

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898



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

DAKOTA REPORTING AGENCY  
605-338-8898

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?

DAKOTA REPORTING AGENCY  
605-338-8898

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.

DAKOTA REPORTING AGENCY  
605-338-8898

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

DAKOTA REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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 --

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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 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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898



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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTA REPORTING AGENCY  
605-338-8898

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

DAKOTA REPORTING AGENCY  
605-338-8898

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

DAKOTA REPORTING AGENCY  
605-338-8898

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**

DAKOTA REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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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605-338-8898

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 Masteths 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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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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605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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 94-73? 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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898



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

DAKOTA REPORTING AGENCY  
605-338-8898

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

DAKOTA REPORTING AGENCY  
605-338-8898

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

DAKOTA REPORTING AGENCY  
605-338-8898

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?

DAKOTA REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

150

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

152

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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 Herseth?  
 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 Herseth 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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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,

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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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605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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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605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTA REPORTING AGENCY  
605-338-8898

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?

DAKOTA REPORTING AGENCY  
605-338-8898

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"?

DAKOTA REPORTING AGENCY  
605-338-8898

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

DAKOTA REPORTING AGENCY  
605-338-8898



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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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 --

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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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605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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?

DAKOTAH REPORTING AGENCY  
605-338-8898

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.

DAKOTAH REPORTING AGENCY  
605-338-8898

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 \$2000 -- \$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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