

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF SOUTH DAKOTA  
3 WESTERN DIVISION

4 CHRIS BROOKS, FRANCIS RENCONTRE, ) Civ. No. 12-5003  
5 GLORIA RED EAGLE, SHARON CONDEN, )  
6 JACQUELINE GARNIER, JENNIFER RED OWL, )  
7 EDWINA WESTON, MICHELLE WESTON, )  
8 MONETTE TWO EAGLE, MARK A. MESTETH, )  
9 STACY TWO LANCE, HARRY BROWN, )  
10 ELEANOR WESTON, DAWN BLACK BULL, ) DEPOSITION OF  
11 CLARICE MESTETH, DONOVAN L. STEELE, ) JASON GANT  
12 EILEEN JANIS, LEONA LITTLE HAWK, EVAN )  
13 RENCONTRE, CECIL LITTLE HAWK, SR., )  
14 LINDA RED CLOUD, LORETTA LITTLE HAWK, )  
15 FAITH TWO EAGLE, EDMOND MESTETH, and )  
16 ELMER KILLS BACK, JR., )  
17 )  
18 Plaintiffs, )  
19 )  
20 -vs- )  
21 )  
22 JASON GANT, in his official capacity )  
23 as South Dakota Secretary of State, )  
24 SHANNON COUNTY, SOUTH DAKOTA, FALL )  
25 RIVER COUNTY, SOUTH DAKOTA, SHANNON )  
COUNTY BOARD OF COMMISSIONERS, FALL )  
RIVER BOARD OF COMMISSIONERS, JOE )  
FALKENBURG, ANNE CASSENS, MICHAEL P. )  
ORTNER, DEB RUSSELL, and JOE ALLEN in )  
their official capacity as members of )  
the County Board of Commissioners for )  
Fall River County, South Dakota, BRYAN )  
J. KEHN, DELORIS HAGMAN, EUGENIO B. )  
WHITE HAWK, WENDELL YELLOW BULL, and )  
LYLA HUTCHISON in their official )  
capacity as members of the County )  
Board of Commissioners for Shannon )  
County, South Dakota, SUE GANJE, in )  
her official capacity as the County )  
Auditor for Shannon and Fall River )  
Counties, and JAMES SWORD, in his )  
official capacity as Attorney for )  
Shannon and Fall River Counties, )  
Defendants. )

DAKOTA REPORTING AGENCY  
605-338-8898

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1 APPEARANCES: Mr. Steven D. Sandven  
2 Mr. Ryan Cwach  
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4 Sioux Falls, South Dakota

5 Attorneys for the Plaintiffs.

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7 Assistant Attorney General  
8 Pierre, South Dakota

9 Attorney for Defendant Jason Gant.

10 Ms. Sara M. Frankenstein  
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12 Rapid City, South Dakota

13 Attorney for the Shannon County Defendants.

14 \* \* \* \* \*

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6 (Original transcript and exhibits provided to Mr. Sandven.)

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1 The deposition of Jason Gant was taken at this time  
2 and place, that is, at the Governor's Inn, Pierre, South  
3 Dakota, on the 10th day of July, 2012, commencing at the  
4 hour of 9:00 a.m.; said deposition taken before Kerry  
5 Lange, RMR, a Notary Public within and for the State of  
6 South Dakota; said deposition taken pursuant to notice.  
7 (Deposition Exhibit Numbers 129 through 131 marked for  
8 identification.)

9 JASON GANT,

10 called as a witness, having been first duly sworn,  
11 testified as follows:

12 EXAMINATION BY MR. SANDVEN:

13 Q Name, please.

14 A Jason Gant.

15 Q Do you -- can you hand Exhibit 129 to him, please.

16 A 129.

17 Q Yep. Are you familiar with this document, sir, that's  
18 titled State Governments' Use of Help America Vote Act  
19 funds, '07?

20 A Yes.

21 Q Can you go to Page 4, please.

22 A Uh-huh.

23 Q All right. How much leftover money did South Dakota have  
24 from HAVA funds in 2007?

25 A Total funds. Balance, 11.5 million.

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1 Q All right. What are the different categories of funds?  
2 Is it Section 101 and Section 251 funds that come down  
3 under HAVA?

4 A I believe those are the numbers.

5 Q Or is it Title I?

6 A Yeah. There is Title I, Title II, and there might be a  
7 Title III.

8 Q All right. So your understanding here today, how many  
9 different categories of HAVA funds are there? And if you  
10 don't know, you don't know.

11 A I don't know.

12 Q Do you know of any of the categories of funds under HAVA?

13 A I know there are state funds, and then there are county  
14 funds that we have here in the state.

15 Q State funds and common funds?

16 A County.

17 Q County funds. All right. Do you know what category,  
18 what Title, if it's Title -- or what section number one  
19 of those goes for?

20 A No.

21 Q Do you know if state funds can be spent on early voting?

22 A All HAVA funds can only be spent based off of two things;  
23 the State of South Dakota HAVA plan and then the federal  
24 HAVA Act.

25 Q All right. So my question is on what we just talked

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1 Q \$11,550,925?

2 A Yes.

3 Q All right. Then what was the total amount of money South  
4 Dakota received in HAVA funding in 2007?

5 A 16,596,803.

6 Q All right. That wasn't an election year, correct?

7 A 2007, no.

8 Q Right. So how much -- how much of the HAVA funds was  
9 spent in '07?

10 A According to this document, it was 6,308,427.

11 Q What kinds of things might HAVA funds be spent on in an  
12 off-election year? That's an awful lot of money,  
13 \$6 million, to spend.

14 A I don't know exactly what the \$6 million was spent on.

15 Q Do you know anything that HAVA funds would be spent on  
16 during an off-election year?

17 A I believe these monies from -- that were spent in '07 --  
18 I remember when HAVA started, one of the biggest  
19 expenditures the state had was the AutoMARKs.

20 Q What is that?

21 A It's a machine that helps voters who have disabilities.  
22 If they are blind or have other disabilities, it's a  
23 touch screen where they touch the voter that -- or the  
24 candidate that they want to vote for, and then it prints  
25 out their platform.

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1 about on Page 4, there was a \$11,550,925 left over.

2 Could any of that money have been spent on early voting  
3 in Shannon County?

4 A Absentee voting -- yes, it's all based off of the HAVA  
5 plan and the HAVA Act.

6 Q Right. My question is, though, there are certain things  
7 that HAVA is allocated for, right?

8 A Yes.

9 Q Technological aids, for instance, correct?

10 A Yes.

11 Q All right. Are there any restrictions on any of that  
12 money that was left over in 2007 being spent on early  
13 voting in Shannon County?

14 A Yes. There are restrictions to that.

15 Q Which money cannot be spent in Shannon County for early  
16 voting?

17 A That's not what I said. All of this \$11 million back in  
18 '07 could only be spent if it qualified under the HAVA  
19 plan or the HAVA Act.

20 Q All right. There's two HAVA plans that have been in  
21 effect, one in 2005 and one in 2010?

22 A No. I believe there was an '06 and an '08. The state is  
23 required to submit a new HAVA state plan every time there  
24 is additional federal funding.

25 Q All right. So it's your testimony there is how many HAVA

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1 plans since 2004?

2 A I would have to go back and look on the -- it would be on

3 the Secretary of State's website on each of the plans.

4 Q But it's your testimony that each time there is a HAVA

5 distribution, that a new state HAVA plan is created?

6 A In order for -- as an example, right now there is \$6,000

7 available for the state to receive from the federal

8 government. In order to receive that, we must submit a

9 2012 state HAVA plan.

10 Q Right. My -- so the HAVA distribution occurs annually,

11 correct?

12 A HAVA -- from whom?

13 Q The feds.

14 A Not necessarily.

15 Q All right. When were the last five federal

16 distributions?

17 A We did -- in 2012 -- I don't know what the federal fiscal

18 year is, but for this -- for 2012, we have \$6,000

19 available.

20 Q You only received \$6,000 in HAVA funding in 2012?

21 A No. We haven't received any money in 2012. We are

22 eligible to -- and 6,000 isn't the number. I mean it's

23 whatever, 6,200 bucks. I don't know what the exact

24 number is, but it's around \$6,000. We have that

25 available to South Dakota. In 2011, there was zero

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10

1 dollars available.

2 Q So there was no new HAVA plan in 2011?

3 A No.

4 Q Okay. How about '10?

5 A There is a new -- there was a HAVA plan -- a 2010 HAVA

6 plan.

7 Q Do you know what the distribution was from the federal

8 government for HAVA funding to the State of South Dakota

9 in 2010?

10 A I don't remember.

11 Q Do you have any idea what it was? Was it over a million?

12 A I would purely be guessing. Half a million. And I'm

13 sure it's in the 2010 HAVA state plan if you have that.

14 I would guess that it's -- part of it's in there.

15 Q All right. So how many HAVA plans have there been since

16 you have been South Dakota Secretary of State?

17 A Zero.

18 Q And you are working on your first one right now?

19 A Well, 2000 -- to be eligible for that 6,000 bucks, we

20 need to file a 2012 version.

21 Q All right. And you were seated when?

22 A January of 2011.

23 Q All right. So no HAVA plan in '11, and you're working on

24 your first one now in '12?

25 A To say we are working on it is -- we are not working on

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1 it to the extent that we have established a task force

2 and began that procedure. We have just begun internal

3 discussions about the possibility.

4 Q All right. Do you remember the chief judge asking you

5 some questions when you were on the stand at the

6 preliminary hearing in this matter?

7 A Uh-huh.

8 Q All right. Do you remember -- do you remember stating

9 that you were drafting one for 2012?

10 A I don't. I remember she asked how many -- what the

11 dollar amount was, and that was around 9 million.

12 Q Don't remember saying that you were working on an

13 election plan in 2012?

14 A No. I don't.

15 Q Okay. So there was \$11,550,925 left over in 2007.

16 A Yes.

17 Q All right. And you don't know what portion of that money

18 could be allocated to Shannon County?

19 A All the dollars could be allocated to any county in the

20 state based off the HAVA plan and the HAVA Act.

21 Q Right. Are you aware of any restrictions on any HAVA

22 funding to Shannon County for absentee or early voting?

23 A The only restrictions for all counties in the state is

24 the HAVA plan and the HAVA Act.

25 Q Right. Which restrictions are there in the HAVA plan or

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12

1 HAVA Act?

2 A That money can only be spent based off what is in the

3 plan and what is in the act.

4 Q Here's my question. And we will be here a while on this

5 if you don't want to answer. But if -- if you want to

6 go -- is there any restriction on any HAVA money, that

7 you are aware of here today, being spent for absentee

8 voting in Shannon County?

9 A I don't know how that is different than what I just said

10 regarding -- Shannon County has the same restrictions as

11 any other county in the state. Shannon County isn't

12 special with this \$11 million.

13 Q Does any county have any restrictions on whether any HAVA

14 money is spent on early voting?

15 A Every county has the same restrictions; that it must

16 follow the plan and it must follow the act.

17 Q Right. Are you aware here today of any restrictions in

18 the plan of HAVA money being spent on early voting?

19 A I guess I'm not understanding the differences here.

20 Q Are there any restrictions in the plan on HAVA funds

21 being spent on early voting, in the current plan?

22 A I don't believe so.

23 Q You don't know of any?

24 A I would have to look through the plan again or -- and the

25 act, but I mean there are -- there's a set criteria of

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1 what are allowable reimbursement terms. And I mean if  
 2 you put pizza and pop on there, that's not an allowable  
 3 reimbursement. Nineteen or twenty different items are  
 4 listed on that.

5 Q All right. Do you know what the costs are associated  
 6 with conducting early voting in a county like Shannon or  
 7 Todd?

8 A I don't.

9 Q Have you ever investigated what the costs are?

10 A Aside from the information that we received regarding  
 11 this trial and the month or so before that March letter.

12 Q The March letter from Shannon County?

13 A Right.

14 Q All right. So you have no idea here today how much it  
 15 actually costs to go ahead and do early voting for six  
 16 weeks before the primary and general in Shannon County?

17 A For the 2012 primary election, we have not, as of  
 18 yesterday, received a reimbursement request from Shannon  
 19 County.

20 Q All right. That's not my question. Do you know how much  
 21 six weeks of early voting costs --

22 A No.

23 Q -- before a primary election in Shannon County?

24 A No.

25 Q Do you know how much six weeks of early voting costs

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1 Q Which staff?

2 A When we received the letter, of course discussed it, and  
 3 then wrote the response that we would give the --  
 4 whatever the dollar amount was that we put in the letter  
 5 as an additional allowable reimbursable amount.

6 Q But before March 1st, 2012, had you ever had a  
 7 conversation with anyone regarding the costs of early  
 8 voting at a physical location in Shannon County?

9 A No. I don't think so.

10 Q Not that you recall?

11 A No.

12 Q Never had a single conversation with anybody regarding  
 13 the costs of early voting in Shannon County? That's a  
 14 no?

15 A I don't remember.

16 Q Not that you can remember?

17 A No.

18 Q All right. The -- when did you first learn that folks in  
 19 Shannon County didn't have the same number of days of  
 20 early voting that people did in other counties at a  
 21 physical location located within the county?

22 A I remember the press story from 2000 -- was it the end of  
 23 2011, that talked about where the Shannon County  
 24 Commission had approved six days or something.

25 Q Why didn't you intervene then?

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1 before a general election in Shannon County?

2 A No.

3 Q Do you know how many staff workers are required to do  
 4 early voting in Shannon County?

5 A Are required?

6 Q Are needed to do early voting in Shannon County.

7 A I know that Shannon -- or that Fall River had two staff  
 8 members and a Lakota translator at the 2012 primary  
 9 election absentee voting period.

10 Q Have you had any discussions with anybody besides your  
 11 lawyer -- I'm not asking about anything with Richard.  
 12 Have you had any discussions with anybody regarding the  
 13 cost of early voting in Shannon County?

14 A I have -- well, we have the letter, the March 2012  
 15 letter. I don't know if that is considered a discussion,  
 16 but -- that was where Shannon County was anticipating  
 17 whatever it was, X dollars was needed.

18 Q Do you remember, did you have a discussion with anybody?

19 A About that amount?

20 Q About the cost of early voting, absentee voting, at a  
 21 physical location in Shannon County.

22 A No. We discussed the money and that Shannon County was  
 23 needing additional money to have the 46 days.

24 Q Who did you have that discussion with?

25 A I suppose staff.

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1 A Each county is in charge of their election. I'm not in  
 2 charge of their election.

3 Q Was that the first time you learned that Shannon County  
 4 folks didn't have the same number of days of early voting  
 5 as people -- at a physical location in the county as  
 6 people in other counties, was 2011?

7 A I don't remember about the physical location issue, but I  
 8 do remember during the 2010 when I was running or  
 9 campaigning for Secretary of State, that there were  
 10 issues in Shannon County.

11 Q Yet you were a statewide candidate in 2010?

12 A Yes.

13 Q And that's when you first learned that Shannon County  
 14 voters didn't have the same number of days of early  
 15 voting in their respective county?

16 A That was the first time I paid attention to it.

17 Q Where did you learn that from?

18 A Probably a newspaper or TV or something.

19 Q Do you remember when you were campaigning in 2010 and  
 20 learned that?

21 A No.

22 Q Do you know if it was in the first half of 2010?

23 A I don't remember.

24 Q Did you know that Shannon County residents had to drive  
 25 to Hot Springs to cast an in-person ballot?

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1 A I don't remember.  
 2 Q You don't remember?  
 3 A Knowing that they had to drive to Hot Springs, I don't  
 4 remember that.  
 5 Q Do you remember getting asked the question by me at the  
 6 preliminary injunction hearing, "And you knew there  
 7 wasn't equal access to voting at that time?" Do you  
 8 remember getting asked that question?  
 9 A I remember that --  
 10 Q Do you remember it; yes or no?  
 11 A Yes.  
 12 Q And do you remember answering, "I knew that Shannon  
 13 County residents had to drive to Hot Springs to cast an  
 14 in-person ballot"? Do you remember saying that?  
 15 A I don't. I mean I -- I know now that they have to drive.  
 16 I don't remember --  
 17 Q Can you look at Page 134 of the transcript.  
 18 A (Witness complies.)  
 19 Q Do you remember going under oath at the hearing?  
 20 A Yes.  
 21 Q Now do you remember getting asked, "And you knew there  
 22 wasn't equal access to voting at the time?"  
 23 A Yes.  
 24 Q And then you answered, "I knew that Shannon County  
 25 residents had to drive to Hot Springs to cast an

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1 in-person ballot"?  
 2 A Yes.  
 3 Q All right. Thank you. So today on the different  
 4 categories of HAVA funds, you don't know the difference  
 5 between the restrictions on Section 101 and Section 251?  
 6 A To go into detail, no.  
 7 Q Generally.  
 8 A No.  
 9 Q Do you know of any difference between the restrictions on  
 10 Section 101 funds from 251 funds?  
 11 A Yes. I know there are differences because --  
 12 Q Can you name a single difference here today?  
 13 A No.  
 14 Q Do you have Exhibit 130 in front of you, sir?  
 15 A Yep.  
 16 Q Secretary of State Gant, why didn't you ever find out  
 17 what the costs of early voting were for in Shannon  
 18 County?  
 19 A Right now we are just waiting for the county to submit  
 20 their expenses.  
 21 Q Has the county ever told you this is how much early  
 22 voting costs at a physical location in Shannon County for  
 23 an election cycle?  
 24 A I'd have to look at the March letter, if that is detailed  
 25 in there.

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1 Q But you have never researched the cost of early voting in  
 2 Shannon County?  
 3 A No.  
 4 Q Do you have any idea what it is?  
 5 A No.  
 6 Q You don't know if it's \$20,000?  
 7 A I know that their past reimbursement requests forms, one  
 8 of them was 20,000. I think one was 28,000 or something.  
 9 But that doesn't just include absentee voting.  
 10 Q Even since the commencement of this litigation, you have  
 11 never said how much does early voting cost in Shannon  
 12 County?  
 13 A No, because I was going to find out as soon as they  
 14 submitted their paperwork.  
 15 Q And it's your testimony here today that the county hasn't  
 16 submitted paperwork informing you of how much early  
 17 voting costs at a physical location in Shannon County?  
 18 A As of yesterday, Shannon County has not submitted a  
 19 reimbursement request.  
 20 Q Has Shannon County submitted anything to you regarding  
 21 the costs of early voting at a physical location in  
 22 Shannon County?  
 23 A Yes; the March letter.  
 24 Q Do you recall in the March letter if that told how much  
 25 early voting cost?

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1 A I don't remember the exact wording, but I want to say it  
 2 was something like \$12,000 additional once they did it.  
 3 Q Okay. Would it -- do you think the cost of early voting  
 4 was -- for an election cycle in Shannon County for six  
 5 weeks before the general, six weeks before the primary,  
 6 is less than \$50,000 annually?  
 7 A I will know that as soon as Shannon County submits the  
 8 paperwork. Then we will know how much it's going to  
 9 cost.  
 10 Q Shannon County hasn't submitted a proposed budget for you  
 11 regarding the cost of early voting at a physical location  
 12 in Shannon County?  
 13 A They are not required to submit a budget to me.  
 14 Q No. Have they done it, though?  
 15 A Unless it was in that March letter, no.  
 16 Q There was a March letter from Shannon County to you you  
 17 are referring to?  
 18 A Yes. I think it was the first part of March.  
 19 Q All right. Looking at Exhibit 130, Page 8, how much  
 20 money did the State of South Dakota receive in 2008?  
 21 A \$5 million.  
 22 Q All right. And how much of that money was carried over,  
 23 was not used in 2008?  
 24 A The balance of the fund was 4,714,346.  
 25 Q Do you know if Shannon County residents had the six weeks

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1 of early voting at a physical location in Shannon County  
 2 in 2008 before the primary election?  
 3 A I don't remember.  
 4 Q Ever research it?  
 5 A No.  
 6 Q Why not?  
 7 A I didn't research any counties regarding their 2008.  
 8 Q Did you know that Shannon County residents only had two  
 9 days of early voting before the primary election in  
 10 Shannon County before -- during the 2008 election cycle?  
 11 A I don't remember what the exact number of days were.  
 12 Q Do you remember generally how many days there were?  
 13 A No.  
 14 Q Did you know that there were less days for Shannon County  
 15 residents to vote at a location in Shannon County than  
 16 other counties -- than other citizens at their county  
 17 seat?  
 18 A In 2008?  
 19 Q Yes, sir.  
 20 A When -- at that time, I wasn't -- I wouldn't have been  
 21 interested in that.  
 22 Q Right. But wouldn't you get interested in it when you  
 23 became Secretary of State and learned in 2010 that the  
 24 folks down there didn't get the same number of days of  
 25 early voting at a physical location in Shannon County?

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1 A Well, I wasn't Secretary in 2008. I am Secretary in  
 2 2012. And that's why I wanted to assist by giving the  
 3 additional monies to be reimbursed; thus ensuring that  
 4 Shannon County had the same rights as every other county  
 5 in 2012.  
 6 Q When did you learn that Shannon County residents didn't  
 7 have the same number of days of early voting at a  
 8 physical location in their respective county as other  
 9 citizens of this state?  
 10 A For what year?  
 11 Q 2008 election cycle.  
 12 A 2008?  
 13 Q Yep.  
 14 A Probably from you during this court hearing.  
 15 Q That was the first time you heard that they had less days  
 16 in the 2008 cycle?  
 17 A Probably.  
 18 Q And then how many -- how many days of early voting did  
 19 the Shannon County folks get at a location in Shannon  
 20 County during the 2010 cycle before the primary?  
 21 A I don't remember.  
 22 Q Was it zero? You don't know?  
 23 A I don't remember.  
 24 Q All right. Did they only get 22 partial days before the  
 25 general election?

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1 A Again, I don't remember.  
 2 Q You don't know?  
 3 A No.  
 4 Q All right. So looking at Exhibit 130, on that \$4,714,346  
 5 that was left over in 2008, do you know if that was  
 6 Section 101 funds or 251 funds?  
 7 A At the top of the page it says "HAVA Title I, Section 101  
 8 Funds as of December 31, 2008."  
 9 Q Thank you. So any of that money could go for early  
 10 voting costs at a county?  
 11 A All HAVA funds have to either follow the HAVA -- have to  
 12 do both; have to follow the state plan and follow the  
 13 HAVA Act.  
 14 Q My question for you, though, is the money that is  
 15 described on Page 8 of Exhibit 130 under "HAVA Title I,  
 16 Section 101 Funds as of December 31st, 2008," can  
 17 Section 101 funds be spent on early voting locations in a  
 18 county? And if you don't know, you don't know.  
 19 A Well, it's based off the HAVA state plan and the HAVA  
 20 Act.  
 21 Q Right. These Section 101 funds, can they be spent on  
 22 early voting at a physical location in a county?  
 23 A They have to be spent based off the plan. The 2000 --  
 24 this would have been the 2008. If this was a 2008 state  
 25 plan, it would have been based off that. So if that was

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1 an allowable -- an allowable reimbursable amount under  
 2 the 2008 plan or act at that time, then, yes.  
 3 Q Are you aware of any restrictions on Section 101 funds  
 4 being spent on early voting at a physical location in a  
 5 county?  
 6 A As I mentioned before, the restrictions are based off the  
 7 plan and the act.  
 8 Q I understand that statement. You have said it probably  
 9 about a dozen times now. What I'm asking is are you  
 10 aware of any specific restrictions, any restrictions on  
 11 Section 101 funds being spent on early voting?  
 12 A I would have to look at the 2008 state plan.  
 13 Q All right. So right now, you are not aware of any  
 14 restrictions?  
 15 A It would depend what the 2008 state plan said. I mean  
 16 that was for that election.  
 17 Q Did you find that March letter? All right. Can you go  
 18 to Page 12 of Exhibit 130. How much Section 251 funds  
 19 did the State of South Dakota get in fiscal year 2008?  
 20 A \$11,596,803.  
 21 Q All right. How much was carried over?  
 22 A You mean the balance?  
 23 Q Yes, sir.  
 24 A The balance is \$7,007,824.  
 25 Q Could that money be used for early voting or could it

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1 have been used for early voting in Shannon County?  
 2 A The same rules; it must follow the plan and must follow  
 3 the act.  
 4 Q Are you aware of any restriction for Section 251 funds,  
 5 in either the state plan or the HAVA regulations, being  
 6 expended on early voting locations in the county?  
 7 A They would have to follow the plan and follow the act.  
 8 Q Here, today, are you aware of any restrictions on those  
 9 Section 251s being spent on those?  
 10 A I have not thoroughly read the 2008 HAVA plan.  
 11 Q All right. Going back to Page 8, have you ever  
 12 researched whether or not Section 101 funds could be  
 13 spent on early voting at a physical location in a county?  
 14 A For 2008?  
 15 Q Any time.  
 16 A Yes, for 2012.  
 17 Q What did you research for 2012?  
 18 A When I received the March letter from Shannon County,  
 19 made sure that allowing an additional reimbursable amount  
 20 was allowed under the plan and under the act.  
 21 Q All right. So there were no restrictions on Section 101  
 22 funds for 2012?  
 23 A I don't remember which section or which funds it was  
 24 coming from. I just know that when we researched it,  
 25 that it was an allowable expense for the 2012 primary and

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1 Q Who does he report to?  
 2 A My director of elections.  
 3 Q Who is your director of elections?  
 4 A Aaron Lorenzen.  
 5 Q How do you spell Mr. Lorenzen's name?  
 6 A L-o-r-e-n-z-e-n. Lorenzen.  
 7 Q How long has he been in that position?  
 8 A January of 2011.  
 9 Q What are his duties?  
 10 A He oversees the elections department. So everything from  
 11 state elections to school elections to city elections,  
 12 federal elections, campaign finance, election night  
 13 reporting, candidates, petitions, the whole gamut of  
 14 elections.  
 15 Q All right. What is his role with early voting, if any,  
 16 absentee balloting?  
 17 A I guess nothing different than what my role would be.  
 18 Q All right. So the director of elections reports to you  
 19 then?  
 20 A Yes.  
 21 Q You are his direct supervisor?  
 22 A Yes.  
 23 Q Do you know where his job duties are listed?  
 24 A No.  
 25 Q Do you know, in the job duties, if there is anything

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1 general election.  
 2 Q All right. Who helped you in your office research?  
 3 A It would have been my HAVA coordinator I guess.  
 4 Q All right. Let's go through your office staff. Who is  
 5 your HAVA coordinator?  
 6 A His name is Brandon Johnson.  
 7 Q How long has he been your HAVA coordinator?  
 8 A I don't remember exactly, but it was probably March of  
 9 2011. Somewhere in that spring.  
 10 Q What is his job description?  
 11 A HAVA coordinator.  
 12 Q Right. What are his duties?  
 13 A A number of duties. One is the agreed reimbursement  
 14 management when all 66 counties submit their information,  
 15 making sure that that is all paid out, making sure we are  
 16 complying with any new Election Assistance Commission  
 17 guidelines. He is also -- other election duties. He  
 18 assists with a number of election areas.  
 19 Q What does he do specific to HAVA?  
 20 A Like I said, the reimbursement, making sure the monies  
 21 are correct, making sure that we are running everything  
 22 based off what the federal government and state plan  
 23 says.  
 24 Q Where are his job duties listed?  
 25 A I don't know where they are listed.

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1 specific to HAVA funds?  
 2 A That would be a portion because HAVA is -- the HAVA  
 3 coordinator reports to him.  
 4 Q Okay. What kinds of things does the HAVA coordinator,  
 5 Mr. Brandon Johnson, need permission from the director of  
 6 elections to do regarding HAVA?  
 7 A He's allowed to follow the reimbursement schedule, and  
 8 then if there would be anything odd, he would bring that  
 9 to Aaron's and I's attention.  
 10 Q All right. So the reimbursement schedule, where is that  
 11 listed?  
 12 A That's the form that all the counties complete after each  
 13 election.  
 14 Q All right. So the reimbursement schedule is a simple  
 15 form?  
 16 A Yes.  
 17 Q All right. So for Shannon County to go ahead -- and  
 18 let's say that this next election costs \$25,000 for early  
 19 voting, all right -- what do they need to do to get that  
 20 \$25,000?  
 21 A They would need to submit a reimbursement form to the  
 22 state.  
 23 Q First of all they would have to make all the  
 24 expenditures, correct? They would have to go ahead and  
 25 spend the money?

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1 A Absolutely. Yes.

2 Q All right. And then they would list those expenditures  
3 and show receipts for those expenditures and do what?

4 A Yes. And submit them to my office.

5 Q Right. And this reimbursement schedule is a form that  
6 goes ahead and just itemizes the receipts?

7 A That's correct.

8 Q And then they have to attach the receipts behind there?

9 A Yes.

10 Q All right. And those receipts go to Mr. Brandon Johnson,  
11 your HAVA coordinator?

12 A The receipts, remember, it's a random sampling to have  
13 the receipts.

14 Q Explain.

15 A In the past, the -- how would the random work. We  
16 haven't gone through it, so I don't know exactly how they  
17 did it in the past.

18 Q Generally.

19 A I would assume they picked ten counties or something and  
20 said you have to submit all your receipts.

21 Q So not all the counties had to submit receipts to get  
22 HAVA money?

23 A I don't believe so. I believe it's just a random --

24 Q You just make Shannon County submit receipts and not  
25 other counties?

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1 Q As far as you know today, the term "random sampling"  
2 isn't referred to?

3 A I don't remember.

4 Q All right. How did the random sampling work? Did you  
5 roll the dice?

6 A Again, I don't know.

7 Q What do you know about random sampling?

8 A What I know is I don't have in my office receipts for  
9 every single county for every single election in the  
10 past.

11 Q What counties don't you?

12 A I don't know which -- I don't know how many there are. I  
13 don't know.

14 Q How do you know that some of your -- you don't have  
15 receipts from some of the counties in your office?

16 A When we were going through learning about HAVA and how  
17 the money works, when I first took office, that is where  
18 we learned that we didn't have every county's receipts.

19 Q Who is "we"?

20 A My office.

21 Q Who in your office did you go through and learn that not  
22 all counties had receipts?

23 A Oh, I would assume it was Mr. Johnson and Mr. Lorenzen.

24 Q Did you guys ever have discussion on how random sampling  
25 worked?

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1 A This March letter was something different that was not in  
2 the norm of what we do.

3 Q What do you mean, it wasn't in the norm?

4 A It was additional money that they were asking for.

5 Q All right. I need to -- tell me everything you know  
6 about the random sampling. When did it begin as far as  
7 you know?

8 A I don't know.

9 Q When you took office, when did you first learn about it?

10 A I suppose it was a few months into office when we were  
11 reviewing the HAVA responsibilities.

12 Q All right. Who was at the meeting reviewing HAVA  
13 responsibilities where you first learned of random  
14 sampling?

15 A I don't remember who was present.

16 Q Is the term "random sampling" written anywhere in any of  
17 the HAVA policies?

18 A I would have to look at them.

19 Q Are you aware of the term "random sampling" being  
20 described or written anywhere in any HAVA policy?

21 A No.

22 Q Are you aware of "random sampling" being mentioned or  
23 described or defined or referred to in any Secretary of  
24 State policy?

25 A I would have to look at the 2010 plan again.

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1 A I'm sure we wondered how they determined it because we  
2 knew we were going to have to figure out what we were  
3 going to do in the future.

4 Q Have you ever provided any instruction to any personnel  
5 in your office regarding the administration of a random  
6 sampling policy for receipts under HAVA?

7 A No, we haven't.

8 Q Do you know if the director of elections has ever  
9 provided any guidance to anybody regarding the  
10 administration of random sampling in your office?

11 A Not that I am aware of.

12 Q Do you know if Brandon Johnson has ever provided any  
13 guidance to anyone regarding the application of random  
14 sampling in your office?

15 A No.

16 Q Who determines if a receipt is necessary or not to get  
17 reimbursed?

18 A I don't know what the policy was in the past. That's  
19 what we were trying to figure out.

20 Q All right. So you didn't -- you knew that there was a  
21 random sampling policy in place beginning when?

22 A I suppose the first six months of being in office.

23 Q All right. What did you do about it?

24 A We talked to the county auditors.

25 Q Which county auditors?

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1 A It would have been at a county auditor convention, so all  
2 of them.

3 Q When was the first county auditor convention that you  
4 remember having this discussion with?

5 A It had to have been in the first half of 2011. I don't  
6 know if it was April or May.

7 Q All right. Do you know where that meeting would have  
8 been?

9 A I'm guessing Pierre, but I don't remember. I don't  
10 remember if we had to drive somewhere or not.

11 Q Do you remember if there was an agenda?

12 A Oh, sure, yes.

13 Q All right. In that agenda, do you remember if there was  
14 any mention of -- of random sampling or how receipts  
15 would work under HAVA?

16 A I remember part of our discussion was about HAVA audits,  
17 and that was part of it.

18 Q All right. Who was giving the instruction on HAVA  
19 audits?

20 A Who did we speak to?

21 Q Yeah. Who did the training from your office; here is how  
22 HAVA audits work?

23 A It was probably me.

24 Q What did you say?

25 A That we want to make sure we don't get a HAVA audit, and

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1 that we need to look at different procedures.

2 Q Did you provide any instructions at the training  
3 regarding how random sampling would work?

4 A No. I don't remember speaking specifically about that.

5 Q Generally?

6 A I remember speaking about equipment. That was a big  
7 concern; having a label on each piece of equipment  
8 purchased with HAVA money. I remember talking about the  
9 possibility of putting together some sort of web-based  
10 system that would make it easy for all the auditors to  
11 submit their receipts.

12 Q Did you ever do that?

13 A No. We haven't been able to yet.

14 Q Why not?

15 A It's on the list, but it just doesn't get done.

16 Q All right. Have you ever provided any written  
17 instructions to any county auditor in the State of South  
18 Dakota on when you would need receipts submitted before  
19 HAVA reimbursement would occur?

20 A I don't believe so.

21 Q Why not?

22 A Because we had a discussion about it, and we never had a  
23 conclusion.

24 Q All right. So I'm getting this straight, shortly after  
25 you took office, you learned that there was random

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1 sampling. Some counties went ahead and had to submit  
2 receipts to get HAVA reimbursement, others did not.

3 Correct?

4 A Correct.

5 Q Then you had a training with some of the county auditors  
6 who attended, correct?

7 A Some would be -- I would say greater than that.

8 Q And you did not define the random sampling requirements  
9 at that training?

10 A I think our discussion at that training led more towards  
11 we should have everyone submit all receipts so that we  
12 don't have to worry about an audit from the Election  
13 Assistance Commission.

14 Q Since you have been Secretary of State, have you required  
15 submission of receipts before HAVA reimbursement for  
16 every transaction?

17 A I would have to double-check on what the policy has been.  
18 I don't even know if we have received many requests since  
19 the June election.

20 Q All right. You don't have a policy regarding submission  
21 of receipts, correct?

22 A I don't know what we -- what has been decided. They may  
23 have, but I don't remember what. I -- if I would have  
24 known this question, I would have asked.

25 Q I don't understand what you just said.

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1 A If we have received anything from the county auditor  
2 since the June election.

3 Q Do you know if this process of random sampling has been  
4 terminated since you became Secretary of State?

5 A I don't, but I know I don't like it.

6 Q You don't like it?

7 A No, because I don't want an EAC audit. I would rather  
8 have all the receipts so we can just give it to the  
9 auditor when they come, if they come, and then it's  
10 easier that way.

11 Q Right. You have -- you have been the boss over there for  
12 about a year and a half, correct?

13 A Yes.

14 Q All right. And you haven't done anything to terminate  
15 that random sampling process in the year and a half that  
16 you have been the boss?

17 A There are 66 county auditors, and I try to work with them  
18 as much as possible. When I force them or attempt to  
19 force them to do something, that doesn't work well. So  
20 we have to work together on figuring out how we can do  
21 things.

22 (Deposition Exhibit Number 143 marked for  
23 identification.)

24 Q All right. Do you recognize this document marked  
25 Exhibit 143?

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1 A Yes.

2 Q How are you familiar with this document?

3 A I thought it was a letter from Shannon County.

4 Q But this is a letter from --

5 A Oh, I see.

6 Q -- from Shannon County's attorney to your attorney?

7 A Yes.

8 Q All right. This is the only communication that you are

9 aware of regarding requests for assistance with early

10 voting?

11 A From Shannon County?

12 Q Yes, sir.

13 A Yes.

14 Q No one has ever talked to you about it?

15 A You sent a number of letters in the fall of 2011.

16 Q Besides me.

17 A Yes. I think this was the only letter from Shannon

18 County Commission.

19 Q All right. So this was a request for \$12,000?

20 A An additional allowable reimbursement.

21 Q Do you know how much total that the South Dakota

22 Secretary of State is administering to Shannon County

23 through HAVA funds for early voting for the 2012 election

24 cycle?

25 A No. I have not received their reimbursement request for

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1 the June, 2012 primary.

2 Q Just so I understand your testimony, this is the only

3 communication that you have received regarding the costs

4 of early voting at a physical location in Shannon County?

5 This is it?

6 A Aside from your letter, yes.

7 Q Okay. And when you got this letter about the costs, some

8 of these costs of early voting in Shannon County, you

9 didn't research what the total cost of early voting in

10 Shannon County was, correct?

11 A No, because I didn't -- no.

12 Q You have never talked with anybody regarding the costs of

13 early voting at a physical location in Shannon County?

14 MS. FRANKENSTEIN: I'm just going to object here just

15 to remind everyone that at the beginning you asked him

16 not to discuss or give answers regarding his discussions

17 with his attorney. And I just want to make sure your

18 questions are still with that understanding.

19 MR. SANDVEN: Yes.

20 A I don't think so.

21 Q You have never talked with Sara Frankenstein regarding

22 the costs of early voting in Shannon County?

23 MR. WILLIAMS: I'm going to object at that point.

24 Q It's not his attorney, but go ahead and answer.

25 MR. WILLIAMS: Hold on. I'm going to object at this

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1 point because if Sara was at a meeting, she would have

2 been there with me. We would have been discussing a

3 joint defense. And anything said during that meeting

4 would have been subject to attorney/client privilege.

5 MR. SANDVEN: You're doing joint defense with Sara

6 Frankenstein?

7 MR. WILLIAMS: If we're talking -- if you're getting

8 at what I'm thinking about, yes, it was a joint defense

9 meeting.

10 Q Okay. Have you ever had any communication with any

11 Shannon County official regarding the costs of early

12 voting in Shannon County?

13 A I don't think so.

14 Q Same question; Fall River official.

15 A I have spoken to Sue Ganje numerous times.

16 Q About the costs of early voting?

17 A Just spoken with her. Nothing specific like this letter.

18 Q Have you ever had any conversation with Sue Ganje

19 regarding the costs of early voting in Shannon County?

20 A I'm trying to remember if after the court hearing we

21 had -- I think that was just about the location and how

22 much that -- well, I don't remember if we talked about

23 the cost of renting a location, but -- no, nothing

24 specific like conducting research on --

25 Q Generally?

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1 A -- specific -- for some reason I remember something about

2 the location. And I don't remember if she told me how

3 much or if it was expensive or cheap. I don't remember.

4 Q Do you know if any employee from your office, anyone that

5 works for you, has ever had a conversation with anyone at

6 Fall River or Shannon County regarding the cost of early

7 voting at a physical location in Shannon County?

8 A I know Fall River has called regarding submitting their

9 form, but they haven't submitted it yet.

10 Q Do you know if anyone from Fall River or Shannon County

11 has ever went ahead and informed anybody in your office

12 how much an early voting location in Shannon County

13 costs?

14 A We will know very shortly as soon as they --

15 Q That's not my question. Do you know if anyone has ever

16 done that?

17 A I don't know.

18 Q So as far as you know, no one from your office has ever

19 had any communication with a Shannon County official or

20 Fall River official regarding the cost of early voting at

21 a physical location in Shannon County?

22 A I don't know.

23 Q Can you think of a single expenditure from HAVA funds

24 administered by the Secretary of State's office that

25 hasn't required a receipt?

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1 A I knew that there weren't receipts for every  
2 reimbursement form from previous elections.  
3 Q How did you learn that?  
4 A For six months in office, we were learning about HAVA,  
5 and that's where we didn't have it. Then we talked to  
6 the auditors and --  
7 Q How did you learn about HAVA your first six months in  
8 office?  
9 A How did I learn?  
10 Q Yes.  
11 A I guess I read through the plans, tried to learn about  
12 how the money was started, what the big expenditures  
13 were, how the process works. Just reading the  
14 information.  
15 Q So it was your own independent research into the HAVA  
16 administration?  
17 A Yes.  
18 Q Right. And then from that -- where did you learn -- from  
19 what files or where did you learn that some of the HAVA  
20 expenditures didn't require receipts?  
21 A Because we didn't have them all.  
22 Q So you went through some of the files for HAVA  
23 administration. Where are those maintained?  
24 A In my office.  
25 Q Which office?

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1 A Secretary of State.  
2 Q Right. Which -- you have several offices over there,  
3 correct?  
4 A You mean locations?  
5 Q Yes.  
6 A I have a second floor and a basement.  
7 Q All right. So where -- who maintains those HAVA records?  
8 A I do.  
9 Q Who in your office does? You don't do your own --  
10 A My HAVA coordinator.  
11 Q So Mr. Johnson?  
12 A Yes.  
13 Q You went through his files and learned --  
14 A No, it wasn't his files. He was a new employee. It was  
15 the office's files. We went and looked at what had been  
16 filed before we got there.  
17 Q Who is "we"?  
18 A It would have been Brandon and probably Aaron and I.  
19 Q All right. Your director of elections, your HAVA  
20 coordinator, and yourself?  
21 A Yes.  
22 Q And you went into an office and opened up files and saw  
23 that some were missing receipts?  
24 A If I physically opened a file cabinet, I don't know if I  
25 did that. But I learned that we didn't have receipts for

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1 every county.  
2 Q Who told you?  
3 A One of those two.  
4 Q Either your --  
5 A They are not in the files. So I don't know where they  
6 are, where they weren't.  
7 Q One of your two employees told you we don't have receipts  
8 for some of these records?  
9 A Yes.  
10 Q Then what did you do?  
11 A Kept learning why.  
12 Q What did you learn?  
13 A That there was a sample.  
14 Q There was a random sample?  
15 A That not all counties were required.  
16 Q Who did you learn that from?  
17 A I don't remember. One of those two.  
18 Q One of those two communicated to you that there was  
19 random sampling --  
20 A Yes.  
21 Q -- for how receipts are done?  
22 A Yes.  
23 Q Did they give you any written correspondence on that?  
24 A No. It was probably just a conversation.  
25 Q Do you remember when it was?

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1 A Like I said before, I think it was those first six months  
2 because I know we spoke to the county auditors about it.  
3 Q Do you remember where that conversation with your two  
4 employees occurred?  
5 A It would have been my office.  
6 Q Do you remember what -- what was said?  
7 A That we don't have receipts for all the counties.  
8 Q And you responded?  
9 A That that was a concern because I didn't want a HAVA  
10 audit.  
11 Q Okay. What's the next step that you took?  
12 A Talked to the auditors.  
13 Q All right. And you talked to the auditors at the  
14 convention that you described earlier?  
15 A Yes.  
16 Q You don't remember what you said about random sampling at  
17 that convention?  
18 A Not specifically about the sample.  
19 Q Generally.  
20 A But I remember talking about how we didn't want an audit,  
21 and we should figure out a system to have all receipts so  
22 that there is no concern should there be an audit.  
23 Q Was there any discussion on this random sampling process  
24 at the convention?  
25 A I don't remember.

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1 Q Do you know if anyone else spoke about the random  
2 sampling at the convention besides yourself?

3 A I am sure that an auditor or number of auditors responded  
4 because we were -- I was asking them questions. We were  
5 asking questions; how does this work, how could we do it  
6 better, how could we make it easier.

7 Q What did you learn? What did you learn about which  
8 transactions required receipts and which ones didn't?

9 A I believe for that form -- I wish I could remember the  
10 name of the form -- that it was everything. I think it  
11 was the whole list.

12 Q What do you mean?

13 A Everything on the list. Like if they requested money for  
14 Items 1, 5 and 10, they had to list a receipt for 1, 5  
15 and 10. So if they were asking for a hundred bucks, they  
16 had to show a receipt for a hundred bucks.

17 Q Do you remember what kind of things didn't require a  
18 receipt?

19 A I think everything that they requested money for required  
20 a receipt. I remember seeing like pay stubs for the  
21 AutoMARK workers, I remember the Lakota translator. Back  
22 in 2010, I think seven counties were requiring a Lakota  
23 translator. So I remember seeing those receipts. Those  
24 were just some that stuck in my head.

25 Q Did you ever research what kind of things didn't require

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1 receipts for administration of HAVA funds under the  
2 random sampling criteria?

3 A I believe everything that was on that sheet that  
4 requested reimbursement required a receipt.

5 Q And everything other than that did not?

6 A They didn't request reimbursement for the other things.

7 Q So my question is, what things didn't require a receipt  
8 under the random sampling process that you learned?

9 A Things that they didn't spend money on.

10 Q For example?

11 A Well, if they didn't spend money on Line 12, they  
12 obviously didn't submit a receipt for Line 12 because  
13 there was no expense for Line 12.

14 Q All right. I thought I heard you talk earlier about a  
15 random sampling where some expenditures, HAVA  
16 expenditures, did not require a receipt.

17 A No. Some counties. The counties -- if you were one of  
18 the counties selected in the sample, you had to submit  
19 all your receipts.

20 Q All right. So some counties had to submit all the  
21 receipts, other counties did not have to submit all their  
22 receipts?

23 A Correct.

24 Q Okay. Was Shannon or Todd County ever one of the  
25 counties that didn't have to submit all their receipts?

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1 A I do not remember.

2 Q Do you remember any county that did not have to submit  
3 all their receipts?

4 A I don't remember either way.

5 Q You don't remember any county --

6 A I don't remember counties that submitted receipts, I  
7 don't remember counties that did not submit receipts.

8 Q You just remember that there were some counties that  
9 weren't required to submit receipts, but yet they  
10 received HAVA funds?

11 A I'm sorry, one more time.

12 MR. SANDVEN: Can you read the question back.  
13 (Last question read back by the reporter.)

14 A Yes.

15 Q But you can't remember a single example of that here  
16 today? Specific example.

17 A No. No. The only thing I remember were those few  
18 examples of -- well, it had to have been one of those  
19 seven Lakota counties that required the Lakota language  
20 because I remember seeing a Lakota translator receipt.

21 Q That didn't have a receipt?

22 A No, that had a receipt. I remember seeing the receipt.

23 Q Right. My question is, do you remember a single example,  
24 specific example, of a county getting HAVA funding  
25 without a receipt?

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1 A Yes.

2 Q Who?

3 A Oh, no. I don't remember a specific example. I just --  
4 in the files there is not receipts for every single  
5 county, so obviously those counties who did not submit a  
6 receipt received money.

7 Q Say that again.

8 A There are counties that submitted receipts, received  
9 money, and there are counties that didn't submit receipts  
10 and received money.

11 Q And received money?

12 A Uh-huh.

13 Q From HAVA?

14 A Yes.

15 Q And you saw there was no record or any proof of what  
16 those expenditures were?

17 A Correct.

18 Q And you don't remember what counties those were?

19 A I don't.

20 Q And you don't remember a single expenditure from those  
21 counties without a receipt?

22 A Everything they put on that form would have been paid  
23 unless it was something that was --

24 Q They just submitted the form without the receipts?

25 A Correct.

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1 Q Okay. And your -- and so going back, when you learned of  
2 that problem, you went to the convention and said we need  
3 to work on this?  
4 A Correct.  
5 Q Was there any action taken after the convention with all  
6 the county auditors?  
7 A We probably talked about it that fall again.  
8 Q Do you remember when?  
9 A It would have been whenever the county auditors had their  
10 fall convention.  
11 Q Where was that at?  
12 A Would have been in -- I don't remember the location.  
13 Q Do you remember what you said regarding how you were  
14 going to deal with this random sampling at the second  
15 convention?  
16 A I think it was just recapping what we had spoken about at  
17 the first one, and if anyone had any new ideas on how to  
18 resolve this problem to avoid a HAVA audit, or if we did  
19 have an audit, to make sure that we had everything.  
20 Q So approximately six months elapsed between the two  
21 conventions?  
22 A I don't remember, but possibly.  
23 Q And there was no action taken at the second convention?  
24 A No.  
25 Q Was there any action taken regarding the random sampling

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1 between the first and second convention?  
2 A I don't remember.  
3 Q Do you remember if any action was taken after the second  
4 convention regarding random sampling, or any further  
5 discussions?  
6 A I don't remember.  
7 Q You don't remember any -- any discussions regarding the  
8 random sampling process with receipts with HAVA funds  
9 except for those two conventions?  
10 A I don't remember if we learned how they did the sample.  
11 I don't remember.  
12 Q Did you ever take it to the election commission?  
13 A The board of elections?  
14 Q Yes.  
15 A I don't believe so.  
16 Q Why not?  
17 A I don't know.  
18 Q Did you ever go ahead and assign one of your staff; you  
19 need to fix this, you need to put together a plan that  
20 fixes this?  
21 A It's -- it was probably just one of the items that we had  
22 to do on our to-do list.  
23 Q Never assigned a specific staff member to go ahead and  
24 remedy this?  
25 A Well, it would have been the HAVA coordinator.

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1 Q Did you ever tell Brandon Johnson you need to come up  
2 with a solution and stop this random sampling process?  
3 A I don't remember. I just know I don't like it because  
4 it's not needed. We should have all the receipts so  
5 there is no question.  
6 Q If you didn't like it, why didn't you put out a directive  
7 to say everything gets a receipt from this point forward?  
8 A I don't know.  
9 Q You want to take a little break, sir?  
10 MR. WILLIAMS: If you would like to.  
11 Q Do you want to stop? You have been going an hour. Yes  
12 or no, sir?  
13 A Oh, I'm fine.  
14 Q Whatever you want. Do you have Exhibit 131 in front of  
15 you?  
16 A Yes.  
17 Q All right. If you go to Page 7, how much did South  
18 Dakota get in 2010?  
19 A No. You're not reading that correctly. This is total  
20 Section 101, 102, 251 funds received. That means since  
21 HAVA was started.  
22 Q So this graph you are saying isn't specific to the  
23 December, 2010 fiscal year?  
24 A As of September 30, 2010. There is no way South Dakota  
25 received \$18 million on September 30th of 2010. Well, I

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1 shouldn't say no way, but I don't think that is right at  
2 all.  
3 Q Do you know how much money that South Dakota did receive  
4 in 2010?  
5 A I don't.  
6 Q No idea?  
7 A I don't.  
8 Q Do you know how much money South Dakota spent in 2010?  
9 A I don't, but I don't believe it was the \$8 million number  
10 there.  
11 Q What do you believe it was, approximately?  
12 A Much, much less than that.  
13 Q Less than a million?  
14 A To know the exact number, I would have to look at the  
15 total -- do we have that spreadsheet as a -- the only  
16 thing I remember about 2010 money that was spent for sure  
17 was the 660,000 that was spent on January 1 of 2011.  
18 Q And what was that spent on?  
19 A Previous Secretary gave 10,000 to each county.  
20 Q Have you had any -- have you had any discussions with  
21 Fall River or Shannon County regarding future elections  
22 after 2012?  
23 A With who?  
24 Q Either Fall -- Fall River or Shannon County Commissions  
25 regarding early voting in Shannon County after 2012.

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1 A I guess I'm not sure if we talked about it at the last  
2 hearing, if 2014 or 2016 were discussed, I don't -- I  
3 don't remember.

4 Q How much money was committed to Shannon County Commission  
5 for early voting for the 2012 primary election?

6 A Shannon County, I want to say they have around \$60,000 in  
7 their account. And according to this letter, they needed  
8 an additional 12,000, which I said yes to. So I know  
9 that -- hopefully it's less than 72,000.

10 Q So it's your understanding that the primary election for  
11 2012 for early voting in Shannon County would be over  
12 \$70,000?

13 A No. I'm saying they had 60,000 in their account, and  
14 they said they needed another 12,000.

15 Q What did you give pre-approval to to Shannon County for  
16 for the primary election, what amount?

17 A That I would allow an additional reimbursable amount of  
18 up to \$12,000.

19 Q All right. So how much money -- how much HAVA money can  
20 Shannon County spend on early voting for the 2012 primary  
21 election?

22 A I guess they could spend 72,000.

23 Q 72,000 on the primary?

24 A Well, they would have zero money then for the general, so  
25 that wouldn't be a good use of their money.

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1 Q What had you given them pre-approval for for the primary?  
2 They can spend the 72,000 as they deem appropriate?

3 A I haven't given them pre-approval. I said I will allow  
4 an additional \$12,000 in reimbursement.

5 Q Beyond --

6 A They may only spend \$10,000. As soon as we get the  
7 receipts, we will know, or the forms.

8 Q All right. You have no idea how much early voting is  
9 going to cost in Shannon County for the 2012 primary  
10 election, correct?

11 A They have not submitted their forms.

12 Q You have no idea?

13 A I do not know. I will know, but I don't today.

14 Q As of today, you don't know how much it will cost? You  
15 have no idea how much --

16 A How much it cost. It happened already.

17 Q You still don't know how much it cost?

18 A They haven't submitted their reimbursement forms yet.

19 Q You don't have any idea how much the primary election,  
20 the early voting, cost in Shannon County?

21 A I know they had rent and staff.

22 Q Do you know how much rent was?

23 A No.

24 Q Do you know how much staff was?

25 A Nope.

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1 Q Do you know how much travel was?

2 A I would assume they are using state rates.

3 Q Do you know how much per diem was?

4 A No.

5 Q Do you know how much overtime was?

6 A No.

7 Q Do you know how much miscellaneous was?

8 A No.

9 Q Do you know how much the notices, the publications, were?

10 A No.

11 Q So the only cost that you know associated with early  
12 voting is the miles -- the mileage cost that uses the  
13 state rate?

14 A The state rate is 37 and a half cents. I assumed Shannon  
15 County uses that -- or Fall River uses that. I think  
16 it's 37 and a half.

17 Q But it's your testimony today that Shannon County has  
18 \$72,000 for early voting from HAVA funds for the entire  
19 2012 election cycle?

20 A No.

21 Q Correct me.

22 A It's not just for absentee voting. It's for all of their  
23 HAVA-related, HAVA state plan, HAVA Act, activities. And  
24 the 60,000 is what I remember as their account balance.  
25 I assume I'm close to right, but --

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1 Q And the early voting costs for a location in Shannon  
2 County, those costs are only incurred once every two  
3 years, correct, every election cycle?

4 A Correct.

5 Q No -- no costs for early voting in off-election years?

6 A Unless there would be a special election.

7 Q Unless there would be a special.

8 A Yeah.

9 Q Would it surprise you that the cost of doing six full  
10 weeks of early voting for both the primary and the  
11 general was less than \$50,000 every two years?

12 A I do not know. I don't know. I don't know what the high  
13 and low is for Pine Ridge and Fall River and --

14 Q And as far as you know, no one in your office has ever  
15 taken the time to find out how much early voting costs --

16 A No.

17 Q -- in Shannon County?

18 A No, because we are going to find out hopefully within  
19 days.

20 Q Why did you tell Shannon County that they needed to  
21 submit receipts initially before you would reimburse when  
22 other counties didn't have to?

23 A This was a special situation. This \$12,000 was not  
24 offered to other counties. It was only offered to  
25 Shannon.

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1 Q All right. How was the 60 -- there was initially about  
2 \$62,000?

3 A There was some document that we had at the last court  
4 hearing that showed what the Shannon County balance was.  
5 I am assuming it was around 60,000.

6 Q How do you determine which county gets how much?

7 A I haven't distributed any funds aside from this 12,000 --  
8 well, I haven't distributed this money. But I haven't  
9 distributed any money to the county accounts.

10 Q Right. But you have budgeted amounts, correct?

11 A Budget -- no.

12 Q So you knew that Shannon County had about \$60,000 left in  
13 their account, correct?

14 A Yes. We have the information for all counties in the  
15 state. It's quite a range.

16 Q Right. How are those amounts determined?

17 A Oh, it's been -- since the initial HAVA funds were sent  
18 to the state, there was a process that they went through  
19 each time they received money, and the previous Secretary  
20 disbursed that money to them.

21 Q You are just using the system the previous Secretary  
22 utilized?

23 A I haven't distributed any funds. The only additional  
24 funds I have allowed was for the Shannon County.

25 Q All right. But the budgeted amounts for each county for

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1 2012 were determined by who?

2 MS. FRANKENSTEIN: He already testified there is no  
3 budgeted amounts.

4 Q Go ahead.

5 A There aren't any budgeted amounts.

6 Q So how do you determine how much each county gets?

7 MS. FRANKENSTEIN: Objection. This has been asked  
8 and answered.

9 Q Go ahead and answer.

10 A In previous years, when they received money, it was  
11 disbursed.

12 Q As far as you know here today -- you are the Secretary of  
13 State, chief election officer. Tell me everything you  
14 know about the criteria for determining how much HAVA  
15 money each county is allocated. Tell me everything you  
16 know.

17 A The criteria --

18 Q Shannon County gets this much, Todd gets this much,  
19 Pennington gets this much. How is that determined by the  
20 Secretary of State's office?

21 A It was done by the previous Secretary and the previous --  
22 I suppose it was in the state -- state HAVA plans.

23 Q Do you have any idea how the previous Secretary of State  
24 did it?

25 A Like I mentioned before, the one I remember was right

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1 before I took office where each county received \$10,000.

2 Q It was just a flat rate regardless of need to each  
3 county?

4 A Yes, sir.

5 Q And who came up with that criteria?

6 A That was the previous Secretary.

7 Q Did you ever do anything to address that criteria where  
8 each county gets the same amount?

9 A I haven't received any new federal money to distribute to  
10 counties. At I mentioned before, there is only that  
11 roughly \$6,000.

12 Q Since you have been Secretary of State, have you done  
13 anything to go ahead and identify any criteria for  
14 determining how much money each county gets?

15 MS. FRANKENSTEIN: For new HAVA funding?

16 MR. SANDVEN: For any HAVA funding.

17 A No. We haven't set a plan. Right now there is only  
18 \$6,000, so it's not a huge chunk of money for the whole  
19 state.

20 Q You have a lot of money sitting there right now, right?

21 A Yes, sir.

22 Q How much money do you have sitting in an account right  
23 now?

24 A There is roughly 9 million.

25 Q Who administers that account?

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1 A Spends the money, you mean or --

2 Q What -- who authorizes approval of that?

3 A It would be the state auditor.

4 Q All right. And the approval process requires that you  
5 submit -- you authorize the expenditure and he pays it,  
6 correct?

7 A Yes. We have to fill out forms that the auditor's office  
8 requires.

9 Q All right. So there is \$9 million plus sitting there.

10 A Give or take. I don't remember the exact number right  
11 now.

12 Q Since you have been South Dakota Secretary of State, what  
13 has been the minimum amount in that account?

14 A I don't know.

15 Q No idea?

16 A I would assume it's around the 9 million. It receives  
17 interest just like any other state trust fund.

18 Q So as far as you know, since you have been Secretary of  
19 State, there has been approximately \$9 million in the  
20 HAVA account?

21 A Yes, sir.

22 Q And that account is maintained in what bank?

23 A I don't know. State treasurer or state auditor, Bureau  
24 of Finance Management. Whatever bank the state funds are  
25 held in I assume.

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1 Q All right. So for approving a HAVA expenditure, first it  
2 goes through your HAVA coordinator, and he has to sign  
3 off on the form?  
4 A The first thing is the auditor has to spend the money.  
5 Q Right. But before the auditor spends the money, the  
6 approval process for the expenditures begin with the HAVA  
7 administrator authorizing the expenditure?  
8 A Yes.  
9 Q Then it goes through the director of elections, and he  
10 has to authorize the expenditure?  
11 A I don't think so. It goes to our accounting, and then it  
12 goes to the auditor.  
13 Q Who signs the form?  
14 A Probably those two, Brandon and my accountant in the  
15 office.  
16 Q Who is your accountant in the office?  
17 A Debbie Trapp.  
18 Q How long has she been there?  
19 A She was there before I got there.  
20 Q Are you familiar with South Dakota Codified Law 12-3-6  
21 that provides that the Secretary of State shall notify  
22 those affected counties they are covered by the  
23 provisions of Public Law 9473?  
24 A I'm not sure what 9473 is.  
25 Q You don't know what Public Law 9473 is?

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1 A Is that the federal -- no.  
2 Q That is the Voting Rights Act.  
3 A Oh.  
4 Q You didn't know that you're supposed to provide notice to  
5 the affected counties that are covered by the Voting  
6 Rights Act?  
7 A I said I didn't know what 94 whatever is.  
8 Q Okay. Have you done anything to -- with your  
9 notification requirements with respective counties  
10 regarding the Voting Rights Act?  
11 A Could I look at the statute?  
12 Q Do you have 12-3-6? Then while they are searching for  
13 that, you are the chairman of the election board?  
14 A Yes.  
15 Q All right. The election board goes ahead and promulgates  
16 rules for elections?  
17 A Yes.  
18 Q What is your role with -- with -- as chairman of the  
19 election board? What do you do?  
20 A I have a vote on the board. I am responsible for not  
21 just chairing the meeting, but also the secretary, so  
22 meeting minutes and filing all the necessary paperwork  
23 with the Legislative Research Council regarding the  
24 administrative rules, publishing the notices in the  
25 newspaper, that whole process.

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1 Q All right. Have you ever went ahead -- do you have  
2 anything to do with the agenda?  
3 A Yes. I set the agenda.  
4 Q When and how do you set the agenda?  
5 A We don't have scheduled meetings like on a quarterly  
6 basis or anything. When there is items that come up or  
7 that there has been a request to change administrative  
8 rules, then I would call a meeting and -- call the  
9 meeting and develop the agenda.  
10 Q Have you ever -- have you ever put early voting issues on  
11 the agenda for the election commission down at -- you  
12 know, for the early voting issues down in Shannon County?  
13 A I don't remember if it was on the agenda, but I remember  
14 we talked about this lawsuit at one of our meetings.  
15 Q All right. Was your lawyer present?  
16 A No.  
17 Q You just -- what did you talk about?  
18 A Just that there was a lawsuit concerning early voting in  
19 Shannon County.  
20 Q What was the discussion? Any thoughts on fixing it?  
21 A None that I remember.  
22 Q Was there any conversation on the folks down in Shannon  
23 County should get the same number of days that other  
24 residents do?  
25 A I think it was a pretty brief summary. There was this

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1 lawsuit and there was a pistol permit lawsuit.  
2 Q Who gave the report?  
3 A Me.  
4 Q Did you provide any remedies on how it could be fixed?  
5 A The lawsuit?  
6 Q Yeah. You were talking with the Election Commission,  
7 correct?  
8 A Yes. I don't think so. I think we just talked about how  
9 it's out there, and we have to go to court and figure  
10 out -- do what the Court says.  
11 Q This was before the preliminary injunction hearing or  
12 after?  
13 A I don't remember.  
14 Q Did you let them know if we gave -- give the Shannon  
15 County folks the same number of days of early voting that  
16 everyone else gets, this would just go away?  
17 A I don't remember.  
18 Q What do you remember saying to the election commission?  
19 A I remember talking about there being a lawsuit regarding  
20 Shannon County.  
21 Q And --  
22 A That's it.  
23 Q Was the meeting recorded?  
24 A No.  
25 Q Was that part of the meeting in executive session?

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1 A No. I don't believe we have had any executive sessions  
2 since I have been there.

3 Q How come you have never put on the agenda some proposed  
4 rules for early voting in Todd or Shannon County?

5 A Because there already are administrative rules regarding  
6 all counties in the state.

7 Q Are there -- is Shannon County and Todd County different  
8 to you than the other counties?

9 A No.

10 Q Having a county seat or not having a county seat doesn't  
11 change anything?

12 A As far as the law, no.

13 Q All right. Do you think it's a hardship on Shannon  
14 County residents to have to drive to Hot Springs to cast  
15 their vote in person? Do you think that is a hardship?

16 A I think it's unfortunate.

17 Q Why do you think it's unfortunate?

18 A Because they don't have a courthouse in their county.

19 Q But do you think it's a hardship on the folks that live  
20 over there?

21 A Yes. It's far to drive.

22 Q And you knew up in Pennington County you have a  
23 satellite, correct?

24 A I don't. Pennington County does.

25 Q You were aware of a satellite location up in Pennington

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1 County?

2 A In Wall, yes.

3 Q So the folks don't have to drive all the way to Rapid  
4 City?

5 A Yes.

6 Q Have you ever had any discussions with the Election  
7 Commission, we need to do the same thing down in Shannon  
8 County?

9 A I am not in charge of Shannon County.

10 Q Have you ever had a discussion with anyone regarding a  
11 satellite location in Shannon County for early voting?

12 A Well, we had a lot of conversations regarding this.

13 Q What do you mean?

14 A That Shannon County needed money to have absentee voting  
15 in Shannon County.

16 Q You have had a lot of conversations regarding that?

17 A Yeah. We had this letter, we had the letter -- my  
18 response authorizing it, then we had a whole court  
19 hearing.

20 Q All right. That is your only communication that you are  
21 aware of?

22 A Yes.

23 Q Okay. Have you had any involvement in promulgating rules  
24 for absentee voting for military folks?

25 A We had a proposal to clarify that system, but we deferred

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1 that at one of our Board of Election meetings.

2 Q Right. One of your responsibilities is to provide any  
3 absentee uniformed service and overseas voter  
4 information?

5 A Yes. There are administrative rules for that.

6 Q How to vote absentee?

7 A Yes.

8 Q Right. So you, as chair of the Election Commission, you  
9 promulgate rules and do that?

10 A I didn't do that specific one, but, yes.

11 Q Your office did?

12 A Yes.

13 Q All right. Is there anything that restricts you from  
14 promulgating rules regarding early voting in Shannon  
15 County?

16 A Those have to be run through the administrative rules  
17 process and approved by the Board of Elections.

18 Q And you would set the agenda for that?

19 A Yes.

20 Q Do you have any intentions of setting the agenda for  
21 promulgating rules for how early voting is done in  
22 Shannon or Todd County?

23 A It's the same -- it's already in administrative rule for  
24 all of South Dakota.

25 Q Right. But you would agree the circumstances are a

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1 little bit different in Shannon County than other  
2 counties because you don't have a county seat, correct?

3 A Even though they don't have a county seat, the 2012  
4 election was, in my mind, the same as every other county.

5 Q The 2012 election, the primary was the same as every  
6 other?

7 A Because they had absentee voting in their county, just  
8 like other counties.

9 Q The full six-week period?

10 A Yes. Well, 46 days. It's a little more than six weeks.

11 Q At the hearing you went ahead and said that some of the  
12 counties did weekend voting at the courthouse.

13 A Yes.

14 Q Who?

15 A I remember reading on KELO-Land.com that Minnehaha would.

16 Q In Sioux Falls?

17 A Yes, sir.

18 Q And they did Saturday voting?

19 A Saturday absentee voting.

20 Q Do you remember the hours?

21 A I don't think it was all day. Might have been for the  
22 morning or something. I didn't print out the KELO  
23 article.

24 Q Have you ever talked to anyone, besides those two  
25 conventions, about this random sampling process for HAVA

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1 expenditures?  
 2 A Did I talk to anyone else? No. The auditor and staff.  
 3 Q You proposed rules regarding early voting before the  
 4 election board on November 29, 2011?  
 5 A Yes. We were going to change -- make the forms easier.  
 6 Q Which forms?  
 7 A If memory serves, it was the -- the general absentee  
 8 application and then the military absentee application.  
 9 Q Did those go through?  
 10 A No.  
 11 Q What happened?  
 12 A We deferred them until later.  
 13 MR. SANDVEN: Let's take about a five-minute break,  
 14 please.  
 15 (Recess at 10:31 a.m.)  
 16 BY MR. SANDVEN:  
 17 Q Approximately how much interest was earned from the HAVA  
 18 money in 2010?  
 19 A Half a million. I believe the state rate was  
 20 somewhere -- 4 point some percent.  
 21 Q All right. So the state's received, since they began  
 22 collecting the HAVA in -- what was the first year they  
 23 got HAVA funds?  
 24 A I don't remember.  
 25 Q But cumulatively the state has received about \$3 million

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1 in interest off the HAVA account? No idea?  
 2 A That would depend on the first year.  
 3 Q How many employees are you responsible for in your  
 4 office?  
 5 A I have 15.3 FTEs.  
 6 Q How many are responsible for the administration of the  
 7 elections?  
 8 A My election department consists of four.  
 9 Q All right. And that includes who?  
 10 A Aaron Lorenzen as director of elections, Brandon Johnson  
 11 is the HAVA coordinator, Andrew Pietrus is another  
 12 elections coordinator, and Patrick Baker is another  
 13 elections coordinator.  
 14 Q Does Mr. Pietrus or Baker have any role in HAVA  
 15 administration?  
 16 A Yes. Everyone does.  
 17 Q Explain, please.  
 18 A When Brandon is working on a major project, they help.  
 19 Q For example?  
 20 A If a lot of the receipts come in, work on that. If  
 21 there's a request to gather documents, they would all  
 22 help.  
 23 Q All right. When we were talking earlier about different  
 24 counties going ahead and submitting receipts on a random  
 25 basis, you went ahead -- and I want to be clear on

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1 this -- you went ahead and you only audited certain  
 2 counties to determine that?  
 3 A No.  
 4 Q Or only certain -- only certain counties were required to  
 5 submit receipts to get their HAVA money?  
 6 A I didn't do anything.  
 7 Q Your understanding of the previous administration.  
 8 A I couldn't find those receipts.  
 9 Q All right. So last question on this. Certain counties  
 10 received HAVA monies, but were not required to submit  
 11 receipts to get those HAVA monies?  
 12 A I don't -- I don't have all the receipts for all counties  
 13 in the file.  
 14 Q Did you ever -- did you ever follow up on whether or not  
 15 those counties submitted receipts someplace else?  
 16 A That was the conversations we had with the county  
 17 auditors. How did the process work, what did you do.  
 18 Shouldn't we all -- have all these receipts in one  
 19 location so should there be a federal audit, we won't  
 20 have to be scrambling to find that information.  
 21 Q With the -- the files that were missing receipts, did you  
 22 ever follow up with those counties to determine whether  
 23 or not they maintained those receipts at their county  
 24 offices?  
 25 A We discussed at -- the need to make sure that you save

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1 everything that is regarding HAVA expenditures.  
 2 Q Right. My question is you saw some files that were  
 3 missing receipts. Did you go back to those counties and  
 4 say did you keep these receipts, do you have them over  
 5 here at your county office?  
 6 A When I talked to the county auditors at that convention,  
 7 we talked about what their procedures were, and to make  
 8 sure they have everything, and the idea wouldn't it be  
 9 nice if we just have all the receipts in one location.  
 10 Q Right. Did any of those counties ever go ahead and  
 11 submit receipts after you had asked for them and said  
 12 some of these files are missing receipts?  
 13 A I didn't ask for them.  
 14 Q You never followed up on the missing receipts?  
 15 A No.  
 16 Q Hand you what's been marked Exhibit Number 93, sir. Do  
 17 you remember getting this -- this memorandum?  
 18 A Yes.  
 19 Q All right. It's dated November 14th, 2011. Do you  
 20 remember the first time you read it?  
 21 A No, I don't.  
 22 Q Do you remember if you did read through the whole  
 23 memorandum?  
 24 A Yes.  
 25 Q All right. So on November 14th, you see Paragraph 1 at

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1 the bottom of Page 1 -- or let's go to Paragraph 2; that  
 2 "A resident of Sioux Falls, South Dakota or Rapid City  
 3 can go to the courthouse and in their respective county,  
 4 and in a single trip request an absentee ballot, receive  
 5 an absentee ballot and cast their absentee ballot."  
 6 A Yes.  
 7 Q Remember reading that?  
 8 A Yes.  
 9 Q Do you agree with that statement?  
 10 A Yes.  
 11 Q And then the next sentence, "Additionally, a said  
 12 resident can, if not registered to vote, register to  
 13 vote, request an absentee ballot, receive the absentee  
 14 ballot, and cast their absentee ballot for the first four  
 15 weeks of the absentee ballot voting period from six weeks  
 16 prior to the election up until two weeks prior to the  
 17 election." Is that true?  
 18 A No.  
 19 Q What is incorrect in that sentence?  
 20 A The absentee voting period is 46 days, not 42 days.  
 21 Q We talked about this at the hearing a little bit. How  
 22 many actual days of early voting did -- you're in Hughes  
 23 County, correct?  
 24 A Yes. I live in Hughes County.  
 25 Q How many actual days of early voting did Hughes County

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1 voters get before the primary election this last time  
 2 around?  
 3 A I don't know. I only know they were open on I think it  
 4 was Monday before the election because I voted that day.  
 5 Q You don't know which days of early voting your county --  
 6 the early voting was available?  
 7 A I don't go to the Hughes County courthouse every day.  
 8 Q Okay. Here is what I'm getting at. At the -- you are  
 9 disagreeing in Paragraph 2 with the six weeks of early  
 10 voting?  
 11 A Six times seven is 42 days. State law says 46 days.  
 12 Q Right. And when you look at the state law, you are  
 13 referring to 12-16-1? You have got the code book in  
 14 front of you. And I think it says that absentee ballot  
 15 voting shall begin no earlier and no later than 46 days  
 16 prior to the election.  
 17 A What was the number?  
 18 MR. WILLIAMS: 12-16-1.  
 19 Q 12-16-1.  
 20 A Which one, this one?  
 21 MR. WILLIAMS: Yeah.  
 22 A Okay. The question again.  
 23 Q Right. What the code says, 12-16-1, is that absentee  
 24 voting shall begin no earlier and no later than 46 days  
 25 prior to the election.

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1 A That's correct.  
 2 Q Right. So it doesn't mean that you get 46 days of early  
 3 voting, correct, because early voting locations aren't  
 4 open on some weekends and some holidays?  
 5 A Right. It has to start on that Friday, which I believe  
 6 is April 20 something.  
 7 Q Right. So this last primary election, how many actual  
 8 days of early voting did the counties get in the State of  
 9 South Dakota?  
 10 A I don't know.  
 11 Q You -- it was just the Mondays through Fridays for that  
 12 46-day period?  
 13 A Each county sets their office hours.  
 14 Q All right. So the discussion that we are having right  
 15 now dealt with Paragraph 2 on Page 2 where you're  
 16 disagreeing that the six weeks prior should be -- that  
 17 early voting begins 46 days prior?  
 18 A Absentee voting begins 46 days prior to the election day.  
 19 Q Right. That's the only thing you disagree with in my  
 20 letter to you dated November 14th, 2011 in Paragraph 2?  
 21 A No.  
 22 Q What else do you disagree with in that paragraph?  
 23 A Where you say up until two weeks prior to the election.  
 24 Q All right. That's -- that's for registration, right?  
 25 A Right. It's 15 days before the election is the deadline.

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1 Q All right. Not two weeks?  
 2 A Two weeks is 14 days.  
 3 Q Right. So that is your only disagreement; is that  
 4 instead of saying that absentee balloting for -- the rest  
 5 of South Dakotans receive 46 days instead of six weeks  
 6 before, and 15 days instead of two weeks before for early  
 7 registration for voter registration?  
 8 A Was your question are those the only two things I  
 9 disagree with?  
 10 Q In Paragraph 2, sir.  
 11 A The second -- your second sentence where you list  
 12 register to vote, request a ballot, receive a ballot,  
 13 cast their ballot, that needs to be clarified that your  
 14 ballot is not counted until -- or not approved until you  
 15 are registered to vote. So if you were to come in, and  
 16 say you were convicted of a felony or you weren't  
 17 eligible to vote, you -- you could go through these  
 18 steps, but your ballot would be rejected because you  
 19 failed to -- you are unable to become registered to vote.  
 20 Q Okay. So what I hear you saying then is that in South  
 21 Dakota anybody can go to their county courthouse,  
 22 correct, if they are not registered to vote, and in a  
 23 single trip, register to vote, request an absentee  
 24 ballot -- request an absentee ballot, cast their absentee  
 25 ballot. But if there is any eligibility questions

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1 regarding their registration, that can be challenged?  
 2 A Correct.  
 3 Q All right. So a Shannon County person, if they wanted to  
 4 do -- to register to vote and do all these steps in a  
 5 single visit, they would have to drive to the Hot Springs  
 6 courthouse?  
 7 A Not during the 2012 primary election.  
 8 Q Right. Because early voting locations, after the  
 9 preliminary injunction, went ahead and changed to the  
 10 full 46-day period.  
 11 A Correct.  
 12 Q All right. Look at Paragraph 3, sir. Do you agree with  
 13 this first sentence that "Except for Shannon County and  
 14 Todd County, all eligible voters in the State of South  
 15 Dakota can go to the courthouse geographically located  
 16 within their respective county, register to vote, request  
 17 and complete an absentee ballot in a single trip until  
 18 two weeks before the election when registration closes"?  
 19 A Same problems as the previous paragraph.  
 20 Q Instead of six weeks, refer to 46 days, instead of two  
 21 weeks, refer to 15 days?  
 22 A And they may not be able to -- their ballot may not be  
 23 valid if they are not eligible to register to vote.  
 24 Q If their registration form fails your criteria?  
 25 A Fails South Dakota law.

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1 Q Okay. And then except for registered voters in Shannon  
 2 and Todd County, registered voters are able to go to the  
 3 courthouse geographically located within their respective  
 4 county and request and complete an absentee ballot for  
 5 the final 15 days of the absentee ballot period, correct?  
 6 A Correct.  
 7 Q And everyone else can, including up until the 3 -- can go  
 8 to the early voting location until 3:00 p.m. of election  
 9 day?  
 10 A Shannon County doesn't have a courthouse, so they can't  
 11 go to their courthouse.  
 12 Q That's why the first sentence says "Except for Shannon  
 13 and Todd Counties..." right?  
 14 A Yes.  
 15 Q They are the only two counties without a courthouse?  
 16 A Yes.  
 17 Q All right. And then the Paragraph 4, Pennington  
 18 County --  
 19 A Corson County, their courthouse blew up. I don't  
 20 remember when that was. But they may not have had a  
 21 courthouse, and they obviously had a different location  
 22 after it burned down.  
 23 Q Geographically located within Corson County, though?  
 24 A I'm sure it was.  
 25 Q And then "Pennington County has had an alternative

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1 location where absentee ballots can be requested and cast  
 2 in a single trip in Wall, South Dakota for several  
 3 election cycles." Is that true?  
 4 A I do not know.  
 5 Q You don't know when the Wall satellite started in  
 6 Pennington County?  
 7 A I do not.  
 8 Q Do you know if it was the last few election cycles or you  
 9 have no idea?  
 10 A I do not.  
 11 Q Okay. I'm going to hand you what's been marked  
 12 Exhibit 58. Does that look like the number of election  
 13 days, the actual days of early voting for the 2012 cycle?  
 14 A Yes. Those look like the days.  
 15 Q So it was 32 days for the primary and 32 days for the  
 16 general?  
 17 A As far as working business days?  
 18 Q Yes, sir. At a minimum, every county should have had  
 19 that many days, correct?  
 20 A I don't know what all of the counties' office hours are.  
 21 Q You don't know what all the courthouse hours are or the  
 22 auditors' office hours are?  
 23 A I don't know either one.  
 24 Q Have you -- have you ever talked with any of the folks at  
 25 the -- at any of your conventions on what their hours are

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1 for -- for these early voting locations?  
 2 A I don't think so.  
 3 Q It's your understanding that most of the early voting  
 4 hours are 8:00 to 5:00, the same hours as the courthouse?  
 5 A Again, I don't know.  
 6 Q Okay. Never researched it?  
 7 A No.  
 8 Q Okay. Then you agreed, last sentence of Paragraph 4,  
 9 that voter registration could also occur at the Wall  
 10 County -- or Wall, South Dakota location?  
 11 A I don't know what all the activities are that take place  
 12 in Wall.  
 13 Q You don't know whether or not -- that voter registration  
 14 occurs out at that satellite?  
 15 A I do not.  
 16 Q Never asked anyone about it?  
 17 A I didn't go into details about it.  
 18 Q General?  
 19 A Just that I was told that they have a satellite location  
 20 in Wall. I don't know if that includes the sheriff or  
 21 the treasurer or register of deeds.  
 22 Q What services?  
 23 A I do not know.  
 24 Q And specific to election services, you don't know what  
 25 they provide out there?

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1 A Correct.

2 Q Okay. How come you have never asked anyone about it?

3 A Because it's Pennington County's election.

4 Q You consider it county business?

5 A It's their -- it's their election.

6 Q Do you know of any other satellite locations in the State

7 of South Dakota since you have been the Secretary of

8 State?

9 A Pine Ridge.

10 Q What we are going through currently?

11 A Yes. Shannon County doesn't have a courthouse, but they

12 have 46 days in Shannon County.

13 Q Okay. Anywhere else? No?

14 A I don't think so.

15 Q Todd County, of course, right, has early vote at Rosebud

16 Sioux Tribe. But besides Todd and Shannon County, do you

17 know of any other counties besides Pennington that have

18 had a satellite location, more than one location where

19 you can cast an early vote?

20 A Well, there is a law that says auditors can go to nursing

21 homes, so I would assume they have done that. That would

22 be your criteria of satellite.

23 Q In Pennington County, did they sometimes do early voting

24 down in Hill City?

25 A Do not know.

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1 A I think every county should follow the law.

2 Q Okay. Do you think the law requires that Shannon County

3 gets 46 days of early voting like everybody else?

4 A The law requires all South Dakotans to have 46 days or to

5 have absentee voting start 46 days beforehand.

6 Q Do you think the law requires that Shannon County have

7 the same number of days of early voting in Shannon County

8 that other counties get?

9 A I believe all South Dakota counties should follow the

10 law, and should all offer the same.

11 MR. SANDVEN: Can you read the question back.

12 (Last question read back by the reporter.)

13 A Didn't I just answer that?

14 Q No.

15 A I believe all counties should have absentee voting start

16 at 46 days beforehand.

17 Q Within their respective county?

18 A That it should start.

19 Q At a location located within their respective county?

20 A I can't control that.

21 Q I'm asking you as Secretary of State what you -- if you

22 think that Shannon County folks should have a location in

23 Shannon County for early voting. Yes or no?

24 A I was pleased that we were able to assist them in

25 ensuring that Shannon County had 46 days.

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1 Q Okay. And you knew that the Fall River auditor was

2 contracted to perform Shannon County auditing services?

3 A Yes.

4 Q Have you ever had any discussions with Sue Ganje

5 regarding the scope of her services to Shannon County?

6 A Not specifically. I have just always assumed she does

7 everything for Shannon that she does for Fall River.

8 Q Have you ever had any conversations with her regarding

9 early voting at a location in Shannon County?

10 A Yes, regarding this lawsuit.

11 Q Have you talked to Sue Ganje about this lawsuit?

12 A Yes.

13 Q What was your discussion?

14 A I think we talked about the rent or something with --

15 where the location was going to be or something like

16 that.

17 Q Did you talk costs at all? Did you talk about who would

18 pay for it?

19 A Well, we talked about this lawsuit.

20 Q What did you --

21 A Just how -- the additional \$12,000 and how hopefully that

22 will solve the problem and make sure Shannon County can

23 have 46 days just like everyone else.

24 Q Do you think they should have 46 days of early voting

25 like everybody else?

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1 Q Why were you pleased?

2 A Because I want all South Dakota counties to follow the

3 law and to have 46 days, for absentee voting to begin 46

4 days before the election.

5 Q Is that why you authorized the \$12,000?

6 A No. I authorized the \$12,000 because it's allow -- it's

7 an allowable expense.

8 Q Right. But that was -- that was an additional -- the

9 \$12,000 was allowable, so you said yes?

10 A Shannon County requested the additional 12,000. I

11 reviewed the plan and the act, and said yes.

12 Q Why didn't you provide that money well before that

13 March 1st request? This letter to you is dated

14 November 14th, 2011.

15 A I wasn't asked by Shannon County until March 1st.

16 Q So you needed Shannon County to go ahead and ask you for

17 money before you got involved in this situation?

18 A I didn't know who you were.

19 Q Okay. And at the end of the letter where it says that I

20 am the attorney for those Pine Ridge folks --

21 A I still didn't know who you were.

22 Q Okay. Did you make any efforts to find out?

23 A No.

24 Q All right. So then you knew -- in Paragraph 6, do you

25 agree that "Private parties paid approximately \$15,000 to

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1 Shannon County, who in turn contracted with the Fall  
2 River County auditor to provide alternative locations for  
3 absentee balloting in Shannon County for approximately  
4 three weeks"? Is that true?  
5 A I had heard about that, but I didn't know exact numbers  
6 or years or what the services were.  
7 Q When did you first learn that Shannon County was having  
8 to get private money to do early voting?  
9 A I don't remember.  
10 Q Do you remember what year?  
11 A I don't.  
12 Q Do you know if it's been since your -- since you became  
13 Secretary of State, or was it before?  
14 A Where the money was given?  
15 Q Yeah. Where you learned that Shannon County was getting  
16 private donations in order to pay for early voting.  
17 A I don't remember.  
18 Q You don't remember if it was before or after you became  
19 South Dakota Secretary of State?  
20 A I do not.  
21 Q Do you remember if it was in the last five years?  
22 A More than likely.  
23 Q Do you know if it was the last three years?  
24 A No.  
25 Q Okay. But you would agree that private parties have went

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1 ahead and put money, private funds, into Shannon County  
2 for early voting at a location in Shannon County?  
3 A I have not seen the Shannon County books.  
4 Q You have never had -- confirmed that?  
5 A No.  
6 Q Did you ever ask anyone why private funds needed to be  
7 used to pay for early voting in Shannon County?  
8 A I don't think so.  
9 Q Why not, sir? That is kind of weird, isn't it; private  
10 money is going just into this county, no place else?  
11 A I don't know.  
12 Q Okay. Then you would agree with Paragraph 7, you are  
13 "not aware of any counties in South Dakota, other than  
14 Todd or Shannon, where private funds have been utilized  
15 for funding a voting location"?  
16 A I'm not aware.  
17 Q Never heard of that anywhere else, right?  
18 A I -- I have not.  
19 Q Did you ever ask anyone why Todd County needed private  
20 funding to go ahead and do early voting?  
21 A No.  
22 Q Have you ever talked with anyone in Todd County about the  
23 costs of early voting?  
24 A I don't think so.  
25 Q Why not?

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1 A It's not one of my responsibilities.  
2 Q As chief election officer, it isn't?  
3 A No.  
4 Q One of the things at the preliminary injunction hearing,  
5 I think you talked a little bit about there were certain  
6 emergency situations where the Secretary of State would  
7 get involved in a county election.  
8 A Yes, sir.  
9 Q What are those emergency situations?  
10 A I can give you the one example that took place in 2012  
11 where the McPherson County auditor passed away, and the  
12 McPherson --  
13 Q Can we stop for a second.  
14 (Noise interruption.)  
15 Q Go ahead, sir.  
16 A The McPherson County auditor passed away earlier this  
17 year, and the McPherson County Commission had a  
18 resolution, I believe it was, requesting -- I don't  
19 remember the specific law, 12 something -- and requested  
20 that my office conduct their election through the county  
21 canvas.  
22 Q Is there anything else you consider an emergency besides  
23 the death of an auditor?  
24 A I suppose if they were in an accident and in the  
25 hospital, that could be an example.

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1 Q An accident of who?  
2 A The auditor.  
3 Q Besides an injury or death of an auditor, is there  
4 anything else you consider an emergency?  
5 A In the law, it talks about the requirement of the person  
6 in charge of the election, the -- their -- I think it  
7 says governing body, and then the secretary. So anything  
8 that all three of those people believe to be an emergency  
9 would make that law go into effect.  
10 Q All right. So who -- who, in your opinion, does it  
11 require determine that an emergency exists before that --  
12 A It's not my opinion. I just don't have the law in front  
13 of me. That's what I remember it saying.  
14 Q Did you consider it an emergency that Shannon County  
15 didn't have the same days -- same number of days of early  
16 voting at a physical location in Shannon County as other  
17 counties an emergency?  
18 A Under this law, the emergency law 12 whatever, no, I  
19 would not consider that an emergency.  
20 Q Why not?  
21 A Because there's people down there who can conduct the  
22 election.  
23 Q Say again.  
24 A There's people there who can conduct the election. They  
25 have a county auditor. It would be like if the county

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1 auditor was too lazy to run the election and just wanted  
2 me to do it. I would not consider that an emergency.  
3 Q Right. You knew down there that they didn't have  
4 adequate funding, correct, to go ahead and pay for early  
5 voting?  
6 A When they notified me in that March 1st letter.  
7 Q So it's your testimony today that until you received that  
8 letter on March 1st, 2012, you did not know -- you didn't  
9 know that money was an issue with early voting at Shannon  
10 County?  
11 A The March 1 letter was when they requested the money.  
12 And then I granted them additional money.  
13 Q I understand that. When did you first learn that money  
14 was the issue, they didn't have the money to go ahead and  
15 pay for early voting at a location?  
16 A March 1st.  
17 Q That's the first time you learned of it?  
18 A That they were short on funds? Yes. That was the first  
19 time they asked me for money.  
20 Q I understand that. But I thought you testified when you  
21 were running your statewide race in 2010, that you went  
22 ahead and learned that folks at Shannon County weren't  
23 getting the same number of days of early voting as  
24 someone else. Correct?  
25 A I remember reading in the newspaper that they weren't.

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1 needed money to conduct early voting?  
2 A That was the first time they asked for money, and I gave  
3 it to them just --  
4 Q My question is did you -- is that the first time you  
5 knew?  
6 A I knew there were issues down there, like I said before.  
7 Q What issues did you know were going on down there?  
8 A From in the newspaper.  
9 Q What issues did you know were going on down there?  
10 A Their absentee voting days.  
11 Q They didn't have the same number of days, correct? You  
12 knew that before the March 1st letter?  
13 A Yes.  
14 Q All right. You knew all these things that are in my  
15 letter dated November 11th -- or November 14th, 2011,  
16 correct?  
17 A I didn't know Shannon County needed money until the  
18 March 1 request.  
19 Q And when you received this letter dated November 14th,  
20 2011, you never called anybody or followed up to say do  
21 they need more money down there?  
22 A I probably sent it to my attorney.  
23 Q But you never followed up with any --  
24 A No.  
25 Q -- of the officials down there and said do you need more

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1 Q And that funding was the source of that problem?  
2 A I would assume that, sure.  
3 Q Right. That they were getting private money to go ahead  
4 and pay for early voting. You knew that before you  
5 became Secretary of State. Correct?  
6 A I guess I don't understand.  
7 MR. SANDVEN: Can you read the question back.  
8 (Last question read back by the reporter.)  
9 A I didn't know when they received that money.  
10 Q But you knew that money went for early voting, didn't  
11 you?  
12 A No.  
13 Q You didn't know what the private donations were going  
14 for?  
15 A I remember that they were getting private money. I don't  
16 know what they spent the money on.  
17 Q Okay. So you -- it's your testimony you didn't know that  
18 money was the issue, that folks down in Shannon County  
19 weren't getting the same number of days at a physical  
20 location in their respective county? You didn't know  
21 that money was the issue until you received that  
22 March 1st letter?  
23 A I knew on March 1st that Shannon County needed additional  
24 money.  
25 Q Was that the first time that you knew that that county

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1 money, can I help out?  
2 A It's not my job to run down to any location and say --  
3 Q It's not your job to make sure that a county has  
4 sufficient funding to conduct an election?  
5 A No. It's their job.  
6 Q So your chief election officer status, that you talk  
7 about true and fair elections in your website, what does  
8 that mean to you when you don't help unless you are asked  
9 for help?  
10 A In this case, with money, yes. I didn't give money until  
11 they asked.  
12 Q And you agree with Paragraph 8 of Exhibit 93, Page 2, "An  
13 early voting location was alternated between Kyle, South  
14 Dakota and Pine Ridge, South Dakota for approximately  
15 four hours daily to allow for driving time for the  
16 contracted auditor and staff to travel to and from Hot  
17 Springs, South Dakota"? Do you agree with that?  
18 A I don't know if that is true or not.  
19 Q You never followed up, did you, to go ahead and find out  
20 if the folks down there -- even on the limited number of  
21 days, they didn't get the same number of hours as  
22 everybody else, did they?  
23 A I wasn't secretary in 2010 or whatever year you are  
24 referencing here.  
25 Q All right. But you never went ahead and investigated

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1 this statement or this allegation that the folks down in  
 2 Shannon County only got four hours of early voting at a  
 3 location in Shannon County certain days?  
 4 A No.  
 5 Q You didn't investigate that?  
 6 A Correct.  
 7 Q And you didn't investigate that since you have been  
 8 Secretary of State?  
 9 A Correct.  
 10 Q Why didn't you follow up on this letter, sir, and find  
 11 out is this really going on down there? They are not  
 12 getting as many days, and even the days they do get, they  
 13 are not getting as many hours? Why didn't you follow up  
 14 on that?  
 15 A I'm not required to.  
 16 Q All right. So until a county commissioner brings a  
 17 problem to you regarding elections, you don't have to do  
 18 anything about it?  
 19 A When Shannon County requested the money, I immediately  
 20 turned around and gave it to them.  
 21 Q All right. So if there is unequal -- unequal treatment  
 22 of voters anywhere in the State of South Dakota and that  
 23 complaint comes to you, you don't do anything with it  
 24 unless assistance is requested from the commission?  
 25 A They are in charge of that election, whether it's Shannon

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1 County or Pennington County. I am not in charge.  
 2 Q Even if you know they are doing it wrong, you don't jump  
 3 in until you are asked?  
 4 A Correct.  
 5 Q So in Paragraph 8, you can't agree with that because you  
 6 don't know. You didn't follow up on that allegation of  
 7 four hours of early voting?  
 8 A I do not know about it.  
 9 Q And then in Paragraph 9, there's "Costs for an early  
 10 voting location in Shannon County include wages for staff  
 11 members at location, mileage to and from Hot Springs, and  
 12 miscellaneous administrative/overhead." You knew that  
 13 there were costs, those costs for early voting, correct?  
 14 A I know that early voting costs money.  
 15 Q Right. You never investigated how much wage for staff  
 16 members, did you?  
 17 A No.  
 18 Q You never looked at the cost for finding a voting  
 19 location?  
 20 A No.  
 21 Q You never figured out what mileage costs were from Hot  
 22 Springs to that location?  
 23 A No.  
 24 Q Or what the miscellaneous costs were, administrative or  
 25 overhead costs?

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1 A No.  
 2 Q You never -- you never looked at what the costs of  
 3 notices were for telling people where the early voting  
 4 location was?  
 5 A No.  
 6 Q So everything, as far as you know, in Paragraph 9 is  
 7 true?  
 8 A I don't know.  
 9 Q You don't know of anything that refutes Paragraph 9?  
 10 A I don't know.  
 11 Q And you have no knowledge of anything that refutes the  
 12 statement in Paragraph 8?  
 13 A I don't have either side. I don't know. I don't know if  
 14 it was four hours, I don't know if it was two hours, I  
 15 don't know if it was ten hours.  
 16 Q What did you do with this letter that alleged all these  
 17 voting problems down at Shannon County when you received  
 18 it on November 14th, 2011?  
 19 A Reviewed it, probably sent it to my attorney, because you  
 20 are an attorney, and --  
 21 Q That was it?  
 22 A We got another one shortly thereafter. I think there was  
 23 two or three of them.  
 24 Q Never told any of your staff, hey, we need to check out  
 25 the merits of these allegations?

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1 A No.  
 2 Q Why not?  
 3 A I wasn't required to, and I didn't know what you were  
 4 doing.  
 5 Q And you would agree with Paragraph 10 that the early --  
 6 "The early voting locations contributed to voter turnout  
 7 more than doubling in Shannon County in 2004 from the  
 8 turnout in 2000"?  
 9 A I wasn't Secretary back then. I don't know.  
 10 Q Did you ever look at any of the statistics on voter  
 11 turnout in any of the elections in Shannon County?  
 12 A Only the documents that you requested.  
 13 Q Right. Did you -- have you ever looked at the  
 14 relationship between early voting and voter turnout?  
 15 A Not an in-depth study, no.  
 16 Q General study?  
 17 A Just looked at it.  
 18 Q Any -- any assessment? Does early voting help voter  
 19 turnout down in Shannon County?  
 20 A I don't know.  
 21 Q You really don't know if there is a -- if there is a  
 22 relationship between early voting and voter turnout?  
 23 A They had less than five percent turnout in the June, 2012  
 24 primary.  
 25 Q In the primary, correct. But when you look at elections

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1 in the past, have you ever studied the '10 -- 2010 or  
2 2008?  
3 A No.  
4 Q Do you know whether, in Paragraph 11, "More than  
5 20 percent of South Dakota voters who voted cast an  
6 absentee ballot in the 2004 election cycle"?  
7 A I don't.  
8 Q You don't know?  
9 A I don't know.  
10 Q Were you aware in Paragraph 12 that the Fall River  
11 State's Attorney, James Sword, claimed that both he and  
12 the Fall River County Auditor had a contract with Shannon  
13 County and the contract had a 30-day termination clause?  
14 Did you know that?  
15 A I know that now.  
16 Q When did you first learn that?  
17 A I don't remember.  
18 Q Was it since this litigation was commenced, sir?  
19 A I don't remember.  
20 Q What did you do when you learned about the termination  
21 clause in the contract, that it could be terminated at  
22 any time?  
23 A Nothing.  
24 Q Huh?  
25 A Nothing.

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1 Q All right. So would you consider that a -- if someone  
2 threatened notice of termination, is that an emergency to  
3 you?  
4 MR. WILLIAMS: Could I have the Secretary of State  
5 review 12-18-41, please.  
6 A (Reviewing statute.)  
7 Q You can answer my question.  
8 MR. WILLIAMS: Give him a minute to review it.  
9 MR. SANDVEN: That is -- this is my deposition. That  
10 is not my question. All right. I didn't ask about the  
11 statute.  
12 Q I asked you, to you, would you consider it an emergency  
13 that the county auditor went ahead and threatened to go  
14 ahead and terminate the agreement?  
15 MR. WILLIAMS: I'm going to ask that you let him  
16 review that because what you're getting to is the  
17 emergency under 12-18-41, and I believe he needs to  
18 review that to determine whether it fits that statute.  
19 Please review it.  
20 A (Witness complies.) Okay.  
21 Q When the county auditor threatened to quit under the  
22 contract between Fall River and Shannon County, do you  
23 consider that an emergency?  
24 A According to this law, it would require the person  
25 charged with the election, the governing body, and the

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1 secretary to all three agree. And I wouldn't even -- the  
2 Secretary of State wouldn't initiate anything. It starts  
3 at the local level.  
4 Q Is there any time that you would get involved in a county  
5 election except for someone -- someone providing you  
6 notice pursuant to 12-18-41?  
7 A Get involved. I don't understand.  
8 Q Investigate a complaint.  
9 A Would I investigate a complaint. That I received from  
10 the county?  
11 Q Would you ever investigate a complaint that was received  
12 by a private citizen of a county regarding  
13 electioneering?  
14 A We would -- on election day, any election day, when we  
15 receive calls or complaints, we would call the county  
16 auditor and let them know what we had heard and ask  
17 what's the story.  
18 Q What about before election day with any election  
19 procedure, would you ever get involved in handling a  
20 complaint at any time?  
21 A If we were to receive a complaint that -- I suppose it's  
22 possible.  
23 Q When --  
24 A I'm trying to think of one that we have done, but -- I  
25 can't think of one. I can't think of one.

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1 Q Did you consider this November 14th, 2011 letter a  
2 complaint from individual citizens from Shannon County?  
3 A I considered this a correspondence from an attorney.  
4 Q Even though it was the attorney for all those folks that  
5 are listed on the bottom of Page 3?  
6 A I didn't know what all that meant.  
7 Q You didn't know what all that meant?  
8 A All these names.  
9 Q When it said attorney for those people, you didn't know  
10 what that meant?  
11 A You were an attorney asking questions. That makes it a  
12 legal matter.  
13 Q So because it said attorney for these 25 folks, you  
14 considered that a legal matter, not a complaint from  
15 those folks?  
16 A This definitely was a legal matter.  
17 Q Right. But you didn't consider it a complaint from Chris  
18 Brooks or Rancis Rencountre or any of the Mesteths or any  
19 of these 25 people listed?  
20 A First thought was it's an attorney, and that was the end.  
21 Q Okay. Did you ever find out where any of those folks  
22 were from?  
23 A Well, I know they are from Shannon County.  
24 Q How did you know that?  
25 A You told us. The lawsuit. I assumed those are the same

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1 people that are on the --  
 2 Q But until the --  
 3 A -- court documents.  
 4 Q Until the lawsuit was initiated, you didn't bother to  
 5 find out where those folks were from?  
 6 A No.  
 7 Q How come?  
 8 A It was a legal matter.  
 9 Q Do you agree with Paragraph 12 of Exhibit 93?  
 10 A I believe that was discussed at the court hearing.  
 11 Q So you agree that Mr. Sword claimed that if a request for  
 12 absentee voting locations was made, that he would  
 13 terminate the contract? Do you know if that is true or  
 14 not?  
 15 A On Line 12?  
 16 Q I'm sorry. On Line 13.  
 17 A Oh. I guess I think that was talked about at the court  
 18 hearing.  
 19 Q You don't know if that is true or not?  
 20 A I don't remember for sure.  
 21 Q You never did anything to investigate whether or not the  
 22 auditor threatened to terminate services down in Shannon  
 23 County?  
 24 A I wasn't secretary in 2010.  
 25 Q I understand that. But that past conduct, you never

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1 followed up to see if that happened?  
 2 A (Witness indicating.)  
 3 Q No?  
 4 A I think we knew at the court hearing that it didn't  
 5 happen.  
 6 Q But this letter was dated a few months before the court  
 7 hearing, wasn't it?  
 8 A Yes.  
 9 Q So why didn't you look at it then?  
 10 A Because it was a legal matter.  
 11 Q And you have no control over legal matters?  
 12 A I am not an attorney.  
 13 Q Right. Isn't this an election procedure or something  
 14 that could affect an election?  
 15 A To me this seemed like a legal issue. Obviously it was.  
 16 Q So if an auditor threatens to quit, that is not something  
 17 for you to deal with?  
 18 A Threatens to quit when?  
 19 Q Well, here you knew that there were problems with early  
 20 voting down in Shannon County, correct?  
 21 A But there weren't any problems in 2012 when I was  
 22 Secretary.  
 23 Q Right. You knew that until the lawsuit was commenced,  
 24 that the Shannon County folks weren't getting the same  
 25 number of days legally of early voting in Shannon County,

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1 correct?  
 2 A Yes.  
 3 Q So -- okay. Looking at Paragraph 15 here, "There was  
 4 approximately 22 days of early voting in Shannon County  
 5 during the 2010 election cycle," correct?  
 6 A I don't know.  
 7 Q You never investigated how many days in 2010 --  
 8 A No.  
 9 Q -- were made available for early voting?  
 10 A No.  
 11 Q Why not, sir?  
 12 A It's not my responsibility for the 2010 election. 2012  
 13 had 46 days, which I'm happy about.  
 14 Q Right. But when was the decision made that there would  
 15 be 46 days, that 46-day period of early voting in Shannon  
 16 County?  
 17 A I was hopeful that my March 2nd letter would make that  
 18 happen.  
 19 Q Right. You were aware in January, right, that Shannon  
 20 County had limited -- or December had limited the number  
 21 of early voting days in Shannon County?  
 22 A When they had their -- yeah, there was a news story.  
 23 Q Right. What do you remember from the news story? How  
 24 many days were provided?  
 25 A I want to say six.

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1 Q When the rest of the state received 32, correct?  
 2 A The rest -- the state law required everyone to start 46  
 3 days before the election.  
 4 Q Right. I think you still have Exhibit 58 in front of  
 5 you.  
 6 A Uh-huh.  
 7 Q It's 32 days for the primary, 32 days of actual early  
 8 voting days for the general, at a minimum?  
 9 A I don't know if that's -- if every courthouse was open  
 10 those hours or those days.  
 11 Q Okay.  
 12 A But -- yeah, those are 32 days.  
 13 Q All right. And then Shannon County only got six days,  
 14 and you knew about that in December, early January?  
 15 A That the Shannon County Commission had decided.  
 16 Q Right. That they would only give six days of early  
 17 voting in Shannon County?  
 18 A At that time, yes.  
 19 Q Do you remember when you first learned that?  
 20 A I think it was the fall of 2011, whenever that newspaper  
 21 story came out.  
 22 Q Why didn't you jump in then?  
 23 A Because Shannon County is in charge of their election.  
 24 Q Even if they are not giving the same number of days as  
 25 other folks, that was okay with you?

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1 A State law requires them to be in charge of their  
2 election.  
3 Q State law also requires early voting for 46 days ahead of  
4 time, right?  
5 A Yes, it does.  
6 Q So why didn't you get involved then?  
7 A Because it wasn't my responsibility. And I wasn't asked  
8 until March 1st to offer assistance. And I immediately  
9 did.  
10 Q Didn't I ask you on November 14th, 2011?  
11 A Ask me what?  
12 Q That you assist Shannon County.  
13 A Your first sentence says, "...is provided to request  
14 whether HAVA funds have been budgeted or made  
15 available..."  
16 Q And then if you go down to the third paragraph, "I am  
17 requesting clarification of budgeting and distribution of  
18 HAVA funds for the upcoming election cycle to avoid the  
19 following issues in past elections in Shannon County."  
20 Wasn't I reaching out to you, asking for you to  
21 intervene and make sure these problems of old didn't  
22 happen again?  
23 A I don't know for sure.  
24 Q When you read -- when you read this third paragraph on  
25 Page 1 of Exhibit 93, I'm asking clarification to avoid

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1 Q Why not?  
2 A It's not my responsibility.  
3 Q Whose responsibility is that?  
4 A The budgeting and accounting, would be Shannon County.  
5 Q And if they are not fulfilling their responsibilities,  
6 whose job is it to -- whose responsibility is it to check  
7 up on them?  
8 A I don't know what state agency that is.  
9 Q So if a county commission isn't conducting proper  
10 elections and doesn't ask for your help, you stay out of  
11 it?  
12 A Yes. I don't run their election.  
13 Q As the chief election officer, you have no oversight over  
14 their elections?  
15 A I don't. I can't force an auditor to do anything.  
16 Q Okay. I'm going to hand you what's been marked  
17 Exhibit 95, sir. Do you recognize this document dated  
18 November 26, 2011 from my office?  
19 A Yes.  
20 Q All right. This was the second request?  
21 A It says it in the letter.  
22 Q Did you read this memorandum?  
23 A Yes.  
24 Q All right. So this was a couple of weeks after that  
25 first letter?

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1 the follow issues, what does that mean to you?  
2 A That there's been years and years of problems in Shannon  
3 County.  
4 Q And asking you to intervene?  
5 A I don't know.  
6 Q You didn't take it as a request for you to go ahead and  
7 intervene, this letter?  
8 A No. Took it as a legal matter.  
9 Q You took it as a legal matter; a legal matter that needed  
10 to go to the attorney but didn't require involvement by  
11 you?  
12 A Yes.  
13 Q Okay. And then in Paragraph 17 of this November 14th,  
14 2011 letter where I state "Private individuals paid  
15 approximately \$5,000 for a single alternative voting  
16 location..." did you know that happened?  
17 A I thought I just read it was 15,000.  
18 Q I think there were two different checks for two different  
19 periods.  
20 A Oh.  
21 Q You don't know?  
22 A I do not.  
23 Q Never found out how much money came from private sources  
24 to pay for early voting?  
25 A No.

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1 A Yes.  
2 Q Did you take this as a request from your office for  
3 intervention?  
4 A I took it as a legal matter.  
5 Q Okay. You didn't -- didn't follow up on any of the  
6 allegations in this November 26, 2011 letter?  
7 A No.  
8 Q Why not?  
9 A It's not my responsibility.  
10 Q Okay. So this said the same things as what we are  
11 stating in the November 14th letter?  
12 A I assume so.  
13 Q So whose responsibility is it to make sure that the  
14 Shannon County residents get the same number of voting  
15 days on-site as everybody else?  
16 A Shannon County.  
17 Q All right. And if they are not doing their job, who's  
18 supposed to intervene?  
19 A I don't know.  
20 Q All right. The right to vote, is that one of the most  
21 fundamental rights to you? I think you talk about that  
22 on your website.  
23 A It's a very important right.  
24 Q There's not much more important than conducting fair  
25 elections, is there?

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1 A It's very important.  
 2 Q One of the most fundamental rights there are?  
 3 A I may think that, but when we only had 20 percent turnout  
 4 this past June, it makes me think that 80 percent of the  
 5 public don't consider it a fundamental right.  
 6 Q But if you see that fundamental right being violated in a  
 7 particular county, you won't get involved?  
 8 A It's not my responsibility.  
 9 Q If a county isn't doing their job in conducting full and  
 10 fair elections, whose job is it to get involved?  
 11 A I don't know.  
 12 Q All right. So this November 6th, 2000 letter, what is  
 13 this marked -- Exhibit Number 95 -- the one you have -- I  
 14 just handed to you, sir?  
 15 A Yes.  
 16 Q So you handed that to your lawyers and didn't do anything  
 17 else with it. Correct?  
 18 A Correct.  
 19 Q I hand you what's been marked Exhibit 94. Do you  
 20 remember getting this letter, sir, from my office on  
 21 December 19th, 2011?  
 22 A Yes.  
 23 Q Do you remember what you did with it?  
 24 A Gave it to my attorney.  
 25 Q Did you read it first?

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1 A I assume I did. I'm sure it was the same.  
 2 Q Had the same 17 concerns, sir?  
 3 A Yes.  
 4 Q All right. Did you find out who I was writing on behalf  
 5 of?  
 6 A Did I find out who the people were under your name?  
 7 Q Yeah. And that's -- when I say "attorney for," and I  
 8 list all those names, that is usually what attorneys do  
 9 to go ahead and talk about who they are writing for.  
 10 A Okay.  
 11 Q Did you ever investigate who those folks were or where  
 12 they were from?  
 13 A No.  
 14 Q How come?  
 15 A It's not my responsibility.  
 16 Q All right. So you -- you receive three letters saying we  
 17 are concerned about early voting down at -- down at  
 18 Shannon County, three letters in about a one-month  
 19 period. Why didn't you follow up on any of this?  
 20 A Because it's Shannon County -- Shannon County's  
 21 responsibility to run their election.  
 22 Q You never called a single Shannon County or Fall River  
 23 official offering assistance?  
 24 A No.  
 25 Q And there was never any communication from Shannon County

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1 towards your office until the March 1st, 2012 letter they  
 2 sent to you regarding early voting?  
 3 A The March 1st was the first formal request. I don't know  
 4 if there was a question or something in all of 2011.  
 5 Q Was there an informal request from Shannon County to you  
 6 for assistance with early voting?  
 7 A I'm just saying I don't know if Shannon County or Fall  
 8 River County called my office in 2011. There's a lot of  
 9 phone calls.  
 10 Q Do you know if the cost of an early voting location in  
 11 2000 -- for the 2012 primary election is less than a  
 12 hundred thousand dollars?  
 13 A I do not.  
 14 Q Have you researched how much it would cost to guarantee  
 15 early voting in Shannon County for the 2014 election?  
 16 A No.  
 17 Q Could your office go ahead and commit HAVA funds to --  
 18 right now and give a preliminary approval to Shannon  
 19 County for 2014?  
 20 A No.  
 21 Q Why not? Where is the restriction?  
 22 A The laws could change. State law could change on the  
 23 number of absentee voting days. The federal law  
 24 regarding HAVA could change.  
 25 Q So because the law could potentially change in the next

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1 two or three or four election cycles, you can't go ahead  
 2 and make any commitment to Shannon County folks or Fall  
 3 River folks that you will go ahead and commit HAVA funds  
 4 as long as it's lawful to these upcoming election cycles?  
 5 A If you use the words "as long as it's lawful," we could  
 6 begin a discussion.  
 7 Q Do you want to do that?  
 8 A I suppose I would be open to that.  
 9 Q What -- what percent of Shannon County is Indian?  
 10 A I think one of your letters said 95 percent.  
 11 Q Over 95 percent. Would you agree?  
 12 A I was just taking what you had told me. I don't have the  
 13 census statistics.  
 14 Q You have never researched how many of the folks are from  
 15 tribal or federally recognized tribes down there?  
 16 A No, sir.  
 17 Q How come?  
 18 A Not my responsibility.  
 19 Q Okay. Under the voting rights laws -- remember, we  
 20 talked about earlier -- it's kind of your responsibility  
 21 to go ahead and notify those affected counties that they  
 22 are covered by provisions of Public Law 9473? That is  
 23 your job, isn't it, under 12-3-6?  
 24 A When you asked this question earlier, this notice  
 25 requirement in 12-3-6 is regarding the designation of

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1 counties in South Dakota under the Voting Rights Act. So  
2 that would have been done each census.  
3 Q Right. But you are supposed to -- you are supposed to  
4 under -- if you go -- let's go to 12-3-13.  
5 A Yep.  
6 Q That is the state Board of Elections, correct?  
7 A Correct.  
8 Q That's where you are the chair?  
9 A Yes, sir.  
10 Q That's where you set agendas?  
11 A Yes, sir.  
12 Q You preside over those meetings?  
13 A Yes.  
14 Q You have a vote at those meetings?  
15 A Yes.  
16 Q All right. At those meetings, it's your responsibility  
17 to go ahead and promulgate rules to implement,  
18 administer, and enforce further federal administrative  
19 rulings made pursuant to Public Law 9473, correct?  
20 A Yes.  
21 Q And it's also your job to implement and administer and  
22 enforce 12-3-6 to 12-3-13, correct?  
23 MR. WILLIAMS: Object. When you're talking about  
24 "your responsibility," are you talking about the  
25 responsibility of the Secretary of State or the Board of

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1 MR. WILLIAMS: Objection. Probably calls for a legal  
2 conclusion. You may answer.  
3 A I would have to look at Public Law 9473 again.  
4 Q I think under 12-3-6, which you read earlier, I thought  
5 that the Secretary of State shall notify those affected  
6 counties that they are covered by the provisions of  
7 Public Law 9473.  
8 A Correct.  
9 Q So you are supposed to know what counties are covered  
10 under the Voting Rights Act, aren't you?  
11 A If Public Law 9473 talks about the Lakota language and  
12 the census changes, then, yes, because after the 2010  
13 census, the census said that no South Dakota counties  
14 require Lakota language.  
15 Q Right. Do you know what 9473 is?  
16 A I am assuming it's the Voting Rights Act.  
17 Q Do you know what the Voting Rights Act is?  
18 A Yes.  
19 Q All right. It's an act to amend the Voting Rights Act --  
20 9473 was an act to amend the Voting Rights Act of '65 to  
21 extend certain provisions for an additional seven years,  
22 and to make permanent the ban against certain  
23 prerequisites to voting. You knew that, right?  
24 A Yes.  
25 Q Do you know what counties in the State of South Dakota

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1 Elections?  
2 Q The state Board of Elections where you preside.  
3 A The state Board of Elections.  
4 Q Yep. That's the state Board of Elections'  
5 responsibility?  
6 A That's what it says in the first line. I am assuming  
7 those haven't changed.  
8 Q And you haven't -- you think the law might have changed?  
9 A I don't know. I'm just saying I haven't gone through all  
10 the -- whatever those are called in the back.  
11 MS. FRANKENSTEIN: Pocket part.  
12 Q Do you want to check if the law has changed?  
13 A Sure. (Reviewing South Dakota Code.) No, it hasn't been  
14 changed.  
15 Q Okay. And you haven't taken any action to promulgate  
16 rules regarding early voting in Shannon County, have you?  
17 A There is already administrative rules regarding absentee  
18 voting for all of South Dakota in law today.  
19 Q There is only two counties that have to contract out  
20 their auditor services, correct, in the State of South  
21 Dakota?  
22 A Yes.  
23 Q And those two counties are Todd and Shannon, correct?  
24 A Yes.  
25 Q And they are both covered under Public Law 9473, correct?

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1 are covered by the Voting Rights Act?  
2 A I believe it's only Todd and Shannon.  
3 Q All right. Do you know what provisions in the Voting  
4 Rights Act are applicable to those two counties?  
5 A The biggest area for us is the Lakota language, to make  
6 sure we have someone who speaks Lakota.  
7 Q Secretary of State, have you ever had any training on the  
8 Voting Rights Act?  
9 A By "training," what do you mean?  
10 Q Any kind of training, anywhere, anytime.  
11 A No.  
12 Q Never had any training?  
13 A Have I taken a class?  
14 Q Any kind of training, anytime, anywhere.  
15 A No.  
16 Q Have you ever read the Voting Rights Act?  
17 A Yes.  
18 Q All right. So as far as you know, the notice of the  
19 affected counties under 9473 went out when?  
20 A The law was passed in 1976, so I would guess back then.  
21 Q Can you go to 12-1-9. And it's called Rule Making Power  
22 of the Board.  
23 A Yep.  
24 Q Have you read this before, sir?  
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 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 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 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 Q For 2008 it's about -- here's a calculator if that will  
2 help you.  
3 A \$10,419.52.  
4 Q Okay. What line items are you adding up there, sir?  
5 A The total under Line 17.  
6 MR. WILLIAMS: This is just one reimbursement  
7 request. Would there have been another request also that  
8 year?  
9 A I am assuming this is from their general election in  
10 November of 2008. So there's possible that there is a  
11 reimbursement from the June, 2008 primary.  
12 Q Do you know if there were other reimbursements during  
13 this election?  
14 A In 2008?  
15 Q Yeah. For Shannon County.  
16 A I would have to look.  
17 Q All right. Right now you don't know how much money  
18 Shannon County received in 2008?  
19 A I don't know how much they requested after the June  
20 primary.  
21 Q All right. Earlier you were talking about Line Items 1  
22 through 17.  
23 A Yep.  
24 Q Those were things that required receipts?  
25 A No. These were items that were allowable expenses to be

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1 voting machines?  
2 A It could also be Number 7.  
3 Q Training election workers in the proper operation of  
4 maintenance of voting machines and scanners?  
5 A Those are required at absentee voting locations.  
6 Q So early voting funds could come out of Line Item 7, Line  
7 Item 14 on your form. Any other line item?  
8 A Really all of them. Supplies -- I mean they had to have  
9 supplies, Number 15. Computerized statement. You could  
10 also look at 13 because they had -- they had to have  
11 two -- they may not have printed out the list. But they  
12 had to have a list at the Hot Springs office and then  
13 they had to have a list at the Pine Ridge office.  
14 Q Yeah.  
15 A Obviously Number 10 wouldn't because that is not election  
16 day, but -- I would assume they posted the sample ballot  
17 at the place or they at least had sample ballots  
18 available. Vote here signs, mileage, workers hired.  
19 Q What line item are you referencing now, sir?  
20 A I was referencing the description of how -- of Row 17  
21 project.  
22 Q Might be easier to do it this way. Which line items  
23 wouldn't cover early voting expenditures on this form,  
24 Line Items 1 through 17?  
25 A Probably not Number 6 because that is on election night.

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1 reimbursed based off HAVA.  
2 Q All right. You said there were some counties who  
3 submitted this form without receipts and went ahead and  
4 received payment.  
5 A Yes. In the files there were counties that didn't have  
6 receipts.  
7 Q For 2010?  
8 A I think we were looking at 2010.  
9 Q Okay. So why did you make it a condition on Shannon  
10 County in 2012 that they go ahead and submit receipts?  
11 A The \$12,000 was not normal, so I wanted to have receipts  
12 so that should there be an audit, I can justify it.  
13 Q What wasn't normal about it? Didn't it fit into one of  
14 these 17 line items?  
15 A It wasn't normal because I didn't give any other counties  
16 additional money for 2012.  
17 Q Right. Which one of these line items was it included in?  
18 A They haven't submitted their expense form yet.  
19 Q What is your understanding of what the 12,000 was to be  
20 utilized for?  
21 A I think the letter said absentee voting.  
22 Q All right. And what line item would that fit under on  
23 this form?  
24 A I suppose it would be Line 14.  
25 Q Hiring extra poll workers to help implement accessible

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1 Q Anything else?  
2 A I suppose 17-2. I don't know how that could relate to  
3 absentee voting. Cost of ballot -- 17-3, cost of ballot  
4 printer training to improve your ballot printing. We  
5 don't print the ballots of absentee voting.  
6 Q So no on 17-2, no on 17-3 for early voting? Correct?  
7 A 17-4, they don't have an ERM in Shannon or Fall River.  
8 Q So 17-2, 17-3, 17-4 does not apply to early voting,  
9 Mr. Gant?  
10 A Yes. I'm still reading.  
11 Q Correct? Those areas don't apply?  
12 A Correct.  
13 Q Okay.  
14 A Okay. Yes, those would be it.  
15 Q So on this -- on this chart, the only lines that don't  
16 apply are 6, 10, 17-2 through 17-4?  
17 A Yes.  
18 Q And you don't have any idea how much money went to  
19 Shannon County from HAVA funds in 2008?  
20 A Not without the reports in front of me. I mean obviously  
21 they received the 10,400 something.  
22 Q Approximately what percent of 2008 HAVA funds were not  
23 used by anybody?  
24 A I do not know.  
25 Q Can you look at Exhibit 130, Pages 8 and 12.

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1 A The funds -- as of December 31 of '08, there were  
2 4.7 million.  
3 Q 4,714,346?  
4 A Yes.  
5 Q And that was Section 101 funds, correct?  
6 A Yes.  
7 Q All right. Then if you go to Page 12, that is  
8 Section 251 funds that were remaining?  
9 A 7,007,824.  
10 Q All right. So what percent of the funds weren't utilized  
11 in 2008, of HAVA funds?  
12 A What percent?  
13 Q There is a calculator. It's the money coming in and  
14 that's -- you just described the money that was left  
15 over, right?  
16 A The balance as of -- on the HAVA Title II, Section 251,  
17 I'm not seeing what the date was, but on the first one it  
18 said -- the 101 -- 101 funds, it was as of December 31 of  
19 2008.  
20 Q Right. Do you have any idea what percent of Section 101  
21 funds weren't utilized in 2008?  
22 A No.  
23 Q Do you have any idea what percent of Section 251 funds  
24 were not utilized in 2008?  
25 A No.

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1 A Assuming it's the same date range of December 31, 2008.  
2 Q If you look at the cover of the report, what is this  
3 report?  
4 A Annual Report on Grant Programs, U.S. Election Assistance  
5 Commission, fiscal year 2008.  
6 Q So do you have any reason to refute the findings in this  
7 report?  
8 A These two tables are different. One lists a date, and I  
9 don't find the other date on the 251 funds.  
10 Q So you don't know if that \$7 million in 251 funds was for  
11 2008, even though it came from the 2008 report?  
12 A Well, if my memory is right, the federal fiscal year  
13 ends, I believe, in October. But this report, the 101  
14 funds, says as of December 31, 2008.  
15 Q So you're -- you don't know if this is going off a  
16 calendar or fiscal year?  
17 A At the bottom here it says fiscal year 2008.  
18 Q Then it references --  
19 A December 31.  
20 Q December 31.  
21 A But the second report on Page 12 doesn't list a date.  
22 Q So when you read this report, you can't tell how much  
23 money rolled over in HAVA funds in 2008?  
24 A Whatever date range this report is based off of, yes, you  
25 can.

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1 Q If you go to Exhibit 130 on Page 8, it has got the funds  
2 expended of \$1,154,330?  
3 A Yes. Total expenditures.  
4 Q All right. So that was the total of expenditures out of  
5 approximately 11 and a half million dollars?  
6 A According to this report, they received 5 million, they  
7 spent 1.1 million, they had interest of 800,000, final  
8 balance was at 4.7 million.  
9 Q So by your calculation, what percent of the 2008 funds  
10 weren't utilized, they carried over to the following  
11 year?  
12 A According to the report, it says percent of funds and  
13 interest expended was 19.67 percent.  
14 Q Is that the percent of funds that weren't utilized? You  
15 don't know?  
16 A I don't know. 5 million less 4.7 million.  
17 Q Okay. I thought -- I thought what you just said that  
18 there were -- out of the Section 101 funds there was  
19 \$4,714,346 that rolled over?  
20 A That was the balance of the funds and interest as of  
21 December 31, 2008.  
22 Q Right. Unused HAVA money in 2008, right?  
23 A Yes.  
24 Q And then on Section 251, funds that were left over, on  
25 Page 12, that was another \$7,007,824. Right?

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1 Q All right. So from this 2008 report, whether it's fiscal  
2 or calendar year 2008, how much money rolled over into  
3 2009?  
4 A I can answer that question based off Page 8 where at the  
5 top of it it says December 31, 2008. I do not see on  
6 Page 12 where it has a date.  
7 Q So because you don't see a date there, do you think it's  
8 the fiscal year that this report is referring to?  
9 A I don't know.  
10 Q Okay. Assuming that the same end date is used throughout  
11 this report, how much money rolled over in 2009?  
12 A It would be 7 million plus the 4.7 million.  
13 Q All right.  
14 A 11 something.  
15 Q 11.7 million, money in South Dakota's HAVA account rolled  
16 over into 2009?  
17 A I can't say that.  
18 Q What can you say?  
19 A That as of December 31, 2008, 4.7 million rolled over  
20 from 101, and on 251 funds, 7,007,000 rolled over as of  
21 whatever that date is.  
22 Q Whatever the reporting period is for this report?  
23 A For the second -- for Table 4.1, HAVA Title II Section  
24 251 funds.  
25 Q Right. So that is \$11.7 million plus that rolled over

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1 during the reporting period here. How much did the state  
2 start with in 2008?  
3 A I don't see that number in the report.  
4 Q Okay. When you look at Exhibit 129, and go to Page 4,  
5 sir, it looks like South Dakota started -- or ended 2007  
6 and started 2008 with \$11,550,925 in their account. Is  
7 that correct?  
8 A I believe these are total funds since inception of HAVA  
9 that have been distributed to the states.  
10 Q In Exhibit 129, Page 4?  
11 A Well, at the top of the report on Page 3, it says in  
12 total 1.2 billion has been expended. And that's the  
13 remaining balance. But that says expended. Oh, has not  
14 been expended. Balance 1.2. Okay. I was right. What  
15 was the question again?  
16 Q All right. Do you know how much money was left in the  
17 HAVA account at the end of 2007 going into 2008?  
18 A If this is based off a calendar year, and this report is  
19 through December 31 of 2007, then the South Dakota  
20 balance was 11.5 million. But I haven't found where it  
21 says the date range.  
22 Q All right. And then the balance at the end of 2008 was  
23 what, looking at Exhibit 130 and adding those two  
24 numbers?  
25 A The 11.7 million.

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1 somewhere around \$12 million, correct? Between 10 and  
2 \$12 million was in the account when you took over?  
3 A I don't know what the number was in January of 2011.  
4 Q Okay. Do you know when the number dropped to 9 million  
5 from this \$12,987,482 at the end of the reporting period  
6 for 2010?  
7 A No. I just remember the last -- that we had roughly 9  
8 million dollars.  
9 Q Has it stayed pretty close to \$9 million throughout your  
10 tenure as Secretary of State?  
11 A I would assume so, but I don't have the report in front  
12 of me that says what our balance was in January of 2011.  
13 I mean it's all there. I just don't have it.  
14 (Deposition Exhibit Number 133 marked for  
15 identification.)  
16 Q Do you recognize this Exhibit 133?  
17 A It's a reimbursement form.  
18 Q In 12 -- or November 19, 2010?  
19 A Yes.  
20 Q All right. So this -- this is where Shannon County  
21 received how much in 2010?  
22 MR. WILLIAMS: Again, would this be for the entire  
23 year?  
24 THE WITNESS: Are you asking me? Oh, it's possible,  
25 but I don't know if there was a 2010 primary election

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1 Q All right. So 2007, there was about 11 and a half  
2 million left over. Correct?  
3 A If this report is as of December 31, 2007, then, yes,  
4 that would be correct.  
5 Q And then at the end of 2008, there was about 11.7 million  
6 left over.  
7 A Again, if that second -- that Table 4.1 is as of  
8 December 31, 2008, then, yes, 11.7 million.  
9 Q Okay. Now, let's go to Exhibit 31 (sic).  
10 A 131?  
11 Q 131, on Page 7 again, sir. So when you took office there  
12 was about how much money in the HAVA funds?  
13 A I don't remember what the balance was in January of 2011.  
14 Q Does it look like, on Page 7 of Exhibit 131, that there  
15 was approximately \$12,987,482 in HAVA funds when you took  
16 office?  
17 A No. It looks like there was \$12,987,482 in the state  
18 account as of September 30th, 2010.  
19 Q All right. And so there was one election in the fall of  
20 2010, correct?  
21 A Yes.  
22 Q All right. You are not sure how much money was in the  
23 account when you took over?  
24 A Correct.  
25 Q All right. And since -- I mean you -- you started office

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1 reimbursement form. If there was, then this would not be  
2 for everything.  
3 A The total amount was 23,467.64.  
4 Q As far as you know, is that all the money Shannon County  
5 received from HAVA funds in 2010?  
6 A I do not know that.  
7 Q If you have nine or ten million dollars sitting in an  
8 account, what's the big deal about paying \$50,000 for  
9 early voting or committing to that for the next election  
10 cycle?  
11 A I have already committed monies for the 2012 election  
12 cycle for Shannon County.  
13 Q What about 2014?  
14 A I explained before that there is laws that could change.  
15 Q Right. And I think I explained before that one of the  
16 things that could happen was to go ahead and you could  
17 say -- you could put a condition on it subject to  
18 changing laws, couldn't you?  
19 A I think I said then I would be open to that.  
20 Q Okay. On allocating \$100,000 a year for early voting for  
21 the 2014 cycle?  
22 A I'm open to discussing possibilities for 2014.  
23 Q Who do you have to discuss that with?  
24 A Well, if Shannon County asked.  
25 Q If Shannon County -- and Shannon County hasn't asked for

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1 anything for 2014?

2 A They have asked for 2012 monies based on your March 1  
3 letter.

4 Q Shannon County hasn't made any other requests of you for  
5 early voting for upcoming election cycles?

6 MR. WILLIAMS: I'm going to, at this point, object.  
7 Some of this may be attorney/client privilege material.  
8 You can --

9 MR. SANDVEN: If Shannon County goes ahead and asks  
10 him, that is attorney/client?

11 MR. WILLIAMS: What I'm saying is if it was directed  
12 through me.

13 Q I'm going to clarify a little bit again so you don't have  
14 to keep doing this. I'm not asking about communication  
15 with Richard. I'm asking about communication between you  
16 and Shannon County or any Shannon County official. Have  
17 there been any discussions regarding HAVA funding at  
18 future elections?

19 MR. WILLIAMS: Let me finish my objection, please. I  
20 would object to the extent that it covers attorney/client  
21 privileged information that was relayed from me or  
22 between me and Sara with regard to potential settlement  
23 in this case or potential joint --

24 MR. SANDVEN: Joint defendants?

25 MR. WILLIAMS: What's that?

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1 MR. SANDVEN: Joint defendants. You're joint  
2 defendants. Okay?

3 MR. WILLIAMS: At times for the purposes of some of  
4 this --

5 MR. SANDVEN: Here and there.

6 MR. WILLIAMS: To the extent that you have talked to  
7 somebody else in Shannon County, not regarding  
8 conversations that you have had with us, you may answer.

9 A I don't believe so.

10 Q Why not?

11 A Why hasn't Shannon County?

12 Q No. Why haven't you initiated any conversation? We have  
13 got this big problem with early voting down in Shannon  
14 County. I have got all this HAVA money sitting here. I  
15 can allocate this towards future elections to make sure  
16 this doesn't happen again. \$50,000 a year is a drop in  
17 the bucket of HAVA funds. Why haven't you done any of  
18 that?

19 A I have authorized the additional expenditure for the 2012  
20 election. I think we should see how that goes. The June  
21 primary, I believe, went very well. Definitely  
22 disappointed in the turnout. Very hopeful that things  
23 will go well in the June -- or the November general  
24 election.

25 Q But you have to see how the general election goes before

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1 you can go ahead and commit future HAVA funds to election  
2 cycles down the road to ensure that folks have early  
3 voting in Shannon County?

4 A If Shannon County wanted to start a discussion about  
5 2014, I would be open to that.

6 Q All right. What do you need to see to go ahead and  
7 allocate HAVA funding to future elections in the State of  
8 South Dakota?

9 A Some sort of written agreement.

10 Q A written agreement between who and who?

11 A I guess it would be between the Secretary of State and  
12 Shannon County.

13 Q And what would be the terms of this agreement?

14 MR. WILLIAMS: Objection. Goes into settlement of  
15 this -- potential settlement of this lawsuit.

16 MR. SANDVEN: It goes to what?

17 MR. WILLIAMS: Potential settlement of this lawsuit,  
18 settlement discussions.

19 MR. SANDVEN: You've had settlement discussions? I'm  
20 not asking him about settlement discussions.

21 MR. WILLIAMS: I have had settlement discussions.

22 MR. SANDVEN: With me?

23 MR. WILLIAMS: Not with you.

24 Q I'm not asking about -- about those settlement  
25 discussions. I'm asking about what you would need to see

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1 as Secretary of State, chief election officer in the --  
2 what terms you would need to see in order for you to go  
3 ahead and commit HAVA funds to future elections for early  
4 voting in Shannon County.

5 A I don't know what the exact wording would be. I would  
6 discuss it with my attorney.

7 Q Generally what would you need to see as South Dakota  
8 Secretary of State?

9 A Again, I don't know all of the items in the agreement,  
10 but one of them -- well, two of them. One would be if  
11 state law changes, how that would affect it. I don't  
12 think it would be fair if there was an agreement that  
13 Shannon County had to have 46 days, and then the  
14 legislature changed it to 30 days, and then we had two  
15 different standards out there.

16 I also believe that another concern would be the  
17 federal government. Should the Help America Vote Act  
18 change and say something that would prohibit the  
19 expenditure of those funds for this particular reason, I  
20 think those would be two of my first thoughts in an  
21 agreement.

22 Q All right. The agreement can't trump future federal or  
23 state laws. What else would you need to see?

24 MR. WILLIAMS: I'm going to object. This would be  
25 pure speculation at this point without actually seeing

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1 any of the documentation requests. But you may answer if  
 2 you can.  
 3 A Those are just the first two that came to my mind.  
 4 Q Anything else come to mind besides it has got to be  
 5 consistent with the law that is in effect at the time?  
 6 What else would you need to see to go ahead and commit  
 7 HAVA funds to Shannon County?  
 8 A Past the 2014 election or 2014 --  
 9 Q Yeah. Past this election cycle, 2014, '16, '18.  
 10 A Maybe something -- if Shannon County were to win the  
 11 lottery and have a billion dollars in their reserve fund,  
 12 obviously I think that would trump \$12,000 from the HAVA  
 13 funds.  
 14 Q Okay. A lottery provision. Anything else?  
 15 A I don't know. I'm just guessing.  
 16 Q You developed the HAVA plan, correct?  
 17 A No.  
 18 Q I thought you said when Karen Schreier asked you at the  
 19 preliminary injunction, the HAVA plan, who was that  
 20 developed by, and you said it's developed by the  
 21 Secretary of State, correct, the Board of Elections,  
 22 correct? That is what you said under oath then.  
 23 A You asked if I developed the plan. The Secretary of  
 24 State develops the plan. And I was not Secretary of  
 25 State when the 2010 HAVA plan was adopted.

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1 create --  
 2 A The process?  
 3 Q -- a HAVA plan?  
 4 A You have to put together a task force.  
 5 Q All right. Who is on the task force?  
 6 A There isn't a task force right now.  
 7 Q So you are not even at step one yet?  
 8 A No.  
 9 Q What is the process for selecting a task force?  
 10 A I think it's spelled out in the HAVA plan.  
 11 Q Do you know what it is?  
 12 A I know there is a Board of Elections. I think in the  
 13 past they had some legislators. The two biggest counties  
 14 I believe are also on there.  
 15 Q Are you going to have some Indians on there?  
 16 A I think that would be a great idea.  
 17 Q Do you?  
 18 A I do.  
 19 Q How come you haven't done it already?  
 20 A The task force?  
 21 Q Board of Elections. Is there any Indian in any part of  
 22 your administration?  
 23 A In my office?  
 24 Q Yes. You have 15.7 employees or something.  
 25 A I don't believe any are.

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1 Q Understood. Are you in the process of developing a HAVA  
 2 plan now?  
 3 A You asked -- yes.  
 4 Q You are?  
 5 A Yes.  
 6 Q Who is involved in this process?  
 7 A We are at the very, very beginning stages.  
 8 Q All right. When do you hope to have a plan completed?  
 9 A I don't have a deadline.  
 10 Q You have no deadline?  
 11 A No.  
 12 Q All right. And this HAVA plan that you don't have a  
 13 deadline for will go ahead and determine how the  
 14 \$9 million that is currently in the account is allocated?  
 15 A Yes. The new -- a new 2000 whatever state HAVA plan  
 16 would be the guiding document for existing funds and any  
 17 future funds.  
 18 Q All right. Do you anticipate that going into effect in  
 19 2012?  
 20 A I don't have a deadline.  
 21 Q No idea when it will go in effect?  
 22 A Oh, no.  
 23 Q All right. So what's step one of the HAVA plan?  
 24 A I haven't finalized it.  
 25 Q I'm asking what is the first step to go ahead and

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1 Q Okay. Any on the board of commissions -- the election  
 2 commission?  
 3 A I don't believe so.  
 4 Q All right. So what's the next step after a task force?  
 5 A Board of Elections I believe has to approve it. We have  
 6 to submit it to the Election Assistance Commission. Then  
 7 I think it goes in the Federal Register.  
 8 Q All right. Have you -- have you had any discussions with  
 9 the Board of Elections about the process for the 2012 --  
 10 or next HAVA plan?  
 11 A No.  
 12 Q Have you had any discussions with anybody regarding the  
 13 next HAVA plan?  
 14 A I have been thinking about it because of the number of  
 15 issues that have been brought up because of this case.  
 16 Q Okay.  
 17 A Like I don't think it's -- I don't think we should only  
 18 allow reimbursement twice a year.  
 19 Q How do you think it should be?  
 20 A Whenever they submit them, we should pay them.  
 21 Q Are you going to do anything to address the random  
 22 criteria you described earlier?  
 23 A As I mentioned before, I don't like not having all the  
 24 receipts. I'm -- I want to make sure that, when we have  
 25 a federal audit, we have all the documentation, so I

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1 would want receipts for every expense.  
 2 Q Have you told anyone that yet?  
 3 A Yeah. I think I told the county auditors at that  
 4 convention.  
 5 Q It was a verbal statement made to the county auditors?  
 6 A That this is what we are thinking about.  
 7 Q Have you done anything in writing or on your website or  
 8 anything?  
 9 A I don't think so.  
 10 Q I'm going to hand you what's been marked Exhibit 43. Can  
 11 you go to the second page, sir. About halfway down it  
 12 states that "Secretary Gant introduced ARSD  
 13 5:02:10:01..."  
 14 A Yes.  
 15 Q All right. And that was -- that was a potential or  
 16 proposed change by you to the absentee ballot application  
 17 form?  
 18 A Yes.  
 19 Q All right. Then you would agree that absentee balloting  
 20 is an election year procedure?  
 21 A Yes.  
 22 Q Early voting is another word for absentee balloting?  
 23 A No.  
 24 Q Explain.  
 25 A Early voting does not exist in law.

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1 A Administrative Rules South Dakota.  
 2 Q All right. So these are election rules that are carried  
 3 out by your office?  
 4 A They are administrative rules that are -- the Board of  
 5 Elections is granted authority to establish  
 6 administrative rules, and with that authority, you  
 7 develop -- develop the rules and amend them.  
 8 Q Here you wanted to delete the military and overseas  
 9 absentee ballot application, correct, sir?  
 10 A Yes.  
 11 Q Why?  
 12 A Because previously we were combining it. The one you  
 13 just mentioned, ARSD 5:02:10:01, was to combine the two.  
 14 So if we combine the two, we obviously don't need a  
 15 separate one.  
 16 Q And you wanted uniformity in these administrative rules?  
 17 A Regarding military and general absentee application.  
 18 Q Then in the next sentence it states that "Secretary Gant  
 19 expressed desire to combine this form with the standard  
 20 absentee ballot application prescribed by ARSD  
 21 5:02:10:01."  
 22 A That's what I just explained regarding the first thing  
 23 you mentioned.  
 24 Q All right. Are there any other administrative rules  
 25 regarding absentee balloting that you are aware of

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1 Q That is an informal phrase we have been using in this  
 2 litigation that we have been interchanging with the term  
 3 "absentee ballot," isn't it?  
 4 A You have, yes.  
 5 Q All right. And what I'm talking about in Shannon County  
 6 is about absentee balloting procedures on-site in Shannon  
 7 County, not early voting, correct?  
 8 A The legal term is "absentee voting," whether it's  
 9 face-to-face or through the mail.  
 10 Q All right. So you saw the need to promulgate, to create  
 11 absentee ballot procedures at this November 29th meeting,  
 12 didn't you?  
 13 A This was -- this proposed amendment was to combine them  
 14 into one so that we didn't have issues with having two  
 15 different forms out there. And I believe there was  
 16 also -- in the administrative rule it has a -- the actual  
 17 form. And the actual form had a line, and then it had  
 18 little hash tags where you were to put a letter between  
 19 each hash tag. And auditors were complaining that that  
 20 was too hard to read when they received it back from the  
 21 military folks. So I wanted to make it just a blank  
 22 line.  
 23 Q Okay. And also at that meeting later on on Page 2, it  
 24 says that you, Secretary Gant, introduced ARSD  
 25 5:02:10:01:04. What does ARSD stand for?

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1 besides these changes here?  
 2 A I believe Administrative Rule 5:02:10 lists a number of  
 3 administrative rules regarding absentee voting as well as  
 4 South Dakota law.  
 5 Q All right. And why -- why has the election commission  
 6 promulgated a wide array of rules regarding absentee  
 7 balloting?  
 8 A Because the legislature directed them to.  
 9 Q Okay. Would the -- what do you mean, the legislature  
 10 directed them to?  
 11 A Only the legislature can give you authority to develop  
 12 administrative rules.  
 13 Q And I understand you have been delegated that rule-making  
 14 or that promulgation authority. But my question is --  
 15 is how you -- why you exercise that authority on absentee  
 16 balloting.  
 17 A I didn't develop this entire administrative rule. The  
 18 changes I was trying to make was to combine it and to  
 19 have one application.  
 20 Q Okay.  
 21 A The other rules were developed -- I don't have the  
 22 information with me -- but I assume a number of years  
 23 ago.  
 24 Q All right. Do you know what other rules are in place  
 25 administratively that addressed absentee balloting?

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1 A As I just mentioned, I believe 5:02:10, I believe that  
2 title is all absentee voting.

3 Q Okay. And then why haven't you included a provision  
4 regarding Todd and Shannon County addressing no  
5 courthouses in Todd and Shannon County in your proposals?

6 A Because they're to follow the same rules that the other  
7 counties have.

8 Q Even without a county seat?

9 A Yes.

10 Q Do you have the authority to go ahead and promulgate  
11 rules that are specific to counties without county seats  
12 for early voting, absentee voting?

13 A I don't believe so.

14 Q What restricts you from promulgating those rules that  
15 would do that?

16 A The legislature.

17 Q How did they restrict you from going ahead and addressing  
18 early voting in Shannon County and Todd County?

19 A There is a statute that says something to the effect that  
20 counties can contract their services. And in that  
21 statute, it doesn't reference anything about giving the  
22 Board of Elections any authority to grant any special  
23 treatment to those two counties.

24 Q You would consider it special treatment to promulgate  
25 rules that provided for early voting in those respective

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1 counties?

2 A I would consider it special treatment if you treat one  
3 county different than another county.

4 Q Okay. So isn't it disparate treatment under the  
5 definition you just provided to have all the counties in  
6 South Dakota but for two, to have their residents have to  
7 run to a different county to cast their absentee ballot  
8 face-to-face?

9 A The law says that those counties that don't have a  
10 courthouse can contract with an adjoining county,  
11 something to that effect.

12 Q Right. But there is nothing in there that restricts that  
13 contract from creating a satellite within the respective  
14 county, is there?

15 A I would have to look at it again.

16 Q Have you read the county (sic) between Fall River and  
17 Shannon?

18 A The what?

19 Q Have you read the contract for services between Fall  
20 River and Shannon County?

21 A I believe it was in one of the documents in the court  
22 proceedings.

23 Q What can your office do to make sure these problems with  
24 absentee balloting in Shannon County don't happen again?

25 A We didn't have any problems in 2012. And I am hopeful

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1 that we can continue this relationship for the general  
2 election in 2012 and develop a plan for 2014.

3 Q And when do you think that plan should be developed for  
4 2014?

5 A I guess any time.

6 Q Were you aware of post offices closing on the Pine Ridge  
7 Indian Reservation and Shannon County?

8 A I was aware of the proposal from the Postal Service to  
9 close post offices.

10 Q Do you know if there has been any actual closings?

11 A Last I remember reading in the paper that they canceled  
12 the closings, but I don't remember if they did a couple  
13 or not.

14 Q Did you ever research whether or not -- did you ever  
15 follow up on those newspaper articles to see if post  
16 offices had closed in Shannon County?

17 A No.

18 Q Okay. It makes it harder to vote if folks don't have  
19 postal services nearby, correct?

20 A If you don't have a post office, it makes absentee voting  
21 more difficult. It doesn't make election day voting more  
22 difficult.

23 Q Okay. And how would it make absentee voting more  
24 difficult?

25 A It could possibly take longer to receive the application

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1 and then return the actual ballot.

2 Q Do you know who the poorest county in South Dakota is  
3 right now?

4 A I believe I read something in these court proceedings  
5 that Shannon County is.

6 Q Okay. And you have known that for how long?

7 A I remember seeing a spreadsheet that listed all the  
8 counties, and Shannon was at the bottom.

9 Q If you knew they were the poorest county in the State of  
10 South Dakota, why didn't you reach out to them to help  
11 with some of the financial challenges with absentee  
12 balloting?

13 A As soon as they asked for help, I offered and they  
14 accepted.

15 Q All right. But when the individual tribal members asked  
16 for help, and you knew how poor it is, you didn't do  
17 anything?

18 A Like I said before, I considered that a legal matter.

19 Q Okay. Have you ever reviewed any of the census  
20 information on South Dakota?

21 A Yes.

22 Q Specific to Shannon County?

23 A Yes.

24 Q Do you know what the population of Shannon County is  
25 approximately?

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1 A I don't.  
 2 Q Did you know that the most recent U.S. census had the  
 3 total population at about 13,928?  
 4 A I did not.  
 5 Q All right. What -- what do you think the Native  
 6 population is in Shannon County?  
 7 A I believe earlier in some document with these court  
 8 proceedings, that you or someone said 95 percent. I  
 9 don't have any direct -- I haven't read a report that  
 10 says 95 percent.  
 11 Q Never asked anybody what the Indian population is down  
 12 there?  
 13 A (Witness indicating.)  
 14 Q No?  
 15 A No.  
 16 Q Did you know that the total population of Shannon County  
 17 went up 2.5 percent from the 2010 census?  
 18 A No.  
 19 Q Did you know there were approximately 12,500 people that  
 20 are Native in Shannon County going by those census  
 21 numbers?  
 22 A If that's 95 percent, then, yeah, I guess.  
 23 Q Does Shannon County have the highest Native percentage in  
 24 the entire State of South Dakota of any county?  
 25 A I don't know for sure.

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1 Q Who prepared this report?  
 2 A I did.  
 3 Q When did you prepare this report?  
 4 A April of 2011.  
 5 Q Where is this report posted?  
 6 A We printed a booklet, and then we posted it on Secretary  
 7 of State's website at SDSOS.gov.  
 8 Q What is the percentage of voter registration for the  
 9 Democratic Party in Shannon County? And I might save you  
 10 a little time. I looked at Page 14.  
 11 A 14. Voter registration as of October 18, 2010, Shannon  
 12 County had -- total active registered was 7,530. What  
 13 was your -- Democrats?  
 14 Q Yes.  
 15 A Democratic registration was 5,813.  
 16 Q So that is about 77.52 percent?  
 17 A I will take your word for it.  
 18 Q You have got a calculator in front of you if you don't  
 19 want to.  
 20 A No, I'm fine.  
 21 Q All right. So the percentage of South Dakota Democrats  
 22 or Democrats in Shannon County by your own report was  
 23 77.52 percent?  
 24 A Yes.  
 25 Q Yes?

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1 Q You don't know?  
 2 A I'm sorry. I don't know.  
 3 Q Would it surprise you that Shannon County is the highest  
 4 Native percentage of any South Dakota county?  
 5 A No. Ninety-five percent sounds high.  
 6 Q Do you know what it means -- the term "compact," when  
 7 you're talking about population densities, have you heard  
 8 that term before?  
 9 A No.  
 10 Q Would it surprise you that Shannon County has the highest  
 11 Native population of any county in the United States?  
 12 A I don't know. I'm not familiar with all the other Indian  
 13 reservations across the country.  
 14 Q Did you know that Shannon County had the highest  
 15 percentage of voter registration for the Democratic Party  
 16 of all South Dakota counties?  
 17 A I knew it was high.  
 18 Q Did you know it was the highest?  
 19 A I am not sure.  
 20 Q You never heard that before?  
 21 A I knew it was high.  
 22 (Deposition Exhibit Number 144 marked for  
 23 identification.)  
 24 Q Do you recognize this report?  
 25 A Yes.

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1 A Yes.  
 2 Q All right. And then that was the highest in the whole  
 3 State of South Dakota?  
 4 A I do not know that.  
 5 Q You have the report in front of you.  
 6 A There is 66 counties.  
 7 Q Correct. Do you see anyone that has a higher percentage?  
 8 A Percentages are not listed on this report.  
 9 Q All right. Would it surprise you that Shannon County is  
 10 the highest Democrat population in the State of South  
 11 Dakota?  
 12 A Has the highest percentage of Democrat registrations?  
 13 Q Yes, sir.  
 14 A No.  
 15 Q Then I think by your own report -- and I did the math on  
 16 this. You can confirm it if you would like. But Buffalo  
 17 County, that is a Native county, right? What reservation  
 18 comprises Buffalo?  
 19 A Is that Lower Brule or Crow Creek? I forget which side  
 20 of the river.  
 21 Q But that is -- Lower Brule is on the west side of the  
 22 river.  
 23 A So this must be Crow Creek.  
 24 Q And that is 75.48 percent --  
 25 A Okay.

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1 Q -- total Democrats in that county?  
 2 A Yeah.  
 3 Q Does that sound right?  
 4 A Yeah; 801 Democrats to 158 Republicans.  
 5 Q Then the next county with the most Democrats in the State  
 6 of South Dakota is Todd County at 71.7 percent by your  
 7 report?  
 8 A Yes.  
 9 Q What reservation is that?  
 10 A Rosebud.  
 11 Q Rosebud Sioux Tribe?  
 12 A Yes.  
 13 Q All right. The next highest Native population in the  
 14 State of South Dakota is Dewey County. That is at 68.19.  
 15 What reservation touches or makes up Dewey?  
 16 A Cheyenne River.  
 17 Q All right. The next one is Ziebach at 61.01 percent by  
 18 your report as the county with the highest percentage of  
 19 Democratic Party voter registration?  
 20 A Yes.  
 21 Q That was 61.01. What tribe has a lot of tribal members  
 22 in Ziebach, what Natives?  
 23 A What tribe?  
 24 Q Yes, sir.  
 25 A I believe it's Cheyenne River.

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1 Q And then you look at the support for Democratic  
 2 candidates for U.S. House of Representatives was even  
 3 higher among Shannon County voters in 2010?  
 4 A Yes.  
 5 Q 90.29 percent of Shannon County citizens voted for  
 6 Democrat Stephanie Herseeth?  
 7 A Yes.  
 8 Q This was the highest percentage support of any county in  
 9 the State of South Dakota?  
 10 A Yes.  
 11 Q And the next highest percentage vote for the Democratic  
 12 House candidate was 77.48 percent in Brown County? And  
 13 I'm looking at Page 15, sir.  
 14 A Uh-huh.  
 15 Q Is that correct?  
 16 A Yes.  
 17 Q And these findings are consistent with the last decade of  
 18 South Dakota elections?  
 19 A I would think the Brown County high vote total for Miss  
 20 Herseeth Sandlin was in part due to her living there or  
 21 being from Brown County.  
 22 Q I would agree with that. My question is is that -- as  
 23 far as Shannon County --  
 24 A Yes.  
 25 Q -- that these percentages are consistent with the

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1 Q Cheyenne River also? Then if you go to Page 16 of your  
 2 report, sir, in the 2010 race for governor and lieutenant  
 3 governor, Shannon County delivered the highest percent  
 4 vote for the Democrat Party candidates in the state?  
 5 A I'll take your word for it.  
 6 Q Well, you don't have to. It's your report, and you have  
 7 a calculator there.  
 8 A There is 66 counties. I can take a half hour to  
 9 calculate each one.  
 10 Q Okay.  
 11 A May I have a piece of paper?  
 12 Q Sure can.  
 13 A We can't just agree your numbers are right?  
 14 Q No, they are your numbers. It's your report. All I  
 15 did --  
 16 A No, your percentage.  
 17 Q Well, I can agree. Will you?  
 18 A Sure.  
 19 Q All right. So in the 2010 race for governor and  
 20 lieutenant governor, there were 2382 votes cast by  
 21 Shannon County citizens.  
 22 A Yes.  
 23 Q And 82.24 percent were cast for Democrats Heidepriem and  
 24 Arndt?  
 25 A Yes.

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1 elections over the last several election cycles?  
 2 A Historically Shannon County has voted Democrat very  
 3 solid.  
 4 Q What are you basing that upon?  
 5 A Research and information on politics.  
 6 Q All right. What research are you basing it on that those  
 7 folks down there vote Democrat? I mean did you sit  
 8 down -- this is a good report. You have got a lot of  
 9 numbers in the report. You went ahead and went through  
 10 the report and assessed that through several election  
 11 cycles or how did you figure it out?  
 12 A When I was preparing for my campaign for Secretary of  
 13 State, it would have been important information to know  
 14 about what counties are more likely to vote for you  
 15 versus not for you.  
 16 Q Okay. And what was your assessment of Shannon County for  
 17 you?  
 18 A Oh, that they weren't going to vote Republican.  
 19 Q How did you know that?  
 20 A Because looking at previous years, they vote Democrat.  
 21 Q Then looking at -- did you know that Shannon County has  
 22 the highest percentage of Democratic Party votes for U.S.  
 23 President in South Dakota for both the 2004 and 2008  
 24 elections?  
 25 A I wouldn't doubt that.

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1 Q Why not?

2 A Because historically Shannon County has voted for the

3 Democrat candidate.

4 Q So basically the tribal members in Shannon County vote as

5 a block?

6 A I would say the registered -- I wouldn't say that the

7 tribal members vote as a block. I would say that county

8 votes Democratic. Obviously it's 95 percent Native

9 American.

10 Q Think there is some discrimination problems or perception

11 of discrimination problems between Shannon County

12 residents and tribal members and some of the border

13 towns?

14 MR. WILLIAMS: Objection. Compound question.

15 Q Go ahead.

16 A Is there discrimination?

17 Q Yeah. Do you think there is between Indians and

18 non-Indians around the Shannon County -- around Shannon

19 County and the border towns?

20 A You will hear about issues on the news, about law

21 enforcement issues.

22 Q Do you think there is some discrimination issues with

23 Natives, you know, in Shannon County and some of the

24 bordering towns?

25 A I think there is differently some racial issues in those

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1 areas.

2 Q Why do you think that?

3 A I don't know.

4 Q You are a smart guy. What do you base that upon?

5 A Well, you've heard about it in the news, that there's

6 this law enforcement issue regarding federal jurisdiction

7 versus -- versus state jurisdiction, and who is in charge

8 and who has custody and what jail and --

9 Q Criminal jurisdiction issues are complex in Indian

10 Country, correct, cause a lot of problems with law

11 enforcement between the jurisdictions?

12 A Yeah.

13 Q Anything else that you base that there is a little bit of

14 racial tension around Shannon County and some of the

15 border towns?

16 A That's the first thing that comes to mind.

17 Q Anything else? Do you think that a lot of the tribal

18 members have issues driving to Hot Springs?

19 MR. WILLIAMS: Objection. Calls for speculation.

20 Q Go ahead.

21 A I know that because during the hearing they were talking

22 about it.

23 Q Yeah.

24 A One of -- I forget the witness' name, but they were

25 talking about it on the stand, if I remember right.

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1 Q Do you have your own -- your own belief on why some of

2 the tribal folks don't like going to Hot Springs?

3 A I don't know.

4 Q No idea?

5 A I mean I have heard stories again about law enforcement

6 or something about feeling like they were being followed

7 or -- there was some sort of testimony like that.

8 Q There has been a lot of voting rights litigation down at

9 Pine Ridge, hasn't there?

10 A Yes.

11 Q Why do you think that is?

12 A Well, the other issue that I am familiar with is the

13 Janis case.

14 Q The felon case?

15 A Was regarding felons and voting, and that they were

16 removed from the computer and they weren't supposed to

17 be. I guess I'm not sure what else.

18 Q Have you ever been in Shannon County, sir?

19 A Yes.

20 Q When were you last there?

21 A Last time I was there was -- was last year. It was

22 August I think of 2011. The president of the tribe and I

23 signed an agreement regarding an effort to continue our

24 working relationship regarding the memorandum of

25 understanding we have for Uniform Commercial Code

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1 filings.

2 Q You signed that with President Steele or --

3 A Yes.

4 Q -- the tribal council?

5 A President Steele.

6 Q And what steps did you take since that -- that trip to go

7 ahead and carry out --

8 A We -- in August of 2011 I had -- I completed my online

9 annual report system that all corporations have to file

10 with my office. And when we were developing that, I

11 wanted us to be thinking about how we could work with the

12 different tribes across the state on the best way, if

13 they were looking at an online system, that we could

14 partner with them to use the same system just like we do

15 with the Uniform Commercial Code. Since then we have

16 applied for a grant from Harvard University. We made the

17 second round there.

18 Q Cooperatively with Oglala Sioux Tribe?

19 A On this one, no. The other grant that we worked on

20 with -- what was the gentleman's name? David something.

21 And we had meetings with -- what is the name of the place

22 here in Ft. Pierre?

23 Q Can't help you. This is your town, not mine, sir.

24 A Wacipi. The building right across in Ft. Pierre. I

25 can't remember the -- what is her name, Stacy something,

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1 and then JR -- is it LaPlant, the Secretary of Tribal  
 2 Relations, we have had meetings over there about how we  
 3 can work together. And there were some federal grants  
 4 that we worked on those together, and --  
 5 Q Have you ever had discussions regarding early voting with  
 6 those groups, you know, how we go ahead and make early  
 7 voting a little bit easier at Todd and Shannon?  
 8 A No. Those meetings have been pretty close to figuring  
 9 out how we can try and cooperate on business and economic  
 10 development.  
 11 Q Okay. Do you know how far it was for the folks at  
 12 Porcupine or some of the rural towns out that way to  
 13 travel to Hot Springs one way?  
 14 A I don't remember how far it is.  
 15 Q Do you have any idea how long the trip takes?  
 16 A I think I remember hearing something about an hour to an  
 17 hour and a half or something.  
 18 Q One way?  
 19 A Maybe. I don't remember what the distance is.  
 20 Q Do you know any other county in the State of South Dakota  
 21 that requires driving time like that to go ahead and cast  
 22 your vote in person?  
 23 A I'm not sure what the distance is between Faith and  
 24 Sturgis, but I know that is a long ways.  
 25 Q Up in Meade County?

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1 county officials and the Shannon County folks? Have you  
 2 ever heard anything about that?  
 3 A I think that was talked about at the court hearing.  
 4 Q Do you perceive that to be in place or what do you think  
 5 it is?  
 6 A I guess I'm just taking what they said.  
 7 Q Hadn't heard anything else about distrust or don't have  
 8 any opinion on distrust of Fall River county officials by  
 9 Shannon County residents?  
 10 A No.  
 11 Q Do you think there is a perceived prejudice against  
 12 Native voters living in Shannon County?  
 13 A I don't know.  
 14 Q No opinion on that?  
 15 A No.  
 16 Q Never heard anything about the perceived prejudice  
 17 against Native voters?  
 18 A Maybe in that court hearing there was that discussion,  
 19 but --  
 20 Q That was kind of the first time you have ever heard  
 21 anything about prejudice with Native voters?  
 22 A As I mentioned before, I mean you have heard about the  
 23 law enforcement issues, which I would assume that  
 24 obviously leads to that.  
 25 Q What do you think about the principle of local voting; I

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1 A Yeah.  
 2 Q And Faith is a pretty little, bitty town, isn't it?  
 3 A Yeah. I don't know, four, five hundred people maybe.  
 4 Q Yeah. Do you know what the biggest town on Pine Ridge  
 5 is?  
 6 A The reservation?  
 7 Q Yes.  
 8 A I assume Pine Ridge.  
 9 Q In Shannon County?  
 10 A Yeah.  
 11 Q Do you know what the second largest city in Shannon  
 12 County is or number three?  
 13 A I don't.  
 14 Q Do you think it's a pretty major expense for some of the  
 15 Natives or any of the folks that live in Shannon County  
 16 to go ahead and drive to Hot Springs?  
 17 A Do I think it's a what?  
 18 Q Do you think it's a big expense for someone to drive to  
 19 Hot Springs to go ahead and vote?  
 20 A Oh, I think anyone who has to drive 60 miles at almost \$4  
 21 gas is very expensive.  
 22 Q All right. And some of the distances are farther in  
 23 Shannon County than even 60 miles, aren't they?  
 24 A Yes.  
 25 Q Do you think there is issues with distrust of Fall River

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1 want to vote near my home, I want to do absentee  
 2 balloting in my own county, just the whole idea of local  
 3 voting?  
 4 A I want everyone to be able to do that.  
 5 Q Why?  
 6 A Because it's helpful.  
 7 Q Even in Shannon and Todd County?  
 8 A Yeah. That is why I gave the additional help.  
 9 Q After the March 1st letter, right?  
 10 A Yes, sir.  
 11 Q I'm going to hand you what's been marked Exhibit 62. Do  
 12 you know where Grass Creek is?  
 13 A I don't.  
 14 Q Do you know where Kyle is?  
 15 A I believe it's in the northern part of Shannon County.  
 16 Q How far is it from Kyle to the Shannon County or the Fall  
 17 River County Courthouse?  
 18 A One hundred thirteen miles.  
 19 Q Have you ever been on those roads?  
 20 A I don't remember if I have been to Kyle.  
 21 Q What do you estimate the cost would be for someone from  
 22 Kyle to go to Hot Springs, cast their vote, and drive  
 23 back?  
 24 A What would be the cost? Gas and time.  
 25 Q Do you know how much -- even at the 37 point -- what's

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1 the state gas rate?  
 2 A 37.5.  
 3 Q And Kyle, did you know, is the second biggest town?  
 4 A I did not.  
 5 Q Porcupine is third I think. How far is that away?  
 6 A 89.7.  
 7 Q One way?  
 8 A Yes.  
 9 Q Do you know if Fall River had any weekend hours?  
 10 A I do not.  
 11 Q Have you ever heard about them having any weekend voting  
 12 hours?  
 13 A I have not.  
 14 Q Do you know what their hours are at their courthouse?  
 15 A I do not know.  
 16 Q Would it be possible for someone who worked 8:00 to 5:00  
 17 at Pine Ridge or Kyle to go ahead and get to the Hot  
 18 Springs courthouse during working hours?  
 19 A Yeah, that would be possible.  
 20 Q How would it be possible?  
 21 A During working hours?  
 22 Q During working hours, sir, without having to take time  
 23 off work.  
 24 A Oh, I'm not aware of any courthouse that's open after  
 25 5:00.

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1 Q Right. So what I'm getting at is -- some of the  
 2 government hubs or the college hub up in Kyle or Pine  
 3 Ridge, the government hub in Pine Ridge at the Red Cloud  
 4 building, so for those folks to have to cast their -- or  
 5 to do absentee balloting at the Hot Springs courthouse,  
 6 they would have to take off work, wouldn't they?  
 7 A To drive to Hot Springs?  
 8 Q Yes, sir.  
 9 A Yes.  
 10 Q They would have to take off a couple of hours of work?  
 11 A I don't know.  
 12 Q Is it fair to you someone would have to take off work and  
 13 drive to Hot Springs to go ahead and cast their absentee  
 14 ballot?  
 15 A But there isn't a courthouse in every town in South  
 16 Dakota. So that would be the same thing with any other  
 17 town within a county that wasn't the county seat. They  
 18 would also have to figure out what to do. Maybe they  
 19 left work early and got home -- you know, got to the  
 20 courthouse right before 5:00 and got home at 6:00.  
 21 Q I mean it's fair to you that these folks have to drive  
 22 from --  
 23 A I'm saying that people that don't live in the county seat  
 24 are going to have to do what you are explaining, about  
 25 taking off work or doing whatever arrangements they have

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1 to.  
 2 Q But not these distances, would they?  
 3 A I'm not familiar with every distance of every town in  
 4 every county.  
 5 Q I'm going to hand you what's been marked Exhibit 63.  
 6 MR. WILLIAMS: Can I ask a question? Is this an  
 7 official publication from somewhere?  
 8 MR. SANDVEN: If you look at the bottom of the page  
 9 where it's retrieved from.  
 10 MR. WILLIAMS: Is this something you compiled?  
 11 MR. SANDVEN: Yes, sir.  
 12 A Sturgis isn't the largest city in Meade?  
 13 Q Isn't that 35.3?  
 14 A Sturgis is the county seat. It says distance from --  
 15 like Minnehaha is zero because Sioux Falls is the largest  
 16 city, and --  
 17 Q So Meade is zero. I'll correct that.  
 18 A I'm not -- I'm trying to think, but I think Sturgis is  
 19 the largest town.  
 20 MR. WILLIAMS: I'm going to object. There has been  
 21 no foundation for this, and it appears that these numbers  
 22 are inaccurate at this point. You may answer to the best  
 23 of your ability.  
 24 Q Does it look like -- do you know of anyone who lives in  
 25 the biggest town in the state that has to drive as far as

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1 the folks in Pine Ridge to cast their early vote?  
 2 A They didn't in 2012.  
 3 Q In 2010?  
 4 A The arrangements then were then. But this is not what is  
 5 taking place today. So I don't believe that that 63 is  
 6 correct. It should be zero because the largest city in  
 7 Shannon County is Pine Ridge, and they had -- they had  
 8 absentee voting.  
 9 Q Can you do anything to make sure that the folks at Pine  
 10 Ridge don't have to drive to Hot Springs and go through  
 11 this mess again in future elections?  
 12 A We just did on March 2nd.  
 13 Q Right. That is for the past elections.  
 14 A No, it's not.  
 15 Q And that covers the general -- that covers one election  
 16 cycle, doesn't it, the 2012?  
 17 A All of 2012. The general election's whatever, three  
 18 months away, four months away.  
 19 Q Anything you can do to make sure these folks don't have  
 20 to go through this again in future elections?  
 21 A In 2014?  
 22 Q Yeah.  
 23 A Yeah. We discussed that.  
 24 Q Will you do it?  
 25 A Yeah. I'm open to it.

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1 Q What will you do to make sure this doesn't happen again?  
 2 A Figure out what we can do to offer more assistance.  
 3 Q I think Box Elder is the biggest town in Meade.  
 4 A Is it really?  
 5 Q I'm going to hand you what's been marked Exhibit 57.  
 6 Remember writing this letter to me?  
 7 A Yeah.  
 8 Q And this is your letter, December 30th, 2011?  
 9 A Yes.  
 10 Q Did you write this or just sign it?  
 11 A Signed it.  
 12 Q Who wrote it for you?  
 13 A Staff member.  
 14 Q Which staff member?  
 15 A Andrew Pietrus.  
 16 Q Did you review it before you sent it to me?  
 17 A Yes.  
 18 Q All right. So as of December 30th, 2011, you said that  
 19 Shannon County had \$68,910.78 remaining in their HAVA  
 20 state account.  
 21 A Correct.  
 22 Q And it could be used in conjunction with expenses based  
 23 off the attached form.  
 24 A And that attached form would have been that reimbursement  
 25 form similar to Exhibit 133.

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1 A Yes.  
 2 Q Is there a relationship in your opinion between early  
 3 voting or absentee voting at a location in Shannon County  
 4 and voter turnout?  
 5 A I think there is a bigger factor in the political  
 6 parties' and the political candidates' involvement in the  
 7 election.  
 8 Q So that is a larger factor, but do you think having  
 9 absentee voting at a location in Shannon County  
 10 encourages voter turnout?  
 11 A Based off the numbers of the June 2012 primary, the  
 12 answer would be no.  
 13 Q Okay. We'll start looking at other voter turnout  
 14 records, too. This morning you talked about -- you don't  
 15 have any authority unless -- you know, to deal with  
 16 election problems unless a county commission goes ahead  
 17 and brings you a complaint. If an individual in Shannon  
 18 County has a concern regarding an election procedure and  
 19 their county commission or their county auditor isn't  
 20 responsive to them, what are they supposed to do?  
 21 A Oh, they could call our office.  
 22 Q But I thought you said you didn't get involved in those  
 23 things unless the county went ahead --  
 24 A No. Your letter was a legal matter. We get calls from  
 25 citizens all the time with questions about elections and

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1 Q Right. You said that "The policy for all HAVA fund  
 2 expenditures has always been one of reimbursement of the  
 3 expense." That is not true, is it?  
 4 A You had to request the money and spend it, and then get  
 5 reimbursed.  
 6 Q I thought you testified earlier some counties didn't have  
 7 to submit receipts?  
 8 A Correct.  
 9 Q Okay. So you weren't talking about receipts there; you  
 10 were just talking about reimbursement?  
 11 A I don't understand what you are asking.  
 12 Q Okay. When you -- you said that South Dakota policy with  
 13 HAVA funds has always been a policy of reimbursement,  
 14 correct?  
 15 A Correct.  
 16 Q You've got to spend the money first?  
 17 A Correct.  
 18 Q But you didn't always have to show proof of receipts  
 19 first; you just had to submit the form?  
 20 A Correct.  
 21 Q All right. Earlier we had talked about the relationship  
 22 between early voting at a location in Shannon County and  
 23 turnout, correct?  
 24 A And --  
 25 Q And voter turnout?

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1 how it works and --  
 2 Q Right. And not just procedural questions. I'm talking  
 3 about a complaint.  
 4 A A complaint.  
 5 Q These folks aren't following the rules, we are not being  
 6 treated fairly. Can an individual in a county bring a  
 7 complaint like that to your office and expect action?  
 8 A Like I mentioned before, on election day, perfect  
 9 example, people were calling in with various questions.  
 10 Q Complaints?  
 11 A Some complaints.  
 12 Q And then you would follow up on each of the complaints?  
 13 A We would notify the county auditor and tell them what is  
 14 going on.  
 15 Q Did you keep a log of the complaints that were called in  
 16 to you?  
 17 A No. It was just kind of generalities. Campaign signs  
 18 are a huge question. They have to be a hundred feet from  
 19 the door. We will get people who will wear a campaign  
 20 T-shirt into the place to vote. And then the election  
 21 officials will tell them, no, you must step out. Turn  
 22 your shirt inside out or cover up the political thing.  
 23 Those are some of the biggest --  
 24 Q I'm talking about someone who files a formal complaint  
 25 that asks your assistance in writing. Do you log those?

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1 Is there a complaint procedure that must be followed?  
 2 A Your information was a -- we deemed it a legal matter.  
 3 Q You deemed it a legal matter, correct?  
 4 A Yes, because it was from an attorney.  
 5 Q Right. So if those individuals -- if that letter would  
 6 have come from individuals, how would you have treated it  
 7 differently? If -- instead of saying "attorney for" and  
 8 listing all those 25 names, they just had the 25 names,  
 9 how would you have dealt with that?  
 10 A Oh, I suppose on a case-by-case basis we would determine  
 11 that.  
 12 Q On this case.  
 13 A On this case, I deemed it a legal matter, sent it to our  
 14 attorney, and then responded with that December 30th  
 15 letter.  
 16 Q But if Shannon County has a problem with early voting,  
 17 the county auditor not giving them the same number of  
 18 days of early voting or something, and they take that to  
 19 their county commissioner, and the commissioner says, no,  
 20 not going to do it, what should they do then?  
 21 A Well, in the example you are talking about with Shannon  
 22 County, it's completely different. Because the way I  
 23 took the court hearing was that we needed to make sure  
 24 that absentee voting took place in Shannon County for 46  
 25 days from the primary and general.

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1 Q All right. Did you know that there were only 15 days of  
 2 early voting in Shannon County in -- during the 2004  
 3 election?  
 4 A Was that state law at the time?  
 5 Q Well, the rest of the state got 46 days. They got the  
 6 six weeks.  
 7 A The 46 days was changed in 2011. Before that it was 45  
 8 days. Before that, I don't know what the number was.  
 9 Q It was 45 days at this time, right, in 2004?  
 10 A I don't believe so.  
 11 Q What was it in 2004? How many days of early voting?  
 12 What was the early voting period?  
 13 A I don't remember.  
 14 Q But you don't think it was 45?  
 15 A The 45-day rule came into place after the U.S. Congress  
 16 passed the Military and Overseas Voting -- M-O-V-E. MOVE  
 17 is what it's called. I don't remember what the E stands  
 18 for.  
 19 Q Right. In 2004 it's your testimony that there wasn't  
 20 approximately six weeks of early voting?  
 21 A I don't know when -- I don't remember when the federal  
 22 government passed the 45-day law.  
 23 Q All right. You don't remember when the rule changed  
 24 where there was no reason required for an absentee  
 25 ballot?

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1 Q At the next election, let's say there is a new Secretary  
 2 of State or there is a new county commission or a new  
 3 county auditor, and they -- they are not doing what you  
 4 did during this recent primary, what are they supposed to  
 5 do?  
 6 A Well, I would hope that before the 2014 election, we can  
 7 come up with some sort of agreement.  
 8 Q Between the -- between who and who and who?  
 9 A Between Shannon County, Fall River County, and Secretary  
 10 of State's office.  
 11 MR. SANDVEN: Can we take five minutes?  
 12 (Recess at 2:26 p.m.)  
 13 BY MR. SANDVEN:  
 14 Q You know there was some changes in rules going into the  
 15 2004 election regarding absentee balloting?  
 16 A No.  
 17 Q Do you know when the rules changed where you didn't need  
 18 a reason to go ahead and cast an absentee ballot?  
 19 A I don't remember the exact year.  
 20 Q It was before the 2004 election. Does that sound right?  
 21 You don't know?  
 22 A I don't remember.  
 23 Q I'm going to hand you what's been marked Exhibits 45 and  
 24 46. Do you recognize those documents from your website?  
 25 A Yes.

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1 A The no excuse absentee ballot?  
 2 Q Correct.  
 3 A I would have to look. I don't remember off the top of my  
 4 head what session that was.  
 5 Q I'm telling you the change in rules was going into the  
 6 2004 election. You don't know how many days of early  
 7 voting the folks in Shannon County got during the 2004  
 8 election?  
 9 A I don't know how many days any county received in the  
 10 2004 election.  
 11 Q Okay. You don't know what the rules were for the 2004 --  
 12 when the last day for registration was?  
 13 A I know today it's 15 days before the election. I would  
 14 have to look at that law again to determine when -- the  
 15 last time it was changed.  
 16 Q All right. But you are saying that in 2004 it wasn't the  
 17 rule that you cast your absentee balloting for the  
 18 first -- for a six-week period before election day?  
 19 A I don't believe the federal law, MOVE, was passed back in  
 20 '04.  
 21 Q I'm not asking about the federal law. I'm asking about  
 22 --  
 23 A You are asking about --  
 24 Q I'm asking you in 2004 how long the period was?  
 25 A I don't remember.

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1 Q Okay. So did you know that private sources paid for 15  
2 days of early voting at a location in Pine Ridge?  
3 A I know that based off of previous conversation we had  
4 today.  
5 Q Nothing -- you don't have anything that will refute that?  
6 A I don't have anything that proves it either.  
7 Q All right. There were no days of early voting before the  
8 primary and special election to replace Janklow?  
9 A I do not know.  
10 Q Did you know that private sources met with Shannon County  
11 in early September to go ahead and figure out how to pay  
12 for early voting at the general in 2004?  
13 A No idea.  
14 Q All right. From those exhibits in front of you, can you  
15 tell what percent of folks participated in early voting?  
16 A The percent voting by absentee was 36.78 percent.  
17 Q Was it -- it was 37.8 percent?  
18 A Percent voting absentee, 36.78 percent.  
19 Q All right. Out of the 1673 voters, is that how many  
20 voted early?  
21 A Number of absentee ballots, yes.  
22 Q And the overall turnout in Shannon County doubled from  
23 the turnout in 2000?  
24 A I do not know.  
25 Q But over one-third of the folks in Shannon County that

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1 A -- who absentee voted. In Shannon County there were 69.  
2 Q All right. So it dropped the number from the previous  
3 election in 2004. Shannon County dropped from 1673 to  
4 69?  
5 A Yes.  
6 Q Sixteen hundred four votes less?  
7 A Yes.  
8 Q They went from 36 percent to 2.8 percent?  
9 A Yes.  
10 Q Did you know that there was no early voting during the  
11 2006 election cycle at a location in Shannon County?  
12 A I do not.  
13 Q No one ever told you that?  
14 A I don't -- I don't remember.  
15 Q Never read it in the lawsuit?  
16 A I don't remember.  
17 Q First time you have heard it is here today?  
18 A I don't know.  
19 Q Do you know why the vote collapsed from -- early voting  
20 from 37.8 percent to 2.8 percent --  
21 A No.  
22 Q -- in one election cycle?  
23 A No.  
24 Q Do you have any idea how that happened?  
25 A I don't have an idea on 2004 or 2006, but I believe 2012

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1 cast their vote in the 2004 election did it via early  
2 voting?  
3 A 36.78 percent voted absentee in 2004.  
4 Q And a total of how many voters voted early in 2004?  
5 A 94,634.  
6 Q In Shannon County?  
7 A 1,673. And I don't see on this report whether it's  
8 general election or primary election. Maybe it's under  
9 the sticker, but -- what's the total? It's probably the  
10 general. But if this was Janklow, that big primary --  
11 was that in '04?  
12 Q I'm going to hand you what's been marked Exhibits 47 and  
13 48. Do you recognize these documents, sir?  
14 A Yes. I don't know if there is a difference.  
15 MR. CWACH: 48 was a copy for him.  
16 Q What are those two documents, sir, from your website?  
17 A Yes.  
18 Q What are they?  
19 A They are -- Exhibit 47 is number of absentee ballots  
20 returned and percentage voting absentee. And then 48  
21 would be actual turnout and actual turnout percentage.  
22 Q Right. So what was the -- how many of the folks voted  
23 early voting during the 2006 election cycle?  
24 A There were 93,285 --  
25 Q In Shannon County?

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1 had a similar election as 2006 because there was -- it  
2 was just under five percent.  
3 Q Right. So you don't know how there could have been a  
4 drop in the number of absent -- people participating in  
5 the absentee balloting process from the 2004 to 2006  
6 election cycle?  
7 A Each election is different with the political parties and  
8 political candidates.  
9 Q And that's what it's due to in your opinion, not access  
10 to early voting location?  
11 A I would assume that is one factor, the differences in the  
12 laws or what took place in Shannon County.  
13 Q What changes in the law happened in Shannon County  
14 between 2004 and 2006?  
15 A Whatever you had just mentioned.  
16 Q I didn't mention any laws changing during 2004 and 2006.  
17 I stated that prior to the 2004 election cycle, the law  
18 changed where you didn't need a reason to request an  
19 absentee ballot. Were there laws that changed between  
20 '04 and '06 regarding -- that affected absentee  
21 balloting?  
22 A I don't remember.  
23 Q All right. So what role do you think that the lack of  
24 absentee balloting or absentee voting in Shannon County  
25 affected the 2004 to 2006 cycle?

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1 A To know for sure, I don't.  
 2 Q Can you speculate?  
 3 A I just did with the different types of political campaign  
 4 that could have been taking place in that year.  
 5 Q And that's what affects voter turnout?  
 6 A I think that is a factor.  
 7 Q How big a factor is it that there wasn't access to early  
 8 voting in Shannon County --  
 9 A I don't know.  
 10 Q -- for the 2006 cycle?  
 11 A I don't know.  
 12 Q It went from 36 percent and change to two percent and  
 13 change. It went from 1673 voters to 69 voters. What  
 14 percent of that do you think was due to no early voting  
 15 locations?  
 16 A I don't know.  
 17 Q Any idea?  
 18 A No.  
 19 Q All right. Do you know whether -- how many days of early  
 20 voting there was for the 2008 election cycle?  
 21 A No.  
 22 Q Were you ever told that the voters at Shannon County were  
 23 only given two days before the primary and two days  
 24 before the general?  
 25 A I don't remember.

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1 Q Is that the first time you have heard that here today?  
 2 A I think so.  
 3 Q Okay. And then you couldn't get registered to vote at an  
 4 absentee voting location two days before the general or  
 5 primary, could you?  
 6 A Again, assuming that law regarding the 15 days was in  
 7 effect, no, you could not. No one can after that 15th  
 8 day.  
 9 Q So if you're early voting, isn't it at least one -- some  
 10 of the days aren't at least 15 days out, you can't  
 11 register to vote at that location like all these other  
 12 counties, can you?  
 13 A Nobody can register to vote two days before an election.  
 14 (Deposition Exhibit Number 51 marked for identification.)  
 15 Q You have what is marked Exhibit 51 and 52. Do you  
 16 recognize these documents?  
 17 A Yes.  
 18 Q Did you know during the 2010 election cycle there was  
 19 only 22 partial days of early voting in Shannon County?  
 20 A I believe we discussed that, yeah.  
 21 Q You did know there were only 22 days?  
 22 A That there was issues with the Shannon County voting from  
 23 the newspaper.  
 24 Q Right. Did you know how many days of actual early voting  
 25 at a physical location in Shannon County there were?

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1 A You have told me there were 22 a number of times.  
 2 Q All right. Other than -- do you have anything to refute  
 3 that?  
 4 A I don't remember what the newspaper story said.  
 5 Q Okay. And then how many -- with 22 days, partial days of  
 6 early voting in Shannon County, what percent of the  
 7 Shannon County folks voted absentee balloting?  
 8 A Four hundred eighty-eight, number of absentee ballots  
 9 returned.  
 10 Q What percent is that?  
 11 A 18.57 percent.  
 12 Q And the rest of the state got how many -- how many days  
 13 of early voting during the 2010 election cycle?  
 14 A The requirement at that time was to begin absentee voting  
 15 45 days before the election.  
 16 Q So they all received somewhere between 30 and 35 days of  
 17 actual open courthouse days?  
 18 A I wouldn't know for sure, but they were supposed to start  
 19 45 days because that is what the law was because we  
 20 changed it in 2011.  
 21 Q In 2011, what was the law change that affected early  
 22 voting?  
 23 A The law change in 2011 regarding absentee voting was  
 24 changing it from 45 days, which was a Saturday, to -- we  
 25 changed it to 46 days, which would be a Friday. And then

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1 we also added that the county auditors must have their  
 2 ballots in-house 48 days before the election so that on  
 3 the 46th day they could mail out all the requests that  
 4 they have received since the beginning of the year.  
 5 Q Is there any rules on how many workers are required at a  
 6 location for early voting in Pine Ridge?  
 7 A There are no rules specific to a county.  
 8 Q Right. But this is a county without a courthouse. How  
 9 many -- what's the minimum number of workers you would  
 10 need? Could you do a satellite location with one worker  
 11 in Pine Ridge? Could they man the station for early  
 12 voting?  
 13 A It might be possible if that person also spoke Lakota.  
 14 Q So you would need an interpreter or a person who was  
 15 bilingual?  
 16 A That's a requirement for --  
 17 Q And then some person to maintain the ballot box?  
 18 A Unless that was the same person.  
 19 Q So it's your position if they spoke Lakota fluently, one  
 20 person could go ahead and do the job?  
 21 A It's really up to the county auditor.  
 22 Q I'm asking your -- your position as chief election  
 23 officer for the State of South Dakota, how many people do  
 24 you think are required?  
 25 A My opinion is irrelevant. It's up to that county

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1 auditor.

2 Q I'm asking your opinion.

3 A I don't know. I have only assisted with one election

4 hands-on, and that was the McPherson County. And I don't

5 know what I would do where I had to have a Lakota

6 translator. I would have to have a -- the AutoMARK that

7 had the Lakota information to make sure that was working,

8 plus the ballots. I am not sure how I would do it.

9 Q What are the minimum qualifications for the people

10 on-site?

11 A That is up to the county auditor.

12 Q What would you consider the minimum qualifications to be?

13 Are they listed anywhere?

14 A I don't believe so.

15 Q All right. So what would you consider the minimum

16 requirements to be for those folks to maintain or work a

17 satellite station in Shannon County?

18 A Aside from the Lakota language, I don't think it would be

19 anything different than what they would have at a

20 courthouse.

21 Q All right. What are those minimum requirements at a

22 courthouse?

23 A Whatever the county auditor deems them necessary to hire,

24 those folks.

25 Q What is your understanding of what most of the county

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1 don't know.

2 Q Any minimum size?

3 A Not --

4 Q No?

5 A Not that I am aware of.

6 Q Anything to do with minimum parking area?

7 A No.

8 Q No restrictions there?

9 A I don't believe so.

10 Q No minimum standards with the location other than being

11 accessible for -- or conform to the ADA?

12 A I don't believe so.

13 Q Why didn't you ever look at the number of early voting

14 days for the 2004 election cycle at a location in Shannon

15 County? Why didn't you ever research back to that?

16 A Because by March of 2012, I knew that the primary and

17 general election was going to be fine because of the

18 agreement with Shannon County.

19 Q Why didn't you research it for determining whether or not

20 there was a reciprocal relationship between voter turnout

21 and absentee balloting?

22 A Just never did.

23 Q Same question for the 2006 election cycle; why didn't you

24 ever look at the number of days where there was an actual

25 location and determine the correlation between early

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1 auditors deem appropriate or the minimum requirements?

2 A I have no idea.

3 Q You have no idea what the minimum requirements are for

4 people that man an election box at a satellite location?

5 A I don't know what the county auditors' determination is

6 on how and why they hire staff.

7 Q Your only requirement is that one of the workers speak

8 Lakota, and they could handle the box?

9 A For Shannon County they have to have a Lakota speaker

10 there because of the Voting Rights Act.

11 Q But it could be any administrative person from the

12 auditor's office that accompanied that particular person?

13 A It's completely up to the county auditor on what he or

14 she wants.

15 Q What would you consider as the minimum requirements?

16 A I'm not sure.

17 Q All right. What do you think is appropriate pay for

18 those two staff workers to go ahead and man the box?

19 A No idea.

20 Q What are the requirements of the location for a satellite

21 office?

22 A I don't know what they would be.

23 Q No idea on the location requirements?

24 A I'm sure it has to be disability accessible and, I mean,

25 all those federal type of rules. But other than that, I

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1 voting and --

2 A No reason.

3 Q No reason? Same question for the 2008 election cycle.

4 A No reason.

5 Q No reason for -- you couldn't think of any reason for

6 researching the previous problems that had occurred at

7 Shannon County?

8 A I would love to know absolutely every statistic of every

9 election in South Dakota and have all kinds of analysis,

10 but there is only so many hours in the day, and I don't

11 know.

12 Q Have you talked with anyone other than your attorney

13 about the number of days of early voting that were in

14 Shannon County in the 2004 election?

15 A I don't think so.

16 Q Have you ever talked to anyone besides your attorney

17 about the number of days in Shannon County of early

18 voting for 2006?

19 A I don't think so.

20 Q Same question for 2008.

21 A Don't think so.

22 Q Same question for 2010.

23 A Possibly.

24 Q Who did you talk to besides your attorney about the

25 problems or how to correct the problems with the lack of

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1 early voting in Shannon County?  
 2 A I didn't.  
 3 Q You didn't talk to anybody?  
 4 A About those three areas you just mentioned.  
 5 Q What did you talk about?  
 6 A Campaign strategy.  
 7 Q Okay. Do you have any idea how much it cost to rent a  
 8 location in Pine Ridge?  
 9 A I do not.  
 10 Q Why didn't you ever research that cost for early voting?  
 11 A Not my responsibility. It's the responsibility of the  
 12 county auditor.  
 13 Q Have you ever researched the travel costs for going ahead  
 14 and doing early voting in Pine Ridge?  
 15 A No.  
 16 Q Why not?  
 17 A It's not my responsibility.  
 18 Q Have you ever researched any of the miscellaneous costs  
 19 for conducting early voting in Shannon County?  
 20 A No.  
 21 Q Do you know what -- what do you consider to be  
 22 miscellaneous costs?  
 23 A I don't know.  
 24 Q Would that be pencils, paper clips, basic office --  
 25 A I do not know.

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1 voting?  
 2 A On an absentee location, which would be your courthouse,  
 3 or in this case in Pine Ridge, they don't have to use a  
 4 poll book. They can use the computer.  
 5 Q Have you ever heard that the poll book excuse was being  
 6 used by the county for going ahead and saying that was an  
 7 additional cost for absentee balloting?  
 8 A No.  
 9 Q No one from the county has ever said we need more money  
 10 for poll books to go ahead and do absentee balloting?  
 11 A No.  
 12 Q Are poll books mandatory for early voting on election day  
 13 from 8:00 to 3:00?  
 14 A I don't believe so.  
 15 Q Did you ever research how much notices cost, press  
 16 releases, KILI radio or something, to go ahead and  
 17 publicize where the voting location is?  
 18 A No, because that is the county auditor's responsibility.  
 19 Q When you give money to the county or distribute the HAVA  
 20 funds to Shannon County, do you distinguish between early  
 21 voting expenditures and regular election expenditures?  
 22 A It's up to the county auditor to put the information on  
 23 that reimbursement form. There is nothing --  
 24 Q But do you require that the auditor distinguish between  
 25 early voting in Shannon County and other election

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1 Q Are poll books required for going ahead and doing early  
 2 voting at future elections in Pine Ridge?  
 3 A They would have the option during absentee voting if they  
 4 were going to use it on paper or the computer. I would  
 5 assume they use it on the computer, but I don't know.  
 6 Q When is it mandatory that the folks at any early voting  
 7 location down at Pine Ridge go ahead and have poll books  
 8 in place?  
 9 A Poll books aren't required during absentee voting. They  
 10 are required on election day.  
 11 Q Why aren't -- why aren't poll books required for absentee  
 12 balloting?  
 13 A Because when those are taking place, it's in their  
 14 office. It's not at each precinct during election day,  
 15 so they are able to use the computer and mark off who  
 16 came in to request the ballot, who cast a ballot.  
 17 Q Are you aware of any discussion regarding early voting on  
 18 a weekend in Pine Ridge?  
 19 A I'm not.  
 20 Q Never heard anything about that?  
 21 A No.  
 22 Q All right. So the reason you didn't consider the cost of  
 23 poll books and internet in the calculation or in any  
 24 calculation for early voting is because it's not required  
 25 for early voting? Poll books are not required for early

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1 expenditures?  
 2 A It's all just based off that form.  
 3 Q All right. So do you know what percent the State of  
 4 South Dakota is paying for early voting at Pine Ridge  
 5 this election cycle?  
 6 A We haven't received their reimbursement form. And that  
 7 may not include all of their expenses, but it would be  
 8 the -- the HAVA reimbursable expenses.  
 9 Q Did you approve the \$12,000 expenditure for early voting  
 10 because of the litigation?  
 11 A I don't remember when the lawsuit was filed.  
 12 Q Was it in January?  
 13 A I don't remember.  
 14 Q Do you remember your March 2nd letter was approximately a  
 15 week before the preliminary injunction hearing?  
 16 A I don't remember when we were out in Rapid City.  
 17 Q You don't remember when you were in court in front of  
 18 Judge Schreier?  
 19 A I don't remember the date.  
 20 Q Did the litigation play any role in you approving that  
 21 \$12,000 expenditure?  
 22 A I don't remember when we first got the lawsuit notice.  
 23 Q I'm not asking that. I'm asking when you wrote that  
 24 March 2nd letter before the early March hearing in front  
 25 of Judge Schreier, did the litigation play any role in

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1 your approving that \$12,000?  
 2 A My concern, Shannon County said they were \$12,000 short,  
 3 and would I be willing to give them additional funds.  
 4 Q Right. They wrote --  
 5 A I said yes.  
 6 Q They made that request on March 1st?  
 7 A Yes.  
 8 Q And you responded on March 2nd?  
 9 A Yes.  
 10 Q Did anyone from the county call you?  
 11 A I don't think so. I don't remember.  
 12 Q All right. You didn't send \$12,000, did you?  
 13 A No. It was an additional allowable reimbursement.  
 14 Q For early voting?  
 15 A I don't have my letter. For staff at early voting  
 16 locations in Shannon County.  
 17 Q Say again.  
 18 A \$12,000 worth of expenses for an eight-hour workday in  
 19 order to staff early voting locations in Shannon County.  
 20 Q Right. And you responded quickly because of the  
 21 litigation?  
 22 A I responded quickly because it was March, and the  
 23 election was in June.  
 24 Q Okay. During the hearing why didn't you tell Judge  
 25 Schreier that not all the counties were required to

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1 A Correct.  
 2 Q All right. But you just -- I thought you testified  
 3 earlier that there's several counties who don't submit  
 4 receipts?  
 5 A I testified earlier that in the files I don't have  
 6 receipts for everyone in previous elections. I also  
 7 stated that I don't like that policy. I think everyone  
 8 should have to submit receipts so that we have a complete  
 9 file.  
 10 Q All right. And then you stated to the "Journal" on  
 11 January 18th that everyone in Shannon County has the same  
 12 opportunity for early voting by using the mail or  
 13 visiting the courthouse?  
 14 A That is true.  
 15 Q You just meant they had to drive to another county to a  
 16 courthouse?  
 17 A Well, they had to drive to where the Shannon County  
 18 government was located, which was at that time -- or I  
 19 guess still is Hot Springs.  
 20 Q Is that where you consider the Shannon County government  
 21 to be located, is in Hot Springs?  
 22 A I don't know where the Shannon County Commission meets,  
 23 but that is where the county auditor is.  
 24 Q For Fall River. And they share -- they share that  
 25 office, correct? They share that position?

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1 submit receipts?  
 2 A I don't remember that was a question.  
 3 Q Is Shannon County the only county that has to go ahead  
 4 and request pre-approval like this March 1st letter?  
 5 A Shannon County was the only county that requested  
 6 additional funds.  
 7 Q Have -- has there ever been any discussion regarding  
 8 promulgation of rules regarding the creation of a HAVA  
 9 plan?  
 10 A Promulgation of -- not since I have been Secretary.  
 11 Q Ever heard of it anywhere?  
 12 A I don't remember reading it in the administrative rules.  
 13 Q So the task force, these other things, that is just the  
 14 requirements laid out in the plan?  
 15 A Yes.  
 16 Q Okay. You told the "Rapid City Journal" on January 18th,  
 17 2012 that there were restrictions on how money can be  
 18 used?  
 19 A Correct.  
 20 Q Right. Were you suggesting that early voting wasn't one  
 21 of those expenses under HAVA?  
 22 A I was explaining that the restrictions are due to the  
 23 HAVA state plan and the Help America Vote Act.  
 24 Q Okay. Do you remember stating that "I can't ensure that  
 25 money is spent appropriately without a receipt"?

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1 A Pretty sure I read somewhere she is also the designated  
 2 auditor for Shannon County.  
 3 Q You also told the "Argus Leader" during that same period  
 4 it sounds like Shannon County is low on county funds, and  
 5 they were asking for additional funds. Do you remember  
 6 telling the "Argus Leader" that in January?  
 7 A Yes.  
 8 Q So was that before or after your March 1st -- the  
 9 March 1st letter from Shannon County to you?  
 10 A Well, if that newspaper was January, that was before the  
 11 March letter.  
 12 Q So you were already getting requests for funding or you  
 13 knew there was a need for funding in Shannon County in  
 14 January of 2012?  
 15 A I am assuming that that article was due to the lawsuit  
 16 being filed.  
 17 Q And then you said, "but all counties struggle with their  
 18 finances"?  
 19 A Yes. I've never heard a county say they have lots of  
 20 money.  
 21 MR. WILLIAMS: Do you have a copy of that article we  
 22 can take a look at?  
 23 MR. SANDVEN: No.  
 24 MR. WILLIAMS: I'm going to object to this line. The  
 25 quotations are taken out of context then. I would ask

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1 that the article be provided.  
 2 MR. SANDVEN: You're asking me to provide it to you?  
 3 MR. WILLIAMS: Yes.  
 4 Q All right. The treasurer -- you are the treasurer of  
 5 Committed to Victory?  
 6 A Yes.  
 7 Q And that's a PAC whose purpose is to elect Republican  
 8 candidates?  
 9 A Yes.  
 10 Q Shannon County has approximately nine times as many  
 11 Democrats as Republicans?  
 12 A How many?  
 13 Q Eight or nine times as many.  
 14 A I thought we said 77 percent earlier, but maybe that was  
 15 a different number.  
 16 Q All right. So about 77 percent Democrats there,  
 17 13 percent Republicans?  
 18 A No. I would -- if I looked, I'm sure there are some  
 19 Independents registered there, too, and there is probably  
 20 a Constitution Party or other party.  
 21 Q Right. In your report, weren't there 7683 registered  
 22 voters, and that 588 were Republicans in Shannon County?  
 23 A I would have to look again.  
 24 Q Go ahead.  
 25 A Do you remember which --

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1 Q I think it's your report.  
 2 A In Shannon County on October 18, 2012, there were 7,530  
 3 total active registered voters, 571 were Republican,  
 4 5,813 were Democratic, 8 were Libertarian, zero were  
 5 Constitution, 46 were other, and 1,092 were Independent,  
 6 and 1,279 are inactive.  
 7 Q So under the new statistics it was about ten to one  
 8 Democrat to Republican?  
 9 A What are the new statistics?  
 10 Q The ones you just read.  
 11 A Out of the 7,500, 500 are Republican and 5800 are  
 12 Democrat.  
 13 Q So what is that ratio approximately?  
 14 A I don't know.  
 15 Q May I hand you what has been marked Exhibit 55.  
 16 Mr. Gant, have you ever seen that document before?  
 17 A Yeah, I believe so.  
 18 Q When did you first see that?  
 19 A I don't remember.  
 20 Q Have you ever read it?  
 21 A Yes.  
 22 Q Do you recall when it is, the first time you read that  
 23 agreement?  
 24 A I do not.  
 25 Q Have you ever participated in any discussions with the

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1 parties regarding implementation of that memorandum of  
 2 agreement?  
 3 A No. No.  
 4 Q Ever directed anyone on your staff to find out how that  
 5 memorandum of agreement is being carried out?  
 6 A No.  
 7 Q How come?  
 8 A It's not our responsibility.  
 9 Q Did you know Chris Nelson participated in some of those  
 10 meetings?  
 11 A No.  
 12 Q But you don't consider you to have any role in the  
 13 carrying out of this memorandum of understanding?  
 14 A This is between -- this is their working -- I don't know.  
 15 I remember there is a Department of Justice agreement for  
 16 Shannon County that I know we have discussed regarding  
 17 the Lakota language and --  
 18 MR. WILLIAMS: Just for point of clarification, when  
 19 we are talking about parties to this agreement, are those  
 20 parties seen on Page 24? Is that your question?  
 21 MR. SANDVEN: I didn't ask that. I asked if he had  
 22 done anything to assist in the carrying out of this MOU.  
 23 A When does it expire?  
 24 Q I'm going to hand you what's been marked Exhibit 56. Do  
 25 you recall when the first time you saw that document is

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1 for funding?  
 2 A No, I don't. I don't -- I don't remember this.  
 3 Q Never saw that document before from Four Directions or  
 4 from the tribe?  
 5 A I'm not sure.  
 6 Q Were you aware of any requests from any leadership in the  
 7 Oglala Sioux Tribe to have early voting in Shannon  
 8 County?  
 9 A When?  
 10 Q Any time.  
 11 A Yeah. We talked about the \$15,000 Four Direction money.  
 12 Q Right. That was Four Directions, wasn't it? What I'm  
 13 asking -- that letterhead is from the Oglala Sioux Tribe,  
 14 isn't it?  
 15 A It talks about Four Directions and 5,500, 11,000 total.  
 16 Q It doesn't just talk about money. It talks about the  
 17 purpose for the money, doesn't it; that the tribe, the  
 18 Oglala Sioux Tribe, wanted early voting for the folks  
 19 over there?  
 20 A It's a letter from the tribe requesting the county  
 21 commission to have absentee ballots at two satellite  
 22 offices, one in Pine Ridge Village and one in Kyle for  
 23 the six weeks of absentee ballot period.  
 24 Q Were you aware of that request from the tribe?  
 25 A I don't remember.

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1 Q Have you ever been part of conversations regarding more  
2 than one satellite location at Shannon County, kind of  
3 like Pennington County?  
4 A I don't believe so.  
5 Q You never knew the tribe wanted that?  
6 A I don't remember reading this letter.  
7 Q I'm asking you if you remember any communication with any  
8 tribal official regarding multiple locations in Shannon  
9 County for early voting?  
10 A My only contact with tribal officials has been with  
11 President Steele. I don't think we talked much about  
12 elections, if anything. It was mostly about the business  
13 proposal.  
14 Q All right. So you weren't aware of any requests from the  
15 Oglala Sioux Tribe --  
16 A I don't remember.  
17 Q -- regarding early voting?  
18 A I don't remember.  
19 Q Can't remember anything here today?  
20 A No.  
21 Q No?  
22 A No.  
23 Q Have you seen these minutes before, what's been marked  
24 Exhibit 36?  
25 A Maybe if it was part of a court proceeding.

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1 out on a break.  
2 (Recess at 3:22 p.m.)  
3 (Deposition Exhibit Numbers 145 and 146 marked for  
4 identification.)  
5 Q Have you read this May 7, 2012 letter from O.J. Semans,  
6 Four Directions?  
7 A Yes.  
8 Q He wanted you to -- he was asking you to make voting more  
9 accessible for Natives by amending the state plan for  
10 HAVA.  
11 A Yes.  
12 Q This has been a couple of months ago?  
13 A Yes.  
14 Q Have you done anything to start that amendment process?  
15 A My plan was to put this with the file on developing the  
16 new plan, and also seeing how the funding issue was going  
17 to develop from the June primary. And with today being  
18 July 9th, it doesn't appear that Shannon County needed  
19 the funds before the election.  
20 Q All right. I think on the second page -- all right. On  
21 the third page, it gives you some examples of Native  
22 American communities that would benefit from the addition  
23 of a community voting site. Do you know where Wanblee is  
24 in Jackson County?  
25 A I'm not sure.

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1 Q If you go to the fourth page, last paragraph, "A request  
2 by Oglala Sioux Tribe President Two Bulls was presented  
3 by O.J. Semans of Four Directions..." Have you read that  
4 before or did you know that that happened?  
5 A I don't remember.  
6 Q And these are the September 3rd, 2010 minutes. Did you  
7 know at this meeting that a notice of termination was  
8 provided by Sue Ganje?  
9 A I remember reading that or hearing about it from the  
10 newspaper or television.  
11 Q Has Four Directions made any requests from your office  
12 since this litigation commenced for early voting where  
13 you had other Native American populations?  
14 A I don't remember if the letter talked about absentee  
15 voting. But, yes, I have received a letter.  
16 Q Do you recall when that was?  
17 A I do not.  
18 Q Around May 7th, 2012?  
19 A I don't remember the date.  
20 Q Do you remember getting asked to make voting more  
21 accessible and equal for Native Americans by amending the  
22 state plan?  
23 A I would have to look at the contents of the letter again.  
24 It was a page or two, if I remember correctly.  
25 MR. SANDVEN: Let's take five minutes. I'll print it

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1 Q Do you know where -- you don't know where Wanblee is?  
2 A I remember hearing of it, but I couldn't point to it on  
3 the map.  
4 Q It's kind of an Indian town in the northeastern corner of  
5 Pine Ridge Indian Reservation. No?  
6 A I said I recognize the name, but I couldn't point to it  
7 in Jackson County.  
8 Q Norris in Mellette County, and he lists a bunch of  
9 counties where there's a heavy Native population --  
10 A Yes.  
11 Q -- that would benefit from a community voting site?  
12 A Yes.  
13 Q What was your response to this? Did you write this  
14 response?  
15 A Yes. "I appreciate your suggestion that particular  
16 communities may benefit from Vote Centers; however, Vote  
17 Centers must be instituted and adopted at a jurisdiction  
18 wide basis. For example, in order for Eagle Butte to  
19 utilize Vote Centers, Dewey County as a whole must do the  
20 same."  
21 Q Where does it say that?  
22 A In my letter of May 23rd.  
23 Q Right. Where -- did you write this letter? I know you  
24 signed it. Did you write it?  
25 A Andrew Pietrus wrote it and I approved it.

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1 Q All right. So in this letter, what are you -- where are  
2 you getting it from that "In order for Eagle Butte to  
3 utilize Vote Centers, Dewey County as a whole must do the  
4 same"?

5 A The concept of vote centers is where you don't have to  
6 vote at your precinct location. You are able to vote at  
7 any location within the county.

8 Q You talk about the advantages to it; voter accessibility,  
9 reduction of voter fraud?

10 A Correct.

11 Q And then you say, "Without the realization of cost  
12 savings, Vote Centers are not practical or feasible"?

13 A That's correct.

14 Q All right. You have \$9 million of HAVA money. Why not  
15 put a little bit of that into these Native populations at  
16 these different towns?

17 A Vote centers became -- the first law regarding vote  
18 centers was for a sole election in 2011. During the 2012  
19 legislative session, we had a permanent law put in place  
20 that allowed any jurisdiction to use vote centers. With  
21 the system being so new, we have used it in five  
22 elections. Two of them were in Sioux Falls, and then one  
23 was in each of Hyde, Potter, and Hand Counties this past  
24 June, 2012.

25 So with the system being so new, there is still a

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1 number of areas where we have to learn, and we have to do  
2 it right. So that is why we are not doing this statewide  
3 and requiring everyone to do it and spending tons of  
4 money on it.

5 Q What is "tons of money"? How much does one of these  
6 cost?

7 A Depending on how many you buy, you can get it for less  
8 than 2,000 bucks a unit.

9 Q So for a vote center it would just be a couple thousand  
10 bucks for each one of these communities, plus some time?

11 A No.

12 Q What's the high cost? How much would it cost to do a  
13 community voting site at these seven Indian communities?

14 A You can't just do it at those communities.

15 Q What would be the cost of working with Dewey County?

16 A Well, we would have to look at Dewey County and how many  
17 current precinct election day voting locations they have,  
18 and how they could consolidate those and then institute  
19 vote centers which allows people from anywhere in the  
20 county to vote at one of those particular vote centers.

21 Q Have you went ahead and -- have you done anything to try  
22 to encourage Indian voting or high Indian population  
23 voting anywhere at any time since you have been Secretary  
24 of State?

25 A I've encouraged all South Dakotans to get out and vote.

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1 Q Right. But like the five -- the five -- you said there's  
2 been five of these voting centers that you have been a  
3 part of?

4 A Yes.

5 Q Any of those been in Indian Country?

6 A No.

7 Q Why not?

8 A Haven't gotten there.

9 Q Why not?

10 A My plan with vote centers and electronic poll books is to  
11 move very slowly and very cautiously. It is an amazing  
12 system that eliminates that person who goes to the  
13 polling place at 6:55 and the poll worker says, no, you  
14 were supposed to go 30 miles over there. A system that  
15 allows us to eliminate that problem is an amazing system.

16 Q Right. So why not do it with some Indians?

17 A We have to start slowly so that --

18 Q With white people first?

19 A No. Sioux Falls was the starter of this program. When I  
20 was a senator from Sioux Falls, I worked very closely  
21 with the Sioux Falls School District. That is where it  
22 started. So, of course, it continued in 2012. Then for  
23 the 2012 primary, I wanted to use three rural counties.  
24 And those three counties requested and were approved to  
25 use vote centers.

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1 Q Did you ever have any outreach to any heavy Indian  
2 populated area regarding potentially using this center?

3 A I've thought about this extensively.

4 Q You've thought about it?

5 A Yes.

6 Q Have you -- have you done any outreach to any Indian  
7 leader of any of the nine federally recognized Indian  
8 tribes in the State of South Dakota regarding a potential  
9 voting center?

10 A No.

11 Q Why not?

12 A Because we haven't gotten there yet.

13 Q Why wouldn't you start with the most impoverished areas  
14 first to go ahead and do this rather than going to  
15 some -- you know, where you worked for a while?

16 A These counties, the state isn't paying for the electronic  
17 poll books. The counties are paying for it. Sioux Falls  
18 went from 58 voting precincts to 10 vote center locations  
19 which meant anyone who lived within the boundaries of the  
20 Sioux Falls School District could vote at any one of  
21 those ten, irregardless of where they lived. In order to  
22 do that in Shannon County, there are many more issues  
23 that have to be resolved first.

24 Q Like what?

25 A Preclearance. The only way to make it cost effective --

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1 if memory serves, Shannon County has something like seven  
2 precinct locations. In order to save money by not having  
3 people at those locations, you would have to eliminate  
4 them. In order to eliminate some of them, you would have  
5 to get preclearance from the Department of Justice.  
6 Q During your tenure as South Dakota's Secretary of State,  
7 have you ever met with any tribal leader and discussed  
8 increasing Indian voter participation in the State of  
9 South Dakota?  
10 A I sent a letter to all tribal presidents asking something  
11 about elections, but I don't remember the exact details  
12 of the letter. And I have no response.  
13 Q Do you know when it went out?  
14 A I don't remember. During 2011, during the Cheyenne River  
15 Reservation election, I went up there and observed. I  
16 worked with -- I forget the gentleman's name. He works  
17 in the North Dakota office. He showed us some polling  
18 places there, and then a couple polling places in South  
19 Dakota.  
20 Q Was he on the tribal council or --  
21 A I don't know if he was on the council, but he was in  
22 charge of their election. I -- I don't remember his  
23 name.  
24 Q Why haven't you done more outreach to Indian Country to  
25 increase Indian voter participation? You have got all

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1 from them to do anything about it?  
2 A Yes.  
3 Q Why?  
4 A Because that was the first time they asked.  
5 Q Do you remember reading the "Argus Leader" here?  
6 A I'm sure I read the article --  
7 Q All right.  
8 A -- six months ago.  
9 Q Go to the second page. Do you know who Lyla Hutchison  
10 is?  
11 A Yes.  
12 Q Have you ever spoke with her?  
13 A Yes.  
14 Q When did you speak with her?  
15 A After the court hearing.  
16 Q All right. Remember her stating in the article "That was  
17 all we could afford. I agree with the voters in the  
18 county. As a Commissioner, I don't know what we can do  
19 about it." Remember her saying -- reading that in the  
20 article?  
21 A Yes.  
22 Q Why didn't you pick up the phone the next day and say,  
23 Lyla, here is what you can do about it?  
24 A Because it's their responsibility, not mine.  
25 Q Okay. Then on the last page of the article again, after

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1 these lawsuits, you have got all this stuff going on  
2 regarding equal access to the polling place. Why haven't  
3 you done more to go ahead and reach out to Indian  
4 leadership?  
5 A I think I can always do better. I can always do more.  
6 Q But you really haven't done anything.  
7 A I sent them a letter. I went and observed the Cheyenne  
8 River election.  
9 MR. SANDVEN: Can I have this marked Exhibit 147.  
10 (Deposition Exhibit Number 147 marked for  
11 identification.)  
12 Q Handing you a January 18th "Argus" article, do you  
13 remember on the second page of this -- I'm sorry. Did  
14 you make the quote on the last page of this exhibit, "It  
15 sounds like Shannon County is low on county funds, and  
16 they were asking for additional funds, but all counties  
17 struggle with their finances"? Do you remember saying  
18 that on January 18th to the "Argus"?  
19 A Yes.  
20 Q So you knew in January -- mid-January of 2012 that  
21 Shannon County was -- was struggling with financial  
22 issues, and that was the cause of the early voting  
23 issues. You knew that?  
24 A Yes.  
25 Q But you waited a month and a half until you got a request

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1 you made the statement that Shannon County is low on  
2 county funds, you talk about Senate Bill 58 that would  
3 enable jurisdictions to establish voter -- voting  
4 centers, allowing voters to cast their ballots wherever  
5 it is easiest?  
6 A Yes.  
7 Q All right. Were you suggesting that that would help  
8 Indian Country?  
9 A I think it will help all of South Dakota.  
10 Q Do you think it will help Indian Country?  
11 A I think it will help all of South Dakota.  
12 Q You'll just get the rest of South Dakota done for a  
13 while, and then you will go to Indian Country?  
14 A No.  
15 Q When will you go to Indian Country with this?  
16 A Hopefully soon.  
17 Q What does "soon" mean?  
18 A Don't know.  
19 Q Okay. Then, Mr. Gant, you also -- you read the article  
20 where it said, "Participation hurt. In 2004, 15,000 in  
21 donations paid for three weeks of early voting...At  
22 57 percent, voter turnout in Shannon County more than  
23 doubled compared to the 2000 general..." Did you read  
24 that?  
25 A I did now.

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1 Q You just didn't read that part of the article at the  
2 time; don't remember?  
3 A Don't remember.  
4 Q Okay. How do you prepare a county for an upcoming  
5 election?  
6 A We have election schools that take place during the  
7 county auditor conventions, and we provide numerous  
8 resources on the website, and any questions or anything  
9 that someone would ask.  
10 Q Have you ever went to Indian Country or Indian leadership  
11 to try to encourage participation in your conventions so  
12 the tribes could go ahead and assist with their early  
13 voting on the reservation?  
14 A I think the gentleman in Cheyenne River and I, I think we  
15 talked about that.  
16 Q Was he a tribal leader?  
17 A I know -- I do not know the title of his position.  
18 Q You know how tribes work. If I had a problem with  
19 elections, I wrote letters to you, you are the boss of  
20 elections.  
21 A I do not run tribal elections.  
22 Q No, I didn't suggest that. But why didn't you go to the  
23 government leaders regarding elections if you wanted to  
24 encourage Indian voter participation?  
25 A The reason for that meeting was to understand how their

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1 A There is three staff, a director, and myself.  
2 Q All right. Who are the -- who are the three staff again  
3 that work primarily with elections?  
4 A Brandon Johnson, Andrew Pietrus, Patrick Baker, and Aaron  
5 Lorenzen is the director.  
6 Q Okay. How much of your time is dedicated to the  
7 administration of elections, sir?  
8 A I've divided the office in three areas; elections,  
9 business services, and then kind of an administrative  
10 catchall which is like notaries, concealed weapons,  
11 trademarks, that -- if you were to average it out, I  
12 suppose it's close to a third, a third, a third.  
13 Q All right. So what is your role with the counties in  
14 preparing the counties for county elections? You don't  
15 do anything unless they ask?  
16 A No. We always have election schools. I have election  
17 schools for cities and schools as well, school districts.  
18 Q How many schools do you put on a year?  
19 A It varies. We will visit with the county auditors at  
20 every one of their conventions. And I know the city and  
21 schools, they have us lined up for three different days  
22 in December.  
23 Q You ever done a school on a reservation?  
24 A No. They are usually in Rapid City, Sioux Falls, or  
25 Pierre.

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1 elections work and if there is anything we could learn  
2 from each other, and maybe he could come and visit with  
3 us on election day.  
4 Q Right. But that wasn't the leadership of one of the nine  
5 tribes.  
6 Last time I ask it. Why don't you just go to the  
7 leadership of the nine tribes and say, here, we have got  
8 some voting issues. Here is how we work it out. Here is  
9 how we can increase voter participation --  
10 A I tried.  
11 Q -- government to government. You wrote a letter?  
12 A I wrote a letter.  
13 Q Never made a call?  
14 A I don't think so.  
15 Q Okay. Have you ever met with the tribal council at  
16 Oglala Sioux Tribe?  
17 A No. Just President Steele.  
18 Q Just went to his office?  
19 A No. We met at a building on the east side of Pine Ridge.  
20 I forget the name of it.  
21 Q How many of your employees are dedicated towards the  
22 Secretary of State's administration of election duties?  
23 A I guess including myself, would be five of us.  
24 Q Who are they besides the four -- the three you mentioned  
25 earlier?

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1 Q Ever had an Indian show up for one?  
2 A I remember there was some -- I remember visiting with a  
3 gentleman from Shannon County when we were in Rapid City  
4 for that city/school school.  
5 Q How many of these schools have you put on for elections?  
6 A I suppose five in 2011, and probably -- I bet we have  
7 only done one so far this year.  
8 Q So out of those six schools, you have attended all of  
9 them?  
10 A Yes.  
11 Q How many participants usually show up for the average  
12 school?  
13 A Well, they are different. I think we had around 300 city  
14 and school districts come at the three different areas.  
15 Q Three hundred people came to one of your trainings?  
16 A Total for those -- for those three for the city and  
17 school elections.  
18 Q Okay.  
19 A Then it would be around 60 or 70, 80 would be pushing it  
20 if there were a number of deputy auditors who would have  
21 come to the two auditor conferences.  
22 Q Right. And you remember --  
23 A We also had -- there must have been six in '11 because we  
24 had a new auditor training because there were a handful  
25 of auditors who had just gotten elected. So we wanted to

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1 do something special for them because they hadn't been an  
2 auditor before.

3 Q So approximately five hundred people have attended your  
4 trainings since you have been Secretary of State?

5 A Well, 300 plus maybe 80, so 380.

6 Q Three hundred eighty.

7 A Those 80 came twice.

8 Q And you remember one Indian coming?

9 A No. I remember talking about the school district in  
10 Shannon County with a gentleman in Rapid City when we had  
11 lunch, but I don't remember if he was --

12 Q Have you ever done any outreach on any of the Indian  
13 reservations to go ahead and participate in the  
14 trainings?

15 A Yes.

16 Q How?

17 A I went to Cheyenne River.

18 Q For the -- you met with a Cheyenne River tribal member  
19 and asked him?

20 A I met with the gentleman who was in charge of tribal  
21 elections.

22 Q On the reservation election board, and you invited him to  
23 one of your trainings?

24 A We went up there and visited, and he drove us around, and  
25 we talked about how we could work together more.

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1 Q Besides hiring the translator, anything else you did to  
2 help out the elections in Shannon County since you have  
3 been the Secretary of State?

4 A On March 2nd I wrote them a letter with additional funds.

5 Q Authorized \$12,000. Anything else?

6 A A visit with Sara Beth Donovan with the Department of  
7 Justice.

8 Q For preclearance or regarding what?

9 A What was the issue? Oh. There was a -- my conversations  
10 with her aren't private, are they?

11 MR. WILLIAMS: No.

12 A It was regarding a -- one of the residents of a  
13 particular precinct had a restraining order against him  
14 from the lady who worked at the precinct location, and  
15 there was concern about how that situation was going to  
16 be handled.

17 Q How did that issue come to your office or to you? How  
18 did it get to you?

19 A It may have been from the state's attorney. It could  
20 have been the U.S. Attorney, too.

21 Q So why is that -- why isn't that a legal issue like you  
22 considered my complaint to be?

23 A This was --

24 Q It's involving a restraining order, right?

25 A -- a day before the election. Either that Friday or

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1 Q Was there any follow-up on that meeting?

2 A I'm pretty sure I wrote a thank you note, thanks for  
3 taking us around, and he might have bought lunch. I  
4 don't remember. He was very nice.

5 Q Any action ever taken in response to that outreach you  
6 just described?

7 A Nothing yet.

8 Q Okay. What counties do you think need the most help in  
9 preparing for an election?

10 A Counties with new auditors.

11 Q How about Shannon and Todd?

12 A Their election is run by two auditors who have been there  
13 for many, many years. They clearly know how to run an  
14 election.

15 Q Since you have been South Dakota's Secretary of State,  
16 have you ever went ahead and done anything to help  
17 prepare Shannon County for an election?

18 A Indirectly.

19 Q How?

20 A Through hiring the Lakota translator.

21 Q And you provided the funding or you did the actual hiring  
22 yourself, your office?

23 A We hired the Lakota translator.

24 Q Out of Pierre?

25 A I don't remember where she is from.

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1 Monday before the Tuesday election.

2 Q So if it's -- you consider it to be a legal or -- legal  
3 issue or an issue for your discretion based upon the  
4 proximity to the election date?

5 A They called to let me know -- since I became Secretary, a  
6 number of conversations with Sara Beth Donovan with the  
7 Department of Justice to begin a relationship so that  
8 when she is in the state or when her election observers  
9 are here, that we have an open line of communication to  
10 talk to each other and, if the need arises, to help each  
11 other out.

12 Q All right. So during this recent election cycle, who did  
13 you help out? Who did you spend your most time with  
14 working, which counties?

15 A Oh, it would have been Hyde, Potter, and Sully. No.  
16 Hyde, Potter and, yeah, Sully.

17 Q What did you do to help them out, sir?

18 A We were assisting them in running their electronic poll  
19 books and vote center.

20 Q All right. So you sent your staff over to those  
21 particular counties to go ahead and assist or you  
22 provided telephonic assistance or --

23 A Staff and myself.

24 Q You went over there on-site to help out?

25 A Uh-huh.

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1 Q And how did you pick those particular counties; because  
2 of the new process?  
3 A They requested it, and I wanted to do it in a rural area.  
4 Q How long have you been involved in politics, sir, as an  
5 operative?  
6 A As an operative? I don't know if I am an operative. Oh,  
7 I don't know. 1980s.  
8 Q Aren't you in your mid 30s? How long have you been a  
9 candidate?  
10 A First time I was a candidate for public office was April  
11 of 2000.  
12 Q Did you start out as a Democrat?  
13 A No. I have always been a registered Republican.  
14 Q What political action committees have you been in charge  
15 of?  
16 A Committed to Victory and Senate Republican Campaign  
17 Committee.  
18 Q All right. For Committed to Victory, you are the  
19 treasurer?  
20 A Yes.  
21 Q You are the only officer?  
22 A Yes.  
23 Q How much money gets administered by you each election  
24 cycle?  
25 A Depends on how much I raise.

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1 Q Because of the bylaws' infrastructure?  
2 A Correct.  
3 Q Same question for Committed to Victory, you had the  
4 discretion?  
5 A Yes.  
6 Q And you are in charge of that political action committee  
7 now?  
8 A Yes.  
9 Q What is its purpose?  
10 A To elect Republicans.  
11 Q With you being the boss of all the elections, this --  
12 chief election officer, how come you didn't step away  
13 from that role?  
14 MR. WILLIAMS: I'm going to object to the term "boss  
15 of all elections," but go ahead and answer if you can.  
16 Q Chief election officer, South Dakota Secretary of State.  
17 A Because I am a Republican, I am an elected Republican,  
18 and if I choose, I will want to become an elected  
19 Republican again.  
20 Q Isn't it kind of funny, though, when you submit reports  
21 to yourself as Secretary of State?  
22 A I also do that with non-profits that I am involved with  
23 as well as other corporate documents.  
24 Q What non-profits do you sit on? Is this going to be a  
25 long list?

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1 Q 2010.  
2 A It was just over 11,000, 12,000, somewhere in there.  
3 Q 2012?  
4 A Zero.  
5 Q Okay. Nothing in '11?  
6 A Is it 17,000?  
7 Q What was the name of the other PAC that you are in charge  
8 of?  
9 A No. You asked if I was ever in charge of.  
10 Q Ever in charge of.  
11 A Yes. Senate Republican Campaign Committee.  
12 Q What year was that?  
13 A I believe it was '05 to 2010.  
14 Q Were you the boss of that? Were you the treasurer?  
15 A I was the treasurer, but not the boss.  
16 Q There were other officers?  
17 A We had a set of bylaws.  
18 Q All right. Were there other officers or were you the  
19 only officer?  
20 A I don't remember if I was listed as chairman and  
21 treasurer. I may have been. But I --  
22 Q You had the discretion to distribute money?  
23 A No.  
24 Q You didn't?  
25 A No.

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1 A No.  
2 Q Okay.  
3 A South Dakota Historical Society Foundation and the Delta  
4 Gamma Chapter Association.  
5 Q What is that?  
6 A Fraternity.  
7 Q Any other boards you sit on, sir?  
8 A Gant Group.  
9 Q What is the Gant Group?  
10 A It was my healthcare consulting business before I became  
11 Secretary.  
12 Q Mr. Gant, what is your educational background?  
13 A I graduated from Geddes High School and graduated from  
14 the University of South Dakota.  
15 Q What's your degree in?  
16 A My degree is in political science with a minor in  
17 business.  
18 Q What years, sir?  
19 A 1999.  
20 Q When you first learned of voting problems in Shannon  
21 County, what was your reaction? The concerns that we  
22 don't have the same access to early voting or the early  
23 voting locations in Shannon County like other folks, what  
24 was your initial reaction?  
25 A I don't remember.

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1 Q What is your reaction now?  
 2 A I'm very happy that we have solved -- a solution for  
 3 2012.  
 4 Q Did Pat Powers have any role in HAVA?  
 5 A No.  
 6 Q All right. He was the director of something for you,  
 7 right?  
 8 A When I mentioned before that I had three areas in my  
 9 office, he oversaw the administrative part.  
 10 Q Not a doggone thing to do with elections?  
 11 A Everyone in the office touches elections. I mean my  
 12 secretary answers the phone, and it's elections, it's  
 13 auditors who call. If the lines upstairs are busy, then  
 14 the basement receives election phone calls. If we are  
 15 going through petitions or we are going through election  
 16 day, it's all hands on deck.  
 17 Q Okay. So what -- what are his roles -- what is his role  
 18 or what was his role with elections? What did he do?  
 19 A Not much aside from when we received petitions from  
 20 candidates, he would Tweet and Facebook those, and he  
 21 helped with IT on election night reporting. We moved to  
 22 a cloud based server system, and he helped with that  
 23 process.  
 24 Q He is kind of a techie guy?  
 25 A Uh-huh. Yes.

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1 relationship so that we can try and help out.  
 2 Q Okay. So by promoting economic development on the  
 3 reservation, that helps voting?  
 4 A No. I mean the Secretary of State's office and the tribe  
 5 working together on economic development, which most  
 6 everyone agrees with, that that would be a step to move  
 7 us to where maybe there is other opportunities that we  
 8 could have to work together.  
 9 Q Right. But for the South Dakota Secretary of State and  
 10 your 15 employees and your resources, you know, your  
 11 skill set, why not focus on getting the voting stuff  
 12 taken care of at Shannon County before economic  
 13 development?  
 14 A I don't know. We just decided to start with business.  
 15 That was our -- my big focus on the first six months in  
 16 office, and it just seemed like a logical step because we  
 17 are developing this system, why not plan for the future,  
 18 and why not begin those discussions.  
 19 Q Do you think the State of South Dakota has a history of  
 20 limiting voting opportunities to Shannon County  
 21 residents?  
 22 A I don't know.  
 23 Q No opinion?  
 24 A No.  
 25 Q Mr. Gant, are you aware of the case Bone Shirt versus

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1 Q Did any HAVA money go to his campaign supply store?  
 2 A No.  
 3 Q Did he have any role in approving any HAVA expenditures?  
 4 A No.  
 5 Q Did he have any role in administering any part of the  
 6 state HAVA plan?  
 7 A No. We haven't developed one.  
 8 Q No, the previous plan.  
 9 A Oh, in 2010? No idea.  
 10 Q Okay. Do you think that poverty makes voting more  
 11 difficult?  
 12 A I think any time it's hard to get to the polling place,  
 13 it can make voting difficult.  
 14 Q So what do you think your responsibilities are to the  
 15 Shannon County folks, one of the highest poverty-stricken  
 16 areas there are?  
 17 A My responsibility is not there. It is the county  
 18 auditor's responsibility.  
 19 Q You have no responsibility to the Shannon County voters?  
 20 A March 2nd I had that responsibility of allowing  
 21 additional reimbursement.  
 22 Q Had you taken any other steps to address voting problems  
 23 in Shannon County besides approving the \$12,000?  
 24 A I think the business side with the economic development,  
 25 I think that is a first step in trying to build more of a

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1 Hazeltine? Have you ever read that?  
 2 A Vaguely familiar. I don't believe I have read the whole  
 3 thing.  
 4 Q Do you agree with the outcome?  
 5 A I don't know what it was.  
 6 Q Do you think that the State of South Dakota has a history  
 7 of limiting political participation of Shannon County  
 8 residents?  
 9 A I don't know.  
 10 Q No opinion?  
 11 A No opinion.  
 12 Q Do you think -- do you believe there is tension between  
 13 non-Indians and Native American communities in South  
 14 Dakota in the border towns around these reservations?  
 15 A As I mentioned before, it seems like there is news  
 16 stories about confusion over federal jurisdiction versus  
 17 state jurisdiction and those issues.  
 18 Q You talked about the causes of the tension you believe to  
 19 be the criminal jurisdiction issues between law  
 20 enforcement and some of the criminal machinery?  
 21 A I think that's part of it.  
 22 Q Anything else?  
 23 A No.  
 24 Q Do you think that tension between white and Native  
 25 Americans in Shannon County impacts the voting behavior

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1 or impacts voting in Shannon County, the bad  
2 relationships?

3 A I don't know. I don't know what the voter turnout was in  
4 the last tribal election.

5 Q Are you familiar with the concept of border towns, how  
6 some of the racial tensions are more severe in the border  
7 towns around the reservation, any experience there?

8 A I grew up in Geddes. We were right next to the Yankton  
9 Sioux Tribe. So I don't know. I don't know the  
10 definition of border town.

11 Q Do you think the race relations maybe around Yankton are  
12 a little better than out at Pine Ridge between some of  
13 the border towns?

14 A I really couldn't answer that.

15 Q Do other states use these voting centers?

16 A Yes.

17 Q Most states?

18 A No.

19 Q How many states?

20 A We've yet to find one state that does it exactly like we  
21 do it. But I know it was started in Colorado maybe ten  
22 years ago.

23 Q What was -- when was the year that you first got them  
24 going in South Dakota?

25 A The legislation was passed during the 2010 legislative

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1 resources on election day to help pay for the \$2,000 per  
2 unit.

3 Q That is what the other five counties did that you worked  
4 with?

5 A Yes.

6 Q How much money did you have in each one of those  
7 pilots -- or how much did they have into it?

8 A Sioux Falls, I believe the electronic poll books cost  
9 around 30,000.

10 Q For one? Are they 10,000 apiece and you get three?

11 A They are \$2,000 a piece.

12 Q So Sioux Falls needed 15?

13 A The \$2,000 is what it would have cost us to buy 250 right  
14 now. I don't remember the exact dollar figure for Sioux  
15 Falls in 2011. I think the total expense was something  
16 like 30,000. Sioux Falls was different because they use  
17 their own computers.

18 Q There's computers and internet and all that stuff down in  
19 Shannon County, too, right?

20 A I do not know if there is internet access.

21 Q Of course there is. It's at all the district centers and  
22 you have got internet providers, you know, right there in  
23 Pine Ridge. Have you ever researched all the internet  
24 capabilities and how they could do that down there?

25 A Not at all.

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1 session.

2 Q Right. Then you became the Secretary of State,  
3 January 1, 2011?

4 A Correct.

5 Q All right. And then you went ahead and began  
6 implementation shortly thereafter?

7 A There were two different pieces of legislation. One was  
8 for a pilot program which would utilize a real Sioux  
9 Falls election in 2011. The second piece of  
10 legislation -- and that is all that 2010 legislation  
11 authorized, was just Sioux Falls. And the second  
12 legislation allowed it for any jurisdiction.

13 Q How could Shannon County get approval to run a voting  
14 center?

15 A There would be lots of steps to take.

16 Q I thought the other five just had to ask you?

17 A Shannon County is different because of preclearance and  
18 the Department of Justice and memorandums of  
19 understanding and --

20 Q Right. But the only additional hoop to jump through with  
21 Shannon County or Todd County for voting centers would be  
22 preclearance from DOJ?

23 A No. There would be a money issue. In order to save --  
24 to make this a break-even, you would have to close a  
25 location or two which would save staff and time and

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1 Q Why not, sir?

2 A Because there was no reason.

3 Q But have you ever talked with anyone at U.S. DOJ about  
4 getting preclearance, you know, to go ahead and do this,  
5 this project down there?

6 A I talked with Sara Beth Donovan about it.

7 Q And --

8 A We both had the same concerns, about closing the other  
9 sites and paying for it.

10 Q And this requirement that you close other sites, this is  
11 purely feasibility or --

12 A It is not a requirement. But you need to -- you need to  
13 justify to the taxpayers why you're spending this money.  
14 And if you can spend \$10,000 and show you saved \$12,000,  
15 well, then the taxpayer saved 2,000 bucks, so that is a  
16 good deal.

17 Q Understood. But couldn't some of the HAVA money be  
18 utilized for voting centers down there? Go to the  
19 checklist. Wouldn't it fit into one of those 17 items?

20 A There is a lot to do with Shannon County before we can  
21 get that far. We -- apparently 2012 was the first time  
22 they had a successful election. So let's go from there.  
23 Let's build upon what we have.

24 Q Okay. What infrastructure do you need in place to do a  
25 voting center or implement the program down in Shannon

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1 County because you could use all this HAVA money, right,  
 2 to fund the equipment and all this other -- all the  
 3 infrastructure? You have got a staff of 15.3 people,  
 4 that you could allocate a person or two. What do you  
 5 need from the tribe to go ahead and implement this or  
 6 what do you need from the folks to implement this or what  
 7 do you need from the commission to implement this?  
 8 A There would be a whole laundry list of items.  
 9 Q Right. But you went through it five times already.  
 10 A And Shannon County is different. They would have to do  
 11 everything that the other counties did, but then --  
 12 Q Plus preclearance?  
 13 A Plus preclearance.  
 14 Q What else?  
 15 A Figuring out if it's the right thing to do, of closing  
 16 some of those locations.  
 17 Q But that is not a mandatory requirement to close if you  
 18 use HAVA money to supplement?  
 19 A But you need to show that you are going to save money.  
 20 Q Why? Why do you have to save money to set up voting  
 21 centers? Why can't it just be increasing Indian voter  
 22 participation and some of the HAVA money absorbs that?  
 23 A Because I'm not focused on a particular racial group. I  
 24 focus on all of South Dakota to make sure we move all of  
 25 South Dakota forward. I don't think we should treat

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1 A I was not Secretary on January 1.  
 2 Q Did you and Chris Nelson do a turnover or anything when  
 3 you assumed office and he left office regarding anything  
 4 to do with HAVA?  
 5 A Yes. We had a transition period.  
 6 Q Right. Did you ever have a discussion regarding this  
 7 \$10,000 allocation with all the counties?  
 8 A Not on that, no.  
 9 Q Did you ever have any discussions with your predecessor  
 10 regarding some of the voting issues in Shannon County or  
 11 Todd County?  
 12 A I don't remember.  
 13 Q Did you ever have any discussions with him regarding  
 14 voting rights litigation of any kind?  
 15 A I don't remember.  
 16 Q Okay. It's no secret, there's voting issues, voting  
 17 litigations in that corner of the state. No discussions  
 18 with Chris Nelson regarding that?  
 19 A I don't remember.  
 20 Q Can you think of any other examples besides that -- it  
 21 was \$660,000 that was distributed to the counties without  
 22 reimbursement. Any other examples you can think of?  
 23 A The only reason I remember that is because it happened  
 24 right before I was sworn in.  
 25 Q Was there any description of what that money was supposed

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1 Shannon different than we treat others. And I have  
 2 already broken that because I have given them more money.  
 3 Q So why did you do that?  
 4 A Because it was needed.  
 5 Q Are there any funds provided through HAVA that the state  
 6 gives directly to the counties without first requiring  
 7 the counties to spend their own funds and seek  
 8 reimbursement?  
 9 A That is given to the counties?  
 10 Q Yes.  
 11 A I can't think of any.  
 12 Q Can't think of a single example where HAVA funds are  
 13 distributed without the reimbursement requirement where  
 14 the county doesn't have to pay the bill first?  
 15 A Yes.  
 16 Q What is your example?  
 17 A On January 1 of 2011 my predecessor sent out a \$10,000  
 18 amount to each one of those counties.  
 19 Q Every one of the counties in the state?  
 20 A All 66 counties.  
 21 Q Of HAVA money?  
 22 A Yes. It was transferred from the state to the county.  
 23 Q Why?  
 24 A I do not know.  
 25 Q You don't know what the reasons were for doing that?

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1 to be used for?  
 2 A I'm sure there was a letter with it, but I don't  
 3 remember.  
 4 Q Have you read the letter?  
 5 A Yep.  
 6 Q What did it say?  
 7 A I don't remember.  
 8 Q Remember anything it said about what the money was  
 9 supposed to be used for?  
 10 A No.  
 11 Q Did that HAVA distribution comply with the state HAVA  
 12 plan?  
 13 A I assume so.  
 14 Q Why didn't reimbursement apply to those funds?  
 15 A I do not know.  
 16 Q Wasn't there a risk of the county misappropriating that  
 17 money in your opinion?  
 18 A No. The county can only spend that with reimbursement.  
 19 Q No, the \$10,000 that was distributed to each county.  
 20 A Right. They can't spend it without reimbursement.  
 21 Q So they got the money, and it sat in their account. It  
 22 had to sit there until they submitted a reimbursement  
 23 form?  
 24 A Correct.  
 25 Q And then you signed those reimbursement forms and said,

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1 yep, you can spend that \$10,000?  
 2 A If it complied with the reimbursement form and the HAVA  
 3 Act and HAVA state plan, yes.  
 4 Q So that \$10,000 that didn't require -- or that was  
 5 fronted, essentially --  
 6 A No, it wasn't fronted.  
 7 Q It was distributed to the counties I thought. Each  
 8 county got \$10,000?  
 9 A Yes, but they couldn't spend it without reimbursement.  
 10 Q And so did you require receipts for the reimbursement  
 11 when it came to your office?  
 12 A Yes. Well, I don't know.  
 13 Q How long ago was it?  
 14 A That money was sent on January 1.  
 15 Q Right. Of 2011?  
 16 A Yes.  
 17 Q All right. And then you have been dealing with that, I  
 18 assume, for the early part of 2011 on approving whether  
 19 or not it could be spent or not, correct?  
 20 A Yes.  
 21 Q So out of the 66 counties who each got the \$10,000, have  
 22 all those counties went ahead and used it up?  
 23 A I do not know.  
 24 Q Do you know if most of them have?  
 25 A I do not know.

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1 to the state auditor or -- and they say, okay.  
 2 A Ultimately everything is my responsibility in that  
 3 office.  
 4 Q Right. So you approved the expenditure of \$660,000 of  
 5 HAVA funds --  
 6 A No.  
 7 Q -- without receipts?  
 8 A No.  
 9 Q Explain.  
 10 A That is not what I said.  
 11 Q All right. Here is what I'm trying to figure out. Chris  
 12 Nelson does this big expenditure or this distribution to  
 13 all the counties, 600 -- \$660,000, shortly before leaving  
 14 office, correct?  
 15 A Uh-huh. Yes.  
 16 Q Then you walk into office. And then people are starting  
 17 to say can I spend this money, Mr. Gant. And you had to  
 18 authorize it.  
 19 A Doubtful. There wasn't an election in January of 2011.  
 20 Q All right. So any time in 2011, did you approve any of  
 21 these?  
 22 A It would be based off the HAVA plan which would have been  
 23 twice a year. So I suppose there was nothing until June.  
 24 Q All right. Do you remember?  
 25 A Which would have had to have been from the November

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1 Q Were you the one that had to approve whether or not they  
 2 spent that money?  
 3 A No.  
 4 Q Who did?  
 5 A They would have had to submit the reimbursement form,  
 6 complied with the HAVA plan. The county would have  
 7 filled out the paperwork, sent it to the auditor, cut the  
 8 check.  
 9 Q Right. But that \$10,000 -- like Shannon County got that  
 10 \$10,000, correct?  
 11 A Right. So before they had 68,000, they had 58,000.  
 12 Q All right. So then before they could spend that money,  
 13 they had to go ahead and submit the reimbursement form to  
 14 your coordinator, correct, your HAVA coordinator?  
 15 A Just like everyone else.  
 16 Q Yep. Then he doesn't send it straight to accounting,  
 17 correct? Don't you have to sign off on these?  
 18 A No. I don't have to sign off on them.  
 19 Q So only the HAVA coordinator has to sign off on whether  
 20 something is an approved expenditure or not?  
 21 A We will discuss it. I don't know if there is an actual  
 22 signage, but --  
 23 Q But for it to go to accounting, I thought I heard you  
 24 tell Karen Schreier at the hearing that you have to  
 25 approve the -- authorize the expenditure before it goes

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1 election.  
 2 Q Right. So do you remember approving these, several of  
 3 these in June, from the counties?  
 4 A I think we spent some of the money.  
 5 Q So --  
 6 A Approved some of the money.  
 7 Q You approved that or your coordinator approved it?  
 8 A The office approved it.  
 9 Q So the Secretary of State office approved it. And then  
 10 did you require receipts from each of those or just the  
 11 reimbursement form?  
 12 A Definitely the reimbursement form. I don't remember  
 13 receipts.  
 14 Q No receipts from any of the counties regarding that  
 15 \$660,000?  
 16 A I don't remember.  
 17 Q All right. Do you remember a single instance of how that  
 18 money was supposed to be spent or how it was categorized  
 19 on the receipt -- on the reimbursement? I'm sorry.  
 20 A No.  
 21 Q Can't remember how any of that -- how any of that  
 22 money --  
 23 A No.  
 24 Q -- was categorized?  
 25 A No.

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1 Q All right. I'm looking at you. You don't seem too  
2 pleased about that distribution, that \$660,000. And then  
3 you -- you were responsible for administering that.  
4 A I did not administer that. I didn't give that money.  
5 Q Right. But you kind of had to deal with whether or not  
6 the money was properly spent or not. You got stuck with  
7 that.  
8 A I have to approve reimbursement forms.  
9 Q All right. So as far as you know, are there any  
10 outstanding reimbursement or outstanding amounts from the  
11 counties that haven't been approved yet as of today out  
12 of that 660,000?  
13 A Shannon County has 68,000. Some other counties have  
14 hundreds of thousands of dollars.  
15 Q Right. But I'm talking about that 10,000 distribution to  
16 each of the counties.  
17 A I don't think we have received a Shannon County  
18 reimbursement form since I have been in office.  
19 Q Okay. It's your testimony that Shannon County hasn't  
20 submitted a reimbursement form to you since you were  
21 seated as South Dakota Secretary of State?  
22 A I don't think they submitted anything in '11, and I know  
23 they haven't since June of '12.  
24 Q I don't understand. If they are so hard up for money,  
25 why wouldn't they be asking you for money?

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1 Q -- since the State of South Dakota started receiving HAVA  
2 funds?  
3 A I'm not sure.  
4 Q You don't know of any others?  
5 A I'm not sure.  
6 Q Did you share any of your concerns about those monies,  
7 that \$660,000, getting misappropriated?  
8 A I never said I had concerns about that money being mis-  
9 appropriated.  
10 Q No. I'm asking if you did. Have you ever stated you  
11 have concerns or had concerns?  
12 A I would not have concerns about that money because they  
13 can only spend it with reimbursement forms.  
14 Q Okay. So why don't you do that with Shannon County? Why  
15 don't you go ahead and say, Shannon County, here is  
16 \$50,000 to cover the cost of early voting for this entire  
17 election cycle. Don't spend it until you go ahead and  
18 submit your reimbursement form. Why can't you do that  
19 for 2012 and future elections?  
20 A Because there is a chance that money will be spent  
21 without receipts.  
22 Q Now I'm really confused because I thought there were some  
23 counties that didn't have to submit receipts, others that  
24 did.  
25 A You asked me about Shannon County.

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1 A I do not know.  
2 Q So from the HAVA funds, do you go ahead and monitor and  
3 track county expenses throughout the year?  
4 A No.  
5 Q All right. So you just have two distribution months, in  
6 June and at the end of the year?  
7 A Yes.  
8 Q That is when you go through the reimbursement receipts at  
9 that time?  
10 A That's when they submit them. They are not required to.  
11 That's just when they can.  
12 Q How long does it normally take you to go through all the  
13 HAVA forms and determine which ones you are going to  
14 approve and which ones you are not?  
15 A We have never gone through an election. This is my first  
16 one.  
17 Q All right. So do you have any idea here today out of  
18 that \$660,000 how much of that has been spent?  
19 A No.  
20 Q No idea if half of it has?  
21 A No idea.  
22 Q Have you ever heard of another example like that where --  
23 where there has just been a flat distribution without  
24 receipts or without a reimbursement form --  
25 A No.

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1 Q Why should Shannon County be treated differently than  
2 anybody else?  
3 A They are not being treated differently.  
4 Q What do you mean?  
5 A The \$12,000 that I authorized is the time where I treated  
6 them differently than the other counties.  
7 Q Right. But did you send the \$12,000 to them?  
8 A No.  
9 Q All you did is preapprove it and say if you submit your  
10 reimbursement form, I will pay it?  
11 A Uh-huh.  
12 Q Correct?  
13 A Correct.  
14 Q All right. So why was it okay just for the South Dakota  
15 Secretary of State to do \$660,000 to all the counties and  
16 just say hold the money, guys, don't spend it until you  
17 submit receipts? Why was that okay?  
18 A You're completely confused there. They didn't get a  
19 check for \$10,000. They were authorized an additional  
20 \$10,000 in their county account.  
21 Q What is the difference? Did you transfer the money from  
22 your account to the county accounts?  
23 A I didn't do any transferring.  
24 Q No. Did the South Dakota Secretary of State's office,  
25 prior administration, did they go ahead, and that

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1 \$660,000, go ahead and send that to the respective -- the  
 2 66 county accounts?  
 3 A No. No. It went into their county account of their  
 4 available expenditures.  
 5 Q You just increase the line item from each one of these  
 6 folks \$10,000?  
 7 A They each received an additional \$10,000. This letter,  
 8 December 30, 2011, where I say that Shannon County has  
 9 \$68,000 available, if they didn't request any  
 10 reimbursement in all of 2011, their ending balance on  
 11 December 31, 2010 -- I don't know about interest and that  
 12 kind of stuff -- but it would have been \$58,910.78. So  
 13 they were granted an additional \$10,000 in expenditure, I  
 14 guess, authority, so to speak.  
 15 Q All right. So in your HAVA account do you have any  
 16 individual sub-accounts for each one of the counties?  
 17 A Absolutely.  
 18 Q And each one of those sub-accounts accrues interest?  
 19 A Yes.  
 20 Q All right. So these numbers that I'm seeing, you know,  
 21 the amount of money that the State of South Dakota has  
 22 received --  
 23 A Oh, yes.  
 24 Q -- you go ahead and you apportion that between counties?  
 25 A Yes.

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1 Q All right. Do you understand how the initial  
 2 distribution of HAVA was done? Why -- do you understand  
 3 why a certain amount was distributed to a certain county  
 4 in each one of those sub-accounts? I know this is long  
 5 before you became Secretary of State. But if that money  
 6 was coming in since 2003, do you understand how it  
 7 started out because it sounds like to me that you went  
 8 ahead and just did everything proportionally after you --  
 9 after you took office. Correct? Whatever the past  
 10 practice was, you continued it, correct?  
 11 A No. You are tying two different things together.  
 12 Q Explain it to me, sir.  
 13 A The interest, speaking of interest, it has to be by each  
 14 account and what their dollar amount is.  
 15 Q All right. So now that we have got interest away, I want  
 16 to talk about principal. Do you understand the criteria  
 17 before you came in for determining what the principal  
 18 amount was that was initially placed in each one of these  
 19 counties' accounts?  
 20 A Not fully because I wasn't there.  
 21 Q Do you understand it partially?  
 22 A Yes.  
 23 Q All right. Explain what you do know about the initial  
 24 allocation of principal of HAVA funds.  
 25 A HAVA was established to eliminate punch card voting.

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1 Q And the HAVA plan doesn't say how much you put in each  
 2 county, does it?  
 3 A It's based off the balance of their account.  
 4 Q No. But what I'm asking is you have got -- you've got 66  
 5 sub-accounts under the main HAVA account, correct?  
 6 A Correct.  
 7 Q All right. Each one of those 66 accounts, how do you  
 8 determine which goes -- how much of that goes in each  
 9 line item?  
 10 A Proportionally.  
 11 Q Based upon population or you divide it by 66?  
 12 A No. Shannon County has 68,000. Another county has a  
 13 hundred thousand. If the state treasurer, auditor,  
 14 whoever it is, says that the interest was  
 15 4.99213 percent, okay, take a hundred thousand times  
 16 that, add that much to their account. Take 68,000 times  
 17 that amount, add it to their account.  
 18 Q So how did that one account that you just -- we were  
 19 talking kind of hypothetical, a hundred thousand. How  
 20 come this one got a hundred thousand in it in the first  
 21 place and this one over here got 60,000 in the first  
 22 place? Is it based upon population initially?  
 23 A That is all through those state HAVA plans from the  
 24 previous administration and their beginning of HAVA and  
 25 the first task force and how the process worked.

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1 Q Yes.  
 2 A Is that a question?  
 3 Q No. I'm saying I understand that part.  
 4 A Oh. Okay.  
 5 Q All right. So why would one county in South Dakota get a  
 6 different amount than another county in South Dakota?  
 7 A I remember one of the first big expenditures was the  
 8 AutoMARKs that we mentioned previously. Obviously a  
 9 county of a hundred thousand population needs more of  
 10 those than a county that only has a thousand. So I would  
 11 assume the county with more population would need more  
 12 machines, thus more money.  
 13 Q Do you have any other understanding or anything  
 14 additional to what you just explained on why the  
 15 principal -- how the principal of the HAVA funds was  
 16 distributed?  
 17 A No.  
 18 Q Purely population based is all you know?  
 19 A I know that for those -- purchasing of those machines.  
 20 Q Right. But the only -- your only knowledge --  
 21 A No.  
 22 Q -- of how it's determined from county to county, the  
 23 amount of HAVA funds, is population based?  
 24 A No.  
 25 Q What else? What other factors are you aware of?

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1 A I just explained. The 660,000.  
 2 Q All right. That was just a flat --  
 3 A 10,000 per county.  
 4 Q All right. But that is 660,000 out of approximately  
 5 \$18 million, correct, that the State of South Dakota has  
 6 received in HAVA funds since the inception of the program  
 7 in '03?  
 8 A Again, you are confused. Because Shannon County, as the  
 9 example we're discussing today, has \$68,910.78 in its  
 10 account --  
 11 Q Correct.  
 12 A -- which is considerably more than \$10,000.  
 13 Q Right. But what I'm getting at is except for that  
 14 \$660,000 that was done equally between the 66 counties,  
 15 the rest of the money, the rest of the principal from  
 16 HAVA funds was distributed based upon population?  
 17 A I do not know that.  
 18 Q Why not?  
 19 A Because I wasn't Secretary from '03 to '10.  
 20 Q So why didn't you ask somebody?  
 21 A I haven't distributed any money myself, with the  
 22 exception of Shannon County.  
 23 Q No one has ever explained to you what the formula is for  
 24 determining what each county gets of HAVA funds?  
 25 A Each HAVA plan determines that.

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1 A Post them?  
 2 Q Are they public? Are they subject to the open records  
 3 law?  
 4 A I would assume so.  
 5 Q When is the last time you have read the report of where  
 6 each -- the report of all the different accounts?  
 7 A I don't remember.  
 8 Q Have you ever?  
 9 A Uh-huh. Yes. I'm sorry.  
 10 Q So throughout the year, the Secretary of State's office  
 11 can look up any county's HAVA account and determine how  
 12 they are spending the HAVA money?  
 13 A No. That's not a true statement.  
 14 Q Explain to me why.  
 15 A A county cannot spend that money without a reimbursement  
 16 form.  
 17 Q Has the Secretary of State's office ever found a county  
 18 to be using HAVA money in violation of HAVA?  
 19 A I have not, and I'm not aware of others.  
 20 Q You are not aware of any county ever misusing any HAVA  
 21 monies? No?  
 22 A Not in the past.  
 23 Q So Shannon County has never issued a reimbursement form  
 24 for an expense that violates HAVA?  
 25 A I don't believe so. I don't know.

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1 Q All right. Do you know if there is anything in the  
 2 existing HAVA plan, the one that is in effect, that says  
 3 how much each county gets?  
 4 A I don't remember.  
 5 Q Don't know?  
 6 A Don't remember.  
 7 Q Does the Secretary of State's office monitor and track  
 8 that account during the year?  
 9 A Which account?  
 10 Q The HAVA account.  
 11 A Yes.  
 12 Q All right. So in the HAVA account, are there 66  
 13 sub-accounts?  
 14 A Yes.  
 15 Q Are there any other sub-accounts besides the sub-account  
 16 for each county?  
 17 A They are broken out into the different titles and  
 18 sections. This title can go this way and this title can  
 19 go this way.  
 20 Q So your understanding is -- how many -- so each county  
 21 has one or two accounts?  
 22 A I don't remember how many they have.  
 23 Q How often does your office track that account?  
 24 A How often --  
 25 Q Do you post those accounts?

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1 Q How much money does the county have to contribute to the  
 2 HAVA account? Is it five percent?  
 3 A I believe so.  
 4 Q Five percent of what?  
 5 A Of the new money that they are receiving.  
 6 Q All right.  
 7 A I believe it's a 95 to 5 match.  
 8 Q Right. So is there a limit on how much Shannon County  
 9 can match with the 5/95 formula?  
 10 A As the example of the 2012 having \$6,000 available, that  
 11 is for the whole state. So even if we did it equally, we  
 12 would each have \$88 or whatever. So then the county  
 13 would have to come up with a dollar, and then \$88.  
 14 Q On some of the real good years with HAVA -- let's say  
 15 it's a five million dollar year, all right? So could  
 16 Shannon County -- that's a pretty good deal. I put in  
 17 five bucks, and I get a hundred to spend on elections,  
 18 right?  
 19 A That would depend upon the state plan in place at that  
 20 time. Remember, you can't accept the HAVA money from the  
 21 feds until you have a state plan in place.  
 22 Q Right. But if the state plan is in place --  
 23 A No. Like today I cannot accept the \$6,000.  
 24 Q Right. But if -- but the distribution from prior years,  
 25 was there a limit on what Shannon County could go ahead

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1 and match?  
 2 A Yes, because it was based upon the state plan at the  
 3 time.  
 4 Q Right. But -- why is the South Dakota plan  
 5 reimbursement?  
 6 A To make sure that the money is spent on those areas, on  
 7 the areas on the reimbursement form.  
 8 Q Did one county -- could they -- could they match a larger  
 9 amount with this 5/95 percentage than a different county  
 10 in the State of South Dakota?  
 11 A It would depend upon that state plan.  
 12 Q Let's talk about the state plan that was in effect when  
 13 you came into office.  
 14 A Okay.  
 15 Q All right. Was there a limit -- was there a difference  
 16 between how much money a county could go ahead and match  
 17 of HAVA funds?  
 18 A I haven't received -- the federal government designated  
 19 zero dollars in 2011, and they designated \$6,000 for  
 20 2012.  
 21 Q But you have 9 million in the account?  
 22 A Yes.  
 23 Q All right. So on the matching for some of that money, if  
 24 Shannon County wanted to match more of some of that  
 25 9 million, could they?

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1 line item?  
 2 A I am. I'm taking \$12,000 out of that --  
 3 Q Right.  
 4 A -- and giving that to Shannon County.  
 5 Q That is just a Band-Aid, though. Out of \$6 million, why  
 6 couldn't you allocate, you know, a hundred thousand  
 7 dollars to go ahead and pay for the next few elections  
 8 and pay for early voting over there? Why couldn't you  
 9 put that over there? They can't spend it unless they  
 10 submit a reimbursement form, right?  
 11 A There were lots of questions there in your whole speech.  
 12 Q All right. I will just do one. Why not just transfer a  
 13 hundred thousand dollars to Shannon County?  
 14 A Shannon County asked for 12,000.  
 15 Q So if they asked you for a hundred thousand dollars,  
 16 would you send it their way and say just use it for early  
 17 elections? Could you do that?  
 18 A Wouldn't want to.  
 19 Q Why?  
 20 A Because that sounds out of line.  
 21 Q They can demonstrate need like nobody else, though,  
 22 right?  
 23 A They demonstrated \$12,000 was their need for 2012. If we  
 24 know that -- some of your initial stuff was about they  
 25 need the money beforehand. Well, it's July 10th.

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1 A As we went through before on those different EAC reports,  
 2 those were the monies that the federal government gave to  
 3 the state and the state had to match based off either  
 4 that law or the state plan or both to be able to  
 5 accept -- like 5 million was the example in one of those  
 6 years.  
 7 Q So out of that 9 million that is just sitting there, is  
 8 all of that allocated in each one of the county accounts?  
 9 A No.  
 10 Q Which of that money isn't allocated? How much of that  
 11 money isn't allocated to a specific county out of the  
 12 9 million?  
 13 A I don't remember what the breakdown is.  
 14 Q Do you know the approximate percentage that isn't already  
 15 allocated?  
 16 A 6 million and 3 million sticks in my head, but I don't  
 17 know if that is right or not.  
 18 Q All right. That \$6 million isn't allocated?  
 19 A I don't think that is in the county accounts. I think  
 20 3 million is in the county accounts.  
 21 Q So you have \$6 million just sitting over here that isn't  
 22 allocated, correct?  
 23 A Isn't allocated to a county.  
 24 Q So why can't you take a hundred thousand dollars of that  
 25 \$6 million and transfer it to Shannon County to their

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1 Assuming I haven't received the letter today, they  
 2 obviously didn't need the money or they paid for it  
 3 somehow.  
 4 Q Did you know they moved stuff from different line items  
 5 to go ahead and pay for the election?  
 6 A I remember something about that.  
 7 Q Do you know they zeroed out the vast majority of their  
 8 discretionary funds?  
 9 A Yep. I remember something -- something about sheriff and  
 10 the social welfare office or veteran services, a number  
 11 of the different --  
 12 Q Which county has the most money currently sitting in its  
 13 HAVA fund, line item?  
 14 A Oh, it's probably Minnehaha or Pennington.  
 15 Q All right. How much money do they have sitting over  
 16 there?  
 17 A I don't know off the top of my head, but I --  
 18 Q Several hundred thousand?  
 19 A Yes. I would guess Minnehaha probably has half a million  
 20 maybe.  
 21 Q Right. And Minnehaha has a lot better tax base than  
 22 Shannon County does, correct?  
 23 A I would assume that Minnehaha collects more property  
 24 taxes, more taxes than Shannon.  
 25 Q Right. And you know the problem in Shannon County with

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1 all the trust land versus fee land?  
 2 A Yes. Some 80 percent or something.  
 3 Q Okay. So, again, why is it out of line to go ahead and  
 4 transfer -- to put in half the money that Minnehaha has  
 5 to the line item under Shannon County? Why not transfer,  
 6 out of that \$6 million sitting there, \$250,000 to their  
 7 line item, and then go ahead and say, you know, you don't  
 8 spend this -- you can't spend this until you submit your  
 9 reimbursement forms? And then they wouldn't have to keep  
 10 zeroing out all their discretionary funding, right?  
 11 A Two reasons. One, that number sounds extremely high.  
 12 And number two, it's been a month after the election, and  
 13 they still haven't requested reimbursement yet.  
 14 Q Okay. Let's put a lower number on it. It cost -- I  
 15 think it cost less than \$50,000 for -- per election cycle  
 16 to go ahead and fund early voting locations in Shannon  
 17 County for the full 46-day period just like all the other  
 18 folks. All right?  
 19 A Yes. You believe that.  
 20 Q I believe that. And so taking that number, 50,000 times  
 21 five elections -- I'm sorry. You would only -- you could  
 22 have ten years, five election cycles for less than  
 23 \$250,000. That could take care of this whole problem.  
 24 If you -- and it's not your money. It's HAVA money that  
 25 was designed to help out situations like Pine Ridge. Why

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1 Q Couldn't you just train the county auditors about all the  
 2 restrictions on HAVA funds, and they go through your  
 3 school and they get a HAVA certification, and then you go  
 4 ahead and give the money to them and they spend it  
 5 without reimbursement?  
 6 A Your question is could I do that?  
 7 Q Yeah.  
 8 A Only if the HAVA plan stated that you could do that.  
 9 Q Right. Can you -- I mean are you in agreement with that?  
 10 A No.  
 11 Q Why not?  
 12 A Because I don't want to have any money -- any of this  
 13 federal money spent without receipts.  
 14 Q This reimbursement practice or plan that South Dakota  
 15 requires since the administration of HAVA funds in '03 --  
 16 A Okay.  
 17 Q -- are we the only state that does that?  
 18 A I don't think so.  
 19 Q Do you know of another state that requires reimbursement  
 20 like the State of South Dakota before administering these  
 21 funds?  
 22 A I can't name a state off the top of my head, no.  
 23 Q We have never had a problem with HAVA expenditures that  
 24 you know about?  
 25 A Yeah. I haven't heard about anything from '03 to '10.

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1 not transfer it over?  
 2 A A number of reasons. One, you have asked me probably a  
 3 hundred times how much does it cost for absentee voting  
 4 in Shannon County. And I have told you I don't know.  
 5 Q And you have never investigated it?  
 6 A No. And Shannon County has said they believe they need  
 7 an extra \$12,000. So we don't even know if that number  
 8 is right. They may only submit reimbursement for 8,000.  
 9 So if that's the case -- as I have said before, if we  
 10 want to sit down and put together some sort of agreement  
 11 for the future, I've said I am open to that.  
 12 MR. SANDVEN: Okay. I need five minutes. We might  
 13 be close to wrapping up.  
 14 (Recess at 4:48 p.m.)  
 15 BY MR. SANDVEN:  
 16 Q Why do you only pay out the HAVA funds twice a year?  
 17 A That's how the 2010 plan states it.  
 18 Q Do you have any opposition to changing it? Doesn't it  
 19 make more sense to do it on a need-based basis?  
 20 A I completely agree. I want to do it when the counties  
 21 submit their reimbursement form. But that is one of the  
 22 changes I want to make to the plan.  
 23 Q What else do you want to change?  
 24 A There was something else with this lawsuit, but I can't  
 25 remember.

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1 But --  
 2 Q So why do we need a reimbursement plan if there has never  
 3 been a problem?  
 4 A We need a reimbursement plan to make sure that we can  
 5 account for every federal dollar that we spend.  
 6 Q That's your requirement, not HAVA's requirement?  
 7 A That is the 2010 state HAVA plan requirement.  
 8 Q And you don't want that requirement changed in the plan?  
 9 A I do not.  
 10 Q Why?  
 11 A Because I just said, we want to make sure that we know  
 12 where every federal dollar -- that every federal dollar  
 13 that is spent is tied to a receipt.  
 14 Q But you can't cite a single reason -- you can't cite a  
 15 single example of any wrongdoing with HAVA funds?  
 16 A No.  
 17 MR. SANDVEN: Nothing further.  
 18 EXAMINATION BY MS. FRANKENSTEIN:  
 19 Q Secretary Gant, I have a few questions for you. The  
 20 approximately \$68,000 that is in Shannon County's HAVA  
 21 account right now, that is not to be spent only for any  
 22 particular year, is that correct?  
 23 A That's correct.  
 24 Q So that is something that could decrease to zero?  
 25 A Yes.

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1 Q And whether or not it decreases to zero without  
2 replenishment, is that an issue for Congress as to  
3 whether or not they will refund HAVA disbursements?  
4 A Yes, it is.  
5 Q What happens if Shannon County spends all of its money  
6 and it has zero, but HAVA is still in place requiring  
7 what it does, which costs money?  
8 A That would be up to the legislature and the governor.  
9 Q Could you transfer money from the state HAVA fund into  
10 Shannon County's HAVA fund should it decrease to zero?  
11 A I would have to review the plan again, but I don't  
12 believe so.  
13 Q You don't believe the state fund could replenish  
14 Shannon's funds?  
15 A No. The state -- just like I'm doing with the March 2nd  
16 letter, it would be that type of situation, if we were in  
17 that type of situation.  
18 Q So should Shannon County's HAVA account decrease to  
19 something low or zero, Shannon County could request from  
20 you for a transfer of money from the state HAVA account  
21 to Shannon County's HAVA account?  
22 A They could request it, but, again, it's not normal  
23 because we are treating a county differently, and that  
24 will have numerous concerns from other counties.  
25 Q You don't know whether, because it was before you took

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1 A No.  
2 Q Is there any requirement or guideline that you know of at  
3 all that states how each county -- how, where or how  
4 often each county provides early voting as far as hours,  
5 location, days of the week, et cetera?  
6 A I'm not aware of any law that details that.  
7 Q In your opinion, who determines that?  
8 A The county auditor or the county commission.  
9 Q We had quite a bit of discussion how Shannon County  
10 residents would have to drive to Hot Springs to vote.  
11 I'm going to represent that that discussion could only  
12 have been relevant to times prior to 2012 because we have  
13 got 46 days of early voting in Shannon County. Do you  
14 agree?  
15 A Absolutely.  
16 Q So in all that testimony where we talked about driving to  
17 Hot Springs for Shannon County residents to vote, could  
18 any of those Shannon County residents prior to 2012 have  
19 requested and voted absentee by mail?  
20 A Yes.  
21 Q And that's not the only way to vote, by mail or absentee;  
22 there is also election day, correct?  
23 A Yes.  
24 Q And election day has polling places that are close by the  
25 voter. Is that true?

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1 office, whether the previous administration considered  
2 the cost for Lakota translators in its distribution  
3 policy when funding each individual county's HAVA  
4 account?  
5 A I don't know that.  
6 Q Is that something that you would consider should you have  
7 the opportunity in the future to disburse HAVA funds?  
8 A Yeah. It's something to consider.  
9 Q Earlier today there was some discussion about the state  
10 statute which indicates something close to the effect as  
11 follows: Absentee voting shall begin no earlier and no  
12 later than 46 days prior to the election. Do you recall  
13 that --  
14 A Yes.  
15 Q -- statute? Is there anything in addition to that in the  
16 state laws or administrative regulations that you know of  
17 that require counties to have early voting open on  
18 certain days of the week?  
19 A No.  
20 Q How about certain hours of the day?  
21 A No.  
22 Q How about in certain locations?  
23 A No.  
24 Q How about how many locations will be open within a  
25 county?

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1 A Much closer.  
2 Q In fact, the idea of precincts is to have a polling  
3 location close to your residence?  
4 A Yes, in your neighborhood.  
5 Q So prior to 2012, regardless of whether Shannon County  
6 had zero days or 22 days of early voting on location in a  
7 satellite office within Shannon County, those residents  
8 still had the opportunity to absentee vote by mail,  
9 absentee vote in a location in Shannon County for  
10 whatever limited time period was allowed, or vote on  
11 election day. Is that true?  
12 A Yes, with the one concern about when the no excuse  
13 absentee legislation was changed.  
14 Q There was a question or two regarding where people can  
15 register to vote. I recall the question being with  
16 regard to if an early voting site is only open two days  
17 prior to the election, that person can't register to vote  
18 also during that time. Do you recall?  
19 A Yes.  
20 Q Where all could people within Shannon County register to  
21 vote?  
22 A There would be a great number of places. They could get  
23 a voter registration form from the Secretary of State's  
24 website. They should -- there should be voter  
25 registration applications at numerous government entities

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1 that are located in their community. Or they could get a  
 2 voter registration application from the county auditor.  
 3 I suppose they could also request one if they didn't have  
 4 internet, and I would assume the auditor would mail it to  
 5 them, but --  
 6 Q So as far as you know, there have always been many  
 7 options as far as where Shannon County residents can go  
 8 to register to vote within the geographic boundaries of  
 9 Shannon County?  
 10 A Yes.  
 11 Q Are you familiar with the Lakota coordinator office that  
 12 also keeps office hours within the geographic boundaries  
 13 of Shannon County?  
 14 A I remember hearing about that.  
 15 Q And do you know whether she can also take voter  
 16 registration cards and register voters?  
 17 A I think I remember hearing that she could, but I could be  
 18 wrong.  
 19 Q If Shannon County did absentee voting at a satellite  
 20 office -- so, for instance, in Pine Ridge, not at the  
 21 Fall River County Courthouse -- on election day without  
 22 any electronic poll book, how would anyone know if the  
 23 same person voted absentee and then voted at his or her  
 24 regular polling place on election day? Voted twice  
 25 essentially.

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1 Q Any other expenses that Shannon County should anticipate,  
 2 should it get preclearance, and work on any Department of  
 3 Justice issues with its memorandum of understanding  
 4 before voting centers are created within its county?  
 5 A The options we discussed today were just those that came  
 6 off the top of my head. There would need to be in-depth  
 7 discussions, considerable education of the public. Any  
 8 time a polling location is closed or it's moved, it  
 9 causes great confusion, and there is the need to make  
 10 sure that you educate as much as possible so the people  
 11 aren't confused.  
 12 The tradeoff with vote centers is that you tell  
 13 people they can vote anywhere, which helps alleviate some  
 14 of the concerns. Well, I used to vote at this place, but  
 15 now I guess I can vote anywhere.  
 16 Q We had some discussion earlier today about the 2010 HAVA  
 17 plan, state plan, which is currently in effect which  
 18 allows for reimbursement twice a year. And you had  
 19 indicated you were open to or in fact wanted to allow for  
 20 more reimbursement per year.  
 21 A That is correct.  
 22 Q Could it be that you have not received Shannon County's  
 23 reimbursement request yet because they want to make sure  
 24 they know of and compile all expenses and all invoices to  
 25 attach to it because they know they only get two

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1 A That is a concern, and an issue that we have, not with  
 2 Shannon County, but with all of South Dakota, especially  
 3 that law. When you allow people to vote at two different  
 4 locations on election day, it can -- that possibility can  
 5 arise. So we've -- the auditors have to be very diligent  
 6 to make sure when someone absentee votes in the  
 7 courthouse, that they also then notify the polling  
 8 location that that person has voted.  
 9 Q Would it be easier and less likely to allow for fraud  
 10 should the county have an electronic poll book at its  
 11 satellite office taking absentee voting up until 3:00  
 12 o'clock on election day?  
 13 A Electronic poll books do stop voter fraud in the sense of  
 14 voting at more than one location or in that situation of  
 15 trying to vote twice.  
 16 Q There was some discussion about voting centers. If  
 17 Shannon County obtained preclearance and worked out any  
 18 issues it had with the Department of Justice pursuant to  
 19 its memorandum of understanding, would you be open to  
 20 allowing voting centers in Shannon County?  
 21 A I would definitely be open to that. The last issue you  
 22 didn't mention was the finances.  
 23 Q Could the 2000 per electronic poll book expense be  
 24 reimbursement through HAVA?  
 25 A Yes.

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1 reimbursement time periods within 2012?  
 2 A Yes.  
 3 Q And should the HAVA plan, state plan, be changed in the  
 4 future to allow for more reimbursement requests  
 5 throughout the year, perhaps a county could expend money  
 6 for an expense and immediately seek reimbursement before  
 7 all their bills come in for that election?  
 8 A That will be the problem that we will have to discuss  
 9 once a task force is put together, is how many times  
 10 counties are going to be able to submit. Trying to do a  
 11 favorable outcome in the Shannon County situation could  
 12 turn out to be detrimental when I have another county  
 13 that submits one dollar reimbursement sheets a thousand  
 14 times. That will be a lot of paperwork and a lot of  
 15 administrative cost.  
 16 Q You indicated earlier that you were not certain what  
 17 criteria was used by your predecessor in the initial HAVA  
 18 task force to initially distribute HAVA funds to each  
 19 South Dakota county's account. Who would be the best  
 20 person to speak to about that criteria used at that time?  
 21 A It would be my predecessor, Secretary Chris Nelson.  
 22 Q Could your office buy counties electronic poll books  
 23 directly?  
 24 A Yes.  
 25 Q Could that expense come out of the state HAVA fund or

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1 would that have to be allocated and paid for out of each  
2 county's HAVA account?

3 A How I did the process with the 2011 Sioux Falls election  
4 was state HAVA paid for the system, Sioux Falls used it,  
5 and then Sioux Falls used it again. And then when they  
6 want to use it for 2013, it will -- they will have to buy  
7 or use the Minnehaha system.

8 Q I'm not sure I understand that.

9 A We are using two different systems. Sioux Falls used a  
10 vendor called ES&S, and Hyde, Potter and Sully used a  
11 vendor called Hart. The second time we used ES&S, I  
12 wasn't happy and the election officials in Sioux Falls  
13 weren't happy with what -- we thought the issues that we  
14 had in the first election would have been resolved by the  
15 second election, and they weren't.

16 So we began a nationwide search to find a new vendor,  
17 and we found that vendor in Hart InterCivic. And that is  
18 the company we used in those three rural counties, and  
19 will be the system we will use in Sioux Falls, assuming  
20 they want to do it again in 2013.

21 Q This vendor, is this some kind of software or is this  
22 hardware?

23 A Both.

24 Q So the software, is there any additional licensing  
25 payments or anything to expand the use to other counties?

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1 hundred percent.

2 Q But they will reimburse --

3 A Yes.

4 Q -- a hundred percent?

5 A A hundred percent.

6 Q So for Shannon County, how would that play out if and  
7 when Shannon County can use polling centers?

8 A That's the big question because money is needed. As I  
9 mentioned before with Sioux Falls going from whatever it  
10 was, 58 locations to 10 locations, that is where they had  
11 a considerable savings. I don't know if eliminating this  
12 location or that location in Shannon County is going to,  
13 one, help preclearance and, two, be a good idea in the  
14 county, even if they are approved for it, if the  
15 residents of one of the other locations -- I mean  
16 obviously they are going to have one in Pine Ridge, but  
17 like if they decide not to have a polling location in  
18 Kyle, I don't know if that's the best course of action  
19 for Shannon County. Obviously they are going to have to  
20 figure that out. But --

21 Q So in the end, I note the reimbursement hasn't taken  
22 place yet, but these three counties will end up  
23 reimbursing the state. So in the end, HAVA didn't cover  
24 the expenses for those three counties?

25 A It will come out of their county HAVA accounts.

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1 A Yes. It's -- I want to say it's \$75 per year per unit.  
2 Q For the software?  
3 A Yes.  
4 Q Okay.  
5 A It comes with a laptop, the software, a scan gun, a  
6 signature pad, and a receipt printer.  
7 Q So I'm not clear on what part of that was paid through  
8 the state HAVA plan and what part was paid through the  
9 counties. That is what I don't understand.  
10 A The state paid for both systems. And the three counties,  
11 Hyde, Potter, Sully, are going to reimburse the state out  
12 of their county HAVA account to purchase those units.  
13 Q The hardware?  
14 A The whole shebang.  
15 Q Okay.  
16 A So whatever the state cost was, it will then be divided  
17 by -- oh, each county up there had a different number of  
18 poll books that they used. I think one had five, one had  
19 seven, one had nine. So they won't pay equal. They will  
20 pay whatever their proportion is. However many machines  
21 they have.  
22 Q In the end the counties anyway that used the new polling  
23 center paid a hundred percent of the bill to use the new  
24 software and hardware?  
25 A They haven't purchased it yet. The state paid for it a

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1 Q So the reimbursement you are talking about is from the  
2 three counties' HAVA accounts to the state HAVA account?  
3 A Yes.  
4 Q Okay.  
5 A There is no actual cash that Hyde County is sending to  
6 the state. It's a purchase that way.  
7 Q Your concern is the Shannon County HAVA account may not  
8 have enough money to pay for the cost because it may not  
9 realize --  
10 A That is one of the many concerns. I have had one  
11 election where I have been Secretary of State. And it  
12 went relatively well. There was extremely low turnout,  
13 but the issues that have been brought up didn't appear to  
14 happen. We had 46 days, so everything seemed to go well.  
15 MS. FRANKENSTEIN: I believe that is all the  
16 questions I have for you. Thank you.  
17 MR. WILLIAMS: I have nothing.  
18 FURTHER EXAMINATION BY MR. SANDVEN:  
19 Q A couple more. On the \$12,000 you authorized on  
20 March 2nd, that request was made on March 1st. Correct?  
21 A Yes. I believe I received that by e-mail or fax on  
22 March 1st.  
23 Q Right. It was your discretion, you could approve that  
24 all by yourself?  
25 A Based off of the state HAVA plan and the HAVA Act.

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1 Q Right. But what you did is that \$6 million balloon that  
2 wasn't allocated toward anything specific that we  
3 discussed earlier, you could just pull \$12,000 out of  
4 that and move it over to Shannon County's line item?  
5 A No. That's not what I did.  
6 Q Where did the 12,000 come from?  
7 A The 12,000 hasn't been -- the 12,000 hasn't been moved to  
8 their account.  
9 Q You have just kind of done a preliminary approval of that  
10 12,000, that you will move it to their account when they  
11 submit reimbursement?  
12 A Correct. They must submit reimbursement.  
13 Q All right. And you can do the same thing for any amount  
14 that you deemed appropriate, couldn't you?  
15 A It's possible, but a major amount would -- there would be  
16 issues with other counties.  
17 Q They would get jealous?  
18 A If I started treating one county differently --  
19 Q Right.  
20 A -- in a major way.  
21 Q 12,000, it was okay?  
22 A I think that is understandable when it's \$6,000 a year.  
23 Q But the reason you wouldn't want to transfer more to this  
24 county with all this need is because of jealousy from  
25 other counties?

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1 Q So whatever amount they asked from you, it's your  
2 discretion on whether to approve it or not approve it?  
3 A If they would have asked for six million, that would have  
4 been a lot of red flags.  
5 Q Could they ask for a hundred thousand?  
6 A We don't even know how much the 2012 primary is costing.  
7 Q Right.  
8 A I mean I think as soon as we know, that is going to be a  
9 much better picture.  
10 Q Right. But whatever requests they make for money to  
11 transfer over is the sole discretion of South Dakota  
12 Secretary of State Gant?  
13 A Based off of the HAVA plan and the HAVA Act.  
14 Q And you will exercise your discretion based upon those  
15 principles --  
16 A Yes.  
17 Q -- in the plan and act?  
18 A Yes.  
19 Q All right. Talked a little bit about polling places,  
20 E-Books.  
21 A Yes.  
22 Q There's no greater chance of greater fraud or someone  
23 voting twice on election day in Shannon County than  
24 anyplace else, is there?  
25 A It would be the same.

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1 A No. The reason I didn't do more money is because they  
2 didn't ask for more money.  
3 Q Right. But I thought I just heard you say that you  
4 wouldn't want to transfer a large amount from the HAVA  
5 money, that the money that's not allocated currently, you  
6 wouldn't want to transfer and replenish their account up  
7 to a hundred or \$200 -- \$200,000 because you're worried  
8 about what other counties would respond with?  
9 A The ability for the \$12,000 based off their information  
10 received that that was an understandable need, and it may  
11 not even be the exact number. I mean they may only ask  
12 for reimbursement for \$11,000. We don't know what the --  
13 what the amount is.  
14 Q Right. But it's your discretion on how much is  
15 transferred or how much is preapproved? You did it all  
16 by yourself; you didn't have to go to anybody else?  
17 A Correct.  
18 Q All right. Then there is no limit for you in the HAVA  
19 plan on what amount you go ahead and transfer or do the  
20 same a month from now?  
21 A I can't think of any requirement.  
22 Q It's totally your discretion on how much money is  
23 transferred to the Shannon County account or preapproved  
24 for early voting?  
25 A They asked for the 12,000, and I approved it.

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1 Q Right. No greater risk in Shannon County than anyplace  
2 else?  
3 A In the 2012 election, the Shannon County -- there wasn't  
4 a difference between Shannon County and any other county.  
5 Q Right. So the questions that Attorney Frankenstein just  
6 asked you, we have got to worry about election fraud on  
7 election day from 8:00 to 3:00, that someone could vote  
8 over here, over here, she talked about risk there, right?  
9 A Yes. I believe I said that's the same risk we have all  
10 across South Dakota.  
11 Q No different in Shannon County than anyplace else?  
12 A No, sir.  
13 Q And you don't know of a single incident since you have  
14 been South Dakota Secretary of State where someone voted  
15 twice at Pine Ridge?  
16 A No.  
17 MR. SANDVEN: No further questions.  
18 MR. WILLIAMS: I have nothing.  
19 MS. FRANKENSTEIN: I have one.  
20 FURTHER EXAMINATION BY MS. FRANKENSTEIN:  
21 Q Back to the absentee voting location in the satellite  
22 office, assuming that satellite office is in Pine Ridge  
23 and they have no computer there, so they don't have  
24 access directly to the Shannon County voter registry --  
25 A Okay.

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1 Q -- and that satellite office is doing absentee voting on  
2 election day up to 3:00, that office wouldn't be like  
3 every other county office because every other county  
4 office presumably does it at their county courthouse  
5 where they have access to their computerized voter  
6 registry. Is that true?  
7 A You are talking on election day?  
8 Q Election day early voting.  
9 A On election day, if you -- you have a Pine Ridge location  
10 and then another location is your scenario?  
11 Q Somebody could absentee vote in Hot Springs at --  
12 A Oh, yes.  
13 Q -- their county courthouse, absentee on election day, and  
14 vote at the satellite location in Pine Ridge on election  
15 day absentee?  
16 A That would be the same thing like voting in Sioux Falls  
17 and then trying to go vote in Dell Rapids. You are still  
18 in Minnehaha County. Yeah. But you can't do that  
19 because the auditor is to notify that precinct location  
20 where that person resides so that they don't vote twice.  
21 Electronic poll books are a completely different story.  
22 Q Because then no phone call needs to be made?  
23 A Correct. All the computers are linked together.  
24 Q Mr. Sandven's questions regarding Shannon County having a  
25 satellite office would be just the same as any other

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1 A Correct.  
2 Q -- that auditor should call up the regular polling place  
3 of that voter and say, by the way, someone voted here  
4 absentee in the polling place, cross them off your  
5 physical list?  
6 A Yes.  
7 Q Okay.  
8 A Sorry.  
9 Q Telephone service or cell phones would be required to  
10 make sure that protocol is available?  
11 A Yes. Some sort of communication from the county auditor  
12 or the auditor's office to that location. It's the same  
13 story anywhere. Shannon isn't special in that regard. I  
14 mean Harding County is even denser and there's, you  
15 know --  
16 MS. FRANKENSTEIN: That's all the questions I have.  
17 FURTHER EXAMINATION BY MR. SANDVEN:  
18 Q Real quick. No greater risk in Shannon County than  
19 anywhere else in the state of voter fraud on election  
20 day?  
21 A It would all be the same based off those scenarios  
22 because the -- the law is the same. Everyone gets to  
23 vote until 3:00 o'clock. Pine Ridge in essence on  
24 June 5th, 2012 was just like Sioux Falls.  
25 Q Yep. You have the same safeguards on Pine Ridge that you

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1 county, that wouldn't be necessarily true except maybe  
2 Pennington County with the satellite early voting center  
3 in Wall.  
4 A I guess I'm confused because when you say "satellite  
5 location," are you talking about Pine Ridge being a  
6 satellite location?  
7 Q Right. Correct.  
8 A Or Kyle being a --  
9 Q Well, let's take 2012 where it was Pine Ridge where  
10 Shannon County had a satellite location. So on election  
11 day somebody could absentee vote at the Shannon County  
12 courthouse, which is in Hot Springs, or they could vote  
13 at the Shannon County satellite office in Pine Ridge, or  
14 they could vote at their regular precinct polling place.  
15 A That is correct, up until 3:00 o'clock.  
16 Q Right. So the -- because -- or if the satellite office  
17 in Pine Ridge doesn't have any electronic poll book, the  
18 only prevention against a voter fraudulently voting in  
19 more than one location is a telephone call?  
20 A Which is the exact same procedure for the rest of the  
21 state. There is nothing special about your scenario that  
22 makes Shannon different than any other county.  
23 Q Okay. So if in another county somebody absentee votes at  
24 the courthouse, which isn't their regular polling  
25 place --

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1 have anywhere else against this. All you need is a cell  
2 phone; is that what I heard?  
3 A The same safeguards. You have two different auditors  
4 running each of those elections.  
5 Q Right. But what I'm getting at is that -- I'm listening  
6 to all these hypotheticals that maybe there is some  
7 mischievous Indian that runs here and here and here, and  
8 does this duplicate voting, all right? Is there any  
9 additional risk at Pine Ridge of that happening than  
10 anywhere else in this state?  
11 A The only difference is that it's not the true auditor's  
12 office because it's a different location. But otherwise,  
13 no, everything is just like Minnehaha.  
14 Q As long as there is some kind of communication that works  
15 between that satellite office and the auditors, you are  
16 fine, right?  
17 A Which I assume they have been doing for years and years.  
18 Q They have cell phones and electricity and all that stuff  
19 like anywhere else, right?  
20 A Yes.  
21 MR. SANDVEN: No further questions.  
22 (Witness excused at 5:28 p.m.)

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1 STATE OF SOUTH DAKOTA )  
2 : CERTIFICATE  
3 COUNTY OF MINNEHAHA )

4 I, Kerry Lange, Court Reporter and Notary Public, do  
5 hereby certify that the witness was first duly sworn by me to  
6 testify to the truth, the whole truth, and nothing but the  
7 truth relative to the matter under consideration; that the  
8 reading and signing of the deposition was not waived by the  
9 witness for reasons as hereinbefore stated; that the  
10 foregoing pages 1 - 280, inclusive, are a true and correct  
11 transcript of my stenotype notes.

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

16 In testimony whereof, I have hereto affixed my signature  
17 this 1st day of August, 2012.

18  
19  
20 \_\_\_\_\_  
21 Kerry Lange

22 Commission Expires: 7/12/17  
23  
24  
25

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1 Pursuant to the Rules of Civil Procedure, I have read  
2 the foregoing pages 1 - 280, inclusive, and have noted any  
3 and all changes in form or substance desired in my testimony,  
4 and have signed below on the \_\_\_\_ day of \_\_\_\_\_, 2012.

5  
6 Page & Line No. Change in Answer Reason for Change  
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24 \_\_\_\_\_  
25 Jason Gant

Notary Signature: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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\$1,154,330 [1] 126/2	'05 [1] 222/13	12/19/11 [1] 3/20
\$10,000 [18] 54/6 59/1 232/14 234/17	'06 [2] 8/22 180/20	12/30/11 [1] 3/12
\$10,000 [18] 54/6 59/1 232/14 234/17	'07 [4] 5/19 6/9 6/17 8/18	120 [1] 4/5
235/7 236/19 237/1 237/4 237/8 237/21	'08 [2] 8/22 125/1	124 [1] 4/4
238/9 238/10 244/19 244/20 245/6	'10 [4] 10/4 97/1 249/19 259/25	129 [8] 3/24 3/24 4/3 5/7 5/15 5/16
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\$10,419.52 [1] 121/3	'12 [2] 10/24 241/23	13 [4] 101/16 113/4 113/22 123/10
\$100,000 [1] 132/20	'16 [1] 137/9	13 percent [1] 197/17
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\$11,550,925 [4] 6/1 8/1 11/15 129/6	-vs [1] 1/12	131 [8] 4/4 4/7 5/7 51/14 120/5 130/10
\$11,596,803 [1] 24/20	.	130/11 130/14
\$11.7 [1] 128/25	...is [1] 105/13	132 [2] 4/5 120/17
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