 14 the State of South Dakota?  
 15 A I don't other than it would have been sometime between  
 16 October 1st of 2004 and September 30th of 2005.  
 17 Q All right. Then on the second page of this, Mr. Nelson,  
 18 in that first full paragraph, last sentence, it says,  
 19 "These requests for reimbursement are maintained in a  
 20 master spreadsheet."  
 21 A Yes.  
 22 Q Did you provide that?  
 23 A No.  
 24 Q Why not?  
 25 A Because I don't have it in my possession.

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1 the State of South Dakota had \$11,567,067 of HAVA Title  
 2 II?  
 3 A Leaving federal fiscal year 2005, that is correct, yes.  
 4 Q I'm going to walk over to you. I didn't have time to go  
 5 ahead and make copies for this, but it's Bate Stamp  
 6 Number 268, sir. And I don't want to stand over you on  
 7 this, but I'm going to be asking you questions on picking  
 8 up rumblings.  
 9 A Yes.  
 10 Q What is that about, "We are picking up rumblings"?  
 11 What's the date on that e-mail?  
 12 A May 1st of 2008.  
 13 Q Who did you send that to?  
 14 A The county auditor for Tripp County and Fall River  
 15 County, and it was cc'd to Kia Warne and Dan Burke.  
 16 Q Why did you send it to Fall River County?  
 17 A I'm guessing that whatever rumblings I was referring to  
 18 referenced Shannon County.  
 19 Q Who did you refer it to at Fall River?  
 20 A Sue Ganje.  
 21 Q All right. The county auditor?  
 22 A Yes.  
 23 Q You sent that to her Fall River -- as Fall River instead  
 24 of Shannon County because --  
 25 A Well, we don't make separate communications based on the

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1 Q Who has got it, sir?  
 2 A Secretary of State's office.  
 3 Q This is a master spreadsheet that goes ahead and divides  
 4 allowable expenses into 14 categories?  
 5 A Correct, which was later expanded to 17 plus. But at  
 6 that point 14 sounds right.  
 7 Q That reimbursement form that you send out --  
 8 A Yes.  
 9 Q -- to the counties, correct, sir?  
 10 A Correct.  
 11 Q What was the interest on the HAVA money during this  
 12 reporting period in this exhibit marked 157?  
 13 A I'm not sure that we can determine from these two pages  
 14 what the interest was that was credited.  
 15 Q All right. What does Line Item 8n., as in Nancy,  
 16 represent, "total federal share"? I'm on Page 1 of  
 17 Exhibit 157, sir.  
 18 A Right. Line 8 indicates the grant funding period.  
 19 Q No. I'm sorry, 10n as in Nancy.  
 20 A 10. And which sub-line?  
 21 Q N as in Nancy.  
 22 A That appears to be the total amount that was spent out of  
 23 those funds during that time period covered by this  
 24 report.  
 25 Q All right. **So leaving fiscal year 2005, going into 2006,**

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1 county. She is the auditor for both counties. We simply  
 2 have one e-mail address, and anything for either county  
 3 goes to her at that one address.  
 4 Q What were the rumblings you were referring to in that  
 5 e-mail, sir?  
 6 A I don't recall other than we must have heard someplace  
 7 that there was some interest in doing that. But I don't  
 8 recall where they -- where they came from or how I picked  
 9 it up.  
 10 Q It would only be one of two counties, correct?  
 11 A Right.  
 12 Q I mean there is only two counties where this is an issue?  
 13 A Right. But I don't recall --  
 14 Q Can I take it back from you --  
 15 A Certainly.  
 16 Q -- so I'm not standing over you.  
 17 A -- where I heard that that might be a possibility.  
 18 Q And Kathleen Flakus, she's the auditor for where?  
 19 A For Tripp and Todd County.  
 20 Q And then the subject line was "absentee sites in Shannon  
 21 and Todd"?  
 22 A I can't see it, but I'll take your word for it.  
 23 Q And this -- and like -- you sent this e-mail on May 1st,  
 24 2008. This was shortly before the 2008 primary?  
 25 A Correct.

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1 that came in. And then again the payment at the end of  
 2 2010 that you just referenced.  
 3 Q In 2008, was there \$5 million of funds that weren't  
 4 allocated, that weren't designated for anything from  
 5 Title II that was being carried over?  
 6 A That sounds -- that sounds --  
 7 Q You had over \$5 million in 2008 carried over from Title  
 8 II?  
 9 A I don't recall the actual number, but it would have been  
 10 probably in the 4 to 5 million range.  
 11 Q Same thing in 2010?  
 12 A I wouldn't be able to tell you without looking at a  
 13 report from 2010.  
 14 Q Okay. We will go ahead and pull that report. But -- so  
 15 if there's \$5 million sitting there, that could be  
 16 used -- that could have been used for the 2008 general  
 17 election, early voting in Shannon County, correct?  
 18 A After May 25th --  
 19 Q That's the general in 2008, right?  
 20 A Correct. But that -- that money had not been allocated  
 21 to the county, and so the county was authorized to use  
 22 the monies that had been allocated to them.  
 23 Q But all the county had to do was just say -- even if it  
 24 cost \$50,000 high end, like you talked about earlier for  
 25 early voting for a whole election cycle, they could have

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 1 Q Because when does the Secretary of State get involved in  
 2 an election? What is the rule?  
 3 A Well, typically our involvement is in the training  
 4 aspect, training county auditors, preparing them for the  
 5 elections. But obviously the situation that was  
 6 occurring down there at that point was crucial. You need  
 7 to have a county auditor. You need to have that  
 8 infrastructure to conduct an election. And the time was  
 9 drawing short, and so I did what I could to try to bring  
 10 that situation to a positive result. And I think we did  
 11 that.  
 12 Q What was your involvement? What did you do?  
 13 A Well, talked not only with the officials in Fall River  
 14 County, but I talked to county auditors in all of the  
 15 neighboring counties to determine, you know, what  
 16 assistance they might be able to offer in this regard,  
 17 went to a county commission meeting, went back to a  
 18 second meeting down there to try to bring the sides  
 19 together and work this out. And fortunately to their  
 20 credit, the officials in Fall River County, at the end of  
 21 the day said we understand the importance of serving  
 22 those -- the folks in Shannon County, and they did.  
 23 Q Was early voting an issue at that meeting?  
 24 A It was part of the discussions, yes.  
 25 Q All right. Did you offer anything on making sure there

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 1 just written you a letter and just said can you  
 2 preapprove or what do you think about us using \$50,000 of  
 3 that 5 million over there for early voting? They could  
 4 have made the request?  
 5 A They could have made the request.  
 6 Q And you wouldn't have denied it?  
 7 A I would have denied it.  
 8 Q You would have denied it?  
 9 A Yes. Absolutely.  
 10 Q Tell --  
 11 A Because I had authorized them to use the monies that were  
 12 allocated to their county for those purposes.  
 13 Q Once this was exhausted, they could have asked for more  
 14 from you?  
 15 A They could have, but that never occurred.  
 16 Q They never asked for the money?  
 17 A For additional over and above, not that I recall, because  
 18 we authorized them to utilize the monies that were  
 19 allocated to their county.  
 20 Q When you were involved in that 2010 meeting on  
 21 September 24th, you were aware of the notice of  
 22 termination of county auditor service?  
 23 A Yes.  
 24 Q That is why you were there, correct?  
 25 A Yes.

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 1 was early voting in Shannon County for the prerequisite  
 2 six weeks?  
 3 A You know, I don't recall what I would -- what I said, but  
 4 my take would have been just what you saw in these  
 5 e-mails from 2008. I mean that was my position in that  
 6 we would allow you to utilize your Title II monies to  
 7 reimburse for those costs. That was my position all the  
 8 way through. And so if we had talked about it, that's  
 9 what I would have said.  
 10 Q What if the county was concerned, hey, we are going to  
 11 zero that out on this election. Will we get new money?  
 12 Did you ever have that discussion?  
 13 A I know there was -- there was concern about zeroing it  
 14 out. Whether we talked about what happens next, what  
 15 happens for 2012, I don't recall if we talked about that.  
 16 Q Who did you talk to about the account being depleted?  
 17 A Well, it was part of the discussion that I recall that  
 18 the county commission had during those meetings.  
 19 Q Did you say we have got \$5 million sitting over here that  
 20 can be transferred if that is depleted? We have more  
 21 money here. Did you say that?  
 22 A I don't know if I did or not. But I can tell you I would  
 23 not have offered to transfer money specifically to  
 24 Shannon County.  
 25 Q Why not?

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1 A Because my policy was that we would transfer equal  
 2 amounts to all counties. And at the end of 2010, that is  
 3 what we did.

4 Q But what if the need for voting in Shannon County is  
 5 ten-fold what the need is in Lincoln County?

6 A Again, the purpose of that federal money is not to  
 7 supplant normal county expenditures.

8 MR. SANDVEN: It's 12:10. Do we want to get -- when  
 9 do you guys want to have lunch?

10 MS. FRANKENSTEIN: Let's have lunch now.  
 11 (Lunch recess at 12:11 p.m.)  
 12 BY MR. SANDVEN:

13 Q You have Exhibits 129, 130, and 131 in front of you?  
 14 A Yes.

15 Q All right. So can you tell me how much Title II money  
 16 carried over for the -- for 2006, 2008, 2010 now? And I  
 17 think Exhibit 129, does that just look like Title I  
 18 monies?

19 A No. Let me -- okay. What I understand this to be is a  
 20 report that contains -- and I'm on Page 18 of  
 21 Exhibit 129 -- the Title II monies as of September 30th,  
 22 2007. It shows the balance, unspent balance for South  
 23 Dakota at 6,821,176.

24 Q So at that time any of that funding could have been  
 25 utilized for early voting?

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1 Q In the 2008 plan that you submitted, it said that the  
 2 state is currently developing Project ST25 which will  
 3 make improvements to election night reporting,  
 4 canvassing, and voter education and access.

5 A Yes.

6 Q What was that?

7 A That was a -- prior to that, our state utilized a main  
 8 frame-based system for reporting election results on  
 9 election night. And that was replaced with ST25 which  
 10 was a sequel-based system for reporting results on  
 11 election night, but it also had a component that allows  
 12 voters to locate where their polling place is, and also  
 13 to view their sample ballot. And so it was a program  
 14 that accomplished all of those purposes.

15 Q Does it still exist today?

16 A Yes. Although my general understanding is there has  
 17 been -- the new secretary has made some changes to it,  
 18 but the system still exists.

19 Q Then the state used Title II, Section 251 funds for  
 20 additional projects to improve federal elections?  
 21 A Yes.

22 Q And you cited that frequently when anyone went ahead and  
 23 asked can we use this money for early voting?  
 24 A Correct.

25 Q And then under the plan, 2008 plan, counties could use

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1 A No, because, again, we hadn't yet received the EAC  
 2 authorization to do that.

3 Q All right. Same question for Exhibit 130, sir.

4 A And this would be the Title II monies on hand at the end  
 5 of September, 2008. South Dakota had \$7,007,824.

6 Q Any of that could have been used for early voting?  
 7 A Beginning May 25th of 2008, yes.

8 Q All right. And it was a hundred percent your discretion  
 9 on whether or not it was approved for early voting?  
 10 A Following May 25th, 2008, yes.

11 Q Right. You said, yes, it's okay?  
 12 A That's correct, yes.

13 Q You didn't need to go to anybody else?  
 14 A No.

15 Q Same question for '10, Exhibit 131.

16 A And this would be the Title II balance as of  
 17 September 30th, 2010. At that point South Dakota had  
 18 \$8,071,582.

19 Q Any of that money could have been used for early voting?  
 20 A Yes.

21 Q All of it could have?  
 22 A There wouldn't have been any legal prohibition on it, no.

23 Q It was a hundred percent your discretion on whether or  
 24 not this was used for early voting?  
 25 A Correct.

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1 Title II funds for specific projects to improve federal  
 2 elections with your approval?

3 A Correct.

4 Q What were those projects?

5 A You know, I don't recall specific projects off the top of  
 6 my head, but -- and I think you might find in some of  
 7 those e-mails there may be some, you know, requests that  
 8 came in from counties, but primarily counties would have  
 9 directed those to the HAVA coordinator. And so anything  
 10 that would be in here would just be the tip of the  
 11 iceberg as to what those would be.

12 Q Anything regarding -- here's your e-mails -- other  
 13 projects?

14 A It does -- if I might, I'm not -- I haven't completely  
 15 gone through the e-mails, but I'm not finding anything  
 16 there. But Mr. Williams handed me the 2010 March HAVA  
 17 state plan that talks about some of those additional  
 18 items.

19 Q You approved them?  
 20 A Yes.

21 Q What were the additional projects that you approved, sir?  
 22 A South Dakota is one of the first states in the country to  
 23 develop computerized links to transmit voter registration  
 24 data between driver's license offices and county  
 25 auditors' offices. And so somebody, when they got their

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1 driver's license or renewed it, could check a box on the  
 2 driver's license application if they wanted to register  
 3 to vote, and that information would go directly  
 4 electronically to the county auditor, and they would be  
 5 registered to vote.  
 6 Q How much did that cost, sir?  
 7 A I don't recall.  
 8 Q Next project?  
 9 A The ST25 project that you just mentioned.  
 10 Q Do you recall approximately how much that cost?  
 11 A This states approximately 350,000.  
 12 Q Any other projects you approved during your tenure?  
 13 A This also mentions voter registration cancellation  
 14 notification system. Prior to this, if somebody  
 15 registered in County A, and they were canceling their  
 16 registration in County B, the county auditors would have  
 17 to transmit that information by paper through the mail.  
 18 And we developed an electronic system for moving those  
 19 cancellation notices from one county to another, or even  
 20 from the Secretary of State's Office to a county. So  
 21 that was -- that was also developed.  
 22 Q Do you know how much that cost?  
 23 A This does not say, and I don't recall.  
 24 Q Okay.  
 25 A And then the last paragraph says, "The state will

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1 A Yes.  
 2 Q All right. It's Page 3 of 9 of the plan.  
 3 A Okay.  
 4 Q Last paragraph, right-hand column.  
 5 A Okay.  
 6 Q It says that each county -- about halfway through the  
 7 last indented paragraph, "Each county established a  
 8 reserved account determined by the county's" purchase --  
 9 or "portion of all statewide registered voters."  
 10 A Correct.  
 11 Q All right. So that was in the 2008 plan?  
 12 A Correct.  
 13 Q And then I thought earlier you said that the registered  
 14 voters or number of registered voters, that wasn't the  
 15 criteria for HAVA eligibility --  
 16 A That's --  
 17 Q -- after a certain year. What was that year? When did  
 18 it all change?  
 19 A I believe we changed that in -- I've already testified to  
 20 this, but I believe it was in either 2007 or 2008. What  
 21 this paragraph does is simply a historical recollection  
 22 of how the initial HAVA monies were distributed. This  
 23 doesn't reflect how anything was being done in 2008.  
 24 Q Right. And then on the historical paragraph, last  
 25 sentence, "The remaining Title II amount of

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1 continue to use Title II Section 251 funds for additional  
 2 projects to improve federal elections as determined by  
 3 the Secretary of State. Counties may use Title II funds  
 4 for specific projects to improve federal elections with  
 5 the approval of the Secretary of State." And that would  
 6 be a county, if they had some particular item that they  
 7 thought would improve their administration, they would  
 8 send that request to the HAVA coordinator, and either the  
 9 HAVA coordinator or myself would make a determination on  
 10 whether that would be approved for reimbursement.  
 11 Q Why didn't you make in-county absentee voting a project  
 12 under your discretion for Todd or Shannon?  
 13 A We did.  
 14 Q How?  
 15 A Well, in that May 1st, 2008 e-mail we authorized the use  
 16 of these funds for that purpose.  
 17 Q But you didn't know how much that project was? You never  
 18 researched how much it cost?  
 19 A Correct. We simply said to the county, we will authorize  
 20 you to use those Title II funds for that purpose.  
 21 Q I'm going -- can I have this marked Exhibit 150.  
 22 (Deposition Exhibit Number 150 marked for  
 23 identification.)  
 24 Q Here is the 2008 plan. Do you remember submitting this  
 25 plan?

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1 3.2 million -- \$3,235,652.80 was reserved in the state  
 2 election fund, designated to each county based upon its  
 3 match..."  
 4 A Right. And that is what would have occurred in 2005 when  
 5 that money came in.  
 6 Q Until what year?  
 7 A Well, it would remain in those county designated sub-  
 8 funds until it's spent.  
 9 Q All right. Then on Pages -- Page 5 of 9, that first  
 10 paragraph, last -- about halfway through, it says that,  
 11 "Counties are reimbursed semi-annually from the state  
 12 election fund." Where did that rule come from?  
 13 A That was simply a procedure that we developed. The  
 14 thought behind that was we wanted to -- we established  
 15 the reimbursement as basically June to make sure we could  
 16 get reimbursements done prior to the end of the state  
 17 fiscal year, and then December, so we could get  
 18 reimbursements done prior to the end of the county fiscal  
 19 year.  
 20 The reason we confined it to those two periods is so  
 21 we didn't have counties sending in for reimbursement for  
 22 every five and ten dollars that they spent, but rather we  
 23 asked them to accumulate six months' worth of  
 24 expenditures and then submit them to us at those two  
 25 periods.

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1 And then our task was to turn that around very  
 2 quickly so we could get those payments out again before  
 3 those two fiscal years ended.  
 4 Q What months were the -- the requests for reimbursement to  
 5 be submitted?  
 6 A Prior -- I believe we ask for those things prior to like  
 7 June 1st or December 1st to give us a month to get the  
 8 paperwork and the checks turned around, but as you will  
 9 see in some of these e-mails, there were requests for us  
 10 to push that date for submission back. And whenever we  
 11 could, we would do that because what we really wanted to  
 12 do is make sure the counties could get their money by  
 13 either the end of June or the end of December. And so  
 14 whenever possible we would accommodate that.  
 15 Q Which date would you push back?  
 16 A Either the June 1st or December 1st date.  
 17 Q You mean back to August?  
 18 A No, no, no, no. Back to maybe June 5th or 10th or  
 19 December 1st or 10th. Again, so that we could get the  
 20 payment made by the end of June or the end of December.  
 21 Q The counties wouldn't even know what all their early  
 22 election or absentee voting costs are until after the  
 23 election was completed, correct?  
 24 A Oh, very true. In fact, most of their expenses for a  
 25 primary they wouldn't know, and those would end up being

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1 reimbursement if they wanted. But the understanding was  
 2 most of those expenditures are going to be for voting  
 3 machines, for programming, and those types of things  
 4 where they are not even going to get the invoice until  
 5 late June, maybe even July.  
 6 Q Right. So Shannon County goes ahead and they are paying  
 7 staff to drive over to do an early voting location,  
 8 correct?  
 9 A Right.  
 10 Q They have got to pay for the physical location?  
 11 A Yes.  
 12 Q Mileage for the folks to get there?  
 13 A Yes.  
 14 Q Miscellaneous notice costs?  
 15 A Correct.  
 16 Q All right. They are not going to know what all those  
 17 costs are until after June 1st, correct?  
 18 A Correct. They will know some of them prior, but the  
 19 majority are probably going to be after.  
 20 Q So why didn't you tell Shannon County just get these  
 21 bills paid and we will give you until the end of June to  
 22 go ahead and get your receipts in, and we will get you  
 23 reimbursed right away?  
 24 A Because, again, we wanted to make reimbursement prior to  
 25 the end of the state fiscal year which is June 30th. In

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1 submitted then in December.  
 2 Q Isn't that a terrible policy; that someone would have to  
 3 eat all those costs, a poor county like Shannon has to go  
 4 ahead and make those expenditures, they submit their  
 5 reimbursement form, then they have got to wait six months  
 6 to get that money back?  
 7 A I don't recall that anybody ever had an issue with that  
 8 time frame.  
 9 Q So you thought six months to get the money back to  
 10 Shannon County was fine?  
 11 A Yes.  
 12 Q You referenced some e-mails again regarding where you did  
 13 exceptions for that reimbursement policy for those time  
 14 frames.  
 15 A We didn't -- we didn't create exceptions for the  
 16 June 30th or the December 30th deadline to get the  
 17 payments out. But we did make some one- or two-week  
 18 exceptions for them to give them a little more time to  
 19 get the paperwork into us.  
 20 Q Because they were supposed to have the paperwork in by  
 21 June 1st?  
 22 A That's my recollection.  
 23 Q A week or a few days before the election itself?  
 24 A Right. So any expenditures that they made up to that  
 25 point, that they had invoices for, they could request

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1 order to do that, we have to have information into the  
 2 state auditor by probably mid-June in order for them to  
 3 get those checks out and back to the counties by the end  
 4 of June.  
 5 Q So who did you make exceptions to? Who did you give a  
 6 couple extra weeks to to go ahead and submit their  
 7 receipts?  
 8 A If we made an exception it would be for all counties.  
 9 Q Okay. You said there was some e-mails?  
 10 A Right.  
 11 Q You thought it was in your e-mails?  
 12 A Yes.  
 13 Q Can you find those, please.  
 14 A Here is -- this is Document 281, an e-mail from Susan  
 15 Williams, who is the Bennett County Auditor, to Jennifer  
 16 Headlee, asking if they could delay their reimbursement  
 17 form submission to December 16th. And this would be of  
 18 2008. Well, actually she must have just been -- I don't  
 19 have her initial -- yeah. She says that they will be  
 20 paying their bill by December 16th. And then we had some  
 21 discussion as to whether or not --  
 22 Q They will be submitting their bill by December 16th?  
 23 A By December 16th. And whether -- and Jennifer responds  
 24 back to Susan saying she will double-check within our  
 25 office to see if that is okay and we can still get the

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1 about that first \$4,000 per county payment that was moved  
 2 to the counties' account, I specifically remember the  
 3 reason doing that was because some counties were zeroed  
 4 out, and they were going to have those ongoing fixed  
 5 costs. So that is the reason we did that.  
 6 Q Is the -- with the counties that were zeroed out, you  
 7 would only give them 4,000 then --  
 8 A Correct.  
 9 Q -- and go from zero to 4,000?  
 10 A Correct.  
 11 Q And then when did you replenish their account for the  
 12 next election cycle or how did you do that?  
 13 A Well, as you recall this morning, we talked about there  
 14 were additional federal monies that came in in two or  
 15 three shots. Those were then put into those accounts.  
 16 So during that whole time the accounts were continually  
 17 replenished by either new federal monies coming in or  
 18 taking some of what the state had and moving it over into  
 19 those county accounts.  
 20 Q Right. It wasn't just new money that you did the equal  
 21 distributions with?  
 22 A Correct.  
 23 Q There were some situations where you would go ahead and  
 24 just transfer money that wasn't designated to individual  
 25 counties?

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1 A Correct. And based on --  
 2 Q How much did you do that and who did you do it for?  
 3 A Based on what we talked about this morning and the review  
 4 of the documents, it appeared that we did that twice.  
 5 Once was a \$4,000 per county transfer.  
 6 Q That was new money coming in?  
 7 A No. That was -- no. That was money that was in the  
 8 state -- state account that we moved over to the county  
 9 accounts. 4,000 per county. And then again, before I  
 10 left office, it was that 10,000 per county.  
 11 Q How long was that before you left office?  
 12 A It was the last week.  
 13 Q Funny timing. Why then?  
 14 A Because I wanted to accomplish that before I left office.  
 15 There was -- there were a number of things that I wanted  
 16 to accomplish before I left office. December of 2010 was  
 17 a very busy time in the office, pushing to accomplish  
 18 some things, and that was one of the things I wanted to  
 19 do.  
 20 Q All right. Have you ever transferred money to a county  
 21 that wasn't an equal distribution from Title II?  
 22 A No. Other than that first one that was based on pro rata  
 23 voter registration. But other than that, no.  
 24 Q Page 5 of 9 in the middle, it talks about "Expenditures  
 25 are made as needed by the Secretary of State with

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1 oversight by the state auditor through spending authority  
 2 granted by the state legislature."  
 3 A Yes.  
 4 Q What are the restrictions on you by the state auditor for  
 5 HAVA funds? Are there any?  
 6 A Any expenditures has to fall within the parameters of  
 7 state law. I can't tell you what types of things the  
 8 state auditor looks at when a voucher goes over to them  
 9 for payment, but that is their job. They review every  
 10 single voucher for every single payment to determine does  
 11 this payment comply with the terms of state law. If  
 12 there is a question on it, they will come back to the  
 13 agency and ask their question to get it resolved.  
 14 I don't know in any of the time I was there that we  
 15 ever had a payment refused, but occasionally there would  
 16 have been questions, you know, does it comply with state  
 17 law.  
 18 Q When you were at that September 24th, 2010 meeting in  
 19 Shannon County, you testified earlier that you knew money  
 20 was an issue for funding early voting. To me it's  
 21 ridiculous. Can you explain to me, I've got \$5 million  
 22 plus sitting over here. Shannon County is yelling from  
 23 the mountaintop I need more money for early voting.  
 24 A Yep.  
 25 Q Why you didn't say I have got it, here you go. And

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1 remember this -- you knew already that there -- should  
 2 have known there was no early voting in June --  
 3 A Right.  
 4 Q -- of that election cycle or not the same number of days.  
 5 A The answer to that question goes back to the philosophy  
 6 that I developed really from day one with the HAVA money.  
 7 My goal with the HAVA money was to be as judicious with  
 8 the expenditure of that as possible so that it would last  
 9 as long as possible for the counties.  
 10 As I indicated earlier, the requirements of that  
 11 federal law are going to go on forever. At some point  
 12 the money is going to run out for everybody, and all of  
 13 those Title III expenditures are then going to fall back  
 14 on county taxpayers. So my goal from day one, and I'm  
 15 not ashamed of it whatsoever, was to make these -- these  
 16 funds last as long as possible for every county in the  
 17 state.  
 18 And so that's the reason that I am not giving certain  
 19 counties extra money. That's why we have been very  
 20 conservative in the expenditure of that money, and,  
 21 frankly, that is why we have got as such money on hand  
 22 yet today as we do because we have been very conservative  
 23 in those expenditures. And county taxpayers across the  
 24 state are going to be the beneficiaries of that for many  
 25 years to come.

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1 There are many states that have zero HAVA dollars  
 2 left today because they spent them all. All those  
 3 federal requirements are now going back on their state  
 4 and county taxpayers. In South Dakota we still have  
 5 money to pay for those. And that's by design. That was  
 6 my philosophy.  
 7 Q Have you ever heard about another state anywhere in the  
 8 United States that doesn't have their own county seat or  
 9 where there is a situation similar --  
 10 A I don't know.  
 11 Q -- to this early voting here?  
 12 A No. I have not heard of that, but I have not queried  
 13 every county in the country, so I don't know.  
 14 Q Have you ever done an assessment of need county-by-county  
 15 for HAVA funds?  
 16 A No. I mean our assessment was what does -- our  
 17 assessment all along is what does it take to accomplish  
 18 the requirements of HAVA. Again, those are laid out in  
 19 Title I and Title III, and those are the things that --  
 20 that we are going to spend the money on. Later in 2008,  
 21 we were allowed to expand the use of that.  
 22 Q Would you have given \$50,000 if they asked for it in 2008  
 23 for early voting in Shannon County?  
 24 A And not give it to other counties, no.  
 25 Q Would you have given them anything that was not

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1 have been terminated?  
 2 A According to the agreement that Shannon County had  
 3 signed, the contract, their option was -- let me back up.  
 4 There was some restrictions someplace in that those  
 5 services had to be provided by a neighboring county. And  
 6 I don't remember where that restriction resides. And  
 7 so -- so I talked to every neighboring county auditor to  
 8 determine whether there was any possibility of those  
 9 neighboring auditors providing those services.  
 10 I did not receive any positive response to those  
 11 conversations. So that brought us back to Fall River  
 12 County officials. And at the end of the day, to their  
 13 great credit, they came back to the table and they did  
 14 the job, and they are doing the job today.  
 15 Q I'm going to hand you what's been marked Exhibit 18. Is  
 16 this the contract that was in effect at that time?  
 17 A It appears to be, yes.  
 18 Q Have you ever read the contract that was in effect  
 19 between Shannon County and Fall River?  
 20 A Yes.  
 21 Q When did you read it last?  
 22 A Probably when all of this was occurring in September of  
 23 2010. I know I haven't read it since.  
 24 Q On Page 2 --  
 25 A Okay.

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1 distributed to other counties in 2008?  
 2 A No.  
 3 Q No matter what the need was?  
 4 A No matter what the need was, I -- you know, I wasn't  
 5 posed with that question, but, no, I can't imagine that I  
 6 would have done that.  
 7 Q Why?  
 8 A Because my philosophy was to make those federal monies  
 9 last as long as possible for every county and every  
 10 taxpayer in the state.  
 11 Q Even if you have got a minority group not having the same  
 12 access to early voting?  
 13 A I felt that with our allowance of the use of those Title  
 14 II monies in 2008, the reimbursement from the county-  
 15 held -- or the county's reserved accounts, that we made  
 16 provision for that situation, those unique situations  
 17 down there. We made provision for that.  
 18 Q So in 2010 when some people were starting to pull out of  
 19 election services, the county auditor, what would you  
 20 have done? You had a notice of termination of services.  
 21 A The two things that I did obviously were talked to  
 22 officials in Fall River County to try to figure out what  
 23 is really at the root of the problem here, what can we do  
 24 to get your folks back on board.  
 25 Q My question is what would you do if the services would

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1 Q -- of Exhibit 18, it talks about approximately \$40,500  
 2 going to the auditor's office from Shannon County, to the  
 3 auditor and the clerk?  
 4 A Okay.  
 5 Q Did you ever ask can some of this be used for early  
 6 voting?  
 7 A No.  
 8 Q Why not?  
 9 A I don't know that I was asked the question.  
 10 Q But when you went down there and heard the complaints  
 11 about money and saw everything going on, did you  
 12 investigate how much money do you have to do your job?  
 13 A That was a discussion that the county commissioners were  
 14 having with their county auditors as I recall. But the  
 15 thing that I remember coming out of that meeting is the  
 16 commissioners understood that at some point, if they kept  
 17 spending that money, it was going to be gone. And they  
 18 wanted to be very judicious in the use of their dollars.  
 19 That is what I remember coming out of that meeting.  
 20 Q So South Dakota Secretary of State Nelson is being  
 21 judicious in his expenditures of funds.  
 22 A Yes.  
 23 Q About 3 million or so is allocated to counties, 5 million  
 24 dollars isn't allocated?  
 25 A Roughly, yes.

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1 Q All right. Then the county with -- at Shannon County  
 2 they have got their little line item or their line item  
 3 for HAVA?  
 4 A Yes.  
 5 Q So they are trying to be judicious --  
 6 A Yes.  
 7 Q -- and make sure that it lasts for their continuing  
 8 obligations?  
 9 A Yes.  
 10 Q Did you ever share with anyone, hey, we have got 5  
 11 million dollars sitting over here. It's accruing  
 12 interest.  
 13 A Uh-huh. Did I share that with anyone? I don't --  
 14 Q At Shannon County.  
 15 A I don't know if I was asked that question, but I think it  
 16 was -- it's generally known that that money was there.  
 17 That money was talked about in all of the HAVA state  
 18 plans. And the county auditors all had access to those  
 19 plans.  
 20 Q Did you know that this agreement could be terminated with  
 21 30 days' notice?  
 22 A I'm sure I read it in 2010. I mean prior to that whole  
 23 issue coming to light, I don't know if I had ever read  
 24 this. I don't know that I had had any reason to.  
 25 Q All right. In the 30 days -- the September 24th, 2010

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1 contracted auditor.  
 2 Q All right. When does the South Dakota Secretary of State  
 3 go ahead and get involved in an issue?  
 4 A If something is being done that is illegal, that is when  
 5 we would get involved. Now, obviously we got involved  
 6 when this contract was terminated. We wouldn't have had  
 7 to, but obviously I had a great concern about that  
 8 election being conducted properly. And so we went down  
 9 on two different occasions to try to work that issue out.  
 10 Q How often have you given a deposition?  
 11 A I think this is just my second one.  
 12 Q What was your first one?  
 13 A It was in the Janis case.  
 14 Q Did you also testify in that case?  
 15 A No. It was -- it didn't go to trial.  
 16 Q Where did you give your deposition?  
 17 A In the attorney general's office.  
 18 Q When?  
 19 A Probably late 2009, early 2010. I don't remember.  
 20 Q All right. Have you been a party to any other lawsuit?  
 21 A Yes.  
 22 Q Please describe.  
 23 A As Secretary of State, I was a party to a number of  
 24 lawsuits. Some dealing with Voting Rights Act, but  
 25 primarily dealing with ballot access, petition access,

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1 date, that's about when early voting should have been  
 2 starting in Shannon County, correct?  
 3 A That's when absentee voting -- approximately when  
 4 absentee voting began statewide.  
 5 Q And the county auditor is saying I'm going to quit, and  
 6 you thought that was a problem?  
 7 A Certainly. That's a problem.  
 8 Q Okay. Why, in your resolution efforts, didn't you  
 9 address the number of days of early voting before that  
 10 election? You knew, you just said, that everyone else in  
 11 the state got to go ahead and have six weeks of early  
 12 voting. Why didn't you say what are we going to do here?  
 13 A Because absentee voting hadn't started yet. And as  
 14 this -- as this was ultimately resolved, the folks got  
 15 six weeks of absentee voting. It wasn't in-county, but  
 16 they had six weeks of absentee voting.  
 17 Q How many days of absentee voting in-county did they get  
 18 for the 2010 election cycle before the general?  
 19 A This morning I think you said 22 maybe.  
 20 Q Twenty-two partial days.  
 21 A Okay.  
 22 Q So why didn't you jump in then and say, hey, let's do a  
 23 little better than that?  
 24 A Again, as we have gone over a number of times, that is an  
 25 issue between their county commission and their

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1 petition cases, that type of thing.  
 2 Q How often have you been sued regarding the Voting Rights  
 3 Act or election issues during your tenure as South Dakota  
 4 Secretary of State?  
 5 A I inherited the Quiver case from my predecessor. I was  
 6 heavily involved in the Bone Shirt case. And then the  
 7 Janis case.  
 8 Q What was your role in both of those cases? You gave a  
 9 deposition in Janis?  
 10 A Right. Right.  
 11 Q You were never deposed in the Bone Shirt case?  
 12 A I don't -- I don't recall that I was. I think I would've  
 13 remembered that, but I don't recall that I was.  
 14 Q Did you give testimony in that case?  
 15 A I did give testimony, yes.  
 16 Q All right. So you knew about all the voting issues going  
 17 on down at Shannon County because of this litigation --  
 18 A Yes.  
 19 Q -- correct?  
 20 A Yes.  
 21 Q Why didn't you do more to go ahead and assist with early  
 22 voting down there?  
 23 A Again, I think that goes back to my philosophy of  
 24 governing. And that is that each level of government has  
 25 its responsibilities. The county commission in those

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1 counties has their designated responsibilities, county  
 2 auditor has their responsibilities, and the Secretary of  
 3 State has his responsibilities. And I respect those  
 4 boundaries, try to give assistance, but not interference.  
 5 And that applies not just to Shannon County, but every  
 6 county in the state.

7 Q Have you ever investigated a complaint by an individual  
 8 voter of election issues in this county or has your  
 9 office?

10 A Sure. And when you use "investigated," realizing we  
 11 don't have any formal investigative authority, but if  
 12 someone were to call with a complaint, absolutely, we  
 13 would get to the bottom of it, find out both sides of it,  
 14 what are the facts, and then is there something that  
 15 needs to be done differently to make sure things are done  
 16 legally and whatever the case was.

17 Q How many times have you fulfilled that role during your  
 18 tenure as South Dakota Secretary of State?

19 A Well, as Secretary of State and as election supervisor,  
 20 probably hundreds, maybe thousands.

21 Q Did it have to be a written request to get your  
 22 intervention?

23 A No.

24 Q Someone just had to call you?

25 A Right.

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1 A No, there is not.

2 Q Isn't that inherent in the law?

3 A No. The law requires six weeks of absentee voting being  
 4 open. And it is as we have talked about this morning.  
 5 But so far as the in-county option, that's the statute  
 6 that governs.

7 Q Do you know what percent Indian population is down there  
 8 in Shannon County?

9 A About 95 percent.

10 Q So why didn't it concern you that this minority  
 11 population, this huge block, why didn't it concern you  
 12 that they don't have the same access to in-county early  
 13 voting as the other 64 counties in the State of South  
 14 Dakota?

15 A Because our legislature has established the policy of  
 16 leaving that decision to the local county commissions.  
 17 And in Shannon County, I believe every one of them is  
 18 Native American.

19 Q On the bottom of Page 5 of 9, as of January 30, 2007,  
 20 there was -- \$6,499,467.23 were in the Title II account  
 21 for South Dakota?

22 A Correct. And then it follows by saying, "Of that,  
 23 2.8 million was reserved to the counties." And obviously  
 24 Shannon County would have a portion of that.

25 Q Have you ever had any discussions with the state Board of

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1 Q Did you remember getting a call from anyone during the  
 2 2008 or 2010 election cycle saying we want this same  
 3 number of days of early voting?

4 A I don't know if we had a call, but I know that discussion  
 5 was going on. We probably did have discussions with  
 6 people, yes.

7 Q Why didn't you investigate that?

8 A Because of the statute we have already talked about. The  
 9 statute gives the authority to make that determination to  
 10 the county commission.

11 Q On the statute, last time I'll ask a question on this,  
 12 it's your interpretation of the statute --

13 A Correct.

14 Q -- right; this statute 12-19-53?

15 A Correct.

16 Q That that gives county governments the discretion, Todd  
 17 and Shannon, gives those auditors the discretion and  
 18 those county commissions the discretion to determine how  
 19 many days of early voting occurs in that county?

20 A It gives the county commission the discretion to  
 21 determine how many days they want to contract for in-  
 22 county services. That is correct.

23 Q And there is no requirement if they contract with Todd or  
 24 Shannon County that they give them the same number of  
 25 days of in-county voting as everybody else?

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1 Elections regarding how HAVA funds are allocated from  
 2 county to county?

3 A I don't recall any discussions, but I'm not saying that  
 4 they didn't occur. Obviously as the HAVA plans were  
 5 being put together, those discussions were had with the  
 6 HAVA task force.

7 Q How did you pick the HAVA task force?

8 A Well, we started with, as I recall, Board of Election  
 9 members.

10 Q Who picked them?

11 A The HAVA task force?

12 Q Yes.

13 A I did. We wanted the Board of Election members. One of  
 14 the big pushes of HAVA was access to the polling place  
 15 for individuals with disabilities, so we wanted a couple  
 16 representatives from the disability community on there.  
 17 We asked somebody from each of the political parties to  
 18 serve on there. We wanted representatives from the  
 19 legislature on there. And there may have been some  
 20 others, but -- and I think we had the auditors from the  
 21 two largest counties, one or two largest counties on the  
 22 task force also since they would obviously be  
 23 significantly impacted.

24 Q How did you encourage tribes, if any, to participate in  
 25 your task force?

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1 South Dakota Secretary of State, how many Indians did you  
 2 have working for you?  
 3 A I believe that Kayla was the only one during that time.  
 4 Q And for the task force that you handpicked, out of the  
 5 two task forces, you picked one Indian?  
 6 A Yes.  
 7 Q And that was it?  
 8 A Yes.  
 9 Q Okay. And you -- and I'm going to quit this line of  
 10 questioning, but you started saying that you did that  
 11 because there were no quotas?  
 12 A Correct. I don't believe in quotas.  
 13 Q You thought one Indian was sufficient for both task  
 14 forces?  
 15 A I wanted -- wanted representation from the legislature.  
 16 I knew Michael Lapointe through that avenue, and knew  
 17 that he was Native American. And so he was able -- I  
 18 asked him to serve.  
 19 Q Do you remember seeing this letter from Jennifer Headlee,  
 20 dated July 22nd, 2009? It looks like it's Bate stamped  
 21 what down there, sir?  
 22 A 295 through 298.  
 23 Q All right. That is where there's a little bit of  
 24 discussion on interest?  
 25 A Yes.

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1 Q What are they?  
 2 A Well, jurisdiction is one. In Shannon County and Todd  
 3 County the distance from the courthouses would be another  
 4 one. One of the things that I have heard frequently from  
 5 county auditors is difficulty getting poll workers to  
 6 show up for the training prior to election day,  
 7 occasionally not showing up on election day. You have  
 8 the language issue that we have to deal with, the  
 9 Section 203 requirements for Lakota language assistance  
 10 that are issues. Then when HAVA required the AutoMARK  
 11 machines to be out there, and Lakota to be on those  
 12 AutoMARK machines, tremendous amount of work for our  
 13 office and county auditors to get the ballots translated  
 14 into Lakota, that information placed on the AutoMARK, and  
 15 all of that working properly for anyone that would want  
 16 to use that. And so just a whole lot of issues,  
 17 challenges that we didn't have elsewhere.  
 18 Q What were the jurisdictional issues? How would that  
 19 affect an election? Are you talking criminal or civil?  
 20 A I'm talking criminal. If there was an allegation that a  
 21 crime was being committed, then you have the issue of who  
 22 had the authority to step in. The FBI was obviously one  
 23 source, but they kind of looked at things differently  
 24 than a county state's attorney might in another county.  
 25 And so it was -- there were jurisdictional issues.

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1 Q All right. Is that the first time that you had heard the  
 2 interest issues on the reporting?  
 3 A There are two different interest issues. The one that we  
 4 talked about this morning was interest that the state-  
 5 held HAVA monies were generating and how to properly  
 6 allocate that back to those -- those accounts. And that  
 7 is what we talked about this morning. But later, in  
 8 probably 2008, 2009, the EAC started making some noise  
 9 about -- and we became aware that for the county-held  
 10 accounts, the monies that were in the county funds, HAVA  
 11 funds, their match monies, that the counties needed to be  
 12 apportioning interest to those county funds.  
 13 Now, realizing these are very small funds, and the  
 14 amount of money we are dealing with is 5 to 10 bucks, we  
 15 wasted more time going back and forth with the EAC over  
 16 those 5 or 10 dollars per county than we ever should  
 17 have, but at the end of the day we came up with an  
 18 agreement with them that we would have each county just  
 19 kick, I don't know, ten bucks into their county-held  
 20 account to cover whatever interest that account might  
 21 have ever accrued. And we came up with that agreement  
 22 with the EAC, and the issue was over.  
 23 Q Earlier you mentioned there is more challenges in Indian  
 24 Country with conducting an election.  
 25 A Yes.

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1 Q What crimes were you concerned about being committed or  
 2 what are the -- what are the crimes that you are talking  
 3 about?  
 4 A You know, the number one thing that we -- probably two  
 5 things. One is voting more than once. And the FBI made  
 6 some of those cases, and the U.S. Attorney prosecuted, in  
 7 Shannon County.  
 8 Q How many cases over your tenure?  
 9 A They -- my understanding was they prosecuted one. They  
 10 investigated about 50, and chose to only prosecute one.  
 11 Q So there has been one criminal prosecution for someone  
 12 voting more than once --  
 13 A Correct.  
 14 Q -- during your tenure?  
 15 A Correct.  
 16 Q Anything else?  
 17 A The other allegation that continually comes up is that  
 18 people are being paid to vote. That was not something  
 19 that was ever substantiated, but it was something that,  
 20 you know, that allegation is going on out there, then,  
 21 you know, somebody has to at least take a look at it.  
 22 And so --  
 23 Q That was never substantiated?  
 24 A No, it was not.  
 25 Q All right. There is a lot of allegations. There is a

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1 A No. The gist of my conversation was, again, for me to  
 2 find out, you know, if I get a complaint here that deals  
 3 with Indian Country, what do I do with this, how do you  
 4 want to handle this. And what I relayed to you is what I  
 5 got from the conversation. He was very willing to listen  
 6 to anything that I might have. But what they could  
 7 actually do about it, that is where things got more  
 8 complicated.  
 9 Q Did you take a specific problem to him?  
 10 A No.  
 11 Q This was just general conversation?  
 12 A Exactly. General in preparation for election cycles. If  
 13 something occurs, if I get a complaint about something,  
 14 how do I handle this. I'm not a criminal prosecutor, but  
 15 a Secretary of State, help me out, how do you want me to  
 16 handle this. He was obviously very open by saying, yeah,  
 17 we will take and listen to anything that -- that you want  
 18 to pass on to us.  
 19 Q Has anyone in the U.S. Attorney's office ever failed to  
 20 prosecute a case that you wanted prosecuted?  
 21 A No, but I don't know that we ever made a request to  
 22 prosecute a case.  
 23 Q You have never even made a request for prosecution?  
 24 A No.  
 25 Q So --

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1 I remember that there were some jurisdictional concerns  
 2 in how to actually figure out what exactly went on here.  
 3 There was an attempted prosecution in that case that  
 4 ended up being dropped. But I remember that as they were  
 5 investigating it, the jurisdictional issue was a big  
 6 thing.  
 7 Q All right. So I'm still only hearing one example of  
 8 voter fraud that was proven up, prosecuted  
 9 successfully --  
 10 A Correct.  
 11 Q -- in the history of the State of South Dakota.  
 12 A I didn't say in the history of the state. I said in the  
 13 20 years I have been working with this.  
 14 Q You don't know anything before you started working with  
 15 it?  
 16 A I don't. I have not researched that.  
 17 Q Anything else on jurisdiction that creates a concern or  
 18 makes things harder in Indian Country for conducting  
 19 elections?  
 20 A I don't recall. Those are the -- those are the issues  
 21 I can think of.  
 22 Q With Mr. Mandel, the U.S. Attorney, did you ever say I --  
 23 it sounds like you are hesitant in prosecuting this over  
 24 here? Did you ever suggest that is what you were getting  
 25 out of the conversation?

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1 **conducting elections in Indian Country?**  
 2 **It -- and it may not be just the physical distance, but**  
 3 **also may be the cultural difference of you have got a**  
 4 **white country auditor that's working with Native American**  
 5 **poll workers. There is also that divide that you don't**  
 6 **have elsewhere in the state.**  
 7 Q What indicates to you there is a divide between the  
 8 Indian and the white auditor?  
 9 A There is a cultural difference. You understand that.  
 10 There is cultural differences --  
 11 Q I'm asking what you think. I have lived there. Yes, I  
 12 do understand it.  
 13 A I think communication is probably more difficult.  
 14 Q Why?  
 15 A Finding people is more difficult.  
 16 Q Start with language. So that communication between the  
 17 non-Indian and the Indian is complicated because why?  
 18 A Well, part of it I think is just finding people. For  
 19 example, when they need to go find election workers, I  
 20 mean from what I hear from county auditors, that is more  
 21 difficult. Simply, you know, finding people,  
 22 communicating with them, getting notices to them, those  
 23 kinds of things are more difficult.  
 24 Q And it's no secret there is an elephant in the room.  
 25 Race relationships around the border towns and Indian

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1 A I mean we're not criminal investigators. We might hear  
 2 things and pass them on to either state's attorneys or  
 3 the U.S. Attorney for them to do whatever they believe is  
 4 in their purview.  
 5 Q Have you ever brought a complaint of election fraud or  
 6 electioneering to the U.S. Attorney's Office?  
 7 A I can't think of -- I can't think of a specific one. Not  
 8 to say that we didn't, but I can't think of one.  
 9 Q Last question on this jurisdiction stuff, and I will move  
 10 on. What I'm hearing is you know of one criminal  
 11 prosecution of an Indian on an election issue. That is  
 12 all you know, correct?  
 13 A Correct.  
 14 Q And you have never made a report to the United States  
 15 Attorney regarding an election issue, a specific election  
 16 issue?  
 17 A Not a formal report, no.  
 18 Q Not an informal one either, really?  
 19 A I don't recall. I don't recall.  
 20 Q **But yet you think that jurisdiction creates issues**  
 21 **for conducting elections in Indian Country?**  
 22 A **It's one of several issues that I mentioned.**  
 23 Q **All right. You talked about distance to the courthouse.**  
 24 A **Correct.**  
 25 Q **Why did that complicate things in Indian Country?**

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there that we can do to find more poll workers.

Q But --

A Again, that's a county level responsibility.

Q So you didn't follow up on it because that is county business?

A Exactly.

Q All right. Back to that distance to the courthouse that causes challenges in Indian Country. Explain that. I still don't understand what you mean.

A Well, if you have got -- let's say on election day you have got some issue at a polling place someplace. It's going to take, as we have talked about this morning, 50 miles to get from Hot Springs down to Pine Ridge for somebody from the auditor's office to get out there to resolve whatever the issue is. And so that's -- that's just part of it. There is more miles to travel.

Q Why does that make it harder to do an election?

A Because if there is an issue that arises on election day and they have got to get somebody from the auditor's office out there, it simply takes more time.

Q How many issues have arisen on election day where they have needed to go ahead and get someone from the auditor's office in Hot Springs to travel to Shannon County that wasn't regularly scheduled?

A I can't quantify that.

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There is only one time that the Secretary of State actually did training for poll workers, and that was prior to the implementation of the AUTOMARK ballot marking machines because that was a brand new thing. All of a sudden we are taking technology and putting it in a polling place that we hadn't before. So we did regional trainings around the state where five, six, or seven counties would bring all of their poll workers together, and then we went out and actually did the training.

Q Ever did one on a reservation?

A I know we were up in -- we did one on Cheyenne River. That's probably the only one that we did actually on a reservation. The one covering Shannon County we did in Rapid City.

Q All right. So one of the reasons that you said that it's more challenging to do an election in Indian Country is it's difficult finding poll workers, correct?

A Yes.

Q And you are basing that statement upon a single conversation with Sue Ganje?

A That's part of it. And then other conversations with other auditors over the years.

Q Did you ever recommend let's do some outreach with some of these poll workers to get more Indians involved?

A I know I certainly asked the question, you know, what is was her predecessor. I don't know.

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Q And someone told you those Indian poll workers are not showing up?

A I know that occasionally there are poll workers that don't show up for the training, and then obviously we have sometimes issues with showing up on election day.

Q Do you know why that issue may be exaggerated at Shannon County as opposed to other counties?

A I don't.

Q Do you know what the actual numbers are?

A I don't.

Q Have you ever researched it?

A I know that at one point I asked Sue Ganje about that, but I don't recall what the numbers were.

Q Do you ever try to do any outreach to encourage participation by poll workers in Shannon County?

A No.

Q Why?

A That is a county responsibility.

Q I thought there was some stuff about that in the HAVA plan, to go ahead and encourage participation in the election process?

A In the election process, but not specifically poll workers.

Q Have you ever conducted any kind of training for poll workers in the ten years in Shannon County or Todd?

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tribes isn't always the best, is it?

A I think that is probably true, but let me be very clear, the two county auditors, Sue Ganje and Kathleen Flakus, in all of my time knowing them, I have never seen anything but the finest and most exemplary professionalism in their conduct of their duties and in their work and relationship.

Q What were their outreach efforts with Indians working in Shannon County? You talked about it's hard to find poll workers. That is your understanding?

A Right.

Q What are their outreach efforts?

A That I don't know.

Q So how do you know it's hard for them to find folks? Anecdotally I hear that.

Q What do you mean by "anecdotally"?

A From county auditors, and not just from those two, but from others that work in Indian Country.

Q I'm asking about Shannon County. What makes you think it's difficult to find poll workers in Shannon County?

A I believe that at some point in my time, that has been related to me because that's the impression that I have, do you know by who?

Q Do you know by who?

A I don't. I don't know if it was Sue, I don't know if it was her predecessor. I don't know.

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Q Understood. It was your discretion. What I'm asking though, is the legal requirements. What couldn't you use from Title II funding after that May 25th, 2008 letter, that could not be used?

A The only thing that was still undetermined at that point was this federal maintenance of effort issue at the county level. And so there was still a question as to whether or not those dollars could be used to reimburse for regular county staff person time.

Q Did you ever get that sorted out before you left office?

A Yes. I wouldn't have been there if it hadn't been for that.

Q Unless it was for the corporation stuff?

A Right. But my recollection was they were talking about voting issues. I don't recall what the issues were. I don't recall the context. As a matter of fact, I hadn't even recalled the meeting until I saw it in these --

Q Can you pull that e-mail, please.

A Oh, yeah. It was -- was an e-mail on a whole different subject. It began by saying, "On my way back from Kyle, I was thinking about..." and that's the only thing that refreshed my memory on that.

Here is an e-mail that answers one of the earlier questions that you were asking about Brian Gottmaker and the conversations I had with him. This is 404. And on October 7th, he had apparently asked me some -- something verbally, and I sent a copy of this to him regarding

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Q Do you know how much money that was in an election cycle?

A I don't. No.

Q Did you ever take the time to figure it out before you said no?

A No.

Q You know --

A Because for me it was a philosophical issue.

MR. SANDVEN: You in the mood for a five-minute break?

(Recess at 3:01 p.m.)

BY MR. SANDVEN:

Q How many employees were you responsible for during your tenure?

A We generally had 14 employees plus myself.

Q You said you didn't visit Shannon County as Secretary of State?

A No. I said I didn't specifically go down there to do any election training or election outreach, but I did notice in one of these e-mails as I was reviewing it after you asked the questions this morning, it reminded me that I did make a trip to Kyle for a state tribal relations

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Q Understood. It was your discretion. What I'm asking though, is the legal requirements. What couldn't you use from Title II funding after that May 25th, 2008 letter, that could not be used?

A The only thing that was still undetermined at that point was this federal maintenance of effort issue at the county level. And so there was still a question as to whether or not those dollars could be used to reimburse for regular county staff person time.

Q Did you ever get that sorted out before you left office?

A Yes.

Q Was there a restriction you couldn't pay those staff hours?

A No finally rolled back on that and determined that there was no maintenance of effort at the county level, which we thought was an appropriate and correct answer. But we didn't change our policy during the time that I was there.

Q Why not? The federal funding agency said, you know what you can use this for the regular hourly pay of these --

A Of these auditor staff turning over to Shannon County?

Q Correct?

A Correct.

Q They said that is okay. Why didn't you say it was okay?

A Again, going back to my philosophy of wanting those --

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1 auditors. "Dear auditors: Secretary of State Chris Nelson has authorized reimbursement from the county's Title II HAVA state-held account for the following expenses related to the Lakota language assistance." And I list eight different items that they can use those monies for.

Q Is the form in there that lists those 17 categories?

A I believe I saw it somewhere in here, yes. Or at least some version of it. Whether it was the latest version, I don't know.

Q How many versions were there during your administration?

A Oh, probably a dozen as we added line items.

Q Was this the last one from your administration, what's marked Exhibit 132?

A I doubt it. Well, okay. 132 contains two different sheets; one that was submitted by Shannon County in December of 2008 and one that was submitted by Shannon County in November of 2010. The November 2010 sheet probably was the last one that we utilized.

Q Can you think of a single expenditure for an absentee voting location in Shannon County where you did not have the discretion to use Title II funds?

A My determination to allow counties to utilize Title II funds for those absentee sites in those two counties was entirely within my discretion.

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1 expenses?  
 2 A Those are the things I've talked about; programming for  
 3 voting machines, maintenance of voting machines,  
 4 insurance on voting machines, those kinds of things.  
 5 They are pretty significant expenditures, particularly  
 6 for the smaller counties.  
 7 Q Has the state ever had any HAVA violations alleged by the  
 8 federal government?  
 9 A No. Not that I am aware of.  
 10 Q Have you ever went through an audit for HAVA funds?  
 11 A We went through a state audit, but we have not yet been  
 12 audited by the feds. That is coming at some point, but  
 13 hasn't happened yet.  
 14 Q There was not a single audit from the feds during your  
 15 tenure?  
 16 A I don't believe so. No.  
 17 Q And who initiated the state audit?  
 18 A I think that was just a normal part of what legislative  
 19 audit does. My understanding was, I'm thinking back, it  
 20 had something to do with the fact that we were using  
 21 federal money, and there was some trigger that if you had  
 22 over X number of dollars of federal money in your grant  
 23 program, that automatically the state would have to do an  
 24 audit. I don't remember the particulars, but that had  
 25 something to do with triggering it.

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1 the State of South Dakota during your tenure as South  
 2 Dakota Secretary of State?  
 3 A Well, as I indicated, there were attempts for  
 4 reimbursement that we denied because it was not something  
 5 that would have been allowable. But other than that, I  
 6 don't know of any.  
 7 Q But you can't think of a single incident where  
 8 reimbursement was denied?  
 9 A I know there were incidents, but I -- one that I can  
 10 think of, I can't tell you what county, they wanted to  
 11 buy briefcases for every polling place. I don't even  
 12 remember the reason. And that was not something that we  
 13 thought was necessary.  
 14 Q But that wasn't Shannon County, was it?  
 15 A I doubt it. I don't know what county it was.  
 16 Q Any other instance -- instances that you can remember  
 17 here today where HAVA funds --  
 18 A I can't. And, again, it was the HAVA coordinator that  
 19 reviewed all those, and, you know, would only come to me  
 20 if she had a question -- he or she had a question in  
 21 their mind as to what it should be.  
 22 Q In the 2000 state HAVA plan, I think you talked about  
 23 this a little bit earlier, the Secretary of State's  
 24 Office said some of the expenses are consistent for each  
 25 county regardless of registered voters. What are those

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1 transferred from the state to the county.  
 2 Q After May 25th, 2008, did your office ever deny funding  
 3 to a county based upon improper expenses on their  
 4 reimbursement form?  
 5 A I'm sure we probably did, but I don't recall any specific  
 6 instances. I know there were periodically times when  
 7 something was asked for that wasn't within the  
 8 parameters, and we would deny it.  
 9 Q What does your office do or your former office do if it  
 10 catches an expense that violated the HAVA?  
 11 A We would, first of all, contact the county and try to  
 12 learn more about what it was they spent money on, how  
 13 they thought that it applied, why they thought it should  
 14 be reimbursed, and then make a final determination on  
 15 whether we would reimburse or not.  
 16 Q Did Shannon County ever issue a reimbursement form or  
 17 receipt for an expense that wasn't covered by HAVA?  
 18 A I don't recall. I don't know county-by-county how --  
 19 what might have happened.  
 20 Q But you can't think of a single incident where Shannon  
 21 County submitted an expense that wasn't under Title II?  
 22 A I don't know. I know there were instances that we did  
 23 not reimburse, but whether Shannon County was involved in  
 24 any of that, I don't know.  
 25 Q Do you know of anyone who has ever misused HAVA funds in

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1 How often were you required to submit a new state plan,  
 2 the state HAVA plan?  
 3 A My understanding was if there were significant changes in  
 4 how HAVA was going to be administered or there were  
 5 significant changes in what we were doing with it, it  
 6 wasn't a hard and fast rule, but as I think you have  
 7 noted, we have probably submitted four, five different  
 8 plans as things changed.  
 9 Q Were there any funds during your administration provided  
 10 through HAVA that the state gave directly to the counties  
 11 without requiring the counties to spend their own funds  
 12 and seek reimbursement?  
 13 A No.  
 14 Q Always had to spend it first, then you would reimburse  
 15 it?  
 16 A That's correct. And the reason for that was so that we  
 17 could check on what it was being spent on.  
 18 Q Who tracks the expenditures besides your HAVA  
 19 coordinator?  
 20 A Within my office -- I don't know how it's being done  
 21 today, but when I was Secretary, that was the person who  
 22 was solely responsible for that. And then once -- once  
 23 she would approve the submission form, then that  
 24 information would go to our fiscal officer who would  
 25 actually do the necessary paperwork for the money to be

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1 statement of how it was done at that point. And then the  
 2 next paragraph also talks about that equal distribution.  
 3 Mr. Nelson, where on Page 4 of 9 did you just read from?  
 4 A The first full paragraph.  
 5 Q Right. That talks about the distribution of that  
 6 \$264,000, correct?  
 7 A Right.  
 8 Q That says how the state credited that amount?  
 9 A Correct.  
 10 Q All right. Where does it say that it's the policy to go  
 11 ahead and always do that?  
 12 A You are not going to see the word "policy" in here. This  
 13 is simply a report of how it was being done.  
 14 Q Right. That's the HAVA plan.  
 15 A Right.  
 16 Q So you said it was "my policy to do it equally." So  
 17 where was that policy implemented or did you promulgate  
 18 rules or did you do anything like that?  
 19 A No, we did not.  
 20 Q Why not?  
 21 A We just did it because that was within my discretion.  
 22 Q This was a Chris Nelson rule that we are going to do it  
 23 equally, and it's not written anywhere that we have to do  
 24 it that way?  
 25 A That is correct. It's reported here as to how it was

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1 A Correct.  
 2 Q And the people who do live there on the parcels of fee  
 3 lands usually aren't quite as wealthy as a lot of the  
 4 folks living in big houses in Lincoln or Minnehaha  
 5 County, correct? There is a lot less taxable income in  
 6 that county?  
 7 A You are asking about specific landowners, and I can't  
 8 answer that question. But generally, is that statement  
 9 accurate? yes.  
 10 Q Okay. So why do you have to be equal in your  
 11 distribution of HAVA funds if the need is not equal?  
 12 A Because that was the way that I determined I was going to  
 13 do it. And, again, I go back to the point, the purpose  
 14 of HAVA, of the HAVA money, was not to offset local tax  
 15 dollars. That wasn't the purpose of it. So that is not  
 16 a road that I went down.  
 17 Q Do you have the '08 and '10 distribution plans or HAVA  
 18 plans in front of you?  
 19 A I have got the '08 plan. Here is the '010. Yes.  
 20 Q Where in the '08 and '10 plans does it say that we have  
 21 to do this equally? Are you looking at '08 first?  
 22 A I'm looking at '08 first, yeah. Okay. In the 2008 plan,  
 23 Page 4 of 9, first full paragraph talks about the fact  
 24 the state credited 4,000 from the state election fund to  
 25 each county's state-held balance. And so that was a

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1 for absentee voting in-county?  
 2 A Because my policy was to provide an equal amount to each  
 3 county, and it was then the county's determination how  
 4 they were going to utilize that.  
 5 Q Where is that policy written?  
 6 A In the HAVA state plan.  
 7 Q It says that it's the policy, no matter what?  
 8 A It says that as how we did it, or how we were going to do  
 9 it. Yes.  
 10 Q No exceptions?  
 11 A I don't believe so.  
 12 Q Why?  
 13 A I don't know that the "why" is addressed in the state  
 14 plan.  
 15 Q I'm asking you as Secretary of State -- these are extreme  
 16 circumstances at Todd and Shannon County -- why wouldn't  
 17 you allocate more money in that situation?  
 18 A Me -- because my belief was that the right thing to do is  
 19 allocate money equally among the counties, and then  
 20 periodically we would transfer additional funds to all  
 21 the counties. That is what we did at the end of 2010.  
 22 Q Understood. But you have got counties with a lot of big  
 23 houses and a lot of taxable land, and you have got  
 24 Shannon County and Todd County that are vastly trust land  
 25 that aren't taxable, correct?

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1 absentee voting in Shannon County?  
 2 A It would be the same answer. Whatever they had available  
 3 in their account, they could request reimbursement for  
 4 those expenditures.  
 5 Q What if the actual expenditures exceeded the amount in  
 6 that account?  
 7 A Then county taxpayers would have to pay for that.  
 8 Q Why wouldn't you go ahead and authorize additional HAVA  
 9 funds?  
 10 A As I have already indicated, our distribution of those  
 11 funds were done on an even basis for every county.  
 12 Q Even though Shannon County has more expenses associated  
 13 with absentee voting than other counties?  
 14 A That is -- that is correct. Other counties are paying  
 15 for their in-person absentee voting with county taxpayer  
 16 dollars.  
 17 Q Right. It's cheaper for 64 of the 66 counties to do  
 18 absentee voting than it is Shannon or Todd, correct?  
 19 A For the in-person, that is correct.  
 20 Q Why is that?  
 21 A Because there -- they don't have to travel outside of  
 22 their office to do that.  
 23 Q So if they depleted their -- the monies that were  
 24 currently sitting in their accounts, it's your  
 25 discretion, why wouldn't you authorize additional funding

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1 that plan?

2 A That is correct.

3 Q And it's been that way for your full eight years as South Dakota Secretary of State?

4 A Correct.

5 Q All right, so the \$5 million plus of title II funds that are currently not allocated to the individual counties, it's entirely within the South Dakota Secretary of State's discretion on how to distribute that to counties? As long as it's used for either title III requirements or other things to improve the administration of federal elections.

6 Q That could be -- that does include absentee voting in Shannon County? A Yes.

7 A Yes.

8 All right, that is not a requirement under South Dakota law or any law right now?

9 A Correct.

10 Q And there is no greater risk about -- for Shannon County going ahead and someone voting twice than anywhere else, correct?

11 A Correct.

12 The satellite location in Wall, there is no greater risk of someone running to a satellite and then their polling place than Shannon County?

13 A Correct.

14 Q No greater risk than any of the other 63 counties?

15 A Correct.

16 MR. SANDVEN: Thank you.

17 MR. WILLIAMS: You have the right to read and make changes to your transcript. You can also waive that right. I will leave that up to you.

18 THE WITNESS: I would like to review the transcript. (Witness excused at 4:48 p.m.)

1 STATE OF SOUTH DAKOTA )  
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1 Pursuant to the Rules of Civil Procedure, I have read the foregoing pages 1 - 302, inclusive, and have noted any and all changes in form or substance desired in my testimony, and have signed below on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

2 Page & Line No. Change in Answer Reason for Change

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My Commission Expires: \_\_\_\_\_  
Notary Signature: \_\_\_\_\_  
Chris Nelson

1 I, Kerry Lange, Court Reporter and Notary Public, do hereby certify that the witness was first duly sworn by me to testify to the truth, the whole truth, and nothing but the truth relative to the matter under consideration; that the reading and signing of the deposition was not waived by the witness for reasons as hereinbefore stated; that the foregoing pages 1 - 302, inclusive, are a true and correct transcript of my stenotype notes.

2 I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel, and that I am not financially interested in this action.

3 In testimony whereof, I have hereto affixed my signature this 30th day of July, 2012.

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Commission Expires: 7/12/17  
Kerry Lange

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