

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

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

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1 APPEARANCES: Mr. Steven D. Sandven  
2 Mr. Ryan Cwach  
3 Steven D. Sandven Law Office, P.C.  
4 Sioux Falls, South Dakota

5 Attorneys for the Plaintiffs.

6 Mr. Richard M. Williams  
7 Assistant Attorney General  
8 Pierre, South Dakota

9 Attorney for Defendant Jason Gant.

10 Ms. Sara M. Frankenstein  
11 Gunderson, Palmer, Nelson & Ashmore  
12 Rapid City, South Dakota

13 Attorney for the Shannon County Defendants.

14 \* \* \* \* \*

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14 \* \* \* \* \*

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

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1 The deposition of Chris Nelson was taken at this  
 2 time and place, that is, at the RedRossa Conference  
 3 Center, Pierre, South Dakota, on the 16th day of July,  
 4 2012, commencing at the hour of 8:00 a.m.; said  
 5 deposition taken before Kerry Lange, RMR, a Notary Public  
 6 within and for the State of South Dakota; said deposition  
 7 taken pursuant to notice.

8 CHRIS NELSON,  
 9 called as a witness, having been first duly sworn,  
 10 testified as follows:

11 EXAMINATION BY MR. SANDVEN:

12 Q Name, please.

13 A Chris Nelson.

14 Q How long were you serving as South Dakota Secretary of  
 15 State?

16 A Eight years.

17 Q First term, please?

18 A 2003 to 2007.

19 Q Second term?

20 A 2007 to 2011.

21 Q When were you seated in your first term?

22 A Would have been January of 2003.

23 Q What did you do before that?

24 A I was the state election supervisor for 13 years.

25 Q And that was beginning when?

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1 A Yes.  
 2 Q Okay. Wait until I'm done. I will try to wait until you  
 3 are done.

4 A Okay.

5 Q So the question is in 2004, all right, did you go ahead  
 6 and send a memorandum to either all the county auditors  
 7 or all the county commissioners, warning about early  
 8 voting, your concerns with what some organization was  
 9 proposing to some of the counties regarding absentee  
 10 voting?

11 A I don't specifically remember that memorandum. I do know  
 12 that in 2004, as with any election year, we sent a number  
 13 of communications to county auditors regarding various  
 14 issues relating to voting.

15 Q Do you ever remember sending a single memorandum  
 16 regarding early voting concerns or absentee voting  
 17 concerns to any county auditor in 2004?

18 A I don't remember a specific memorandum, but we certainly  
 19 might have because certainly, as you know, 2004 was a big  
 20 election year. There was a lot of contention that year  
 21 with both the special congressional election and a high  
 22 profile Senate race, and we sent memorandums on a whole  
 23 number of subjects.

24 Q All right. Do you remember sending any memorandum on  
 25 early voting or absentee voting in 2004?

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1 A Would have been in -- I believe it was April of 2000 --  
 2 or April of 1989.

3 Q 1989 through '03?

4 A Through '02.

5 Q Okay. Then there was a gap for --

6 A There was a gap. As I was out on the campaign trail, I  
 7 stepped out of the election supervisor's position. It  
 8 wasn't appropriate for me to be in that position at that  
 9 point.

10 Q What did you -- and then who did you report to when you  
 11 were election supervisor; the South Dakota Secretary of  
 12 State --

13 A Correct.

14 Q -- directly to whoever that was?

15 A Who was Joyce Hazeltine.

16 Q Do you remember in 2004 sending a memorandum to county  
 17 auditors, county commissioners, warning about early  
 18 voting efforts by some organization?

19 A I don't specifically remember it, but I may have done  
 20 that.

21 Q Generally do you remember mailing anything on your  
 22 letterhead to all the county auditors, all the --

23 A We --

24 Q Wait until I'm done. All right? Have you done a  
 25 deposition before?

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1 A I'm sure that some of our memorandums covered that topic,  
 2 certainly.

3 Q Are they in the materials that were subpoenaed?

4 A I don't think anything like that would be included in  
 5 there. No.

6 Q Why not?

7 A Because it wasn't requested.

8 Q Okay. Let's go through what was requested.

9 A Sure.

10 Q Do you have your subpoena?

11 A No, not with me.

12 Q Did you read the subpoena?

13 A Yeah.

14 Q Do you remember seeing a request for meeting minutes,  
 15 electronic records, e-mails or records relating to the  
 16 2010, '04, '03 state HAVA task force?

17 A Yes.

18 Q Did you provide all of that?

19 A If I could, with your permission, go through what I had  
 20 in my possession.

21 Q Just answer -- just answer my question.

22 A Please repeat your question.

23 Q All right. Did you provide any minutes, electronic --

24 A No.

25 Q Wait until I'm done with my question.

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1 A Okay.

2 Q And I will do the same with you.

3 A Okay.

4 Q All right. Did you have any meeting records, meeting  
5 minutes, electronic records, e-mails, or other records  
6 relating to the 2010, 2004, 2003 state HAVA task forces?

7 A Minutes, no.

8 Q Electronic records?

9 A Let me go through. I am trying to remember each of the  
10 items you mentioned. Meeting minutes, no, because any of  
11 those type of materials, I didn't take with me from the  
12 Secretary of State's office. The only thing that I have  
13 in my position is e-mail records that transferred with me  
14 from the Secretary's office to the Public Utilities  
15 Commission. And so what I provided to you is e-mail  
16 records that are responsive to each of the questions that  
17 you asked for.

18 Q All right. So --

19 A So there are e-mails that deal with the HAVA task force,  
20 yes.

21 Q For which cycle did you --

22 A I did a record search for the entire eight years that I  
23 was Secretary. And so it would be for all eight years.

24 Q All right. Then the documents that describe the  
25 decision-making process for requiring county

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1 reimbursement of election expenses?

2 A Any of those that were in my e-mail system, yes.  
3 Anything that was not in my e-mail system is something I  
4 didn't take with me from the Secretary's office.

5 Q All right. We just got this packet before the hearing.  
6 Is there anything in there?

7 A In regard to what?

8 Q The question I just asked.

9 A Please ask again.

10 Q Decision-making process of the South Dakota Secretary of  
11 State for determining the requirements for county  
12 reimbursement of election expenses.

13 A There are e-mails that talk about that process. I don't  
14 know if it specifically gets at the decision-making part  
15 of it, but it certainly talks about it, yes.

16 Q And any e-mails regarding the distribution of HAVA funds?

17 A Yes.

18 Q All right. And let's go through that quick. What -- the  
19 first money came out in 2003 from HAVA?

20 A I don't recall if we actually got it in 2003, but 2003 is  
21 when we began working in earnest on putting together the  
22 plan for obviously the task force and the monies. I  
23 don't recall when the first money actually arrived here.

24 Q You don't remember what year?

25 A No, I don't.

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1 Q Do you remember when -- when the money did arrive, what  
2 was the allocation procedure? There is 66 counties. How  
3 did you determine how much -- each county got how much?

4 A There were several different pots of money, types of  
5 federal money. The Title I HAVA money was used primarily  
6 for purchasing voting -- vote counting machines, and  
7 those machines were then given directly to the counties.  
8 They were purchased by the Secretary of State, given to  
9 the counties for them to use.

10 The Title II money was used for the Title III  
11 requirements of HAVA. And there were a number of those  
12 requirements. At some point the federal law allowed  
13 states to certify that they had met all the requirements  
14 of Title III and could request to use that money for  
15 other items that advance the cause of federal elections.  
16 And we did that.

17 So far as the Title II money, some of that was used I  
18 believe for purchasing the AutoMARK ballot marking  
19 machines, and then an allocation of that was made to  
20 individual counties for their Title III expenses. And we  
21 allocated that based on a pro rata share based on  
22 their -- I believe it was the number of registered voters  
23 per county. And our thought at that time was that their  
24 Title III expenditures may be roughly commiserate with  
25 the number of registered voters that they had in their

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1 county. And at that point we thought that was probably  
2 the best way to distribute and divvy up those monies.

3 The counties were -- in order to access those Title  
4 II dollars, a match was required, a five percent match.  
5 For the dollars that the state provided, that was state  
6 monies, but for the monies that were allocated out to the  
7 counties, that match was provided by the counties. It  
8 was county dollars that were put in. We set up a program  
9 to allow the counties to maintain those funds, those  
10 match funds that they put up, within their county  
11 coffers. They set aside a specific fund and we called it  
12 the county held fund. And that met the federal match  
13 requirement.

14 Q Do you remember warning any of the county auditors  
15 regarding early voting by Four Directions or some  
16 organization during the 2004 election cycle in late  
17 August?

18 A I don't specifically remember it, but I certainly could  
19 have. As I said before, we had a number of  
20 communications with county auditors regarding a whole  
21 number of issues that year.

22 Q Generally what do you remember?

23 A Generally I remember that the 2004 general election was  
24 probably going to be one of most contentious elections  
25 that this state had seen in a number of years, and

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

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

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1 A Not specifically. I'm certain I talked to the "Argus  
 2 Leader" a number of times on a number of topics, but  
 3 whether that was one of them, I don't recall.

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

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

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1 that they were actively encouraging Native Americans in  
 2 Shannon and Todd County, impressing upon them the  
 3 importance of that particular election to Native  
 4 Americans, and encouraging them to go vote.

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

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1 studied turnout for a lot of years, and 2004 is a great  
 2 example of that. The phenomenal turnout not only  
 3 state-wide, but particularly in Indian Country -- I mean  
 4 if you compared 2004 to 2002 or previous elections,  
 5 phenomenal turnout in 2004. Why? They cared about the  
 6 candidates and the race. And that is why they turned  
 7 out. And it was not just in early voting, but it was on  
 8 election day. And that doesn't apply just to Native  
 9 Americans. It applies across the state. If people care  
 10 about candidates and races, they go vote.

11 Q When did the rules for absentee voting change where you  
 12 didn't need a reason to cast an early ballot?

13 A That change was made by the 2003 legislature, so it was  
 14 implemented for the first time in the 2004 election.

15 Q So for the 2002 election cycle you just referred to, what  
 16 were the reasons that you had to have in order to get an  
 17 early ballot?

18 A You had to -- if I remember correctly, you had to be sick  
 19 or expect to be out of the county on election day or tied  
 20 up at work. I don't remember all the reasons, but you  
 21 had to fit into one of those categories in order to  
 22 request an absentee.

23 Q Then the legislature changed that in 2003?

24 A Correct.

25 Q Were you any part of that effort to change the reasons?

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1 A Yes.

2 Q What was your role?

3 A That was an interesting journey. As Secretary of State,  
 4 we took that proposal to the state Board of Elections,  
 5 and the state Board of Elections approved our introducing  
 6 that concept to the legislature to remove the excuses or  
 7 the reasons for absentee voting. We took that to the  
 8 legislature, and our bill was defeated.

9 At the same time, there was an individual legislator  
 10 that was -- had a bill to require photo ID at the polls.  
 11 And that bill was not getting the type of support that he  
 12 thought it ought to. And he came to me, and he said, you  
 13 know, can you support our bill. And I said the only way  
 14 I'm going to support that bill is if you will support and  
 15 gather support for removing the reasons for absentee  
 16 voting. And he agreed to that. And then those two bills  
 17 at that point moved forward.

18 Q Were you the -- were you the primary mover with the  
 19 election board for the early voting then in 2003, the  
 20 changes, making it easier?

21 A You know, I don't know that I would say I was the primary  
 22 mover. I remember there were county auditors that were  
 23 talking about it. But I know that in my time as an  
 24 election supervisor, you know, by 2003 I became convinced  
 25 that that was the right thing to do.

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1 Q Why?

2 A Primarily because people were just lying on their  
 3 applications. If they wanted to absentee vote, they  
 4 would absentee vote. It wasn't preventing anybody from  
 5 doing that, but they would have to lie to do it. And so  
 6 I thought, and a number of auditors thought, let's just  
 7 take that excuse away and make that process easier.

8 Q What was your understanding why folks -- why the  
 9 legislator wanted early voting? Was it just to run your  
 10 bill alongside of his with the photo ID?

11 A I think that was -- it's one of those political  
 12 compromises that so often happens to get legislation  
 13 through. And, you know, at that particular time that is  
 14 what it took to get what I wanted done. And so those two  
 15 bills came together and moved through.

16 Q How many examples did you have of people lying on their  
 17 application?

18 A Anecdotally, a number. Those came from county auditors.  
 19 I mean they would tell me that all the time, that that  
 20 was their feeling of what was going on.

21 Q What do you mean, anecdotally?

22 A As county auditors would visit with voters, I mean they  
 23 would hear those kind of things. And it got to the  
 24 point, you know, they would pass that on to us, and it  
 25 just didn't make sense.

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1 Q Was that your only reason for going ahead and moving  
 2 forward?

3 A That's the reason I remember. There may have been others  
 4 at the time, but that's the primary one that I remember.

5 Q Did you want -- did you want to make it easier for folks  
 6 to go ahead and vote so they wouldn't have to vote on  
 7 election day?

8 A I didn't want folks to have to lie if they wanted to  
 9 absentee vote. That was -- that was my -- as I recall,  
 10 that was my prime mover in that.

11 Q But it wasn't a secondary mover to go ahead and make it a  
 12 little bit easier for folks to vote, that they wouldn't  
 13 just have to vote on election day?

14 A Well, as I said, anecdotally we were hearing people were  
 15 voting absentee anyway, but they were having to lie to do  
 16 it.

17 Q But besides stopping the lying to vote early, you knew  
 18 that people wanted to vote early?

19 A Certainly.

20 Q All right. You wanted to make that process easier for  
 21 them?

22 A Certainly.

23 Q In 2004, how many days of early voting did folks have?

24 A Well, absentee voting was 42.

25 Q All right.

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

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

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

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

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1 recall. We were simply looking for what we thought was  
 2 the fairest way to allocate that money, and it appeared  
 3 to us that the number of registered voters that a county  
 4 serves would probably be the best way to allocate that.

5 Q Okay. But a county like Lincoln County doesn't have the  
 6 need that Shannon County does or Todd County does, right,  
 7 for early voting costs?

8 A I don't know that the costs would be any different. And  
 9 realizing when this formula was put together, early  
 10 voting or absentee voting wasn't part of the equation or  
 11 discussion whatsoever. This was simply focused on  
 12 meeting Title III requirements. And -- yeah. And so  
 13 absentee early voting, Lakota language assistants, none  
 14 of that was even contemplated at that time.

15 Q Why not?

16 A Because they weren't Title III requirements. At that  
 17 point our sole focus was on making sure that we met the  
 18 Title III requirements of HAVA. And that was the  
 19 singular focus at that point. And then, as I mentioned,  
 20 once we had accomplished that statewide -- and we were  
 21 one of the first states in the country to do that -- we  
 22 applied to the EAC for permission to use those Title II  
 23 dollars for other purposes.

24 Q So could any Title I money be utilized for costs  
 25 associated with absentee voting in Shannon or Todd

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1 the administration of a federal election. And so if  
 2 counties would approach us with new ideas or things that  
 3 they thought that they could do that would improve the  
 4 administration of a federal election, something new, we  
 5 would consider that.

6 And sometimes we would agree with them and say, yes,  
 7 you can use your Title II monies for that purpose. And  
 8 sometimes we would say, no, that's not something that is  
 9 going to improve the administration of a federal  
 10 election, or, no, it looks like all you are trying to do  
 11 is supplant what has been paid for with county funds in  
 12 the past. That is not the purpose of the federal money,  
 13 and we would say no. But that's the evaluation that we  
 14 would use.

15 Q All right. So could any of the money from Title II be  
 16 utilized for early voting?

17 A We authorized Shannon and Todd County to utilize their  
 18 Title II money for absentee voting in those two counties.  
 19 Those are the only two counties that we authorized to do  
 20 that.

21 And the reason we did that is understanding that  
 22 because they didn't have courthouses located in their  
 23 counties, that they would have additional expenditures  
 24 over and above what the other counties would, and we felt  
 25 that reimbursing those costs would be something that

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1 County?

2 A I don't think so, but I would have to review that to say  
 3 for certain. I don't think so.

4 Q Did you ever research that?

5 A No.

6 Q Why not?

7 A That wasn't a question that was posed to me.

8 Q You knew they needed money for early voting down in  
 9 Shannon County. Why wouldn't you research whether or not  
 10 Title I of the HAVA funds could be used to supplement  
 11 that?

12 A Because we chose to authorize Shannon and Todd County to  
 13 utilize Title II monies for those expenses.

14 Q Never even checked on Title I, though, whether or not  
 15 that could be used for early voting --

16 A No.

17 Q -- in your eight years?

18 A Correct.

19 Q All right. Title II monies, was there any restriction on  
 20 Title II monies being utilized for early voting in either  
 21 Shannon or Todd County?

22 A Title II monies can be used for Title III expenditures.  
 23 And then after we got certified by the EAC, we could use  
 24 it for -- and I'm going to try to quote the federal law  
 25 language as best I can -- for those things that improve

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1 would improve the administration of the federal election.

2 Q Are there any restrictions on Title II money for absentee  
 3 balloting in Shannon or Todd County?

4 A My recollection of what we told the counties was they  
 5 could use that to reimburse for their actual  
 6 expenditures, but not use it to supplant things that  
 7 would normally be paid for with county funds. The one  
 8 thing I can think of in particular would be regular staff  
 9 time. But for expenses over and above their regular  
 10 office staff time, I believe that we reimbursed for those  
 11 things.

12 Q Right. My question, under Title II, besides your  
 13 requirement that they submit receipts -- pay the expenses  
 14 first, submit receipts, and then we will reimburse --  
 15 your reimbursement policy, besides that were there any  
 16 restrictions on Title II funds being utilized for early  
 17 voting in Shannon or Todd?

18 A And are you referring to restrictions in federal law or  
 19 what -- I'm not understanding what you are looking for.

20 Q Yes. Title II, federal law. That's a federal law,  
 21 right?

22 A Right.

23 Q That's what I'm asking about. Are there any restrictions  
 24 on Title II being utilized for early voting in Shannon or  
 25 Todd Counties, sir?

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

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

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

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

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

9 Q What year was that?

10 A Like I said, it was 2006, '7, '8, someplace in there.

11 Q So from 2003 to around 2006, it was -- HAVA funds were  
12 distributed to counties according to the number of  
13 registered voters?

14 A There was only one distribution. That was on the initial  
15 pot of money. The initial Title II dollars that came in,  
16 we utilized that methodology. For the succeeding dollars  
17 that came in, and that was in the last half of that  
18 decade, then we switched the methodology, and it was same  
19 dollars per county.

20 Q All right. But that was 2003 to 2006?

21 A Roughly.

22 Q It was the number of registered voters, that is how you  
23 did the distribution?

24 A Realizing that that distribution was only done one time.

25 Q For that whole period --

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1 A Right.

2 Q -- 2003?

3 A When the money came from the federal government, we did  
4 the distribution one time, allocated it to the counties,  
5 and done.

6 Q Okay. And then in 2006 you went ahead and said instead  
7 of going by registered voters, we are just going to  
8 divide it by 66?

9 A Correct. 2006, '7, '8, someplace in there, yes.

10 Q So from 2006 until you left office, all counties got an  
11 equal portion of HAVA funds --

12 A Correct.

13 Q -- from Title II?

14 A Correct.

15 Q What about Title I?

16 A Title I was a single payment that only came once. And  
17 so -- and that was never distributed to the counties.  
18 That was used to buy voting machines that were given to  
19 the counties. And we went through a pretty expensive  
20 process of determining what do you, county, need for a  
21 voting -- vote counting machine. Obviously Minnehaha  
22 County got bigger and more machines than Stanley County  
23 did. But we bought the machines and just gave them to  
24 the counties.

25 Q So from 2006 until the 2010 election, you did equal

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1 portions of Title II monies to each of the counties in  
2 the State of South Dakota?

3 A Yes. As new money came in -- as new money came in, we  
4 distributed evenly, and their match money was put up  
5 evenly.

6 Q Okay. Do you remember the distributions approximately  
7 for the 2004, 2008, 2010 election cycles?

8 A I don't.

9 Q Do you remember what the surpluses were for 2004 of HAVA  
10 funds?

11 A And what do you mean by surplus? Surplus where?

12 Q Money you didn't use from the HAVA funds, carryover to  
13 the next election.

14 A No, I don't.

15 Q All right. Remember for the 2008 election?

16 A No.

17 Q 2010 election?

18 A No.

19 Q All right. Again, my question then, so from 2006 until  
20 you left office, why was it fair to you that Lincoln  
21 County, who has a great tax base, and Shannon County that  
22 is one of the poorest, if not the poorest county in the  
23 state, why should they both get the same amount of money  
24 of HAVA funds?

25 A Because the distribution has nothing to do with tax base.

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1 It has to do with meeting the Title III requirements of  
2 HAVA. Remember, this is federal money that was given to  
3 states to meet the requirements of a federal law, Title  
4 III. And one of those is that essentially each county  
5 has to have an optical scan type machine so that they can  
6 use the AutoMARK ballot marking device. That requires  
7 programming of those machines, that requires maintenance  
8 on those machines, insurance on those machines.

9 And as I have explained, a lot of those fixed type  
10 costs were, I would say, disproportionate to the smaller  
11 counties. And, therefore, we chose to split that money  
12 evenly to assist the smaller counties in meeting their  
13 Title III requirements.

14 Q But a county like Shannon that is almost broke most of  
15 the time or a county like Todd that is broke almost, you  
16 know, most of the time, why not give them a bigger -- a  
17 bigger chunk of the HAVA?

18 A Because -- I mean that's not -- I don't think HAVA  
19 contemplated that.

20 Q Making voting easier for minorities?

21 A HAVA laid out requirements that had to be met. HAVA gave  
22 us dollars to meet those requirements. And that's the  
23 methodology that we chose to allocate those to meet those  
24 federal requirements.

25 Q Is it your position that HAVA funds weren't intended to

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1 go ahead and pay for minority voting on reservations like  
 2 in South Dakota, like Shannon or Todd Counties?  
 3 A That's a very broad question.  
 4 Q You can answer it broadly.  
 5 A HAVA dollars were intended for two things. Actually  
 6 three things. One, is to meet the requirements of Title  
 7 I. Secondly, is to meet the requirements of Title III.  
 8 And then as I have explained, once those requirements  
 9 were met by a state, you could apply to the EAC for  
 10 permission to use it for other things that advance the  
 11 administration of a federal election.  
 12 And there are a number of things that we have done  
 13 under that umbrella, but two that I can think of that get  
 14 at your question are the reimbursement for absentee  
 15 voting in Shannon and Todd County that we have  
 16 authorized. My decision, as I looked at that situation,  
 17 was those two counties did not have a courthouse,  
 18 therefore I felt it would advance the administration of a  
 19 federal election to allow them to use their Title II  
 20 monies for those absentee voting purposes.  
 21 Q Did you --  
 22 A The second thing that we did specifically is authorize  
 23 those counties that are under Section 203, minority  
 24 language requirements, to utilize Title II monies to meet  
 25 their obligations under 203 of the Voting Rights Act, and

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1 counties have done that.  
 2 Q Did you ever request the EAC approval for early voting on  
 3 anything specific to early voting?  
 4 A No.  
 5 Q Why not?  
 6 A Once we had the approval from the EAC to use Title II  
 7 monies for those other things that improved the  
 8 administration of a federal election, at that point I  
 9 believe it was within my discretion to determine how that  
 10 was to be done. I don't believe that I needed to ask the  
 11 EAC for determinations on each type of expenditure.  
 12 Q So if you wanted to in 2004, you could have written  
 13 Shannon County a check from HAVA funds for \$100,000 and  
 14 said go do early voting, go do absentee voting like the  
 15 rest of the folks in the state, same number of days?  
 16 A No. And the reason is in 2004 we didn't have approval to  
 17 use those Title II dollars for those other things to  
 18 improve administration of federal elections.  
 19 Q And you --  
 20 A That came, I'm guessing, in 2006 or 2007. It was later.  
 21 Q Why didn't you request it for 2004?  
 22 A Because we hadn't met all the requirements of Title III  
 23 yet that I can recall.  
 24 Q 2006, why didn't you request it? You didn't need to  
 25 because you already had approval, right?

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1 A Correct.  
 2 Q All right. So why didn't you say here, Shannon County,  
 3 here is a hundred thousand dollars to pay for early  
 4 voting?  
 5 A My determination was that I would authorize them to use  
 6 their Title II dollars to pay for early absentee voting.  
 7 I authorized that.  
 8 Q How much?  
 9 A Whatever their actual expenditures were, actual  
 10 out-of-pocket expenditures for that purpose.  
 11 Q All right. And I need to hear you right on this. So you  
 12 told Shannon County for the 2006 election cycle that  
 13 whatever early voting costs is, put in a reimbursement  
 14 form, and I'll pay for it with HAVA?  
 15 A My recollection was that began in 2008, but I would have  
 16 to go back and look at the exact date that we did that,  
 17 but I don't know that it was in effect for 2006.  
 18 Q All right. In 2008 you told the county auditor -- or you  
 19 wrote a letter to the county auditor that said any early  
 20 voting costs that you incur, put in the reimbursement,  
 21 and we will pay for it with HAVA funds?  
 22 A Actual expenditures, yes.  
 23 Q Who did you tell that to?  
 24 A That was communicated to the county auditors. And they  
 25 have done that. That's occurred.

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1 Q 2004, you don't know how many days of early voting there  
 2 were in Shannon County?  
 3 A No, I don't.  
 4 Q All right. Do you have any idea how much early voting  
 5 cost for the 2004 election cycle?  
 6 A Where?  
 7 Q Shannon County or Todd County.  
 8 A No, I don't.  
 9 Q 2006 election cycle?  
 10 A I don't.  
 11 Q 2008 election cycle?  
 12 A I don't.  
 13 Q 2010 election cycle?  
 14 A I don't.  
 15 Q Did you ever research it; how much does early voting cost  
 16 in Shannon or Todd County? Did you ever research that?  
 17 A When those two counties put in for their reimbursement  
 18 for their early voting expenses, and my recollection is  
 19 that it was for 2008 and 2010, they certainly would have  
 20 submitted those numbers to us. Do I remember -- well, I  
 21 wouldn't even have reviewed those. The staff person  
 22 would have reviewed those and made sure the reimbursement  
 23 got out. So I don't have those numbers off the top of my  
 24 head. But would they have been submitted to our office;  
 25 yes.

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

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

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

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

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1 I'm sure I was aware of it, but I don't recall me ever  
2 weighing in on the issue of number of days.

3 Q Why are you sure you were aware that they only received  
4 about 15 days?

5 A I didn't say that I was aware of 15 days. I would have  
6 been aware of it at the time. I didn't recall it today.  
7 Because I remember that being a big deal; that issue of,  
8 you know, how do we get -- how can we do absentee voting  
9 in those counties, who is going to pay for it, who is  
10 going to staff it, and how do we make sure that it's done  
11 properly. I remember that being a big deal.

12 Q Besides conforming to the technical requirements for  
13 absentee voting, why didn't you go ahead and say, hey,  
14 Shannon County, Fall River County, you need to give those  
15 folks in Shannon County the same number of days of early  
16 voting, absentee voting, that the rest of the state gets?  
17 Why didn't you do that?

18 A Because that would have been usurping the authority of  
19 their elected county commissions.

20 Q You didn't consider it illegal at the time?

21 A No.

22 Q Do you consider it illegal now to give those folks less  
23 days?

24 A No.

25 Q And it's not your decision on whether it's fair or not?

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1 A Correct.

2 Q Did you know there were no days of early voting in  
3 Shannon County before the 2004 primary election?

4 A I'm sure I would have been aware of it at the time, but I  
5 don't recall that today. But understand, again, you are  
6 still using the term "early voting" which is not  
7 something that is used in our state law. But absentee  
8 voting was available to every registered voter in both of  
9 those counties for the entire 42-day period.

10 Q If they wanted to travel to Hot Springs, correct?

11 A Or --

12 Q Put something in the mail?

13 A Put something in the mail, yes.

14 Q All right. Did you ever go ahead and investigate the  
15 costs of driving from locations in Shannon County to Hot  
16 Springs? Did you ever check that out?

17 A No.

18 Q Why not?

19 A I am not sure that that was something that I would have  
20 been concerned with. What I do recall is -- and this  
21 applies not just to those two counties, but anywhere in  
22 the state. If somebody wants to absentee vote, it's the  
23 cost of a stamp. And, you know, that's what I do know.

24 Q Do some people like to vote in person rather than licking  
25 a stamp?

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1 A Sure. I'm one of those. I prefer to vote at my polling  
2 place. That's my preference as opposed to voting  
3 absentee.

4 Q But the reason you never researched the cost for Shannon  
5 County residents for early voting, for driving to Hot  
6 Springs, was because they could mail it in and it was the  
7 cost of a stamp?

8 A Certainly.

9 Q Is that your answer?

10 A That is one of the considerations, certainly. That  
11 applies not just to those counties, but anywhere in the  
12 state. That -- everyone in this state has access to  
13 absentee voting for 42 days.

14 Q You knew Shannon County is kind of poor, right?

15 A Yes.

16 Q And for some people filling up a tank and driving to Hot  
17 Springs, that is a considerable cost?

18 A Yes.

19 Q You knew that, right?

20 A Certainly.

21 Q But you never went out to research driving distances or  
22 costs associated for the Shannon County residents to  
23 drive from their house to Hot Springs and back?

24 A No.

25 Q And did you ever know what the hours were for early

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1 voting in the Hot Springs courthouse?

2 A It would have been their normal courthouse hours, but I  
3 can't tell you what those are.

4 Q Somewhere between 8:00 and 5:00 probably?

5 A Probably, yes.

6 Q All right. So if someone was working in Pine Ridge at  
7 the tribal headquarters, they would have to take off work  
8 to go -- to go do early voting?

9 A They could send an application in the mail.

10 Q Oh, they could do the mail-in.

11 A Yeah.

12 Q But if they wanted to vote in person, they would have to  
13 get a car, correct, get some mode of transportation to  
14 get over to Hot Springs, correct?

15 A If they wanted to vote in person, they have two choices.  
16 They could either go to Hot Springs or they could go to  
17 their neighborhood polling place on election day. Those  
18 are the two in-person choices. But the question really  
19 is how can they get their ballot in the box and get it  
20 counted. And there is a third option, and that's the  
21 send in an application.

22 Q Right. But -- and that's your reasoning. They could go  
23 ahead and vote on election day, the folks in Shannon  
24 County, they could mail in their -- mail in, request a  
25 ballot, and vote that way --

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1 A Yes.  
 2 Q -- or they could drive to Hot Springs?  
 3 A Certainly. All those are options.  
 4 Q All right. And you never researched the cost of the  
 5 third option of driving to and from Hot Springs or those  
 6 difficulties for voting in person?  
 7 A No.  
 8 Q And you never did that for three or four election cycles?  
 9 A Correct.  
 10 Q You never researched those costs?  
 11 A Correct.  
 12 Q And you never researched how many days of early voting  
 13 they even did get in Shannon County doing -- during the  
 14 2004 --  
 15 A I would have known how many days at that time, yes.  
 16 Q Do you know today how many days of early voting happened  
 17 before the primary in -- in Shannon County?  
 18 A I wouldn't have recalled until you mentioned it, no.  
 19 Q It was zero?  
 20 A Okay. I will take your word for it, but I don't recall  
 21 that.  
 22 Q And the rest of the state, everyone else in the state got  
 23 32 days or so of actual early voting, didn't they?  
 24 A That would be correct, yes.  
 25 Q In their county?

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1 A Correct.  
 2 Q Is that fair to you, 32 and zero?  
 3 A Every registered voter has an opportunity to absentee  
 4 vote.  
 5 Q So that is fair to you then?  
 6 A Yes.  
 7 Q Shannon County folks get zero days of early voting in  
 8 their county, the rest of the state gets 32 days of early  
 9 voting in their county?  
 10 A Everyone has an opportunity to vote absentee for the  
 11 entire six-week period --  
 12 Q Right.  
 13 A -- anywhere in the state.  
 14 Q So for folks that want to vote in person, it's not the  
 15 same, is it?  
 16 A If you want to vote in person, you have two options. You  
 17 can drive to your courthouse, which in this case is Hot  
 18 Springs. If you are talking distances, very much like  
 19 somebody that lives in Faith having to drive to their  
 20 courthouse in Sturgis.  
 21 Q What is the population of Faith? Is it several -- two,  
 22 three, four hundred people?  
 23 A You know, I can't tell you the population, but I can tell  
 24 you how many telephone lines they have. They have got  
 25 300 telephone lines in Faith.

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1 Q That is a little town?  
 2 A Yes.  
 3 Q You used that example frequently during the 2004 and 2006  
 4 and 2008 election cycles to go ahead and say it's no  
 5 different at Shannon County. Do you remember talking in  
 6 the press that people in Meade County have got to drive a  
 7 distance, too?  
 8 A I don't remember talking about it, but I certainly could  
 9 have because they have to drive a distance, just like we  
 10 do in a lot of places in South Dakota.  
 11 Q Have you ever researched the distances county by county  
 12 from the largest town in the county to the courthouse,  
 13 what that distance is?  
 14 A No.  
 15 Q Why not?  
 16 A Didn't occur to me that I needed to.  
 17 Q Second largest town in the county to the courthouse, ever  
 18 research that?  
 19 A No.  
 20 Q Do you know what the largest towns are in Shannon County?  
 21 A The largest -- well, the only incorporated town is  
 22 Batesland, but the largest community --  
 23 Q Population base.  
 24 A Population base would be Pine Ridge.  
 25 Q What is number two and three? What are the other big

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1 towns there?  
 2 A I'm not sure the order of the rest of them.  
 3 Q Okay. Never researched it?  
 4 A No.  
 5 Q Why not?  
 6 A Didn't know I needed to.  
 7 Q If the folks have to drive all the way to Hot Springs to  
 8 cast their vote in person, you didn't think it was  
 9 necessary to determine how far they needed to drive?  
 10 A If -- if driving distance was a concern, they have an  
 11 option of voting through the mail. And those options are  
 12 there. They are open the entire six-week period.  
 13 Q Do you know how many post offices there are in Shannon  
 14 County?  
 15 A I don't know.  
 16 Q Have you ever researched where they are located?  
 17 A No.  
 18 Q Have you researched the distances that some of the folks  
 19 in the rural areas have to drive to a post office?  
 20 A No.  
 21 Q Why not?  
 22 A Didn't occur to me that I needed to.  
 23 Q During the 2004 election cycle, do you know whether or  
 24 not Shannon County voters got a single day of voting,  
 25 early voting, in Shannon County before the primary to

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1 replace Janklow?  
 2 A I didn't recall that. You've told me that it was zero,  
 3 but I didn't recall that, no.  
 4 Q Did you know they didn't get any days before the general  
 5 election in replacing Janklow, no days of early voting in  
 6 Shannon County?  
 7 A For which election?  
 8 Q The -- before the -- the primary in 2004 and the special  
 9 election to replace Janklow.  
 10 A Those were the same election.  
 11 Q Right. Zero days?  
 12 A Right. I wouldn't have recalled that, but that is what  
 13 you have told me.  
 14 Q You don't remember?  
 15 A No.  
 16 Q You don't have any idea how many days of early voting  
 17 there was in Shannon County during the 2004 election  
 18 cycle?  
 19 A No. Not -- I would have known at the time, but that's  
 20 not something I remember.  
 21 Q All right. Do you remember the length of the voting day  
 22 during the -- those limited number of days of early  
 23 voting in Shannon County during the 2004 election cycle?  
 24 A No.  
 25 Q Do you remember discussions that there was no overtime?

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1 The folks left Shannon County -- or left Hot Springs at  
 2 8:00 o'clock and drove over to Pine Ridge, and then they  
 3 were back by quitting time at 5:00. Do you remember  
 4 those conversations?  
 5 A Yes. I do.  
 6 Q What do you remember?  
 7 A I remember exactly what you have laid out.  
 8 Q So how many days -- how many hours per day, of those  
 9 limited number of days, did early voting occur in Shannon  
 10 County?  
 11 A I don't know what the hours were at those offices.  
 12 Q No idea?  
 13 A No, I don't, other than, you know, what you have told me.  
 14 Q Was it about four hours?  
 15 A I don't know.  
 16 Q Do you know what the travel time from Hot Springs to Pine  
 17 Ridge is?  
 18 A Probably about an hour.  
 19 Q Were you involved in any of the discussions? Did you  
 20 ever say, Shannon County, you need to go ahead and give  
 21 the Shannon County folks the same number of hours per day  
 22 of early voting that everyone else gets?  
 23 A I don't recall being involved in any of those  
 24 conversations.  
 25 Q Did you ever tell anyone that?

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1 A I don't recall.  
 2 Q In 2004, you don't remember?  
 3 A I don't recall that, but that would have been something,  
 4 again, that would have been under the purview of the  
 5 county commission. Whatever the locally elected county  
 6 commission determined they wanted it in their county,  
 7 that would have been their purview.  
 8 Q All right. You didn't have an opinion on it?  
 9 A I don't recall talking about it, no.  
 10 Q Do you have an opinion on it today? Should the folks in  
 11 Shannon County have the same number of hours per day to  
 12 cast their vote in person in their county like everybody  
 13 else?  
 14 A That is something that is under the discretion of the  
 15 county commission.  
 16 Q You have no opinion on how that discretion is exercised?  
 17 A I don't.  
 18 Q Did you know that there was private sources that paid for  
 19 early voting in 2004?  
 20 A Yes.  
 21 Q What did you think of that?  
 22 A I thought that was very commendable on their part.  
 23 Q Why?  
 24 A Because that allowed -- and the private sources were  
 25 concerned -- they specifically wanted in-person absentee

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1 voting for whatever reason. And if, you know, they were  
 2 willing to pay for that, I thought that was fine. I do  
 3 recall asking the Attorney General's Office if that was  
 4 something that was legal because we had never had that  
 5 type of offer before. And the determination was made  
 6 that it was. And at that point I had no problem with it.  
 7 Q When did you know that early voting was legal, early  
 8 voting locations, satellite locations, in Shannon County?  
 9 A Please repeat the question.  
 10 MR. SANDVEN: Can you read it back.  
 11 (Last question read back by the reporter.)  
 12 A I don't recall. Are you asking when did I know that the  
 13 private payment was legal or that the locations were  
 14 legal?  
 15 Q What did you request for -- what did you ask from the  
 16 Attorney General's Office?  
 17 A We became aware that the private organization was  
 18 offering to provide the county with money to pay for the  
 19 cost of early voting locations. And my request, as I  
 20 recall, to the Attorney General was is that something  
 21 that is legal. And they came back and said, yes. And  
 22 that was the end of the discussion as far as I recall.  
 23 Q When did you first learn that a satellite location or an  
 24 early absentee voting location in Shannon County could be  
 25 set up? When did you first learn that was okay?

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

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

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

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1 Q 51?  
2 A Yes.  
3 Q 52?  
4 A Yes.  
5 Q From those exhibits, can you determine during the 2004  
6 election cycle how many folks participated in early  
7 voting?  
8 A How many participate in absentee voting, yes.  
9 Q What is that percent?  
10 A Statewide, 23.96.  
11 Q In Shannon County?  
12 A 36.78.  
13 Q That was a total of how many voters?  
14 A 1,673 in Shannon County.  
15 MR. WILLIAMS: You are referring to Exhibit 45?  
16 THE WITNESS: Correct.  
17 Q Okay. Then during the 2006 election cycle, what percent  
18 of folks in Shannon County voted early, absentee?  
19 A Well, I'm referring to Exhibit 47. It doesn't clarify if  
20 this is for the primary or general, but I am assuming  
21 it's the general election. And 2.81 percent.  
22 Q So that is a drop of how much between the '04 and '06  
23 elections, sir?  
24 A Roughly, a drop of 34 percentage points.  
25 Q And the number of voters declined from what to what for

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

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

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

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

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1 election is 15 days prior.

2 Q In the rest of the state during your three elections --

3 how many elections did you oversee; '04, '06, '08, and

4 '10, four of them?

5 A Yes. And then as election supervisor, starting in 1990,

6 and all the way through 2002. Well, through 2000. In

7 the 2002 primary, then I backed out of that position.

8 Q Between 2004 and 2010, what were the rules for

9 registering at an early voting location or an absentee

10 voting location?

11 A You could register to vote as long as it was at least 15

12 days before the election.

13 Q At any of those locations?

14 A Yes.

15 Q All right. So in Shannon County, all right, if they

16 didn't have that location, they would have to find

17 another place to get registered early?

18 A Correct.

19 Q Were you aware of the satellite in Wall?

20 A I know that Pennington County has done something in Wall,

21 but I don't know the particulars. And it may have

22 something to do with the city finance office, but, again,

23 I don't know the particulars.

24 Q Could absentee balloting occur in Wall?

25 A I think that is the purpose, but that is a county level

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1 deal. All I remember is some comment by the county

2 auditor that they were cooperating with the -- I believe

3 the finance office to do something over there.

4 Q Do you know what the costs of early voting in Wall were?

5 A No.

6 Q In 2008, how many of the Shannon County folks voted

7 absentee?

8 A 2008 general election in Shannon County, 448 voters,

9 which was 13.1 percent of the vote cast in Shannon

10 County.

11 Q And that was with two days before the primary and two

12 days before the general in Shannon County?

13 A Again, I don't remember what those numbers were.

14 Q Do you remember in 2010 how many days of absentee

15 balloting in Shannon County occurred?

16 A I don't, no.

17 Q You don't remember if it was 22 partial days before the

18 general election?

19 A That sounds right. I remember there being a big concern

20 about that. I actually traveled to Fall River -- to Hot

21 Springs several times to work on that issue. But the

22 exact number of days that ended up happening, I don't

23 recall.

24 Q All right. You were at the September 24th, 2010 meeting

25 in Shannon County? Do you remember that?

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1 A I remember being at a meeting. I don't recall the exact

2 date.

3 Q Do you remember ACLU being there and Department of

4 Justice?

5 A I remember the Department of Justice. I am not sure if I

6 remember the ACLU, but I remember the Department of

7 Justice was there.

8 Q Remember President Two Bulls from Oglala Sioux Tribe

9 being there?

10 A Yes.

11 Q Remember what she was asking for?

12 A I don't.

13 Q You don't remember why she was there?

14 A She was there generally I think to advocate for absentee

15 voting site in Shannon County.

16 Q Why didn't you just say we have HAVA money, we can help

17 with this?

18 A I had already said that. I already authorized the county

19 to use their HAVA money for that.

20 Q Did you have any limits on the amount of HAVA money that

21 could be utilized by Shannon County during the 2010

22 election cycle?

23 A Whatever they had in their county -- or in their both

24 county and state held accounts, whatever amount of money

25 was allocated to their county, it was at their discretion

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1 whether to use it on that purpose or not.

2 Q You had discretion to transfer fund money that wasn't

3 designated or allocated to their account, didn't you?

4 A Yes.

5 Q Did you say, hey, I have got more money over here besides

6 what has already been allocated to you, Shannon County,

7 that I can transfer over?

8 A No, I did not.

9 Q Why not?

10 A Because in my mind that would not have been fair to

11 allocate additional monies to that one particular county

12 as opposed to every other county.

13 Q Even though the need was greater in Shannon County than

14 anywhere else?

15 A Correct. I did not.

16 Q I don't understand. If you knew the need was greater in

17 Shannon County than anywhere else, you knew that they

18 couldn't fund the early voting locations there, why

19 couldn't you just designate additional monies?

20 A My recollection was that they had 30, 40, 50 thousand

21 dollars already. I'm thinking it was in the \$50,000

22 range in their account. They had monies.

23 Q That wasn't just for absentee voting, was it? That was

24 for conducting all elections, all election expenditures,

25 wasn't it?

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1 A Well, the Title III election expenditure, correct. But  
2 that was certainly adequate money. And at the end of  
3 2010, I transferred additional monies into each county's  
4 account -- I believe \$10,000 -- to help replenish to  
5 prepare for the next election.

6 Q So you thought they had plenty of money, they just had to  
7 ask you for more if they needed it?

8 A They had sufficient money to conduct absentee voting in  
9 Shannon County and to pay for their Title III  
10 requirements, yes.

11 Q Did they have sufficient money to pay for 32 days of  
12 actual early voting, the full eight hours, before the  
13 primary and before the general?

14 A I believe they did. But I have not -- my recollection is  
15 they had about \$50,000 in their account.

16 Q All right. It's your testimony here today they had  
17 sufficient money to do absentee voting in Shannon County,  
18 correct, at that time for 2010?

19 A Yes.

20 Q But I thought earlier you didn't know how much absentee  
21 voting cost?

22 A I don't, but -- I can't tell you specifically, but I know  
23 that 50,000 certainly would cover their Title III  
24 requirements for that election and whatever possible  
25 expenditures they would have for absentee.

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1 Q You know elections better than I will ever know them.  
2 You have been doing them a lot of years. Why do you  
3 think \$50,000 would cover 32 days of absentee voting in  
4 Shannon County and 32 days before the general and  
5 primary? Explain.

6 A Because I can't imagine it costing more than that.

7 Q Why? How much should staff cost? How many folks do you  
8 need at a location, minimum?

9 A So far as staffing, I think it depends on where you are  
10 at in the election cycle. If you are talking -- if you  
11 were to start 42 days out, one staff is going to be  
12 probably sufficient because there is not going to be a  
13 lot of interest at that point. As you get closer to the  
14 election, you may need more.

15 It's also going to depend on the type of election. A  
16 2004-type election, you are going to need more staff. If  
17 you go to a 2006-type election where you don't have that  
18 intense focus, you are not going to need as many staff.

19 But I can't put specific numbers to your question. I  
20 wish I could. If we could go back and look at the  
21 reports that are sitting in the Secretary of State's  
22 office for what they have asked for reimbursement, we  
23 could nail that down. But generally, I can't imagine  
24 those expenditures being more than \$50,000.

25 Q Right. And you would -- there is no requirement that you

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1 have more than one staff person there at the box if  
2 things are slow, correct?

3 A Correct. Yeah. That's entirely at the discretion of the  
4 county auditor and the county commission.

5 Q But there is no legal requirement that I have two county  
6 officials or --

7 A No.

8 Q Is there a minimum requirement over who sits at the box?  
9 Do you have to have the county auditor or could it be a  
10 clerk?

11 A It could be a deputy county auditor, yes.

12 Q All right. What do those folks get paid most of the  
13 time?

14 A I don't know.

15 Q No idea? You don't know what the range is for --

16 A I don't.

17 Q -- deputy clerks?

18 A No, I don't.

19 Q And then you -- then you would need a location, correct?

20 A Yes.

21 Q And what are the minimum requirements for the location?

22 A I'm not sure that there is a minimum requirement other  
23 than it be handicap accessible.

24 Q Little bit of parking, make sure people can get in and  
25 out, right?

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1 A Right.

2 Q Did you ever research how much or have any idea how much  
3 it cost to rent a space like that in Pine Ridge, South  
4 Dakota?

5 A No, I didn't.

6 Q Then what would the travel costs be?

7 A That I don't know.

8 Q Is it just the state rate?

9 A I don't know what their arrangements are with those  
10 counties.

11 Q Do you know what the state rate for mileage is?

12 A Thirty-seven cents.

13 Q That is about 60 miles or so one way from Hot Springs  
14 over there? Yes?

15 A Generally, yes.

16 Q So what are the miscellaneous costs that go along with  
17 conducting an election? What else would they need there  
18 that they would have to pay for that you have got to  
19 figure into a budget?

20 A They -- depending on what they had for, you know,  
21 computer equipment. They would certainly need access to  
22 the voter registration list. They may need to do that  
23 electronically. I'm not sure how they are set up to do  
24 that down there. So there may be some -- some computer  
25 cost. But generally I think it's going to be, you know,

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1 hiring that person, the mileage, and the rent for the  
2 location.

3 Q Do you need a poll book there to go ahead and do this  
4 absentee voting?

5 A No.

6 Q Why do you say, no, sir? I don't understand.

7 A Because the -- the names of people that vote absentee are  
8 entered into the poll book on election day when absentee  
9 ballots are processed. So you don't need one when they  
10 absentee vote. You need a registration list, but not a  
11 poll book.

12 Q Okay. Any other special requirements for the early  
13 voting location other than those that you have just  
14 described?

15 A Not that I can think of, but, again, I have never done  
16 it. I'm not the county auditor that has actually got the  
17 experience doing it, but I can't think of any others.

18 Q All right.

19 A I'm sure when you talk to them they will say, well, that  
20 Nelson doesn't know because he has never done it, but I  
21 can't think of it.

22 Q But as far as -- as far as costs or the budget, that is  
23 why you think it would be less than \$50,000 for an entire  
24 election cycle to do six weeks of early voting before the  
25 primary and the general?

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1 A Correct. Along with their other Title III expenditures  
2 that they are going to have anyway.

3 Q So if -- so that is only a little over \$12,000 -- I'm  
4 sorry, over -- less than 50 an election cycle, or  
5 allocate \$25,000 a year because you don't have an  
6 election every year normally, right?

7 A I don't know what the exact cost is. Again, I just -- I  
8 can't imagine it being greater than 50,000, but I'm not  
9 prepared to get into what exact dollar it's going to be  
10 per election.

11 Q Right. That is why I'm going off the high end. At the  
12 most a county would -- Shannon County would need to go  
13 ahead and set aside \$50,000 every two years or \$25,000 a  
14 year to go ahead and prepare for, pay for absentee  
15 balloting for the full six weeks before the general,  
16 before the primary in Shannon County?

17 A Along with their normal Title III expenditure. I can't  
18 imagine it being more than that.

19 Q Okay. Did you hear any financial concerns at the  
20 September 24, 2010 meeting at Shannon County that you  
21 attended? Did they say we can't afford to pay for this  
22 early voting, this absentee voting over there?

23 A Yes.

24 Q What did you say?

25 A I don't recall exactly what I said, but I know we made

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1 clear what our reimbursement arrangements would be.

2 Q You said we have got money over here, you just have got  
3 to -- you've just got to go ahead and submit this form?

4 A I don't know exactly what I said, but that certainly is  
5 what we would have conveyed.

6 Q Any -- any feedback from the commission or the county  
7 auditor? What was the feedback?

8 A My recollection was they had a very good understanding  
9 that -- I mean here's the thing. And it applies not just  
10 to that county, but every county. And this -- this also  
11 is really what drove -- what kind of drives a lot of my  
12 decisions from day one with HAVA.

13 The federal HAVA law, the requirements of that law  
14 are going to be in place probably forever. They are not  
15 going away. The cost to meet those requirements aren't  
16 going away. I know that, the counties know that. They  
17 pay for them this year. Two years down the line, they  
18 have got them again.

19 My recollection was that those county commissioners  
20 and -- I mean they have got as tough a job as any county  
21 commissioner in this state because of the financial  
22 difficulties down there. I mean they know that those  
23 requirements are going to continue. And they know that  
24 they have got to have the money to pay those requirements  
25 down the road. If they spent everything in their pot

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1 today, they are not going to have the money to pay for  
2 the requirements two years down the road. And I think  
3 they were evaluating that and trying to be judicious in  
4 how they spent and at what rate they spent their HAVA  
5 funds.

6 Q All right. You knew in 2004 that there weren't the same  
7 number of absentee voting days in Shannon County as the  
8 other counties?

9 A Yes.

10 Q All right. So why didn't you get that fixed before 2006?  
11 Because it happened again. It was worse in 2006. It was  
12 zero days before the primary, zero days before the  
13 general.

14 A Because those days are determined by the local county  
15 commission, not by the Secretary of State.

16 Q Did you ever have any communication with anyone between  
17 the '04 and '06 election and say, here, what are we doing  
18 here so this doesn't happen again?

19 A I don't recall if I did.

20 Q You don't remember anything?

21 A No, I don't.

22 Q All right. And then in 2006 -- and we talked about the  
23 early voting numbers collapsing 30 plus percent. Did you  
24 ever have any conversations between the '06 and the '08  
25 election and say look at what happened in '06 where they

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1 had zero days over there? We have got to do better this  
2 time in 2008.

3 A No. I don't recall having any of those conversations.

4 Q Why not? Why didn't you have those conversations?

5 A Because, again, those determinations are something made  
6 with the -- by the county commission and the county  
7 auditor.

8 Q But if you know that there is problems in a county, why  
9 wouldn't you intervene and go ahead and say, here, I can  
10 help you out? We have got millions of dollars of HAVA  
11 money. There is no way this cost more than \$50,000 every  
12 two years. Let's figure this out together. Why didn't  
13 you do any of that?

14 A I viewed my role as helping counties comply with the  
15 election law. If there is something that's going on that  
16 is illegal, that is not according to the law, we do  
17 everything we can to help the counties get that  
18 straightened out. But when it comes to things that are  
19 up to the county discretion, I typically didn't step on  
20 that discretion. That's just the way I operate.

21 Q Have you ever had any involvement of any kind in  
22 promulgating rules regarding absentee voting?

23 A Yes.

24 Q Let's go through them. What's the first time you had  
25 something to do with promulgating absentee voting rules?

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1 What year, sir?

2 A I don't recall, but, again, I began as election  
3 supervisor in 1989, so it could have been any time after  
4 that.

5 Q As election supervisor, I know that was a significant  
6 period of time, that you served in that capacity for a  
7 long number of years. But what do you remember during  
8 that part of your career in elections being involved in  
9 promulgating rules regarding absentee balloting?

10 A Generally the rules that are promulgated for absentee  
11 voting involve forms and language. What does the  
12 application look like. What does the envelope look like  
13 that you mailed the ballot out. What does the envelope  
14 look like that you mail the ballot back.

15 During those 20 some years I was involved in  
16 elections, we'd periodically make changes to those forms  
17 to make them easier to use, easier to understand. Prime  
18 example would be after 2003 when the legislature removed  
19 the excuses or the reasons, we'd go in and promulgate a  
20 new form to remove that. Later when there were some new  
21 federal requirements for military absentee voting, we  
22 would go back in and put that kind of language in to  
23 comply with those statutory changes. Generally that is  
24 what I recall.

25 Q Any other -- do you recall any other involvement in

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1 promulgating rules regarding absentee balloting other  
2 than those just described?

3 A No, I don't.

4 Q Okay. So you took those rules, you were the -- as the  
5 Secretary of State you would put that on the agenda and  
6 go in front of the election commission, correct?

7 A The election board, yes.

8 Q And under the statute, they have the authority to  
9 promulgate rules to carry out those election  
10 responsibilities?

11 A Yes.

12 Q Why did you think it was necessary to go ahead and  
13 promulgate a rule regarding absentee balloting? Why did  
14 you have to go through that process? The state  
15 legislature already said do it, so why did you need to go  
16 through the rule-making process?

17 A Well, the state legislature specifically gave us  
18 authority to promulgate forms and language on forms for a  
19 lot of different things regarding elections, not just  
20 absentee voting, but all of the forms that you deal with.  
21 And so they gave us that specific authority, and then we  
22 followed through with that and put those forms together  
23 and made changes.

24 Q Did you do anything besides change the form? Did you put  
25 together a little procedure or was the procedure

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1 delineated right in the form itself?

2 A Procedure is primarily delineated in statute. And so did  
3 we do anything procedurally in administrative rule, I  
4 don't recall that we did.

5 Q But you considered the absentee balloting process a  
6 procedure, didn't you, an election procedure?

7 A Yes.

8 Q And what are all the aspects that comprise absentee  
9 balloting? What did you talk about before? It was the  
10 mailings, correct?

11 A Yes.

12 Q That had its own form?

13 A Yes.

14 Q A mail -- a mailing to request a ballot, correct?

15 A Yes. There is one singular application. It doesn't  
16 matter if you are sending it in through the mail, if you  
17 are filling it out, giving it to somebody, a campaign or  
18 a private group to take it in, if you are at the  
19 auditor's office, if you're at an absentee site. Doesn't  
20 matter. One application is used for all of those things.

21 How much of that application you fill out depends on  
22 your method -- what you are trying to accomplish. If you  
23 are applying for an absentee ballot through the mail,  
24 then there is a section that says give us your mailing  
25 address where you want us to send the ballot to.

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

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

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

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

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1 physically located within, if the contracting county,  
2 being the county commission, requests that absentee  
3 ballots be provided.

4 Q And that was done in 1992?

5 A Correct.

6 Q And that's what -- that's what you think goes ahead and  
7 says the county only has to do -- they could do less days  
8 of early voting, absentee voting in-county than the  
9 neighboring county?

10 A Correct. And if you go back to the legislative history,  
11 that is what you're going to find. That was the  
12 discussion when this was passed.

13 Q What was the discussion? What are you referencing?

14 A My recollection -- granted this is 20 years ago -- but my  
15 recollection was that it was -- it was just that; that it  
16 was the legislature authorizing those county commissions  
17 to make specific requests to have absentee ballots  
18 located within their county, to make that request of  
19 their contracting auditor.

20 Q Right. But there was no discussion regarding the number  
21 of days; you can do less to the Indians over there than  
22 you can anybody else, right?

23 A I don't recall that, whether that was part of it or not.  
24 I don't know.

25 Q Right. You are not aware of anything enacted anywhere

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1 that states you can do less days of in-county absentee  
2 voting to Shannon County folks than anybody else? That  
3 is not stated anywhere, is it?

4 A This gives the discretion to make that decision to the  
5 county commission of those counties.

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

7 A Probably since 1992.

8 Q And that's why it wasn't a big deal to you that Shannon  
9 County got less days of in-county absentee voting than  
10 anywhere else?

11 A Correct. Because it was -- the legislature gave that  
12 discretion to the county commission.

13 Q But when you say the discretion to contract, but not to  
14 contract it equally, right, unequally?

15 A It gives the county commission the discretion as to how  
16 to write that contract and what they want the contract  
17 for.

18 Q Is it your opinion that the county commission can  
19 contract for less days, Shannon County can contract for  
20 less days of in-county absentee voting than  
21 neighboring -- than neighboring counties?

22 A Neighboring counties don't have to contract. But is it  
23 my opinion that Shannon County Commissioners could choose  
24 to contract for less than, you know, the 42 days, the  
25 answer is yes.

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1 Q Anything else you are basing that opinion on besides what  
2 you just cited or what --

3 A No.

4 Q -- you just walked through in the statute?

5 A No. That is -- that is the sole statute.

6 Q Have you ever talked with anyone about this?

7 A I've quoted it frequently, but have I ever sought a legal  
8 opinion or attorney general's opinion on it, no.

9 Q When have you quoted it frequently? Who did you share  
10 this with?

11 A Whenever this discussion comes up is -- you know, what  
12 are the requirements for Shannon and Todd County. This  
13 is the statute that gives their county commissioners the  
14 authority to determine what they want.

15 Q So you as -- while you were Secretary of State, you  
16 suggested to county officials, you don't have to do the  
17 same number of days in-county as everywhere else?

18 A I would suggest to them that that decision is up to the  
19 county commission, correct.

20 Q But you have told them that they have the discretion to  
21 contract for less days than other counties have for --  
22 for absentee voting in their county?

23 A I don't know the exact language that I used, but I  
24 certainly would have communicated to them that my belief  
25 was that this statute gave the county commission the

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1 authority to determine how many days they wanted within  
2 their county.

3 Q And you never got a legal opinion on that?

4 A No.

5 Q That was your opinion?

6 A That was my opinion.

7 Q When is the first time you told Shannon County that?

8 A I don't recall, other than as new election statutes are  
9 passed, it would have been our normal course to provide  
10 those new statutes to all the county auditors. So when  
11 this statute was passed in 1992, I'm certain that we  
12 would have provided that to all of the counties. They  
13 would have been aware of it at that point.

14 Q Right. This really became a big deal in 2004, didn't it,  
15 when you didn't need a rule or a reason for absentee  
16 balloting, you didn't need a specific reason?

17 A I think the reason it became a big deal in 2004 was,  
18 again, the intensity of the campaign that was going on at  
19 that time. I mean that was -- that campaign was  
20 unprecedented in South Dakota history, at least in the 20  
21 years that I have been working in elections.

22 Q Before you went ahead and told county auditors -- and you  
23 must have told the Fall River County auditor that she  
24 could contract for less days, less than 42 days of early  
25 voting in Shannon County?

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1 A I don't recall exactly what I told her, but I am certain  
2 that in any conversations I would have had about that  
3 subject, this would have been the statute that I would  
4 have referenced that gives that discretion to the county  
5 commission.  
6 Q Did you ever -- did you ever talk to -- why didn't you  
7 talk to a lawyer and say does that give them the  
8 discretion to contract for less days of early voting in  
9 Shannon County and Todd County?  
10 A Because to me the language was clear.  
11 Q Last time I'll go ahead and ask a question regarding this  
12 statute with you, but I need to understand your  
13 reasoning, Secretary of State.  
14 In that first sentence, why does it say or where  
15 does -- where do you think -- what words give the  
16 discretion of, Shannon County, you can do less days than  
17 everywhere else?  
18 A If. If. The word "if." If the contracting county  
19 requests. If. It's not mandatory. It's discretionary.  
20 Q And because of that term "if," it's discretionary whether  
21 you get one day of early voting in the county or 32 days  
22 of early voting?  
23 A Correct.  
24 Q What about on election day? I thought everyone gets  
25 early -- you can vote on election day from 8:00 to 3:00?

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1 A You can vote absentee on election day, yep. That is  
2 correct.  
3 Q You knew that wasn't happening in Shannon County, though,  
4 didn't you?  
5 A I don't know.  
6 Q You never researched it?  
7 A No.  
8 Q Why not?  
9 A Because their county auditor is located in Fall River  
10 County.  
11 Q You never heard a complaint, never heard any concerns in  
12 any meetings or any correspondence, that not only did we  
13 not get the same number of days before the election of  
14 early voting in Shannon County, on election day we didn't  
15 get it from 8:00 to 3:00 like anybody else? You never  
16 heard that in your whole tenure as Secretary of State?  
17 A I don't recall. We might have, but I don't recall any  
18 specific conversations.  
19 Q Okay. I'm going to hand you a series of exhibits.  
20 (Deposition Exhibit Numbers 151 through 160 marked for  
21 identification.)  
22 MR. WILLIAMS: Before we start, can I clarify one  
23 thing for the record. When Mr. Sandven asked me about my  
24 representation of Mr. Nelson, I responded in the  
25 affirmative, that I am his attorney. I wanted to clarify

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1 that that role covers his tenure as Secretary of State  
2 and his employment with the Office of Secretary of State.  
3 Mr. Nelson is currently employed by the South Dakota PUC  
4 for which he has other representation.  
5 Q Do you have Exhibit 151 in front of you, sir?  
6 A Yes.  
7 Q Tell me what this is?  
8 A As part of the receipt of HAVA grant monies from the  
9 federal government, the Secretary of State's office had  
10 to do periodic reports to the federal government on those  
11 expenditures. And this appears to be one of those  
12 reports covering April 10th, 2003 through December 31st  
13 of 2003.  
14 Q All right. You said it appears. This is what you signed  
15 on January 20th, 2004, and you submitted this, correct?  
16 A Yes.  
17 Q All right. And this is the reporting period for HAVA  
18 funds from when to when?  
19 A April 10th, 2003 to December 31st, 2003.  
20 Q All right. On Line Item G -- 10g, total federal share,  
21 what does that \$323,900 represent?  
22 A That appears to represent the total expenditure of HAVA  
23 money. I would also say -- obviously this is something I  
24 haven't reviewed in eight years, so I can't be certain,  
25 but that is what it appears to be.

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1 Q All right. Does this tell you how much money South  
2 Dakota received from HAVA in 2003? Was this the original  
3 initial distribution?  
4 A I don't believe so, no.  
5 Q All right. So this total federal funds authorized for  
6 the funding period, that \$413,061.04, that was just  
7 the -- that was -- what does that represent?  
8 A I don't know.  
9 Q All right. This is your form to U.S. General Services  
10 Administration, right?  
11 A Correct.  
12 Q And it's for election reform payments. This is for HAVA  
13 funds, right?  
14 A Correct.  
15 Q All right. So this is the financial status report. This  
16 is what you were required to submit as Secretary of State  
17 for any expenditures of HAVA funds?  
18 A Correct.  
19 Q And you don't know what line Item 10h represents, that  
20 \$413,000 and change?  
21 A At -- eight years after we filled this out, I don't  
22 recall what that line item represents.  
23 Q Do you know what Line Item i. represents on that,  
24 \$89,161.04?  
25 A It appears to be a calculated line of lines H minus G.

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1 Q Right. So that was money that was left over in 2003 and  
2 carried over in 2004? That was leftover HAVA money,  
3 correct?  
4 A That is what it appears to be, yes. I can't say for  
5 certain.  
6 Q Why can't you say for certain?  
7 A Because that's been eight years since I looked at this,  
8 and I don't recall exactly what we did eight years ago in  
9 filling this out.  
10 Q All right. Do you remember, did the form change  
11 significantly during your tenure as South Dakota  
12 Secretary of State?  
13 A I don't recall.  
14 Q Did the reporting requirements change at all to HAVA or  
15 to this -- to the government, federal government, the  
16 grantor, during this period of time?  
17 A I don't recall. My assumption would be over an eight-  
18 year period that forms might have changed some. But what  
19 I know is consistent is that we had to do periodic  
20 reports.  
21 Q All right. But this does nothing to refresh your memory  
22 of how much money was carried over from HAVA funds in  
23 2004?  
24 A No.  
25 Q You have no idea how much HAVA funds were initially

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1 distributed --  
2 A No.  
3 Q -- in 2003?  
4 A I don't, but I -- what I do know is that the e-mails that  
5 he is reviewing I believe have those numbers in them.  
6 Q Okay. On Page 2 of Exhibit 151, do you remember  
7 preparing this chart or submitting this chart?  
8 A No.  
9 Q All right. See the line item "grants to counties,  
10 \$242,797," do you know what that represents?  
11 A I don't, no.  
12 Q Really.  
13 A If you give me a moment, I may be able to piece that  
14 answer together --  
15 Q Take your time, sir.  
16 A -- by looking at the last page. (Brief pause.) I do.  
17 Those were monies that were given to -- and if you look  
18 at the -- about the last ten lines on the final page,  
19 those were counties that had punch card vote counting  
20 machines. And as you recall, the whole fiasco with the  
21 2000 election regarded punch card voting machines. And  
22 one of the purposes of HAVA was to get rid of punch card  
23 voting machines. So these were monies that were given  
24 directly to these specific counties to get rid of their  
25 punch card voting machines.

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1 Q All right. So the -- 74.96 percent, this -- of the total  
2 amount of this reporting period -- and what I'm doing is  
3 looking at Page 2.  
4 A Yes.  
5 Q There was a grant to counties, \$242,797.  
6 A Yes.  
7 Q That was 74.96 percent of the money reported on this  
8 form, correct?  
9 A Correct.  
10 Q And that all went for machines?  
11 A Yes.  
12 Q Okay.  
13 A Because -- realizing this was very early in HAVA  
14 implementation and the -- really one of the number one  
15 focuses of HAVA was getting rid of punch card machines.  
16 And these were the counties that we worked with to get  
17 rid of those machines.  
18 Q And do you know why it was distributed to these counties?  
19 Why isn't Shannon County in there?  
20 A They didn't use punch card machines.  
21 Q Okay. Can you look at Exhibit 152, sir.  
22 A Yes.  
23 Q So how were you familiar with this form?  
24 A This appears to be another reporting form covering that  
25 same reporting period.

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1 Q All right. Here's what I am confused on. It says at the  
2 top, "Amended CY 2003," all right? So -- and it was  
3 submitted February 7th, 2007, four years later. Can you  
4 tell me why this amendment was required and what was the  
5 reporting period?  
6 A I can't tell you why the amendment was required. The  
7 reporting period was April 10th, 2003 to December 31st,  
8 2003.  
9 Let me clarify. Exhibit 151 apparently was a report  
10 to the U.S. General Services Administration, whereas  
11 Exhibit 152 is a report to the U.S. Election Assistance  
12 Commission. And this report appears to cover just Title  
13 I monies.  
14 Q Right. When it says the period, it says -- when you look  
15 at Line Item 8, it says, "April 10, 2003 until  
16 disbursed." And then you go to the next Line Item 9, and  
17 it's just 2003.  
18 A Yes.  
19 Q Can you explain the "until disbursed," what that  
20 references?  
21 A Yes. Line 8 talks about the funding or the grant period.  
22 And with this particular grant, the period lasts  
23 literally until the funds are completely disbursed.  
24 There is no deadline for disbursing the funds. Whereas  
25 Line 9 is the exact period covered by this report.

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1 Q So when it says -- when you look at Line Item O, it says  
2 "Total federal funds authorized for this funding period."  
3 So at the time you filled out this form in 2007, there  
4 was \$5,039,273.71 available?  
5 A That is the amount of money that came in. My  
6 understanding was that is the amount of money that came  
7 in for Title I. Now, having said that, my recollection  
8 was the amount that came in was 5 million even. I  
9 believe the 39,000 additional money may be interest that  
10 was added to that fund. And that interest being added  
11 may well be the reason this was amended because I know we  
12 had some issues with how to properly report interest that  
13 was being added to the federal funds. And it may have  
14 been an issue where we finally got that worked out, and  
15 ended up doing amended reports to report that interest  
16 being added.  
17 Q All right. So when did you get the five million?  
18 A Well, my guess was maybe April 10th.  
19 Q Of 2003?  
20 A Of 2003. But sometime during this period, yes.  
21 Q At the time that you filled out this form, how much was  
22 unused?  
23 A It says 4,714,557.  
24 Q So on February 7, 2007, when you submitted this form to  
25 the U.S. Election Assistance Commission, there was

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1 \$4,714,557.60 sitting there?  
2 A No. At the end of 2003 there was \$4,714,557 sitting  
3 there.  
4 Q Okay. Why was this -- understood. Why was this form  
5 submitted in '07?  
6 A Well, as it indicates at the top, it's an amended form.  
7 And I don't recall exactly why we submitted an amended  
8 form, but my guess -- I know we had an issue with how to  
9 properly report interest money that was added to the  
10 federal dollars that were remaining on hand. And it may  
11 have been that we filed an amended report to show those  
12 interest dollars being added, but I can't say for  
13 certain.  
14 Q Okay. So going into the 2004 election cycle, you had  
15 roughly \$4.7 million available?  
16 A Of Title I money.  
17 Q And could any of that Title I money that was described,  
18 that 4.7 million, have been used for early voting in  
19 Shannon County?  
20 A No.  
21 Q Why not?  
22 A Because it wasn't authorized under federal law.  
23 Q Could you have requested --  
24 A I don't believe so.  
25 Q -- that some of that money --

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1 A No.  
2 Q What are you basing that on?  
3 A The limitations of Title I of HAVA.  
4 Q All right. That couldn't go for any of the early voting  
5 equipment or any of that stuff at an early voting  
6 location?  
7 A Without re-reviewing that, I don't believe so. And there  
8 is a specific reason. When we ultimately did authorize  
9 HAVA money, we authorized Title II money because there  
10 are fewer restrictions on Title II money than there are  
11 on Title I. And so my recollection at this point is we  
12 would not have been able to use Title I money for that.  
13 Q Looking at the second page of this exhibit, could -- the  
14 money could be used for funding the HAVA office, correct?  
15 A Correct.  
16 Q And then looking at Page 2 of 2, the last page of this  
17 exhibit, it could include the voter files and rule  
18 changes, HAVA rule changes, correct?  
19 A That were required under Title I of HAVA, correct.  
20 Q Okay.  
21 A And also, as you will notice on the bottom of that last  
22 page, buying out punch card machines and replacing them  
23 with optical scan machines was the primary focus.  
24 Q All right. And I thought I asked earlier, but you have  
25 never researched what Title I funds could be utilized for

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1 an early voting location in Shannon County?  
2 A When I was Secretary of State, I could have -- I knew the  
3 requirements of Title I, Title II, and Title III of HAVA  
4 intimately. In the intervening years, some of that I no  
5 longer recall. But my recollection is that utilizing  
6 Title I funds for absentee voting would not have been a  
7 permissible purpose.  
8 Q All right. So Exhibit 152, Line 10p, that \$4.7 million  
9 plus, it's your testimony that none of that could be used  
10 for early voting locations in Shannon County?  
11 A That's my recollection, correct.  
12 Q Okay. Can you look at 153, sir.  
13 A Yes.  
14 Q What is this?  
15 A Appears to be another report to the Election Assistance  
16 Commission.  
17 Q Is this for Title I or Title II monies?  
18 A It doesn't say, but by looking at the numbers, I can tell  
19 you it's Title I monies. And the reason I say that is  
20 when you look at Line o., 10o., it's at \$5 million. And  
21 that's how much we received in Title I money.  
22 Q All right. This is the report that you submitted on  
23 February 24th, 2005?  
24 A Correct.  
25 Q And there were approximately \$4.4 million of Title I

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1 monies left over?  
 2 A At the end of 2004, correct.  
 3 Q All right. If you look at Line Item 2, this is for  
 4 39.011 election reform funding?  
 5 A Yes.  
 6 Q Anything on this form go ahead and distinguish between  
 7 Title I and Title II funds?  
 8 A Yes. On the second to the last page, it talks about it  
 9 being the Title I funds report for 2004.  
 10 Q When did you have your first task force on how to use  
 11 HAVA funds?  
 12 A First HAVA task force I believe was in early 2003. And  
 13 you'll find those exact dates in the e-mails I have  
 14 provided.  
 15 Q How big was the task force?  
 16 A Fifteen to seventeen maybe.  
 17 Q Who selected the task force members?  
 18 A I did.  
 19 Q Any Indians on there?  
 20 A Yes.  
 21 Q Who?  
 22 A Michael Lapointe.  
 23 Q What year?  
 24 A 2003.  
 25 Q All right. You said there was 16 members?

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1 A No.  
 2 Q Did you research that?  
 3 A The monies that were credited to each of the accounts  
 4 through interest had to be spent for the same reasons  
 5 that the original dollars were spent.  
 6 Q What you explained earlier is Title I had -- you didn't  
 7 apportion according to registered voters. That was Title  
 8 II, right?  
 9 A Correct.  
 10 Q There was no county allocation of Title I, correct?  
 11 A Correct.  
 12 Q All right. Second to the last page, says Secretary of --  
 13 about halfway down, the paragraph beginning "Secretary of  
 14 State Nelson launched an aggressive voting education  
 15 campaign, educating voters on voting procedures, voting  
 16 rights, and voting technology."  
 17 A Yes.  
 18 Q Any of that go to Shannon County?  
 19 A I don't recall being in Shannon County. I know that we  
 20 specifically sent letters to each of the tribal chairmen  
 21 offering to come out and do education. Those offers were  
 22 accepted by Cheyenne River and Rosebud. And we did go to  
 23 those two areas.  
 24 Q You did go there --  
 25 A Yes.

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1 A I think it was 15 to 17 maybe. I don't recall the exact  
 2 number.  
 3 Q Who was Michael LaPointe representing at the time?  
 4 A I know he was a state senator at the time.  
 5 Q From the Rosebud area?  
 6 A Yes.  
 7 Q All right. Any other Indians on there?  
 8 A Not that I recall, no.  
 9 Q How come?  
 10 A No --  
 11 Q One in 16 enough?  
 12 A No particular reason. I didn't have a racial quota.  
 13 Q Can you go to Page 4 of Exhibit 153.  
 14 A Yes.  
 15 Q About two-thirds of the way down, sir, there is a Line  
 16 Item 2007, then there is the number 4491000, interest --  
 17 2005, interest and dividends program. It's -- it's got  
 18 that line item off in the column all by itself of  
 19 \$119,909.89. What's that?  
 20 A My guess is that that was interest that was credited to  
 21 those federal funds.  
 22 Q Could that be utilized for early voting in Shannon  
 23 County?  
 24 A No.  
 25 Q Not even the interest?

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1 Q -- or just the letters?  
 2 A I went there because they responded to our request to  
 3 come.  
 4 Q And it says in the next sentence that you "traveled South  
 5 Dakota starting in March until the June primary talking  
 6 to service organizations, clubs and the media." Did you  
 7 ever go talk with tribal councils at any of the tribes in  
 8 South Dakota?  
 9 A Well, again, I'm not sure if it was during this period.  
 10 Q Then it says in August you hit the road again?  
 11 A Yeah. I don't recall the exact period, but I know that I  
 12 met with the entire tribal council at Rosebud because  
 13 they accepted my -- as I -- after I sent out the letter,  
 14 they accepted and invited me to come down.  
 15 Q What year was that, sir?  
 16 A I'm thinking it was not 2004. If I -- I would think that  
 17 probably was 2006 because we were also doing -- at that  
 18 point we were doing education on the AutoMARK ballot  
 19 marking machines, the fact that it had Lakota language on  
 20 it, and we wanted to make sure that folks in Indian  
 21 Country knew that that was going to be available at the  
 22 elections.  
 23 And so, yeah, I remember going to Rosebud, meeting  
 24 with the tribal council, doing the whole demonstration of  
 25 the AutoMARK machine. Cheyenne River, ended up meeting

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

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

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

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

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

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

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

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

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1 Q You prepared this report?  
 2 A Staff person prepared the report.  
 3 Q Who was the HAVA coordinator for the 2004 election cycle  
 4 in your office?  
 5 A I believe in 2004 it would have been Jennifer Jacobson.  
 6 Q How long did she serve in that position?  
 7 A I would say generally two or three years. She was  
 8 replaced by Daniel Burke who was then replaced by  
 9 Jennifer Headlee.  
 10 Q So the first Jennifer, what was her last name?  
 11 A Jacobson.  
 12 Q Who selected her as HAVA coordinator?  
 13 A I did.  
 14 Q Did you have job duties or anything for her? Did you  
 15 have a job description?  
 16 A I'm sure we did, but realizing that that was a brand new  
 17 position, and if I could have summarized, it was your job  
 18 is to make sure we comply with the HAVA requirements.  
 19 Here is HAVA law. This is your job.  
 20 Q That was '03 through '07, sir?  
 21 A I don't recall when we -- when Dan Burke came on board.  
 22 Q Do you recall about how many years that the first  
 23 Jennifer or Jennifer Jacobson worked there?  
 24 A Two or three.  
 25 Q Do you know where she is at today?

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1 A As far as I know, yes.  
 2 Q So this Exhibit 154, does this just deal with Title I  
 3 funds in your opinion?  
 4 A Yes.  
 5 Q All right. Do you know how much Title II funds -- when  
 6 the first big distribution from HAVA was on that?  
 7 A I don't recall.  
 8 Q Do you know how many -- how much money approximately in  
 9 Title II HAVA funds existed in 2004?  
 10 A I don't.  
 11 Q '06?  
 12 A I don't.  
 13 Q '08?  
 14 A I don't know those numbers. I think you are going to  
 15 find that in the e-mails, though.  
 16 Q The e-mails for which period?  
 17 A Well --  
 18 Q If I put everything back together -- you're the one who  
 19 put together this binder?  
 20 A Yes.  
 21 Q All right. And then we will get it back together. Then  
 22 we will go ahead and go from there. What in Exhibit 154,  
 23 Line Item 1p --  
 24 A If I could, with your permission, skip ahead to 157, I  
 25 think that may answer your question.

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1 A She lives in Salem.  
 2 Q Do you know what she does there today?  
 3 A She runs a private consulting business.  
 4 Q Do you know the name of it?  
 5 A Not off the top of my head.  
 6 Q The next gentlemen that served as your HAVA coordinator  
 7 was who?  
 8 A Dan Burke.  
 9 Q He did it from what year to what year?  
 10 A He resigned in June of 2008. I don't recall when he  
 11 started, but that is when he left.  
 12 Q Do you know where he is at today?  
 13 A He is dead.  
 14 Q Next person?  
 15 A Jennifer Headlee.  
 16 Q Jennifer Headlee, she served from when to when, sir?  
 17 A From I believe it was July of 2008 through the end of my  
 18 term, through December of 2010.  
 19 Q Do you know where she is at today?  
 20 A Iowa.  
 21 Q What is she doing there?  
 22 A I don't know for certain. I know I had a reference  
 23 request from Iowa State for employment she was pursuing  
 24 there. Whether she got that, I don't know.  
 25 Q As far as you know, she is in Ames, Iowa?

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1 Q Let's go to 1p.  
 2 A Okay.  
 3 Q So when you filled out this report on February 7, 2007,  
 4 there was approximately 4.6 million of Title I HAVA funds  
 5 carrying over.  
 6 A That was the amount carried over at the end of 2004.  
 7 Q Exhibit 155.  
 8 A Yes.  
 9 Q If you look at Line Item -- this is your report that you  
 10 submitted on February 28, 2006?  
 11 A Yes. Signed by my deputy, but it is our report, yes.  
 12 Q All right. Your deputy is Chad Heinrich?  
 13 A Was at that time, yes.  
 14 Q While you were Secretary of State, who was involved in  
 15 these HAVA funding issues besides you and your  
 16 coordinator?  
 17 A The other two key -- three key people would have been the  
 18 deputy, the election supervisor, also our fiscal officer.  
 19 Q All right. Who was the election supervisor?  
 20 A Kia Warne.  
 21 Q From what year to what year?  
 22 A She would have been the election supervisor during the  
 23 entire eight years.  
 24 Q Okay. Who else?  
 25 A I had two deputies. One was Chad Heinrich and the second

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1 was Teresa Bray.  
 2 Q What was their involvement in HAVA, though?  
 3 A Involved in discussions, sounding board. If there  
 4 were -- things we needed to discuss, they were usually at  
 5 the table.  
 6 Q Okay. So Chad Heinrich, his involvement in the HAVA  
 7 funding is -- was what?  
 8 A Well, he would have been involved in any discussions that  
 9 we had -- understanding that the deputy has the same  
 10 authority as the Secretary of State pursuant to state  
 11 law, and so he would be a person that would have been  
 12 kept in the loop on a lot of this.  
 13 Q All right. Exhibit 156, sir.  
 14 A Yes.  
 15 Q This is your report submitted February 7, 2007?  
 16 A Yes.  
 17 Q Do you know why all these amendments were submitted on  
 18 February 7th, 2007?  
 19 A Again, looking at the amended ones versus the exhibits  
 20 that weren't amended, it appears the key change was the  
 21 addition of interest money that was credited back to  
 22 these accounts. And as I have explained, I remember that  
 23 being an issue that came to light as to how to properly  
 24 credit those interest payments. And it appears to me  
 25 that that was figured out sometime in early 2007, and we

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1 submitted amended reports to credit the interest  
 2 properly.  
 3 Q All right. That was the only reason you had to do --  
 4 submit new reports that you can recall; you didn't have  
 5 the interest figured in the original --  
 6 A That I can recall, that's the only reason, yes.  
 7 Q All right. So this was for fiscal year 2005?  
 8 A Calendar year 2005.  
 9 Q Calendar year 2005. And if you look at Line Item p.,  
 10 there was about \$4.6 million carried over into 2005 --  
 11 '6?  
 12 A Carried into 2006, that is correct. Title I money.  
 13 Q Looking at Exhibit 157, sir.  
 14 A Yes.  
 15 Q What is this reporting period?  
 16 A It is October 1st, 2004 through -- through September 30th  
 17 of 2005 which appears to be federal fiscal year 2005.  
 18 Q Right. This is Title II, Section 251?  
 19 A Correct.  
 20 Q So every nickel of this money could be utilized for early  
 21 voting in Shannon County?  
 22 A Not at that point, no. At the point that the money was  
 23 received, we were restricted to using this specifically  
 24 to meet Title III requirements which would not include  
 25 early absentee voting sites.

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1 Q What are you basing that upon?  
 2 A The language of HAVA.  
 3 Q What language, sir?  
 4 A I can't specifically tell you today, but those were the  
 5 restrictions. And then, as I have explained, HAVA  
 6 specifically said once you have met your Title III  
 7 requirements, you can request permission from the  
 8 Election Assistance Commission to use those monies on  
 9 other things to advance the administration of federal  
 10 elections. At the point we had completed our  
 11 requirements, then we asked for that permission, and that  
 12 is what then opened up the ability for us to allow Todd  
 13 and Shannon County to use their Title II monies for their  
 14 absentee voting sites.  
 15 Q When did you first make that request, sir?  
 16 A I don't know, but it's in the e-mails.  
 17 Q Okay. Let's stop a minute here. I'm going to hand you  
 18 what's been Bate stamped N001 to N0136. We are going to  
 19 do this in chunks.  
 20 A Okay.  
 21 Q First of all, is there anything in there that indicates  
 22 Title II distributions?  
 23 A I will tell you initially I printed these off. I breezed  
 24 through them. I'm not intimately familiar with them.  
 25 But if I have told you there is something in here, it's

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1 here. It will take me a little bit to find it.  
 2 Q We have time, sir.  
 3 A Okay.  
 4 Q As you are going through things, Mr. Nelson, I'm looking  
 5 for anything to do with Title II. And then remember you  
 6 said that you had submitted a report.  
 7 A Okay. I'm sorry.  
 8 Q You had submitted a request --  
 9 A Yes.  
 10 Q -- for some discretion --  
 11 A Yes.  
 12 Q -- in utilization. Anything to do with that.  
 13 A Okay. That would not be in any of this. Title II monies  
 14 didn't even come until probably late 2004 or early 2005.  
 15 And these all cover 2002 and 2003. So --  
 16 Q Any communication with Shannon County regarding early  
 17 voting?  
 18 A I would doubt it.  
 19 Q Can you look, please.  
 20 A I did find the answers to clarify a couple of your  
 21 earlier questions. Would you like me to address that or  
 22 not?  
 23 Q Absolutely, sir. And can I have the Bate stamp number  
 24 that you are looking at, that digit in the lower  
 25 right-hand corner.

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

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

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

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

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1 Q And you state that obviously this is a decision of those  
2 county commissioners and needs to be precleared?

3 A Again, I don't have it in front of me, but I will take  
4 your word for it.

5 Q All right. So this is where -- I'll hand this back to  
6 you. So this is where the county went ahead and people  
7 were requesting whether HAVA funds could be used for  
8 early voting?

9 A That must have been a question because I say in this,  
10 "One of the questions we are being asked," and I don't  
11 recall who was asking the question, but apparently it was  
12 out there, whether their county HAVA funds could be used  
13 for this purpose. And I say, "After May 25th, this would  
14 be an allowable expense under the category of, quote,  
15 other improvements to federal elections," unquote.

16 And so I would read into that that May 25th was the  
17 effective date of the EAC's approval for us to use Title  
18 II monies for other purposes. This was communicating to  
19 those counties that for expenses after May 25th, that  
20 this would be permissible.

21 Q Was this the first time they had said, hey, can we use  
22 HAVA money to pay for this? Was this the first request  
23 from Sue Ganje?

24 A I don't recall.

25 Q First request from Mrs. Flakus?

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1 A I don't recall, but this would have been the first time  
2 that we could have done that, having received EAC  
3 approval to do so. So immediately upon receiving EAC  
4 approval, this was the communication to those counties  
5 that this would be permissible.

6 Q All right. So did a request come in from Shannon County  
7 for the 2008 primary election cycle HAVA funding?

8 A After the election for reimbursement or prior to?

9 Q This is shortly before the primary --

10 A Correct.

11 Q -- in 2008, right?

12 A As I mentioned, I said one of the questions we were being  
13 asked, and I don't recall -- who was asking the question  
14 or where the question was coming from, I don't recall.  
15 But what I knew is that that is something the county  
16 would be interested in knowing, and so communicated that  
17 to the county.

18 Q Right. But for 2008 -- the June -- the primary election  
19 was in early June, correct?

20 A Correct.

21 Q So this is about a week before the election.

22 A Could be, yes.

23 Q So you are saying you can't use any HAVA funds until a  
24 week before the election?

25 A Because May 25th was the date that the EAC -- their

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1 approval to use these funds for other purposes became  
2 effective.

3 Q Why did you wait so long to ask for their approval?

4 A My recollection, we asked for their approval as soon as  
5 we had met Title III -- all the Title III requirements.

6 Q Why did you wait so long, though, to go ahead and tell  
7 the county auditors, a week before the primary, now you  
8 can use some of the money? You know everyone else gets  
9 six weeks, right, for early voting in-county?

10 A This communication was May 1st, over a month before the  
11 primary. This would have been -- I don't recall the  
12 exact date that we requested EAC certification to use  
13 these additional monies. Okay. I believe that's in the  
14 e-mails.

15 Q Okay. Let's stop right there.

16 A Okay.

17 Q All right. Here is the e-mails. This is the remaining  
18 e-mails. And I think we're Bate stamped 137 on. Take  
19 your time and find what you are talking about.

20 A Okay. Good. I think that will clear up a lot of these  
21 questions.

22 (Recess at 11:01 a.m.)

23 A I'm looking at Document 246, and there is some answers to  
24 some of your earlier questions, if I might.

25 This indicates that the Title II payment came to the

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1 state in April of 2005. And that was in the amount of  
2 11,596,803. The other question that this answers --

3 Q That was Bate stamped 246 you were referring to, sir?

4 A Correct.

5 Q And this is -- this is your e-mail that dictates the  
6 amount or what is it?

7 A This is a grant questionnaire that would have been  
8 attached to one of my e-mails.

9 Q But that's on how much you got?

10 A Yes.

11 Q Okay. So there is an \$11 million -- \$11 million chunk  
12 that came into HAVA Title II in 2005?

13 A Right. Let me clarify. That would have been on  
14 Page 247. And then on Page 249, it clarifies that  
15 Jennifer Jacobson left the office in the fall of 2005,  
16 and that Dan Burke began HAVA coordinator October 31st of  
17 2005. What I'm not finding in this is the exact date of  
18 that EAC certification that we could use Title II monies  
19 for other purposes. I'm not finding that date here.

20 Q When did you find the -- do you remember when you made  
21 the request?

22 A I -- I don't. It would have been as soon as we completed  
23 the Title III requirements because I know as -- as we  
24 were going through the Title III requirements, there  
25 was -- you know, we were talking about that, wanting to

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1 get through those so that we could apply for that  
 2 certification. That was something we wanted to do to  
 3 give the county some additional flexibility in using  
 4 their monies. So it was something that we were looking  
 5 forward to, and moved along as quickly as we could.  
 6 What I don't recall is how long it took the EAC to  
 7 turn that around. But, again, according to this Page  
 8 Number 268, apparently the effective date of that was  
 9 May 25th of 2008.  
 10 Q When did you begin doing your Title III assessment?  
 11 A I'm not sure what you mean by "assessment." We began  
 12 assessing the requirements of Title III as soon as the  
 13 law was passed in October of 2002.  
 14 Q Why did it take so long, until late 2005, to go ahead and  
 15 say, yeah, we have taken care of all that Title III  
 16 stuff. Now we can make a request it be moved over to  
 17 Title II?  
 18 A First of all, we didn't get the Title II money until  
 19 April of 2005. And then it simply took time to put all  
 20 of those requirements together and make sure it was all  
 21 accomplished.  
 22 Q From October 2002 until when in 2005 to go ahead and see  
 23 if the Title III requirements had been satisfied?  
 24 A I'm going to have to correct you on the dates. We didn't  
 25 even get the Title II money until April of 2005. Once we

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1 A Correct.  
 2 Q All right. Not a lot of it was used in 2005, was it?  
 3 A Referring to Exhibit 157, between April of 2005 and the  
 4 end of September, it appears only about \$29,736 was  
 5 spent.  
 6 Q Out of the 11.6 million?  
 7 A Correct.  
 8 Q All right. So that much carried over to 2006, correct?  
 9 A Correct.  
 10 Q Then are you looking at Exhibit 157 right now?  
 11 A Yes.  
 12 Q And then this was an amended form --  
 13 A Yes.  
 14 Q -- of Title II?  
 15 A Yes.  
 16 Q Do you know the reason for the amendment?  
 17 A Again, if I compare Line 10c. from the unamended to the  
 18 amended, it appears that interest money was credited.  
 19 Q That is the only difference that you can see?  
 20 A Yes.  
 21 Q All right. So then going to Exhibit 159, this is for the  
 22 reporting period 2006, correct? And that's for Title I?  
 23 A Title I, calendar year 2006.  
 24 Q From the Title I money in 2006, you go to the last page,  
 25 was any of this money for improving the accessibility and

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1 had that money, then we could begin complying with the  
 2 Title III requirements. And at some point between April  
 3 2005 and May 25th of 2008, those requirements were  
 4 satisfied, we were able to prove that to the EAC, and  
 5 they issued their certification to expand the use of  
 6 those monies.  
 7 Q That took you three years to figure that out?  
 8 A Yes. Not just figure it out, but accomplish that, yes.  
 9 Q Why so long?  
 10 A I don't recall. I don't recall all of the different  
 11 items. Without reviewing, going back and reviewing HAVA,  
 12 I couldn't tell you what all those requirements were or  
 13 what was involved.  
 14 Q All right. Who did you assign to this?  
 15 A Anything that was done that was election-related in the  
 16 office, Kia Warne, the election supervisor, would have  
 17 been involved, the HAVA coordinator would have been  
 18 involved, I would have been involved, and my deputy would  
 19 have been involved. Then obviously it's coordination  
 20 between our office and the county auditors to make it all  
 21 happen.  
 22 Q All right. So the Title II money is just sitting there,  
 23 \$11 million plus, correct --  
 24 A Correct.  
 25 Q -- in April of 2005?

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1 quality of polling places down in Shannon County?  
 2 A It doesn't appear that any of this money was used for  
 3 improvement of polling places.  
 4 Q Okay. Was any of the Title I money from 2006 spent in  
 5 Shannon County?  
 6 A I don't know that it was spent in the county, but there  
 7 are two line items here. One is development of a tie  
 8 between the driver's licensing system to allow people to  
 9 register to vote when they got their driver's license and  
 10 to verify -- apparently some verification of  
 11 registrations with the driver's license system. And then  
 12 the Kids Voting letters we talked about previously. Some  
 13 of that may have benefited Shannon County, but I can't  
 14 say.  
 15 Q Okay. In Exhibits 151 through 158 so far that we have  
 16 been going through recently, have there been any Title --  
 17 can you tell in any of those exhibits whether or not  
 18 there were Title I expenditures, any money spent in  
 19 Shannon County in Title I funds in the reporting periods  
 20 in Exhibits 151 through what you have in your hand, 158?  
 21 A If you give me a moment to review those. I would note  
 22 three things. 150 -- Exhibit 155 indicates grants to  
 23 South Dakota counties of 11,587. I don't see indicated  
 24 which counties those went to. So I don't know.  
 25 The second thing I would note is there were purchases

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1 of some materials that were then given to counties. I'm  
 2 sure Shannon County was part of that. But it was a  
 3 material gift, not cash.  
 4 Q What do you mean, like forms and stuff like that?  
 5 A Forms. But in particular I noticed the polling place  
 6 voter key -- and that's the key that guides the election  
 7 workers at the polling place. You know, what do you do  
 8 if a voter comes in and they don't have their ID or if  
 9 they do have their ID, or -- all of those different  
 10 permutations, or the list shows they have already voted  
 11 absentee, how do you work each of those situations.  
 12 We put together a voter key that laid out all of  
 13 those parameters, so that every voter that came in was  
 14 treated properly, irregardless of what the situation was.  
 15 And we printed those and we provided those to the  
 16 counties for their polling places.  
 17 Q Was there only one distribution of Title I monies, that  
 18 \$5 million?  
 19 A Yes.  
 20 Q And then interest accrued on it?  
 21 A Yes.  
 22 Q Out of that \$5 million plus, how much did Shannon County  
 23 get during your tenure as South Dakota Secretary of  
 24 State?  
 25 A Well, as cash, probably none. But it was used for some

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1 of these materials that they would have been a part of,  
 2 just like every other county.  
 3 The only other comment that I would make, and I am on  
 4 158, Exhibit 158, and this is now moving into the Title  
 5 II money, and there was an indication that Shannon County  
 6 had spent -- well, they spent \$1,618, but it appears that  
 7 that was all from their county-held funds, their match  
 8 money. And so they spent down part of the match that  
 9 they put up. But I don't see that they've actually drawn  
 10 down any of their state-held HAVA money.  
 11 Q So as far as you know, during your tenure as South Dakota  
 12 Secretary of State, Shannon County only -- didn't receive  
 13 any Title I money?  
 14 A Correct.  
 15 Q All right. Now, let's talk about Title II. Looking at  
 16 Exhibit 158 --  
 17 A Yes.  
 18 Q -- and Exhibit 160. Exhibit 158 is Title II money for  
 19 2005, correct?  
 20 A Federal fiscal year 2005, correct.  
 21 Q Then Exhibit Number 160 is just the amended report?  
 22 A No. 160 covers federal fiscal year 2006.  
 23 Q All right. So for federal -- for fiscal year 2006, now  
 24 there is 11 -- now there's \$11,912,112.56 authorized? Or  
 25 that's the total money that has been allocated of Title

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1 II since South Dakota started getting Title II?  
 2 A Correct.  
 3 Q There was \$7,006,009.55 left over at the end of this  
 4 period, 2006?  
 5 A On September 30th, 2006, correct.  
 6 Q \$7 million plus sitting there?  
 7 A Correct.  
 8 Q All right. Then for 2005, there was \$11 million that  
 9 carried over, correct, in Exhibit 158?  
 10 A Correct.  
 11 Q All right. So approximately \$4.6 million or so was spent  
 12 of Title II HAVA monies during that period '05 -- 2005,  
 13 2006?  
 14 A In federal fiscal year 2006, as shown on Sheet 160, the  
 15 expenditure was \$4,876,367.  
 16 Q How much of that went to Shannon County?  
 17 A Looking at Page 2 of that exhibit --  
 18 Q What exhibit are you on now, sir?  
 19 A 160.  
 20 Q Okay.  
 21 A Page 2 of that exhibit, the majority of that money,  
 22 4.6 million, went to purchase the voting assist  
 23 terminals, the AutoMARKs, that were then given to each  
 24 county. Shannon County got one of those for each of  
 25 their polling places, plus one for the county auditor's

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1 office.  
 2 Q So each county got one of those voting machines?  
 3 A One of those voting assist terminals for each polling  
 4 place.  
 5 Q So it's -- Shannon County only had one polling place,  
 6 correct? Or how many polling places did they have? We  
 7 are not talking about absentee voting locations now.  
 8 A No. I would -- my recollection is they had ten polling  
 9 places, but I would have to double check that. But ten  
 10 is my recollection.  
 11 Q All right. So out of this roughly \$5 million chunk of  
 12 money, Title II, that was distributed by your office  
 13 during this -- during 2006, how much of that went for  
 14 every county getting a machine? About 4.6 million?  
 15 A Correct.  
 16 Q All right. And then out of that \$5 million, besides  
 17 getting voting machines at the polling places, out of the  
 18 Title II monies, Shannon County, I don't see them on the  
 19 list for expenditure from county-held.  
 20 A That's correct. On Page -- well, it says Page 4 of 5 at  
 21 the top. It indicates that payments were made to 18  
 22 counties from the state-held account in the total of  
 23 114,511.  
 24 Q Why didn't Shannon County get a nickel of that money in  
 25 2006?

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1 A Well, we don't know that they didn't because apparently  
2 there is not a listing of those counties here.  
3 Q Five-page report. We're missing pages?  
4 A I don't know if we are missing pages or not, but that  
5 information is not provided here.  
6 Q Right. There is a -- you prepared this form, right?  
7 A One of my staff prepared it.  
8 Q Right. In the form on Page 4, it's expenditures from  
9 county-held reservation of fund balance, 5 percent match  
10 accounts for Title III expenses --  
11 A Correct.  
12 Q -- in fiscal year 2006?  
13 A Correct.  
14 Q And there's 18 counties listed there. And Shannon County  
15 isn't one of them, correct?  
16 A Actually -- allow me to count. There are 22 counties  
17 that spent part of their county-held match dollars.  
18 Shannon County was not one of those counties.  
19 Q All right. So --  
20 A But the bigger issue -- I think what you are trying to  
21 get at is the figure that is up above where it's  
22 referenced that 18 counties received reimbursement from  
23 their state-held monies. And it's indicating that there  
24 was \$114,511 that were transferred to those 18 counties.  
25 We do not on this report have a listing of those.

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1 auditors accomplishing that, correct.  
2 Q Do you think it should have taken three years to get that  
3 done?  
4 A I don't know that I can answer that without going back  
5 and looking at each one of the requirements and  
6 refreshing my memory on exactly what we had to do to  
7 accomplish it. I don't have a copy of HAVA with me. If  
8 I did, I could go through those and answer that question.  
9 Q The 2008 HAVA plan?  
10 A No. The 2002 HAVA law.  
11 Q You want the legislation.  
12 A But let me say this. We pushed as hard as we could to  
13 get that done as quickly as possible. That was -- that  
14 was not something that we were dallying on by any means.  
15 Q How big was the report you submitted and who did it go  
16 to?  
17 A To request the additional authority?  
18 Q To get things squared away with Title III so you could  
19 apply some of that money to Title II.  
20 A It went to the Election Assistance Commission. I don't  
21 recall what was included in that request.  
22 Q What did you have to reconcile with Title III, what  
23 categories? What were you concerned about? What had to  
24 be done?  
25 A My recollection was we had to prove to the EAC that we

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1 Q Where is that?  
2 A It would be at the Secretary of State's office.  
3 Q Okay. So so far, up through fiscal year -- end of fiscal  
4 year 2006, how much Title II money did Shannon County  
5 get?  
6 A We don't know.  
7 Q You have no idea here today either?  
8 A Of that 114,511, I do not know if any of that went to  
9 Shannon County. I do not know if they requested  
10 reimbursement. I don't.  
11 Q You could have done that EAC request in 2005, correct,  
12 for some of those monies to be utilized for early voting?  
13 A No.  
14 Q Why not?  
15 A Because we hadn't completed the Title III requirements  
16 yet.  
17 Q And that was contingent upon your office allocating  
18 sufficient resources to complete that task, correct?  
19 A It was resources and actually accomplishing the task,  
20 correct.  
21 Q Right. But the only restriction on you accomplishing  
22 that task was for your staff and you to get it done?  
23 There was no timeline for submission to this EAC,  
24 correct?  
25 A It would have been my staff, along with the county

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1 had completed all of the requirements of Title III.  
2 Q What did that require? Which requirements? How many  
3 were there?  
4 A I don't recall offhand.  
5 Q Approximately.  
6 A I don't recall. Again, without looking at Title III and  
7 re-refreshing my mind, I can't tell you.  
8 Q So all you had to do is say these are the authorized  
9 expenditures under Title III HAVA, right? There is a  
10 checklist in the legislation?  
11 A Not expenditures, but tasks, things that had to be  
12 accomplished and completed, yes.  
13 Q For Title III in HAVA?  
14 A Yes.  
15 Q All right. So then you went through that checklist,  
16 right, and had your office determine whether or not those  
17 expenditures were -- those action items in HAVA III had  
18 been accomplished?  
19 A Correct. And realizing that was our goal starting in  
20 October of 2002, as soon as the legislation was passed.  
21 I mean we knew that was the final goal.  
22 Q So it took six years, not three years, for you to  
23 determine that?  
24 A It took six years to accomplish that, realizing we didn't  
25 get the money until the third year. But, correct.

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1 Q Did the EAC approval state that May 25th was the magic  
2 day where money could be utilized --  
3 A I don't --  
4 Q -- from Title II for early voting?  
5 A I don't recall, but obviously, according to this document  
6 268, that was my understanding when I wrote that e-mail.  
7 Where I got that or how they communicated that to us, I  
8 don't recall.  
9 Q Did you -- are you the one that came up with the May 25th  
10 date?  
11 A No. That would have been from the EAC.  
12 Q So it's your testimony here today that EAC went ahead and  
13 said you cannot use Title II money for early voting until  
14 May 25th, 2008?  
15 A Correct. Because it's not a Title III expenditure. We  
16 couldn't use Title II money for anything outside of Title  
17 III requirements until we got that EAC certification.  
18 Q Right. And the EAC certification wasn't effective until  
19 May 25th?  
20 A Correct. 2008, correct.  
21 Q That is when the letter came from EAC that said -- that's  
22 when it was dated, you can start doing this now?  
23 A No. Obviously this e-mail was written May 1st. So we  
24 must have gotten some communication from them indicating  
25 that May 25th was going to be the date. But I don't

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1 recall what that communication was, and obviously it  
2 wasn't part of my e-mail trail. It probably went to a  
3 staff person, so I don't have it.  
4 Q But there were six -- there were six weeks of early  
5 voting everywhere else, correct, absentee voting  
6 in-county? When would that have started for this  
7 election cycle, for the primary in 2008?  
8 A Sometime in late April of 2008.  
9 Q Late April, 2008?  
10 A Correct.  
11 Q All right. So -- and you were saying I won't pay for  
12 early voting until May 25th, correct?  
13 A Correct.  
14 Q All right. But could that have been for expenditures  
15 that were incurred before May 25th, and we just -- the  
16 reimbursement form was submitted after May 25th?  
17 A I don't believe so because, again, according to what I'm  
18 reading into this e-mail, the EAC's authorization to  
19 utilize those funds became effective May 25th. Now, what  
20 I can't tell you today is why the EAC chose that date,  
21 how that was determined. It may have had something to do  
22 with publishing in the Federal Register. If I had to --  
23 if I had to guess today -- I know I shouldn't be doing  
24 that, but if I had to guess, it probably had something to  
25 do with being published in the Federal Register and

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1 waiting 30 days, that type of thing. But I don't know  
2 how that date was selected.  
3 MR. SANDVEN: Mr. Williams, did you provide this in  
4 your discovery?  
5 MR. WILLIAMS: If I did, you would have it.  
6 MR. SANDVEN: You haven't provided it. Why not?  
7 MR. WILLIAMS: I'm not being deposed today.  
8 MR. SANDVEN: You are not going to answer why you  
9 didn't provide this form? Will you provide this form?  
10 MR. WILLIAMS: I will provide anything you request in  
11 discovery that is not privileged.  
12 MR. SANDVEN: All right. This has already been  
13 requested, hasn't it?  
14 MR. WILLIAMS: I don't recall the request.  
15 Q All right. So what was the rumblings? Who was rumbling?  
16 A As I have already indicated, I don't recall.  
17 Q What does the term "rumbling" mean? Was there a  
18 complaint regarding early voting occurring?  
19 A I had heard something. But my use of the term "rumbling"  
20 meant that it probably wasn't anything definitive, but I  
21 heard somebody talking about it.  
22 Q What did you hear them talking about?  
23 A That there might be an interest in having in-county  
24 absentee sites prior to that election. And so my  
25 response to the county auditors, based on what I had

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1 heard, was here is the parameters for doing that and  
2 here's the reimbursement that we will be able to help  
3 with.  
4 Q Then why were you cc.g a response letter to Senator  
5 Heidepriem on this issue?  
6 A My -- I don't recall. I remember Senator Heidepriem  
7 asking some questions, but I don't remember what they  
8 were. I don't know if it was in regard to how much money  
9 Shannon County had in their account or about the early  
10 voting. I don't recall what he was asking about, but  
11 obviously it was something that he was interested in.  
12 Q Have you seen 0276, an e-mail from you to Ganje? I'm  
13 going to ask you some questions off that.  
14 A Yes.  
15 Q All right. Can I see it? All right. So Sue Ganje on  
16 October 10th was asking about double-checking on Title II  
17 and Title III monies?  
18 A Apparently.  
19 Q Why was there still confusion during the October election  
20 cycle between you and Ganje on whether or not Title II  
21 could be utilized for absentee voting?  
22 A That I don't know because obviously this is basically  
23 reiterating what was communicated in that May e-mail of  
24 the same year.  
25 Q But you told her on -- you told the county auditor, Sue

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1 Ganje, that you can use Title II money for other things  
 2 which improve the administration of federal elections,  
 3 correct?  
 4 A Yes.  
 5 Q And you told her that I've authorized that to include  
 6 absentee voting sites.  
 7 A Correct.  
 8 Q And it could be more than one site in any particular  
 9 county?  
 10 A Yes.  
 11 Q What is the maximum number of absentee voting locations  
 12 that you were talking about?  
 13 A I don't believe I indicated a maximum.  
 14 Q There is none that you are aware of?  
 15 A No.  
 16 Q Just funding --  
 17 A Correct.  
 18 Q -- would dictate?  
 19 A Correct.  
 20 Q Then you said -- you told Sue Ganje that the entire  
 21 amount is available for any legitimate costs associated  
 22 with the absentee site.  
 23 A Yep. And that's exactly what I have communicated to you  
 24 earlier today.  
 25 Q And the only illegitimate cost would be that you can't

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1 A Okay.  
 2 Q Now, here is what you did. What did you do?  
 3 A Okay. I clarified that the ability to use the money for,  
 4 quote, other things, unquote, became effective May 25th,  
 5 2008. "Yes, all those expenses that you mentioned would  
 6 be allowable." And so what she had laid out in her  
 7 e-mail to me and -- at 2:56 where she talked about we  
 8 would be able to charge any wages we pay to people who  
 9 work with us, excluding our office personnel, mileage,  
 10 advertisements, rent, any other expenses, and I affirmed  
 11 that she was correct in that understanding.  
 12 Q All right. So in layperson's terms, you would pay for  
 13 anything associated with an early voting location in  
 14 Shannon County except for basic staff wages. Correct?  
 15 A Except for wages of existing office staff. And in my  
 16 e-mail response -- or e-mail response to her at 2:46, I  
 17 also used the term "legitimate costs associated." And so  
 18 obviously it was going to be anything that was going to  
 19 be needed to do that task. But, yeah, it's pretty wide  
 20 open.  
 21 Q Do you think you made it clear to the county that you can  
 22 use HAVA funding for early voting?  
 23 A Yes.  
 24 Q And I'm not trying to be funny here, but why do you think  
 25 that is clear?

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1 reimburse the county for regular staff time?  
 2 A I didn't use the word "illegitimate," but I indicated she  
 3 could not use that to supplant what she would normally be  
 4 paying her staff out of county funds, correct.  
 5 Q All right. So you communicated to Sue Ganje beginning in  
 6 May of 2008, I'll pick up the tab for early voting if you  
 7 submit receipts?  
 8 A That you can use your -- your state-held HAVA funds for  
 9 that purpose and we will reimburse, yes.  
 10 Q And then on October 10, 2008, you reconfirmed that --  
 11 A Yes.  
 12 Q -- didn't you?  
 13 A Yes.  
 14 Q All right. Do you remember -- this is 277, sir. Take a  
 15 look at that.  
 16 A Okay.  
 17 Q All right. So you told her twice on October 10th -- this  
 18 first e-mail was at 2:46 p.m. When did you send that  
 19 e-mail?  
 20 A Okay. I -- I sent an e-mail at 2:46 p.m., and she  
 21 responded back with a clarification question. And I  
 22 forwarded that clarification question to Jennifer  
 23 Headlee, the HAVA coordinator. That's the sum total of  
 24 this e-mail exchange.  
 25 Q Then I'm going to hand you 278.

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1 A Well, I think these -- these e-mails make that clear, and  
 2 I would guess we probably talked about this on the phone  
 3 or at some training sessions also. That would have made  
 4 sense to me. I don't recall any specific conversations,  
 5 but it's certainly possible.  
 6 Q Do you ever remember telling anyone in Shannon County you  
 7 can't use Title II HAVA funding for early voting?  
 8 A I don't recall that, but if I had been asked prior to  
 9 this May 1st, I would have said, no, you cannot. But we  
 10 are working expeditiously to get that EAC certification  
 11 so that we can open it up for those purposes.  
 12 Q So since May 25th -- when did you first have knowledge  
 13 that May 25th was the day that Title I can be utilized  
 14 for early voting?  
 15 A That I don't know. I can't find it in this. And my --  
 16 my understanding would have been that that was  
 17 communicated to my staff person, and that is why I don't  
 18 have it in my e-mails.  
 19 Q All right. But you have never made any representation to  
 20 any Shannon County or Fall River official that Title II  
 21 funding could not be utilized to pay for an early voting  
 22 location in Shannon County?  
 23 A After May 25th, 2008, that is correct.  
 24 Q Have you ever denied a single request after May 25th,  
 25 2008 for early voting expenditures in Shannon County?

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1 A I don't believe so, but understanding that those requests  
2 for reimbursement came to a staff person, and I only  
3 became aware of those if there was some issue that the  
4 staff needed to raise it up to my level. But I'm not  
5 aware that we denied any.

6 Q So this is October 10th that we are looking at here,  
7 correct?

8 A Yes.

9 Q All right. And then I have got Exhibit Number 277. Can  
10 I trade with you?

11 A Yes.

12 Q I see an e-mail from you to Jen. What time is that on  
13 October 10th?

14 A 3:13 p.m.

15 Q What do you say?

16 A "Jen, let's visit about this."

17 Q Do you remember what the visit was? Did you ever tell  
18 her don't pay Shannon County that money?

19 A No. I don't recall what the visit was, but my -- what I  
20 would read into this is I wanted to make sure that she  
21 and I were on the same page, of the same understanding,  
22 as to how this was going to unfold. And if you could  
23 show me that again --

24 MR. WILLIAMS: "That" is referring to --

25 A 278, which was my response back to Sue Ganje at 3:40. So

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1 at some time between 3:13 and 3:40, I visited with Jen,  
2 we made sure we were under the same understanding, and I  
3 was able then to respond back to Sue Ganje with that  
4 understanding.

5 Q Is there anything else you should have done to make it  
6 clear that Title II HAVA expenditures could be utilized  
7 for early voting after May 25th, 2008?

8 A I don't believe so, no.

9 Q Why do you say that?

10 A Well --

11 Q Last time I'll ask.

12 A I believe I adequately communicated that to the county  
13 auditors with that May 1st e-mail.

14 Q Do you know how many Title II requests or requests for  
15 HAVA funding came in from Shannon County to your office  
16 during either the 2008 election cycle after May 25th, or  
17 the 2010 before you left office, sir?

18 A I don't know.

19 Q No idea?

20 A No idea. Again, staff person dealt with all that, and so  
21 I would not have seen those.

22 Q But you -- you never did anything to interfere with  
23 payment or deny payment to Shannon County on any of those  
24 expenditure requests if they were --

25 A For early absentee voting never, no. No. And it may be

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1 outside the purview, but just to be very, very clear,  
2 there was an issue in the 2010 primary election where  
3 there were expenditures made for Lakota language  
4 assistants that were clearly outside the purview, and we  
5 refused to reimburse those expenses.

6 What I mean by "clearly outside," we authorized the  
7 employment of a coordinator for that, which they did.  
8 That coordinator consequently hired 20 some assistants,  
9 and we said that -- that is not a legitimate expense for  
10 those 20 some assistants.

11 Q For one coordinator you thought it was a little  
12 excessive?

13 A I did. And so we refused to pay for that. But that is  
14 the only thing that I can recall we refused to pay for.

15 Q I'm going to hand you Title III of the Uniform  
16 Non-Discriminatory Election Technology. Can you just  
17 walk through what you had to get squared away with Title  
18 III before that money could be cut loose for early voting  
19 under Title II.

20 A First thing I see is some voter education provisions.  
21 And I recall that we made changes to some of the  
22 instructions that are on the ballot itself, instructions  
23 that are posted at the polling place. We instituted some  
24 large posters that have some of these instructions that  
25 are posted at the polling place. That was one of the

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1 first provisions.

2 Q If we can start big picture. Approximately how many  
3 items are there listed total that you had to make sure  
4 that you were in compliance with, and what section under  
5 Article 3 are you referencing? Is there a to-do list in  
6 there?

7 A Well, not a to-do list, but with any typical statute, Sub  
8 A says requirements. And then it goes down and lists in  
9 outline form all of the different requirements that we  
10 had to meet. But if I could summarize this first page,  
11 it was a lot of these notice type things that we had to  
12 do.

13 Q Why did that take three years or six years to go ahead  
14 and get squared away, sir?

15 A I'm not saying it did. I can't tell you today when we  
16 had that accomplished. It was certainly prior to 2008.  
17 So this was not the last thing that we accomplished.

18 Q Right. While you are going through, what I'm wondering  
19 is what were the tricky ones that took so long?

20 A Okay. The next section talks about voting machines that  
21 are accessible for individuals with disabilities. And  
22 that is getting at the requirement that we ultimately  
23 fulfilled by purchasing and deploying AutoMARK voting  
24 systems.

25 Q Was that a hard one to get done in six years?

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1 A It was the largest of these requirements, simply for a  
2 couple of reasons. First, we wanted to find the right  
3 units for South Dakota, and then obviously get them  
4 purchased, get training done, get them deployed. So it  
5 was the biggest of those. And we did that for the 2006  
6 primary election, realizing we didn't get the money until  
7 2005. So the first federal election following the  
8 receipt of that money, we deployed these.

9 In Sub 4 it talks about alternative language  
10 accessibility. We had to make sure the machines could  
11 utilize Lakota and go through the programming to make  
12 sure that Lakota was on those machines for the counties  
13 that needed that.

14 Q So the machines were pretty big expenditures,  
15 approximately \$4.6 million --

16 A Yes.

17 Q -- we saw on this form. You couldn't fix that until you  
18 had the money?

19 A Correct.

20 Q Understood. Any of the other items on there that your  
21 office had to work with that it was -- there was a  
22 financial restriction on getting it completed?

23 A Let me move through these, and we will see. There's a  
24 requirement to allow provisional voting. That's  
25 something that we had -- that we put in place, that was

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1 a driver's list or if they didn't have a driver's  
2 license, against Social Security. We had the driver's  
3 license portion of that done, and the Social Security  
4 Administration was dragging their feet. And I -- they're  
5 dragging their feet on getting their -- their end of it  
6 done so that we could interface with them and do their  
7 check.

8 And that was not accomplished -- and I can't tell you  
9 when that piece came together, but it was not by the time  
10 we wanted to have it done and it was not at the beginning  
11 of 2006. I know that. We were waiting for them. And  
12 that was a frustration not just with us, but all the  
13 states because we were waiting -- we had a federal law  
14 that said you have to, federal agency that was dragging  
15 their feet that wasn't allowing us to get there.

16 There were some requirements to add some additional  
17 language to our voter registration forms. That was  
18 something that we've done early on. We had that in place  
19 by 2004. That wasn't something that required any  
20 dollars. It was just a change in forms.

21 Yeah. Looking through this, the only item I can  
22 think of that would have been a delay was that ability to  
23 intersect with the Social Security database. And I don't  
24 recall when that was resolved. Other than that, it seems  
25 to me that most of these items we had accomplished by the

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1 in place for 2006.

2 Probably the other big requirement, there is a  
3 requirement that a state have a computerized statewide  
4 voter registration list, which we put in place very, very  
5 early in this process. We actually used our state match  
6 money to pay for that. But we also had to make some --  
7 some upgrades to it to do the verifications. There's  
8 requirements when a person registers to verify against  
9 either the driver's license list or the Social Security  
10 database, and verify that they are not dead and they are  
11 not under current felony conviction. And so a lot of  
12 this talks about doing that programming and getting all  
13 of that put together. So that was part of it.

14 Q What do you think the things were that were hanging up  
15 your office in 2006, 2007, early 2008, you know, on  
16 getting that Title III straightened out so you could make  
17 the request?

18 A That is what -- that is what I'm looking for because the  
19 things I have talked about, my recollection was we had  
20 accomplished in 2006. And so I'm looking to see what  
21 else.

22 That verification against the Social Security -- I  
23 talked about when a person registers, and I -- you  
24 refreshed my memory. There was a huge issue because HAVA  
25 required us to verify a person registering against either

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1 2006 general election.

2 Q All right. But during the 2006 election cycle, you were  
3 still waiting for interface from this other federal  
4 agency?

5 A That is my recollection. But, again, I don't recall when  
6 we ultimately were able to get that. But I know that was  
7 a big issue.

8 Q Okay. \$660,000 disbursement, \$10,000 to each county  
9 shortly before you left office.

10 A Yes.

11 Q What was that about, sir?

12 A It was I believe the third disbursement we made where we  
13 gave an equal amount to each of the counties. And I just  
14 felt it was important, after having gone through the 2010  
15 elections, counties were drawing down their HAVA money,  
16 to give them another shot to get them ready for 2012.

17 Q You didn't give the county that money; you just allocated  
18 it in your line item or -- each county had its own  
19 account?

20 A Right. Those HAVA monies are held within the state  
21 treasury in a federal election fund. And then the  
22 counties have their allocation that is tracked utilizing  
23 the spreadsheet that we talked about earlier. So we  
24 simply allocated that money to those counties' accounts,  
25 and then sent them notification of that. And I think we

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1 also sent them at that point not just the notification,  
2 but here is what your new balance is in that account.  
3 And the other thing I would mention, those county-  
4 held accounts, we also credit those, or the state-held  
5 county monies, we credit them with interest because those  
6 monies are earning interest. And so we give them their  
7 pro rata share of the interest.  
8 Q Why wasn't it need based just rather than an even  
9 distribution among the 66 counties?  
10 A That was the way we had done those two earlier  
11 distributions, and that was simply the methodology that  
12 we had used, and I thought it was appropriate.  
13 Q Was it your methodology?  
14 A Yes.  
15 Q When was the first distribution and for how much? And  
16 I'm going to ask the first, second, third distributions,  
17 if you can find that in your documents.  
18 A I think these Pages 246 through 249 have a little bit of  
19 that history. And I think may -- on Page 248, there is a  
20 statement that says, "Secretary Nelson authorized the  
21 crediting of each county's state-held Title II account  
22 with \$4,000 effective January 1st, 2008."  
23 Q That was the first one you can recall during your  
24 administration?  
25 A I believe so. I -- I don't see a reference to anything

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1 earlier than that. I believe so.  
2 Q Okay. So why give every county \$4,000?  
3 A Again, going back to my earlier answer today, after  
4 having gone through the 2006 election, and realizing that  
5 there is going to be some of those costs, primarily  
6 programming, machine maintenance, that every county is  
7 going to have, and those are things that are required  
8 under Title III, you know, under HAVA, that each county  
9 was going to need those monies.  
10 The smaller counties were obviously burning through  
11 their money quicker because of those fixed costs, so we  
12 determined to give each county an equal share. And  
13 that's something, again, we talked with the county  
14 auditors about openly. We didn't know how the larger  
15 counties would view that, whether they would find it to  
16 be fair. And to their credit, there was no objection to  
17 our methodology.  
18 Q And you knew that some counties had a greater need, their  
19 line item -- their account was significantly lower than  
20 other --  
21 A Yes. Yes.  
22 Q So why didn't -- and Shannon County was one of those  
23 counties that was a lot lower than Minnehaha or Lincoln?  
24 A I don't remember specifics, but they certainly would have  
25 been lower than those two counties that you just

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1 mentioned.  
2 Q So why not give them a little more because they don't  
3 have the tax base, there's demonstrable need?  
4 A That wasn't -- again, these monies -- these federal  
5 monies are not meant to supplant local tax dollars. They  
6 are meant to accomplish the requirements of Title III.  
7 And as we analyze what those requirements are and what it  
8 was costing the counties to accomplish those, we realized  
9 that there are these fixed costs that every county is  
10 going to have, and that an equal payment would best help  
11 them to pay for those costs. It was not something that  
12 we were looking at how can we supplant or replace county  
13 monies, but simply one of those Title III requirements.  
14 Q This was your decision?  
15 A Yes.  
16 Q All right. When was the second distribution? So that  
17 first distribution was, ballpark, \$250,000?  
18 A 264,000.  
19 Q Okay.  
20 A Yep.  
21 MR. WILLIAMS: It looks like this is laid out in the  
22 state plan. If I can show him that document, he might be  
23 able to better describe this for you.  
24 MR. SANDVEN: Okay.  
25 A Okay. I note this is the updated March 2010 state plan.

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1 MR. SANDVEN: While he is reading through that, for  
2 the record, here is my letter requesting to you, Rich,  
3 that EAC report. I think it was covered by earlier  
4 discovery. But how soon can you get that report that he  
5 keeps referencing?  
6 MR. WILLIAMS: I will make a specific request to the  
7 Secretary of State's office today for this. As soon as  
8 they get it to me, I will pass it on.  
9 MR. SANDVEN: Thank you.  
10 A And then apparently -- and I don't have the exact date,  
11 but sometime in federal fiscal year 2008, there was  
12 575,000 more Title II dollars that were coming from the  
13 federal government. And we determined that we would  
14 allocate those dollars equally among the counties. But  
15 since those were new dollars coming in, we also had to  
16 have the five percent match. So we required each county  
17 to put up an equal portion of their match. And the  
18 counties agreed to do that. And so this was at some  
19 point in federal fiscal year 2008.  
20 Then in federal fiscal year 2009, there was some  
21 additional federal funds that came in, 500,000. And  
22 those were distributed evenly. The counties evenly put  
23 up their match money for that.  
24 And then it looks like that also occurred in federal  
25 fiscal year 2010, same scenario, for a total of 350,000

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1 that came in. And then again the payment at the end of  
2 2010 that you just referenced.

3 Q In 2008, was there \$5 million of funds that weren't  
4 allocated, that weren't designated for anything from  
5 Title II that was being carried over?

6 A That sounds -- that sounds --

7 Q You had over \$5 million in 2008 carried over from Title  
8 II?

9 A I don't recall the actual number, but it would have been  
10 probably in the 4 to 5 million range.

11 Q Same thing in 2010?

12 A I wouldn't be able to tell you without looking at a  
13 report from 2010.

14 Q Okay. We will go ahead and pull that report. But -- so  
15 if there's \$5 million sitting there, that could be  
16 used -- that could have been used for the 2008 general  
17 election, early voting in Shannon County, correct?

18 A After May 25th --

19 Q That's the general in 2008, right?

20 A Correct. But that -- that money had not been allocated  
21 to the county, and so the county was authorized to use  
22 the monies that had been allocated to them.

23 Q But all the county had to do was just say -- even if it  
24 cost \$50,000 high end, like you talked about earlier for  
25 early voting for a whole election cycle, they could have

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1 just written you a letter and just said can you  
2 preapprove or what do you think about us using \$50,000 of  
3 that 5 million over there for early voting? They could  
4 have made the request?

5 A They could have made the request.

6 Q And you wouldn't have denied it?

7 A I would have denied it.

8 Q You would have denied it?

9 A Yes. Absolutely.

10 Q Tell --

11 A Because I had authorized them to use the monies that were  
12 allocated to their county for those purposes.

13 Q Once this was exhausted, they could have asked for more  
14 from you?

15 A They could have, but that never occurred.

16 Q They never asked for the money?

17 A For additional over and above, not that I recall, because  
18 we authorized them to utilize the monies that were  
19 allocated to their county.

20 Q When you were involved in that 2010 meeting on  
21 September 24th, you were aware of the notice of  
22 termination of county auditor service?

23 A Yes.

24 Q That is why you were there, correct?

25 A Yes.

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1 Q Because when does the Secretary of State get involved in  
2 an election? What is the rule?

3 A Well, typically our involvement is in the training  
4 aspect, training county auditors, preparing them for the  
5 elections. But obviously the situation that was  
6 occurring down there at that point was crucial. You need  
7 to have a county auditor. You need to have that  
8 infrastructure to conduct an election. And the time was  
9 drawing short, and so I did what I could to try to bring  
10 that situation to a positive result. And I think we did  
11 that.

12 Q What was your involvement? What did you do?

13 A Well, talked not only with the officials in Fall River  
14 County, but I talked to county auditors in all of the  
15 neighboring counties to determine, you know, what  
16 assistance they might be able to offer in this regard,  
17 went to a county commission meeting, went back to a  
18 second meeting down there to try to bring the sides  
19 together and work this out. And fortunately to their  
20 credit, the officials in Fall River County, at the end of  
21 the day said we understand the importance of serving  
22 those -- the folks in Shannon County, and they did.

23 Q Was early voting an issue at that meeting?

24 A It was part of the discussions, yes.

25 Q All right. Did you offer anything on making sure there

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1 was early voting in Shannon County for the prerequisite  
2 six weeks?

3 A You know, I don't recall what I would -- what I said, but  
4 my take would have been just what you saw in these  
5 e-mails from 2008. I mean that was my position in that  
6 we would allow you to utilize your Title II monies to  
7 reimburse for those costs. That was my position all the  
8 way through. And so if we had talked about it, that's  
9 what I would have said.

10 Q What if the county was concerned, hey, we are going to  
11 zero that out on this election. Will we get new money?  
12 Did you ever have that discussion?

13 A I know there was -- there was concern about zeroing it  
14 out. Whether we talked about what happens next, what  
15 happens for 2012, I don't recall if we talked about that.

16 Q Who did you talk to about the account being depleted?

17 A Well, it was part of the discussion that I recall that  
18 the county commission had during those meetings.

19 Q Did you say we have got \$5 million sitting over here that  
20 can be transferred if that is depleted? We have more  
21 money here. Did you say that?

22 A I don't know if I did or not. But I can tell you I would  
23 not have offered to transfer money specifically to  
24 Shannon County.

25 Q Why not?

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1 A Because my policy was that we would transfer equal  
2 amounts to all counties. And at the end of 2010, that is  
3 what we did.  
4 Q But what if the need for voting in Shannon County is  
5 ten-fold what the need is in Lincoln County?  
6 A Again, the purpose of that federal money is not to  
7 supplant normal county expenditures.  
8 MR. SANDVEN: It's 12:10. Do we want to get -- when  
9 do you guys want to have lunch?  
10 MS. FRANKENSTEIN: Let's have lunch now.  
11 (Lunch recess at 12:11 p.m.)  
12 BY MR. SANDVEN:  
13 Q You have Exhibits 129, 130, and 131 in front of you?  
14 A Yes.  
15 Q All right. So can you tell me how much Title II money  
16 carried over for the -- for 2006, 2008, 2010 now? And I  
17 think Exhibit 129, does that just look like Title I  
18 monies?  
19 A No. Let me -- okay. What I understand this to be is a  
20 report that contains -- and I'm on Page 18 of  
21 Exhibit 129 -- the Title II monies as of September 30th,  
22 2007. It shows the balance, unspent balance for South  
23 Dakota at 6,821,176.  
24 Q So at that time any of that funding could have been  
25 utilized for early voting?

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1 A No, because, again, we hadn't yet received the EAC  
2 authorization to do that.  
3 Q All right. Same question for Exhibit 130, sir.  
4 A And this would be the Title II monies on hand at the end  
5 of September, 2008. South Dakota had \$7,007,824.  
6 Q Any of that could have been used for early voting?  
7 A Beginning May 25th of 2008, yes.  
8 Q All right. And it was a hundred percent your discretion  
9 on whether or not it was approved for early voting?  
10 A Following May 25th, 2008, yes.  
11 Q Right. You said, yes, it's okay?  
12 A That's correct, yes.  
13 Q You didn't need to go to anybody else?  
14 A No.  
15 Q Same question for '10, Exhibit 131.  
16 A And this would be the Title II balance as of  
17 September 30th, 2010. At that point South Dakota had  
18 \$8,071,582.  
19 Q Any of that money could have been used for early voting?  
20 A Yes.  
21 Q All of it could have?  
22 A There wouldn't have been any legal prohibition on it, no.  
23 Q It was a hundred percent your discretion on whether or  
24 not this was used for early voting?  
25 A Correct.

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1 Q In the 2008 plan that you submitted, it said that the  
2 state is currently developing Project ST25 which will  
3 make improvements to election night reporting,  
4 canvassing, and voter education and access.  
5 A Yes.  
6 Q What was that?  
7 A That was a -- prior to that, our state utilized a main  
8 frame-based system for reporting election results on  
9 election night. And that was replaced with ST25 which  
10 was a sequel-based system for reporting results on  
11 election night, but it also had a component that allows  
12 voters to locate where their polling place is, and also  
13 to view their sample ballot. And so it was a program  
14 that accomplished all of those purposes.  
15 Q Does it still exist today?  
16 A Yes. Although my general understanding is there has  
17 been -- the new secretary has made some changes to it,  
18 but the system still exists.  
19 Q Then the state used Title II, Section 251 funds for  
20 additional projects to improve federal elections?  
21 A Yes.  
22 Q And you cited that frequently when anyone went ahead and  
23 asked can we use this money for early voting?  
24 A Correct.  
25 Q And then under the plan, 2008 plan, counties could use

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1 Title II funds for specific projects to improve federal  
2 elections with your approval?  
3 A Correct.  
4 Q What were those projects?  
5 A You know, I don't recall specific projects off the top of  
6 my head, but -- and I think you might find in some of  
7 those e-mails there may be some, you know, requests that  
8 came in from counties, but primarily counties would have  
9 directed those to the HAVA coordinator. And so anything  
10 that would be in here would just be the tip of the  
11 iceberg as to what those would be.  
12 Q Anything regarding -- here's your e-mails -- other  
13 projects?  
14 A It does -- if I might, I'm not -- I haven't completely  
15 gone through the e-mails, but I'm not finding anything  
16 there. But Mr. Williams handed me the 2010 March HAVA  
17 state plan that talks about some of those additional  
18 items.  
19 Q You approved them?  
20 A Yes.  
21 Q What were the additional projects that you approved, sir?  
22 A South Dakota is one of the first states in the country to  
23 develop computerized links to transmit voter registration  
24 data between driver's license offices and county  
25 auditors' offices. And so somebody, when they got their

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1 driver's license or renewed it, could check a box on the  
 2 driver's license application if they wanted to register  
 3 to vote, and that information would go directly  
 4 electronically to the county auditor, and they would be  
 5 registered to vote.

6 Q How much did that cost, sir?

7 A I don't recall.

8 Q Next project?

9 A The ST25 project that you just mentioned.

10 Q Do you recall approximately how much that cost?

11 A This states approximately 350,000.

12 Q Any other projects you approved during your tenure?

13 A This also mentions voter registration cancellation  
 14 notification system. Prior to this, if somebody  
 15 registered in County A, and they were canceling their  
 16 registration in County B, the county auditors would have  
 17 to transmit that information by paper through the mail.  
 18 And we developed an electronic system for moving those  
 19 cancellation notices from one county to another, or even  
 20 from the Secretary of State's Office to a county. So  
 21 that was -- that was also developed.

22 Q Do you know how much that cost?

23 A This does not say, and I don't recall.

24 Q Okay.

25 A And then the last paragraph says, "The state will

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1 A Yes.

2 Q All right. It's Page 3 of 9 of the plan.

3 A Okay.

4 Q Last paragraph, right-hand column.

5 A Okay.

6 Q It says that each county -- about halfway through the  
 7 last indented paragraph, "Each county established a  
 8 reserved account determined by the county's" purchase --  
 9 or "portion of all statewide registered voters."

10 A Correct.

11 Q All right. So that was in the 2008 plan?

12 A Correct.

13 Q And then I thought earlier you said that the registered  
 14 voters or number of registered voters, that wasn't the  
 15 criteria for HAVA eligibility --

16 A That's --

17 Q -- after a certain year. What was that year? When did  
 18 it all change?

19 A I believe we changed that in -- I've already testified to  
 20 this, but I believe it was in either 2007 or 2008. What  
 21 this paragraph does is simply a historical recollection  
 22 of how the initial HAVA monies were distributed. This  
 23 doesn't reflect how anything was being done in 2008.

24 Q Right. And then on the historical paragraph, last  
 25 sentence, "The remaining Title II amount of

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1 continue to use Title II Section 251 funds for additional  
 2 projects to improve federal elections as determined by  
 3 the Secretary of State. Counties may use Title II funds  
 4 for specific projects to improve federal elections with  
 5 the approval of the Secretary of State." And that would  
 6 be a county, if they had some particular item that they  
 7 thought would improve their administration, they would  
 8 send that request to the HAVA coordinator, and either the  
 9 HAVA coordinator or myself would make a determination on  
 10 whether that would be approved for reimbursement.

11 Q Why didn't you make in-county absentee voting a project  
 12 under your discretion for Todd or Shannon?

13 A We did.

14 Q How?

15 A Well, in that May 1st, 2008 e-mail we authorized the use  
 16 of these funds for that purpose.

17 Q But you didn't know how much that project was? You never  
 18 researched how much it cost?

19 A Correct. We simply said to the county, we will authorize  
 20 you to use those Title II funds for that purpose.

21 Q I'm going -- can I have this marked Exhibit 150.  
 22 (Deposition Exhibit Number 150 marked for  
 23 identification.)

24 Q Here is the 2008 plan. Do you remember submitting this  
 25 plan?

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1 3.2 million -- \$3,235,652.80 was reserved in the state  
 2 election fund, designated to each county based upon its  
 3 match..."

4 A Right. And that is what would have occurred in 2005 when  
 5 that money came in.

6 Q Until what year?

7 A Well, it would remain in those county designated sub-  
 8 funds until it's spent.

9 Q All right. Then on Pages -- Page 5 of 9, that first  
 10 paragraph, last -- about halfway through, it says that,  
 11 "Counties are reimbursed semi-annually from the state  
 12 election fund." Where did that rule come from?

13 A That was simply a procedure that we developed. The  
 14 thought behind that was we wanted to -- we established  
 15 the reimbursement as basically June to make sure we could  
 16 get reimbursements done prior to the end of the state  
 17 fiscal year, and then December, so we could get  
 18 reimbursements done prior to the end of the county fiscal  
 19 year.

20 The reason we confined it to those two periods is so  
 21 we didn't have counties sending in for reimbursement for  
 22 every five and ten dollars that they spent, but rather we  
 23 asked them to accumulate six months' worth of  
 24 expenditures and then submit them to us at those two  
 25 periods.

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1 And then our task was to turn that around very  
2 quickly so we could get those payments out again before  
3 those two fiscal years ended.

4 Q What months were the -- the requests for reimbursement to  
5 be submitted?

6 A Prior -- I believe we ask for those things prior to like  
7 June 1st or December 1st to give us a month to get the  
8 paperwork and the checks turned around, but as you will  
9 see in some of these e-mails, there were requests for us  
10 to push that date for submission back. And whenever we  
11 could, we would do that because what we really wanted to  
12 do is make sure the counties could get their money by  
13 either the end of June or the end of December. And so  
14 whenever possible we would accommodate that.

15 Q Which date would you push back?

16 A Either the June 1st or December 1st date.

17 Q You mean back to August?

18 A No, no, no, no. Back to maybe June 5th or 10th or  
19 December 1st or 10th. Again, so that we could get the  
20 payment made by the end of June or the end of December.

21 Q The counties wouldn't even know what all their early  
22 election or absentee voting costs are until after the  
23 election was completed, correct?

24 A Oh, very true. In fact, most of their expenses for a  
25 primary they wouldn't know, and those would end up being

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1 submitted then in December.

2 Q Isn't that a terrible policy; that someone would have to  
3 eat all those costs, a poor county like Shannon has to go  
4 ahead and make those expenditures, they submit their  
5 reimbursement form, then they have got to wait six months  
6 to get that money back?

7 A I don't recall that anybody ever had an issue with that  
8 time frame.

9 Q So you thought six months to get the money back to  
10 Shannon County was fine?

11 A Yes.

12 Q You referenced some e-mails again regarding where you did  
13 exceptions for that reimbursement policy for those time  
14 frames.

15 A We didn't -- we didn't create exceptions for the  
16 June 30th or the December 30th deadline to get the  
17 payments out. But we did make some one- or two-week  
18 exceptions for them to give them a little more time to  
19 get the paperwork into us.

20 Q Because they were supposed to have the paperwork in by  
21 June 1st?

22 A That's my recollection.

23 Q A week or a few days before the election itself?

24 A Right. So any expenditures that they made up to that  
25 point, that they had invoices for, they could request

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1 reimbursement if they wanted. But the understanding was  
2 most of those expenditures are going to be for voting  
3 machines, for programming, and those types of things  
4 where they are not even going to get the invoice until  
5 late June, maybe even July.

6 Q Right. So Shannon County goes ahead and they are paying  
7 staff to drive over to do an early voting location,  
8 correct?

9 A Right.

10 Q They have got to pay for the physical location?

11 A Yes.

12 Q Mileage for the folks to get there?

13 A Yes.

14 Q Miscellaneous notice costs?

15 A Correct.

16 Q All right. They are not going to know what all those  
17 costs are until after June 1st, correct?

18 A Correct. They will know some of them prior, but the  
19 majority are probably going to be after.

20 Q So why didn't you tell Shannon County just get these  
21 bills paid and we will give you until the end of June to  
22 go ahead and get your receipts in, and we will get you  
23 reimbursed right away?

24 A Because, again, we wanted to make reimbursement prior to  
25 the end of the state fiscal year which is June 30th. In

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1 order to do that, we have to have information into the  
2 state auditor by probably mid-June in order for them to  
3 get those checks out and back to the counties by the end  
4 of June.

5 Q So who did you make exceptions to? Who did you give a  
6 couple extra weeks to to go ahead and submit their  
7 receipts?

8 A If we made an exception it would be for all counties.

9 Q Okay. You said there was some e-mails?

10 A Right.

11 Q You thought it was in your e-mails?

12 A Yes.

13 Q Can you find those, please.

14 A Here is -- this is Document 281, an e-mail from Susan  
15 Williams, who is the Bennett County Auditor, to Jennifer  
16 Headlee, asking if they could delay their reimbursement  
17 form submission to December 16th. And this would be of  
18 2008. Well, actually she must have just been -- I don't  
19 have her initial -- yeah. She says that they will be  
20 paying their bill by December 16th. And then we had some  
21 discussion as to whether or not --

22 Q They will be submitting their bill by December 16th?

23 A By December 16th. And whether -- and Jennifer responds  
24 back to Susan saying she will double-check within our  
25 office to see if that is okay and we can still get the

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1 payment out by January 1st. And Jennifer sends that to  
2 me, asks what my thoughts are.

3 My response is there could be a problem. We need to  
4 check with our fiscal officer who's Debbie Trapp, to find  
5 out if she can actually get the payment turned around  
6 that quickly. But I don't see any correspondence with  
7 her, and so I don't know what the response would have  
8 been. But my recollection is that there were times that  
9 we were able to push that date back somewhat.

10 Q Are you aware of any other state agency that will only do  
11 reimbursements twice a year or is this just your rule?

12 A I don't know what other state agencies do. I can  
13 affirmatively say this was our rule that we developed  
14 internally again so that we weren't making payments for  
15 every 5- and 10-dollar expenditure, but rather were  
16 lumping them into groups.

17 Q Why didn't you tell Shannon County, I know things are  
18 tight down there, there is going to be a lot of absentee  
19 voting costs, you have got an extra month to get your  
20 receipts in, and we will get you paid right away?

21 A I don't know why we didn't tell them that other than it  
22 wasn't the policy. And, frankly, we thought -- we  
23 thought this policy was very reasonable because our  
24 efforts were to get them their reimbursement of election  
25 money by the end of their fiscal year or to make

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1 Q Page 5 of 9 again, that first paragraph, last sentence,  
2 "The state may determine to increase the amount of the  
3 election fund reserved for individual counties." See  
4 that?

5 A Okay. Page 5 of 9, which paragraph.

6 Q First paragraph, last sentence, sir. "The state may  
7 determine to increase the amount of the election fund  
8 reserved for individual counties."

9 A I'm sorry. I'm not -- we are on the 2000 -- June 2008  
10 plan. 5 of 9. Okay. That is 4 of 9.

11 Q Sorry.

12 A "The state may determine to increase the amount of  
13 election fund reserved for individual counties."

14 Correct.

15 Q Okay. Was anyone lower than Shannon County?

16 A What do you mean, lower?

17 Q Less in their -- in their designated amount, less in  
18 their account.

19 A I don't know.

20 Q You don't know anyone else who was 50,000 --

21 A I do know that there were counties that zeroed out their  
22 account. Whether Shannon County zeroed out their  
23 account, I don't know. I don't recall that they ever  
24 did.

25 Q Was there ever discussion with any of those neighboring

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1 reimbursement by the end of the state fiscal year.

2 Q But it takes Shannon County a month or so to get together  
3 all the bills from an election cycle, get the -- get the  
4 form filled out, get it submitted to you, and then  
5 they've got to wait five months?

6 A Well, typically what they would do, because not only  
7 would they have some of their primary expenses, but some  
8 of the expenses incurred for the general election would  
9 be included in that also. Matter of fact, most of their  
10 general election expenses would be submitted with that  
11 December reimbursement. And so it would be a combination  
12 of both.

13 Q So what percentage of their election expenses do you  
14 think would be absorbed from early voting for the primary  
15 by June 1? What do you think they are going to be able  
16 to represent?

17 A It all depends on when they're making their -- their  
18 payments for labor and reimbursement for mileage and that  
19 kind of thing, but my guess is the majority would be  
20 incurred by the county after June 1st. I don't know what  
21 their actual payment schedules are. When it comes to  
22 reimbursement for payment for, you know, the larger Title  
23 III items, voting machine programming and those type of  
24 things, those are going to be in late June, early July  
25 maybe.

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1 counties what happens when you zero out your account?

2 A Well, I know there was concern by those counties because  
3 they understood that once your account was zeroed out, as  
4 we talked about this morning, your Title III requirements  
5 continue for perpetuity, and they were going to need to  
6 continue making those expenditures. And the  
7 understanding was that at that point those expenditures  
8 would fall back on the county taxpayers who pay for  
9 election expenses. But then we received additional  
10 federal monies that were allocated for each county, and  
11 on a couple of occasions, we took some of the state HAVA  
12 money and did an allocation to each county.

13 Q Plus you had \$5 million laying around that wasn't  
14 allocated of Title II, just collecting interest?

15 A It was a significant amount, yes.

16 Q Five million plus, correct?

17 A Correct.

18 Q So what happened when those counties were zeroed out?  
19 Did you replenish their account? Let's go one at a time.  
20 Who was zeroed out?

21 A I don't recall.

22 Q Do you remember any counties that were zeroed out?

23 A I know there were counties that were zeroed out, but I  
24 couldn't tell you which counties. I just remember that  
25 was an issue. And you recall this morning we talked

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1 about that first \$4,000 per county payment that was moved  
 2 to the counties' account, I specifically remember the  
 3 reason doing that was because some counties were zeroed  
 4 out, and they were going to have those ongoing fixed  
 5 costs. So that is the reason we did that.

6 Q Is the -- with the counties that were zeroed out, you  
 7 would only give them 4,000 then --

8 A Correct.

9 Q -- and go from zero to 4,000?

10 A Correct.

11 Q And then when did you replenish their account for the  
 12 next election cycle or how did you do that?

13 A Well, as you recall this morning, we talked about there  
 14 were additional federal monies that came in in two or  
 15 three shots. Those were then put into those accounts.  
 16 So during that whole time the accounts were continually  
 17 replenished by either new federal monies coming in or  
 18 taking some of what the state had and moving it over into  
 19 those county accounts.

20 Q Right. It wasn't just new money that you did the equal  
 21 distributions with?

22 A Correct.

23 Q There were some situations where you would go ahead and  
 24 just transfer money that wasn't designated to individual  
 25 counties?

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1 A Correct. And based on --

2 Q How much did you do that and who did you do it for?

3 A Based on what we talked about this morning and the review  
 4 of the documents, it appeared that we did that twice.  
 5 Once was a \$4,000 per county transfer.

6 Q That was new money coming in?

7 A No. That was -- no. That was money that was in the  
 8 state -- state account that we moved over to the county  
 9 accounts. 4,000 per county. And then again, before I  
 10 left office, it was that 10,000 per county.

11 Q How long was that before you left office?

12 A It was the last week.

13 Q Funny timing. Why then?

14 A Because I wanted to accomplish that before I left office.  
 15 There was -- there were a number of things that I wanted  
 16 to accomplish before I left office. December of 2010 was  
 17 a very busy time in the office, pushing to accomplish  
 18 some things, and that was one of the things I wanted to  
 19 do.

20 Q All right. Have you ever transferred money to a county  
 21 that wasn't an equal distribution from Title II?

22 A No. Other than that first one that was based on pro rata  
 23 voter registration. But other than that, no.

24 Q Page 5 of 9 in the middle, it talks about "Expenditures  
 25 are made as needed by the Secretary of State with

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1 oversight by the state auditor through spending authority  
 2 granted by the state legislature."

3 A Yes.

4 Q What are the restrictions on you by the state auditor for  
 5 HAVA funds? Are there any?

6 A Any expenditures has to fall within the parameters of  
 7 state law. I can't tell you what types of things the  
 8 state auditor looks at when a voucher goes over to them  
 9 for payment, but that is their job. They review every  
 10 single voucher for every single payment to determine does  
 11 this payment comply with the terms of state law. If  
 12 there is a question on it, they will come back to the  
 13 agency and ask their question to get it resolved.

14 I don't know in any of the time I was there that we  
 15 ever had a payment refused, but occasionally there would  
 16 have been questions, you know, does it comply with state  
 17 law.

18 Q When you were at that September 24th, 2010 meeting in  
 19 Shannon County, you testified earlier that you knew money  
 20 was an issue for funding early voting. To me it's  
 21 ridiculous. Can you explain to me, I've got \$5 million  
 22 plus sitting over here. Shannon County is yelling from  
 23 the mountaintop I need more money for early voting.

24 A Yep.

25 Q Why you didn't say I have got it, here you go. And

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1 remember this -- you knew already that there -- should  
 2 have known there was no early voting in June --

3 A Right.

4 Q -- of that election cycle or not the same number of days.

5 A The answer to that question goes back to the philosophy  
 6 that I developed really from day one with the HAVA money.  
 7 My goal with the HAVA money was to be as judicious with  
 8 the expenditure of that as possible so that it would last  
 9 as long as possible for the counties.

10 As I indicated earlier, the requirements of that  
 11 federal law are going to go on forever. At some point  
 12 the money is going to run out for everybody, and all of  
 13 those Title III expenditures are then going to fall back  
 14 on county taxpayers. So my goal from day one, and I'm  
 15 not ashamed of it whatsoever, was to make these -- these  
 16 funds last as long as possible for every county in the  
 17 state.

18 And so that's the reason that I am not giving certain  
 19 counties extra money. That's why we have been very  
 20 conservative in the expenditure of that money, and,  
 21 frankly, that is why we have got as such money on hand  
 22 yet today as we do because we have been very conservative  
 23 in those expenditures. And county taxpayers across the  
 24 state are going to be the beneficiaries of that for many  
 25 years to come.

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1 There are many states that have zero HAVA dollars  
 2 left today because they spent them all. All those  
 3 federal requirements are now going back on their state  
 4 and county taxpayers. In South Dakota we still have  
 5 money to pay for those. And that's by design. That was  
 6 my philosophy.

7 Q Have you ever heard about another state anywhere in the  
 8 United States that doesn't have their own county seat or  
 9 where there is a situation similar --

10 A I don't know.

11 Q -- to this early voting here?

12 A No. I have not heard of that, but I have not queried  
 13 every county in the country, so I don't know.

14 Q Have you ever done an assessment of need county-by-county  
 15 for HAVA funds?

16 A No. I mean our assessment was what does -- our  
 17 assessment all along is what does it take to accomplish  
 18 the requirements of HAVA. Again, those are laid out in  
 19 Title I and Title III, and those are the things that --  
 20 that we are going to spend the money on. Later in 2008,  
 21 we were allowed to expand the use of that.

22 Q Would you have given \$50,000 if they asked for it in 2008  
 23 for early voting in Shannon County?

24 A And not give it to other counties, no.

25 Q Would you have given them anything that was not

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1 have been terminated?

2 A According to the agreement that Shannon County had  
 3 signed, the contract, their option was -- let me back up.  
 4 There was some restrictions someplace in that those  
 5 services had to be provided by a neighboring county. And  
 6 I don't remember where that restriction resides. And  
 7 so -- so I talked to every neighboring county auditor to  
 8 determine whether there was any possibility of those  
 9 neighboring auditors providing those services.

10 I did not receive any positive response to those  
 11 conversations. So that brought us back to Fall River  
 12 County officials. And at the end of the day, to their  
 13 great credit, they came back to the table and they did  
 14 the job, and they are doing the job today.

15 Q I'm going to hand you what's been marked Exhibit 18. Is  
 16 this the contract that was in effect at that time?

17 A It appears to be, yes.

18 Q Have you ever read the contract that was in effect  
 19 between Shannon County and Fall River?

20 A Yes.

21 Q When did you read it last?

22 A Probably when all of this was occurring in September of  
 23 2010. I know I haven't read it since.

24 Q On Page 2 --

25 A Okay.

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1 distributed to other counties in 2008?

2 A No.

3 Q No matter what the need was?

4 A No matter what the need was, I -- you know, I wasn't  
 5 posed with that question, but, no, I can't imagine that I  
 6 would have done that.

7 Q Why?

8 A Because my philosophy was to make those federal monies  
 9 last as long as possible for every county and every  
 10 taxpayer in the state.

11 Q Even if you have got a minority group not having the same  
 12 access to early voting?

13 A I felt that with our allowance of the use of those Title  
 14 II monies in 2008, the reimbursement from the county-  
 15 held -- or the county's reserved accounts, that we made  
 16 provision for that situation, those unique situations  
 17 down there. We made provision for that.

18 Q So in 2010 when some people were starting to pull out of  
 19 election services, the county auditor, what would you  
 20 have done? You had a notice of termination of services.

21 A The two things that I did obviously were talked to  
 22 officials in Fall River County to try to figure out what  
 23 is really at the root of the problem here, what can we do  
 24 to get your folks back on board.

25 Q My question is what would you do if the services would

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1 Q -- of Exhibit 18, it talks about approximately \$40,500  
 2 going to the auditor's office from Shannon County, to the  
 3 auditor and the clerk?

4 A Okay.

5 Q Did you ever ask can some of this be used for early  
 6 voting?

7 A No.

8 Q Why not?

9 A I don't know that I was asked the question.

10 Q But when you went down there and heard the complaints  
 11 about money and saw everything going on, did you  
 12 investigate how much money do you have to do your job?

13 A That was a discussion that the county commissioners were  
 14 having with their county auditors as I recall. But the  
 15 thing that I remember coming out of that meeting is the  
 16 commissioners understood that at some point, if they kept  
 17 spending that money, it was going to be gone. And they  
 18 wanted to be very judicious in the use of their dollars.  
 19 That is what I remember coming out of that meeting.

20 Q So South Dakota Secretary of State Nelson is being  
 21 judicious in his expenditures of funds.

22 A Yes.

23 Q About 3 million or so is allocated to counties, 5 million  
 24 dollars isn't allocated?

25 A Roughly, yes.

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

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

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

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

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

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

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

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

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

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

23 A No.

24 Q Someone just had to call you?

25 A Right.

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

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

7 Q Why didn't you investigate that?

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

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

13 A Correct.

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

15 A Correct.

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

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

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

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1 A No, there is not.

2 Q Isn't that inherent in the law?

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

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

9 A About 95 percent.

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

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

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

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

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

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

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

7 Q How did you pick the HAVA task force?

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

10 Q Who picked them?

11 A The HAVA task force?

12 Q Yes.

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

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

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1 A I'm not -- I don't recall any specific communication --  
 2 Q General communication?  
 3 A -- with tribes. I don't recall any.  
 4 Q What percent of the state is Indian, would you guess?  
 5 A Eight to nine percent.  
 6 Q So why didn't you do some outreach to that segment of the  
 7 South Dakota population to participate in the task force  
 8 regarding voting?  
 9 A You know, I don't know that I have an answer for that  
 10 other than we had -- we asked Michael Lapointe to  
 11 participate on the task force. But beyond that --  
 12 Q Michael was a Republican senator at the time?  
 13 A Yes. He was somebody I knew. And I don't know if he was  
 14 working for the tribe at that time, but I know later then  
 15 he went to work in the tribe's office.  
 16 Q Did you ever go do any outreach to Sisseton Wahpeton  
 17 Oyate regarding task force solicitation?  
 18 A No.  
 19 Q Why not?  
 20 A Didn't occur to me.  
 21 Q Flandreau Santee Sioux Tribe?  
 22 A No.  
 23 Q Yankton Sioux Tribe?  
 24 A No.  
 25 Q Crow Creek Sioux Tribe?

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1 A No.  
 2 Q Lower Brule Sioux Tribe?  
 3 A No.  
 4 Q Rosebud Sioux Tribe?  
 5 A No.  
 6 Q Cheyenne River Sioux Tribe?  
 7 A No.  
 8 Q Standing Rock Sioux Tribe?  
 9 A No.  
 10 Q Oglala Sioux Tribe?  
 11 A No.  
 12 Q In hindsight, would you have requested a little input  
 13 from those big Indian populations?  
 14 A In hindsight, do I wish I would have extended an  
 15 invitation, yes.  
 16 Q Why?  
 17 A Over the eight years that I served as Secretary of State,  
 18 I spent a large amount of time and effort dealing with  
 19 Native American voting issues as we have already talked  
 20 about.  
 21 Q You got sued a lot?  
 22 A I got sued a lot. But it was more than that. It was  
 23 going through what we need to do to make sure each  
 24 election was conducted properly out in those areas. I  
 25 mean it's no secret that it's harder to conduct elections

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1 in Indian Country than it is elsewhere in the state for a  
 2 whole lot of reasons. And so I spent a great deal of  
 3 time on that. And would I have been better served, you  
 4 know, early in my term as Secretary of State, and  
 5 realizing that was the first year I was Secretary, would  
 6 I have been better served by perhaps doing some of that  
 7 outreach early; probably.  
 8 Q Was it the same task force all the way through?  
 9 A No. The task force, after the initial plan, was  
 10 disbanded. And it was with the understanding that any  
 11 subsequent changes to the state plan could be done by the  
 12 state Board of Elections. Then at some point before the  
 13 very last update in 2010, there was some review and we  
 14 determined that we needed a broader task force than just  
 15 the state Board of Elections. And so a broader task  
 16 force was put together again at that point to deal  
 17 specifically with issues relating to military and  
 18 overseas voting. That was the big -- the big issue with  
 19 that 2010 plan. There had been some changes in federal  
 20 law, some new requirements with military and overseas  
 21 voting, and we had to respond to that.  
 22 Q I'm going to hand you what was Bate stamped 0345 through  
 23 054, 0354. Is that what you are talking about on task  
 24 force number two?  
 25 A Yes. Yes.

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1 Q How many Indians did you put on that?  
 2 A I don't believe we had any.  
 3 Q Why?  
 4 A Again, the focus of this task force was dealing with the  
 5 new federal military and overseas voting requirements,  
 6 and so we had a more limited task force at that point.  
 7 Q A few Indians in the military, huh?  
 8 A Yes, there are.  
 9 Q So why didn't you include an Indian?  
 10 A I don't have an answer for that. I don't know.  
 11 Q Hindsight, should have?  
 12 A As I said this morning, I don't know that I believe in  
 13 racial quotas, but would it have been good to do that  
 14 outreach and at least ask; yes.  
 15 Q Have you ever advocated for any Indian in any office or  
 16 any position in your office for a hiring position?  
 17 A Absolutely.  
 18 Q Who have you hired that is Indian?  
 19 A Kayla Long Break was one of the last people that I hired  
 20 from Cheyenne River. Tremendous young lady that --  
 21 Q What year?  
 22 A Would have been 2010.  
 23 Q All right. You have about 15 employees in your office?  
 24 A Yes.  
 25 Q And over your tenure -- or your eight-year tenure as

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1 South Dakota Secretary of State, how many Indians did you  
2 have working for you?

3 A I believe that Kayla was the only one during that time.

4 Q And for the task force that you handpicked, out of the  
5 two task forces, you picked one Indian?

6 A Yes.

7 Q And that was it?

8 A Yes.

9 Q Okay. And you -- and I'm going to quit this line of  
10 questioning, but you started saying that you did that  
11 because there were no quotas?

12 A Correct. I don't believe in quotas.

13 Q You thought one Indian was sufficient for both task  
14 forces?

15 A I wanted -- wanted representation from the legislature.  
16 I knew Michael Lapointe through that avenue, and knew  
17 that he was Native American. And so he was able -- I  
18 asked him to serve.

19 Q Do you remember seeing this letter from Jennifer Headlee,  
20 dated July 22nd, 2009? It looks like it's Bate stamped  
21 what down there, sir?

22 A 295 through 298.

23 Q All right. That is where there's a little bit of  
24 discussion on interest?

25 A Yes.

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1 Q All right. Is that the first time that you had heard the  
2 interest issues on the reporting?

3 A There are two different interest issues. The one that we  
4 talked about this morning was interest that the state-  
5 held HAVA monies were generating and how to properly  
6 allocate that back to those -- those accounts. And that  
7 is what we talked about this morning. But later, in  
8 probably 2008, 2009, the EAC started making some noise  
9 about -- and we became aware that for the county-held  
10 accounts, the monies that were in the county funds, HAVA  
11 funds, their match monies, that the counties needed to be  
12 apportioning interest to those county funds.

13 Now, realizing these are very small funds, and the  
14 amount of money we are dealing with is 5 to 10 bucks, we  
15 wasted more time going back and forth with the EAC over  
16 those 5 or 10 dollars per county than we ever should  
17 have, but at the end of the day we came up with an  
18 agreement with them that we would have each county just  
19 kick, I don't know, ten bucks into their county-held  
20 account to cover whatever interest that account might  
21 have ever accrued. And we came up with that agreement  
22 with the EAC, and the issue was over.

23 Q Earlier you mentioned there is more challenges in Indian  
24 Country with conducting an election.

25 A Yes.

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1 Q What are they?

2 A Well, jurisdiction is one. In Shannon County and Todd  
3 County the distance from the courthouses would be another  
4 one. One of the things that I have heard frequently from  
5 county auditors is difficulty getting poll workers to  
6 show up for the training prior to election day,  
7 occasionally not showing up on election day. You have  
8 the language issue that we have to deal with, the  
9 Section 203 requirements for Lakota language assistance  
10 that are issues. Then when HAVA required the AutoMARK  
11 machines to be out there, and Lakota to be on those  
12 AutoMARK machines, tremendous amount of work for our  
13 office and county auditors to get the ballots translated  
14 into Lakota, that information placed on the AutoMARK, and  
15 all of that working properly for anyone that would want  
16 to use that. And so just a whole lot of issues,  
17 challenges that we didn't have elsewhere.

18 Q What were the jurisdictional issues? How would that  
19 affect an election? Are you talking criminal or civil?

20 A I'm talking criminal. If there was an allegation that a  
21 crime was being committed, then you have the issue of who  
22 had the authority to step in. The FBI was obviously one  
23 source, but they kind of looked at things differently  
24 than a county state's attorney might in another county.  
25 And so it was -- there were jurisdictional issues.

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1 Q What crimes were you concerned about being committed or  
2 what are the -- what are the crimes that you are talking  
3 about?

4 A You know, the number one thing that we -- probably two  
5 things. One is voting more than once. And the FBI made  
6 some of those cases, and the U.S. Attorney prosecuted, in  
7 Shannon County.

8 Q How many cases over your tenure?

9 A They -- my understanding was they prosecuted one. They  
10 investigated about 50, and chose to only prosecute one.

11 Q So there has been one criminal prosecution for someone  
12 voting more than once --

13 A Correct.

14 Q -- during your tenure?

15 A Correct.

16 Q Anything else?

17 A The other allegation that continually comes up is that  
18 people are being paid to vote. That was not something  
19 that was ever substantiated, but it was something that,  
20 you know, that allegation is going on out there, then,  
21 you know, somebody has to at least take a look at it.  
22 And so --

23 Q That was never substantiated?

24 A No, it was not.

25 Q All right. There is a lot of allegations. There is a

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1 lot of allegations against all of us, correct?  
 2 A Correct.  
 3 Q So what -- but your concern was that people were going to  
 4 vote more than once?  
 5 A That is --  
 6 Q And that's why you say the FBI didn't handle that like  
 7 the state's attorneys would?  
 8 A That's obviously a concern anywhere. But the one  
 9 prosecution that I am aware of in the state for that took  
 10 place in Shannon County.  
 11 Q What year?  
 12 A I believe that came out of the 2004 general election.  
 13 Q All right. So there has been one person that you know of  
 14 that has been prosecuted for voting more than once in the  
 15 last 50 years?  
 16 A Well, in the last 20 years.  
 17 Q One?  
 18 A That I am aware of, yes.  
 19 Q And that is the only one you are aware of at any time,  
 20 correct?  
 21 A Correct.  
 22 Q So don't you think you're being a little dramatic by  
 23 saying the jurisdictional issues raise concern?  
 24 A It's part of -- it's part of the picture. I mean you  
 25 can't -- you can't dismiss that. It's part of the

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1 MR. WILLIAMS: Is that the case?  
 2 A No. I think I can answer the question.  
 3 As -- as I -- I had conversations with him prior to  
 4 elections as to what -- Bob Mandel was the person  
 5 assigned in the U.S. Attorney's office to oversee  
 6 election crime issues in South Dakota. He was their  
 7 point guy. And so I had conversations with him as to  
 8 what exactly your authority is, particularly in Indian  
 9 Country, you know, if there's -- if I get a question, an  
 10 allegation, how do I handle it, what do you want me to do  
 11 with it because obviously that is not something that we  
 12 can deal with.  
 13 And the impression I got was that they were not very  
 14 excited about getting involved in criminal issues or  
 15 allegations of criminal issues in Indian Country.  
 16 Q Regarding elections?  
 17 A Regarding elections.  
 18 Q Did he say that?  
 19 A You know, I don't recall his exact words, but those were  
 20 the impressions that I got.  
 21 Q Who was at the conversation besides you and him?  
 22 A Just he and I.  
 23 Q Where did you have that conversation?  
 24 A I know we had some telephone conversations. I know at  
 25 one time I visited him in his office in Rapid City.

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1 picture.  
 2 Q Okay. I mean are you asserting that the FBI doesn't  
 3 monitor elections the way the state's attorney would?  
 4 A The FBI is very hesitant to get involved in election  
 5 issues.  
 6 Q Why do you say that?  
 7 A Conversations that I have had.  
 8 Q With who?  
 9 A I'm going to maybe have to look to my legal counsel. The  
 10 conversation that I had was what I would consider a  
 11 privileged conversation.  
 12 MR. WILLIAMS: Who was the conversation with?  
 13 THE WITNESS: Bob Mandel when he was with the U.S.  
 14 Attorney.  
 15 Q He is not your attorney.  
 16 A I understand that.  
 17 Q He is a U.S. Attorney, right?  
 18 A Correct.  
 19 Q So there is no privilege. Go ahead. What was the  
 20 conversation?  
 21 MR. WILLIAMS: I will decide if there's a privilege.  
 22 But you are correct, there is no privilege.  
 23 MS. FRANKENSTEIN: Unless it was in contemplation or  
 24 during the course of a criminal investigation which has  
 25 not been closed.

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1 Q When? What election cycle?  
 2 A I -- I don't recall. It may have been several.  
 3 Q Did he tell you I'm not going to investigate election  
 4 issues on the Pine Ridge Indian Reservation?  
 5 A No.  
 6 Q Did he say I'm going to be hesitant in doing it?  
 7 A The -- one of the exact lines that I remember is before  
 8 we can do anything, we have to get approved by  
 9 Washington. And so it gave me the impression that it  
 10 was -- it was more difficult than -- in another county  
 11 where the local state's attorney can tell the sheriff  
 12 just go out and see what's going on. So it's a -- it's a  
 13 bigger process.  
 14 Q All right. Besides that one issue, that one prosecution  
 15 for an Indian or the Shannon County person voting more  
 16 than -- than once in the history of South Dakota, any  
 17 other prosecutions that raised the criminal jurisdiction  
 18 issue you are defining now?  
 19 A Well, probably the biggest one came out of the 2002  
 20 election when we had a large number of what turned out to  
 21 be fraudulent absentee ballot applications end up in  
 22 county auditor offices. As it turned out, that was  
 23 something that originated in a number of different  
 24 reservation areas. And I know there was -- the attorney  
 25 general's office was working on that, and it ended up --

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

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

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

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

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1 tribes isn't always the best, is it?  
 2 A I think that is probably true, but let me be very clear,  
 3 the two county auditors, Sue Ganje and Kathleen Flakus,  
 4 in all of my time knowing them, I have never seen  
 5 anything but the finest and most exemplary  
 6 professionalism in their conduct of their duties and in  
 7 their work and relationship.  
 8 Q What were their outreach efforts with Indians working in  
 9 Shannon County? You talked about it's hard to find poll  
 10 workers. That is your understanding?  
 11 A Right.  
 12 Q What are their outreach efforts?  
 13 A That I don't know.  
 14 Q So how do you know it's hard for them to find folks?  
 15 A Anecdotally I hear that.  
 16 Q What do you mean by "anecdotally"?  
 17 A From county auditors, and not just from those two, but  
 18 from others that work in Indian Country.  
 19 Q I'm asking about Shannon County. What makes you think  
 20 it's difficult to find poll workers in Shannon County?  
 21 A I believe that at some point in my time, that has been  
 22 relayed to me because that's the impression that I have.  
 23 Q Do you know by who?  
 24 A I don't. I don't know if it was Sue, I don't know if it  
 25 was her predecessor. I don't know.

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1 A There is only one time that the Secretary of State  
 2 actually did training for poll workers, and that was  
 3 prior to the implementation of the AutoMARK ballot  
 4 marking machines because that was a brand new thing. All  
 5 of a sudden we are taking technology and putting it in a  
 6 polling place that we hadn't before. So we did regional  
 7 trainings around the state where five, six, or seven  
 8 counties would bring all of their poll workers together,  
 9 and then we went out and actually did the training.  
 10 Q Ever did one on a reservation?  
 11 A I know we were up in -- we did one on Cheyenne River.  
 12 That's probably the only one that we did actually on a  
 13 reservation. The one covering Shannon County we did in  
 14 Rapid City.  
 15 Q All right. So one of the reasons that you said that it's  
 16 more challenging to do an election in Indian Country is  
 17 it's difficult finding poll workers, correct?  
 18 A Yes.  
 19 Q And you are basing that statement upon a single  
 20 conversation with Sue Ganje?  
 21 A That's part of it. And then other conversations with  
 22 other auditors over the years.  
 23 Q Did you ever recommend let's do some outreach with some  
 24 of these poll workers to get more Indians involved?  
 25 A I know I certainly asked the question, you know, what is

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1 Q And someone told you those Indian poll workers are not  
 2 showing up?  
 3 A I know that occasionally there are poll workers that  
 4 don't show up for the training, and then obviously we  
 5 have sometimes issues with showing up on election day.  
 6 Q Do you know why that issue may be exaggerated at Shannon  
 7 County as opposed to other counties?  
 8 A I don't.  
 9 Q Do you know what the actual numbers are?  
 10 A I don't.  
 11 Q Have you ever researched it?  
 12 A I know that at one point I asked Sue Ganje about that,  
 13 but I don't recall what the numbers were.  
 14 Q Do you ever try to do any outreach to encourage  
 15 participation by poll workers in Shannon County?  
 16 A No.  
 17 Q Why?  
 18 A That is a county responsibility.  
 19 Q I thought there was some stuff about that in the HAVA  
 20 plan, to go ahead and encourage participation in the  
 21 election process?  
 22 A In the election process, but not specifically poll  
 23 workers.  
 24 Q Have you ever conducted any kind of training for poll  
 25 workers in the ten years in Shannon County or Todd?

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1 there that we can do to find more poll workers.  
 2 Q But --  
 3 A Again, that's a county level responsibility.  
 4 Q So you didn't follow up on it because that is county  
 5 business?  
 6 A Exactly.  
 7 Q All right. Back to that distance to the courthouse that  
 8 causes challenges in Indian Country. Explain that. I  
 9 still don't understand what you mean.  
 10 A Well, if you have got -- let's say on election day you  
 11 have got some issue at a polling place someplace. It's  
 12 going to take, as we have talked about this morning, 60  
 13 miles to get from Hot Springs down to Pine Ridge for  
 14 somebody from the auditor's office to get out there to  
 15 resolve whatever the issue is. And so that's -- that's  
 16 just part of it. There is more miles to travel.  
 17 Q Why does that make it harder to do an election?  
 18 A Because if there is an issue that arises on election day  
 19 and they have got to get somebody from the auditor's  
 20 office out there, it simply takes more time.  
 21 Q How many issues have arisen on election day where they  
 22 have needed to go ahead and get someone from the  
 23 auditor's office in Hot Springs to travel to Shannon  
 24 County that wasn't regularly scheduled?  
 25 A I can't quantify that.

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1 Q You can't think of a single example, can you?

2 A I can't think of a single example, but that type of thing

3 is a regular occurrence on election day anywhere in South

4 Dakota. I mean that is just part of election day where

5 things pop up at a polling place, and somebody from the

6 auditor's office has to go out there to help resolve it.

7 That is just part of it.

8 Q But, again, you are not aware of a single example where

9 that happened with Shannon County, where someone had to

10 drive over during the election day that wasn't scheduled?

11 A From the auditor's office, no. I can think of one

12 instance where the sheriff had to go over, but I can't --

13 I can't think of a specific instance where the auditors

14 office had to.

15 Q But has Sue talked with you, it's kind of difficult to

16 run over -- from Hot Springs over to Pine Ridge on

17 election day?

18 A Well, there's miles to cover, certainly. And she is also

19 working with her county, Fall River County, so there is

20 twice the work to do.

21 Q But isn't that same argument applicable for going ahead

22 and saying if it's hard for Sue Ganje or her non-Indian

23 workers to drive out to the rez, it's kind of hard for

24 the folks working on the rez to drive to Hot Springs to

25 go ahead and cast their absentee ballot in person?

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1 Q But you get federal funding to help you with that,

2 correct?

3 A Yes.

4 Q So all you've got to do is go out and find the folks, and

5 the feds pay for it?

6 A That is correct, yes.

7 Q I'm looking at an e-mail that was provided in your

8 packet. It's 0358. All right. This is a May 19th

9 e-mail.

10 A Okay.

11 Q Remember this one?

12 A Correct.

13 Q Okay. So that was six days before the approval came out

14 where Title II could be utilized for all those collateral

15 issues?

16 A Correct.

17 Q Does this have anything to do with Title II expenditures

18 here?

19 A These would all be Title II expenditures, yes, that

20 were -- when I talk about -- when I talk about

21 reimbursement for staff beyond providing an interpreter

22 at each polling place and the hiring of a coordinator for

23 Lakota language assistance, that would be something

24 additional that they could apply for reimbursement for

25 from their HAVA funds.

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1 A I don't think I disagreed with that as we were talking

2 about that this morning; that there is miles to cover

3 there simply because of the geography. But what absentee

4 voters have available to them is the post office box;

5 whereas on election day when you have got issues to

6 resolve, you can't do it through the mail. You have got

7 to get somebody there and get it taken care of.

8 Q You talked about the language being a barrier for

9 conducting elections in Indian Country. What did you

10 mean?

11 A You know, I'm not sure -- I'm not sure what I meant by

12 that. I may need to retract that.

13 Q You want to retract that?

14 A I will retract that, yes.

15 Q So --

16 A I mean other than in this -- I'm not sure what I was

17 referring to, other than the fact that we have to provide

18 Lakota language assistance, which requires lining up

19 interpreters at the polling place and having them

20 trained. That is something that we don't deal with

21 elsewhere in Indian Country -- or elsewhere in the state.

22 Getting Lakota on the AutoMARKs and proofing that, making

23 sure that all works. And so those are issues that we

24 have to deal with there that we don't have elsewhere in

25 the state.

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1 Q Can I see that, sir. So then it says that "This e-mail

2 does not authorize reimbursement for an office or office

3 expenses. Any expenses incurred in either of these two

4 areas or any other area not covered in the February 26th

5 e-mail are not HAVA."

6 Why didn't you tell Sue but on May 25th, everything

7 loosens up?

8 A Not everything loosens up. On May 25th of 2008 -- this

9 is 2010.

10 Q Okay.

11 A On May 25, 2008, we got permission from the Election

12 Assistance Commission to utilize HAVA funds for other

13 things that improve the administration of federal

14 elections. Approving those specific things was still

15 within the purview of the Secretary of State. And in

16 2010, apparently in this February 26th e-mail that is

17 referenced here, I approved using the county's HAVA funds

18 for this coordinator and for their interpreters.

19 Q Do you remember talking to Linda Lea about HAVA funds

20 going for education?

21 A I know there is some e-mails in that regard.

22 Q Okay.

23 A The Department of Justice fairly closely monitors what

24 states and counties do to comply with Section 203. And

25 they would come out periodically, meet with us to find

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1 out what are we doing for Lakota language assistance.  
 2 And one of the things that we had been doing that -- we  
 3 have a ballot question pamphlet prior to each general  
 4 election. That is a pamphlet that has the attorney  
 5 general's explanation of each ballot question, and then a  
 6 pro and a con argument. We print those and we put them  
 7 on our website and all that.

8 And at some point we must have had the understanding  
 9 that we had to have that translated into Lakota and put  
 10 on Native American Indian radio stations. And we would  
 11 do that. Very lengthy translations, very difficult  
 12 translations. But we were doing that. And then  
 13 apparently we learned in 2010 from the Department of  
 14 Justice that we would not have to do that. And then  
 15 Linda Lea's question is why wouldn't we do it anyway.

16 Q It's your discretion, right?

17 A It's our -- at that point it would have been our  
 18 discretion, yes, because DOJ says you don't have to, but  
 19 it's at your discretion.

20 Q Was it kind of a hard process, you said, a lengthy  
 21 process?

22 A It was. The thing that I specifically remember being  
 23 communicated to us by the folks that were doing the  
 24 translation is there are words used today in the English  
 25 language where there are just not good, comparable words

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1 Q -- for interpreting --

2 A Yes.

3 Q -- ballot initiatives in Lakota?

4 A The pro/con arguments, correct. Now, realizing the  
 5 language that is on the ballot and the attorney general's  
 6 explanation, that is all translated, that is all provided  
 7 to the stations, that is on the AutoMARK available at the  
 8 polling places. That is all being done. What this was  
 9 talking about is the pro and con arguments on each of the  
 10 ballot questions.

11 Q You didn't think the folks who just read Indian needed  
 12 that?

13 A That was the determination of the Department of Justice.

14 Q No. They said you have the discretion on whether --

15 A Correct.

16 Q -- or not to do it. And in exercising your discretion  
 17 you didn't want to spend the \$400 or \$100 --

18 A That is correct.

19 Q -- to do it?

20 A That is correct.

21 Q Why?

22 A Because I typically don't spend money that I don't have  
 23 to. And that goes back to what I talked about, my  
 24 philosophy, earlier of making that money last as long as  
 25 possible.

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1 in Lakota. And that was one of the things that made that  
 2 difficult.

3 Q Was this an expensive education campaign? And what it  
 4 was talking about is translating the pro/con arguments of  
 5 an initiative, correct?

6 A Correct. And -- no, not particularly. I mean the  
 7 interpreters that we worked with, the translators, were  
 8 very reasonable in what they were charging. And so I  
 9 don't recall the total expenditure, but not large, no.

10 Q So what was the big deal?

11 A I think the biggest issue was whether playing something  
 12 like that -- well, number one, whether the stations would  
 13 actually play it, since it was pretty lengthy, and  
 14 whether or not folks were actually listening to it.

15 Q But it only cost a hundred dollars a question, right?

16 A Again, I don't recall the amount, but it wasn't great.  
 17 Yeah. As you pointed out in this e-mail, that was what  
 18 we pointed out.

19 Q This is your e-mail, right?

20 A Yes.

21 Q What was the date on it?

22 A June 10th, 2010.

23 Q Right. So you were complaining about a \$400 expenditure  
 24 from HAVA funds --

25 A Yes.

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1 Q That \$400 would have depleted that five million bucks too  
 2 quickly?

3 A It would have come out of that five million bucks.

4 Q Title II funds could be used for more than one voting  
 5 location, you said that earlier, right, in Shannon  
 6 County?

7 A I believe so.

8 Q It was your discretion if you -- I thought I heard you  
 9 say if they want two voting locations, they submit their  
 10 reimbursements, Title II authorizes, I will pay it,  
 11 correct?

12 A I believe so, but I would have to -- I -- what I might  
 13 have actually told them at the time, I don't recall.

14 Q Right. But I thought it was your position that that  
 15 Title II, that big pot of money that is left over, could  
 16 be utilized for one or more early voting locations in  
 17 Shannon County, correct?

18 A That is correct.

19 Q Just like they do it up in Pennington County, correct?

20 A Correct.

21 Q So why did you write this e-mail in 2010, Bate  
 22 Stamp 0399?

23 A I had not recalled that, and obviously hadn't reviewed  
 24 that before today.

25 Q And things change. I mean that was -- that was -- we

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1 have all written a lot of e-mails since then, right? I  
 2 have. I don't remember everything I wrote back then.  
 3 But why would you go ahead and say, no, you can't have  
 4 two of them there in Shannon County?  
 5 A I don't know why I made that determination at that point  
 6 other than what is stated here, that I apparently had  
 7 some ballot security concerns about two sites. But other  
 8 than that, I don't know what my thought process was.  
 9 Q All right. You don't have ballot security with two sites  
 10 in Pennington County, right?  
 11 A Actually I would have the same concerns there also.  
 12 Q Did you ever investigate it?  
 13 A No.  
 14 Q Why not? You know it's been that way since you started  
 15 as South Dakota Secretary of State, right?  
 16 A Well, at some point I became aware they were doing it.  
 17 I'm not sure when I became aware of it.  
 18 Q You don't know what year?  
 19 A No, I don't.  
 20 Q All right. So Linda Lea Viken, she was on the election  
 21 board then?  
 22 A Yes.  
 23 Q Ever have any -- ever have any conversations with the  
 24 election board about HAVA, about that issue?  
 25 A About the issue of having two absentee sites, no. I

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1 don't recall that.  
 2 Q All right. Do you remember why you capitalized the word  
 3 "TWO" absentee voting sites, kind of making a big deal  
 4 out of that?  
 5 A No. I don't recall why I capitalized a particular word.  
 6 Q Why would they have to pay for it with county money, the  
 7 second site?  
 8 A As I indicated, I'm not sure what my rationale was at  
 9 that point other -- I don't know.  
 10 Q And you knew there was no restriction by Title II?  
 11 A That is correct.  
 12 Q This was a Chris Nelson restriction?  
 13 A That is correct.  
 14 Q You have no basis for it?  
 15 A Sitting here today, I can't recall what my basis was  
 16 other than what's printed there. So you are correct.  
 17 Q Why did you have a ballot security concern in Shannon  
 18 County? What were -- what did you think would happen?  
 19 A Any time -- and the same thing is going to apply to  
 20 Pennington County. Any time you have got absentee voting  
 21 going on in two locations where you are not cross-  
 22 checking the list of who is voting, somebody can show up  
 23 in both places if they want to. And that's -- that's my  
 24 concern.  
 25 Q Right. Why didn't you do something to act on that

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1 concern up in Pennington County during your eight years  
 2 as Secretary of State?  
 3 A That's a good question. And I know that I -- I probably  
 4 voiced those concerns to the auditor, but did not follow  
 5 up on it.  
 6 Q It's your testimony you made statements regarding ballot  
 7 security concerns to the Pennington County Auditor?  
 8 A You know, I don't recall what I would have said to her.  
 9 And as I have already told you, when I learned about  
 10 that, I don't recall when that was.  
 11 Q So you don't remember saying anything to the county  
 12 auditor at Pennington County about it?  
 13 A I don't. I know it would have been a concern of mine,  
 14 but --  
 15 Q You don't know who you stated it to?  
 16 A I don't.  
 17 Q What are the number of complications that should be  
 18 avoided?  
 19 A I don't recall what I was referring to.  
 20 Q Can you think of a single complication that should be  
 21 avoided?  
 22 A I mean probably the thing that comes to mind is you  
 23 simply got twice as many people to manage and two  
 24 locations to manage, and those types of things.  
 25 Q And --

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1 A And realizing the difference there with -- and it doesn't  
 2 get at security, but my recollection of Pennington County  
 3 is they were utilizing the existing finance office in  
 4 Wall, I think. And so you don't have those issues of  
 5 other staff and, you know, other locations; whereas here  
 6 you are going to be talking about lining up other  
 7 locations, other staff, and those complications.  
 8 Q Did you ever suggest have a permanent voting location in  
 9 Shannon County so that would address those concerns?  
 10 A No.  
 11 Q Why not?  
 12 A Didn't occur to me.  
 13 Q But that was your concern -- that is why you weren't as  
 14 concerned about Pennington County, I thought.  
 15 A That's correct.  
 16 Q So why not suggest that Shannon County make a permanent  
 17 absentee voting location also?  
 18 A I don't know.  
 19 Q Any other complications that you thought should be  
 20 avoided that you can remember here today, sir?  
 21 A Not that I can remember, no.  
 22 Q And this e-mail, you titled it, this was Title II HAVA  
 23 money, correct?  
 24 A Correct.  
 25 Q And you said that you wouldn't authorize Title II HAVA

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1 money for two absentee voting locations?  
 2 A Correct.  
 3 Q You can't think of a reason why here today?  
 4 A That is correct.  
 5 MS. FRANKENSTEIN: Steve, can I see that?  
 6 MR. SANDVEN: That's document 0399, ma'am.  
 7 MS. FRANKENSTEIN: Can I just take a look?  
 8 MR. SANDVEN: Okay.  
 9 Q Who is Brian Gortmaker?  
 10 A He is head of DCI.  
 11 Q Remember voicing a concern to him on October 7, 2010? I  
 12 will let you look at the e-mail. I'm sorry. It's titled  
 13 "As Coincidence Would Have It."  
 14 A Okay. So what's your question?  
 15 Q What's the coincidence?  
 16 A I don't recall.  
 17 Q This is your e-mail, right?  
 18 A Right. From two years ago.  
 19 Q You were making a report to the Department of Criminal  
 20 Investigation --  
 21 A Correct. And --  
 22 Q -- regarding voting issues at Shannon County?  
 23 A My --  
 24 Q Can I take that paper, sir?  
 25 A Certainly. My recollection is that I -- I probably had

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1 some verbal conversation with Mr. Gortmaker, and this  
 2 appears to be a follow-up to that. But I don't recall  
 3 what the context of that would be other than what this  
 4 e-mail says. Apparently there were some supplies that  
 5 were missing from that office, and I think there was a  
 6 question about, you know, what ought to be done with  
 7 that.  
 8 Q All right. So you said you just had a call from the Fall  
 9 River auditor's office?  
 10 A Yes.  
 11 Q What is the coincidence you are talking about?  
 12 A I don't know. I don't recall.  
 13 Q Indians and theft?  
 14 A No.  
 15 Q What coincidence?  
 16 A I don't know. Other than it appears that I -- my  
 17 recollection is that I had been talking with  
 18 Mr. Gortmaker about something, and that this was a  
 19 follow-up to that conversation. I don't recall what it  
 20 was.  
 21 Q Conversation with who? The Fall River County auditor's  
 22 office?  
 23 A I don't remember.  
 24 Q Was it because of a theft at Fall River?  
 25 A No. The -- what is talked about here is in the Lakota

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1 language coordinator's office that was set up prior to  
 2 the primary, there were materials that were missing at  
 3 the end of that time period when the office was closed.  
 4 And I remember there being a question about, you know,  
 5 should somebody do an investigation on what happened to  
 6 these materials.  
 7 Q Who reported to you that there were a thousand dollars of  
 8 supplies and equipment stole from that office?  
 9 A It would have been somebody from the Fall River County  
 10 Auditor's Office because that is the only person that  
 11 would have had that information.  
 12 Q So who did you follow up with on this?  
 13 A Other than sending that e-mail, I don't know that I did  
 14 anything.  
 15 Q All right. I'm still unclear. Did Sue Ganje tell you  
 16 someone took a thousand dollars worth of stuff from the  
 17 office in Shannon County?  
 18 A Somebody from their office, and I am assuming it was Sue,  
 19 told me that that much was missing.  
 20 Q What supplies and equipment were missing?  
 21 A I remember some discussion about a laptop. What was  
 22 involved in that, I don't know. I don't remember.  
 23 Q And Sue Ganje said that they weren't able to recover that  
 24 laptop and some of these supplies?  
 25 A That is my recollection, yes.

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1 Q And who owned the laptop?  
 2 A I don't know.  
 3 Q And you thought possibly there may be theft involved?  
 4 A When something is missing, that is always a possibility,  
 5 yes.  
 6 Q So this was shortly before the general election in 2010,  
 7 the month before?  
 8 A Correct.  
 9 Q Did you ever talk to that coordinator before you made  
 10 this report to DCI?  
 11 A No.  
 12 Q Why not?  
 13 A I don't know that I had that person's contact  
 14 information.  
 15 Q Did you ever ask Sue Ganje before you -- we make a  
 16 mountain out of a molehill, let's make sure that that  
 17 person -- we talk to that person in that office first?  
 18 A My presumption is that she had already done that, and had  
 19 failed to recover whatever was missing.  
 20 Q Did she tell you that?  
 21 A I don't recall that specifically.  
 22 Q Did you have the identifying information ever for the  
 23 laptop?  
 24 A No.  
 25 Q Do you know if the laptop was in fact stolen?

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1 A No. I don't.  
 2 Q So you just wrote this e-mail based upon a conversation  
 3 with Sue Ganje and sent an e-mail to DCI?  
 4 A Right. As is indicated in the subject matter, I must  
 5 have had some prior conversation because typically this  
 6 would not be something that I would send to DCI.  
 7 Typically that would be something that would be the  
 8 purview of the state's attorney in the county. And so  
 9 the only reason I can imagine I sent it to Mr. Gortmaker  
 10 is we must have had some prior conversation about some  
 11 issues there, and this was something that was adding to  
 12 that.  
 13 Q Do you know if it ever -- anything -- it was ever proven  
 14 that there was anything taken from the office?  
 15 A No. I don't know that. I don't know that I had anymore  
 16 involvement after I sent this.  
 17 Q Why did you say we would not be reimbursing with HAVA  
 18 money for supplies and equipment so that would be county  
 19 taxpayer dollars?  
 20 A That goes back to what we indicated earlier. There were,  
 21 you know, the hiring of a whole lot of people that I  
 22 didn't deem were necessary for the project. And we  
 23 weren't going to reimburse for that.  
 24 Q This is related to that?  
 25 A It's all the same office, yes.

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1 A No. I'm not disputing that, but those could be paid for  
 2 by county funds.  
 3 Q All right. You sent an e-mail on December 11, 2009.  
 4 It's Bate stamped 0410. Let you take a look at that.  
 5 A Yes.  
 6 Q Remember writing that one?  
 7 A Yes.  
 8 Q If I can share with you. How did you communicate that  
 9 Title II monies could be utilized? And what you say is,  
 10 "We will be providing them with additional details on  
 11 allowable uses of the money and their reporting  
 12 requirements." How did you communicate that to the  
 13 counties?  
 14 A My presumption is that would have been communicated by  
 15 e-mail.  
 16 Q When you say "presumption," that means you don't  
 17 remember?  
 18 A No. It means some things we communicated by e-mail and  
 19 some by regular mail. But something like this probably  
 20 would have been by e-mail.  
 21 Q All right. Find it.  
 22 A It may not have been from me. It may have been from one  
 23 of my staff, in which case I don't have it here. But I  
 24 will check and see if I do.  
 25 Q I will give you a minute.

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1 Q All right. So you said no on paying all those  
 2 assistants --  
 3 A Correct.  
 4 Q -- that no HAVA money was going to be used for that?  
 5 A Correct.  
 6 Q Then you said no HAVA money is going to be used for  
 7 supplies and equipment in the Lakota election  
 8 coordinator's office?  
 9 A Right. My -- my understanding was when we -- we agreed  
 10 to pay -- to allow HAVA funds to be used to pay for the  
 11 coordinator. I don't believe we authorized the  
 12 expenditures of any dollars beyond the salary of the  
 13 coordinator.  
 14 Q All right. That is all stuff Title II could have  
 15 covered, though, right?  
 16 A Yes.  
 17 Q So why wouldn't you pay for supplies and equipment in the  
 18 Lakota election coordinator's office?  
 19 A Just simply discretion on my part.  
 20 Q Right. And we all know what discretion is. I'm asking  
 21 why you exercised your discretion by saying no?  
 22 A Again, to try to preserve those dollars for as long as  
 23 possible.  
 24 Q But you didn't think that a Lakota election coordinator  
 25 needed some office supplies?

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1 A Certainly.  
 2 MR. WILLIAMS: 0410.  
 3 MS. FRANKENSTEIN: 0399, I don't have a copy of that.  
 4 MR. WILLIAMS: I just handed it to Mr. Sandven this  
 5 morning.  
 6 MS. FRANKENSTEIN: I figured if it was Bate stamped  
 7 it was distributed. But, okay.  
 8 A And this is Document 335. On December 11th, 2009, we  
 9 sent an e-mail to --  
 10 Q Who is "we," Chris, Mr. Nelson?  
 11 A Came from Jennifer Headlee.  
 12 Q Your coordinator?  
 13 A My HAVA coordinator. And it went to the county auditors  
 14 that were subject to the 203 requirements. And it said,  
 15 "Secretary Nelson has authorized the use of your HAVA  
 16 state-held account funds in order to help your county  
 17 meet the requirements of Section 203 of the Voting Rights  
 18 Act. A new line, 17-12, will be added to the Title II  
 19 reimbursement form. More detailed information regarding  
 20 this authorization will follow shortly." We will see --  
 21 and see if I have got that.  
 22 Q The form you mean?  
 23 A Okay. No, the additional information. Then on  
 24 February 26th, and this is Document 338, February 26th,  
 25 again from Jennifer Headlee to those same county

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

7 Q Is the form in there that lists those 17 categories?  
8 A I believe I saw it someplace in here, yes. Or at least  
9 some version of it. Whether it was the latest version, I  
10 don't know.

11 Q How many versions were there during your administration?  
12 A Oh, probably a dozen as we added line items.

13 Q Was this the last one from your administration, what's  
14 marked Exhibit 132?  
15 A I doubt it. Well, okay. 132 contains two different  
16 sheets; one that was submitted by Shannon County in  
17 December of 2008 and one that was submitted by Shannon  
18 County in November of 2010. The November 2010 sheet  
19 probably was the last one that we utilized.

20 Q Can you think of a single expenditure for an absentee  
21 voting location in Shannon County where you did not have  
22 the discretion to use Title II funds?  
23 A My determination to allow counties to utilize Title II  
24 funds for those absentee sites in those two counties was  
25 entirely within my discretion.

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1 Q Understood. It was your discretion. What I'm asking  
2 though, is the legal requirements. What couldn't you use  
3 from Title II funding after that May 25th, 2008 letter,  
4 that could not be used?  
5 A The only thing that was still indeterminate at that point  
6 was this federal maintenance of effort issue at the  
7 county level. And so there was still a question at that  
8 point as to whether or not those dollars could be used to  
9 reimburse for regular county staff person time.

10 Q Did you ever get that sorted out before you left office?  
11 A Yes.

12 Q Was there a restriction; you couldn't pay those staff  
13 hours?  
14 A EAC finally rolled back on that and determined that there  
15 was no maintenance of effort at the county level, which  
16 we thought was an appropriate and correct answer. But we  
17 didn't change our policy during the time that I was  
18 there.

19 Q Why not? The federal funding agency said, you know what,  
20 you can use this for the regular hourly pay of these --  
21 of these auditor staff running over to Shannon County,  
22 correct?  
23 A Correct.

24 Q They said that is okay. Why didn't you say it was okay?  
25 A Again, going back to my philosophy of wanting those --

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1 the federal dollars to last as long as possible. And one  
2 way of doing that was not supplanting what were ordinary  
3 county expenditures that they would be making whether or  
4 not HAVA existed or any of this existed.

5 Q Do you know how much money that was in an election cycle?  
6 A I don't. No.

7 Q Did you ever take the time to figure it out before you  
8 said no?  
9 A No.

10 Q You know --  
11 A Because for me it was a philosophical issue.

12 MR. SANDVEN: You in the mood for a five-minute  
13 break?  
14 (Recess at 3:01 p.m.)  
15 BY MR. SANDVEN:

16 Q How many employees were you responsible for during your  
17 tenure?  
18 A We generally had 14 employees plus myself.

19 Q You said you didn't visit Shannon County as Secretary of  
20 State?  
21 A No. I said I didn't specifically go down there to do any  
22 election training or election outreach, but I did notice  
23 in one of these e-mails as I was reviewing it after you  
24 asked the questions this morning, it reminded me that I  
25 did make a trip to Kyle for a state tribal relations

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1 committee meeting that was held in Kyle. And then also  
2 was down there to work on that UCC code with the tribe.

3 Q The tribe's version?  
4 A The tribe's version. And in particular, the memorandum  
5 of understanding between the tribe and Secretary of State  
6 for the portions we would handle for the tribe.

7 Q At the Indian affairs meeting, did you get into voting  
8 issues at all?  
9 A Yes. I wouldn't have been there if it hadn't been for  
10 that.

11 Q Unless it was for the corporation stuff?  
12 A Right. But my recollection was they were talking about  
13 voting issues. I don't recall what the issues were. I  
14 don't recall the context. As a matter of fact, I hadn't  
15 even recalled the meeting until I saw it in these --

16 Q Can you pull that e-mail, please.  
17 A Oh, yeah. It was -- was an e-mail on a whole different  
18 subject. It began by saying, "On my way back from Kyle,  
19 I was thinking about..." and that's the only thing that  
20 refreshed my memory on that.

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

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1 Lakota language assistance requirements. And I pointed  
2 out Shannon County was the only one that had entered into  
3 an agreement with the DOJ for a coordinator position.  
4 And hence, that must have been the context in which I  
5 sent that follow-up e-mail. So the coincidence that I  
6 was referring to is Shannon County coordinator, Shannon  
7 County coordinator.

8 Q Okay.

9 A Document 269, July -- I wrote this on July 12th to Kia  
10 Warne. I said, "I was just thinking about this on the  
11 way back from Kyle yesterday." And then I talk about  
12 some match money items.

13 Q All right.

14 A I also mentioned that "The meeting in Kyle went very  
15 well. Details Monday."

16 Q Was that a meeting with tribal council?

17 A It was a state tribal relations committee meeting.

18 Q Do you know who was in attendance from the tribe? Who  
19 was in a leadership position?

20 A I don't. I would tell you that I -- I am presuming that  
21 an attendance list was probably maintained and could be  
22 obtained from the Legislative Research Council.

23 Q Did you ever meet with the Shannon County Commission  
24 regarding early voting issues besides that September 24,  
25 2010 meeting?

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1 Q Did Sue Ganje ever ask you are we supposed to have the  
2 same number of days of early voting in-county as  
3 everybody else?

4 A I don't recall if she asked that or not.

5 Q Never remember having that conversation?

6 A I don't. And, again, any -- any question that would have  
7 been asked in that regard, you know what my response was,  
8 I would have quoted the statute 12-19-53.

9 Q Do you know how much money went to Shannon County for the  
10 '06, '08, or '10 election cycles?

11 A No, I don't. And I didn't take those records with me  
12 from the Secretary's office.

13 Q Did you do any preparation or assist in the preparation  
14 of early voting besides offer the reimbursement policy  
15 for costs in Shannon County?

16 A Not that I recall, although if the county auditor would  
17 have called me to bounce ideas or questions off of, I  
18 would have answered those. But I don't recall any of  
19 those specific conversations.

20 Q What steps did you go ahead and take to prepare a county  
21 for an upcoming election? Not just early voting, an  
22 election.

23 A I understand. Prior -- in the December prior to any  
24 election year we would hold a two-and-a-half-day training  
25 session for county auditors and deputies where we would

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1 A I met with them twice, and I don't remember if that 24th  
2 was the first meeting or the second meeting. But I met  
3 with them twice for that month.

4 Q And that was all around the notice of termination of  
5 auditor services?

6 A Exactly, yeah. Did I meet with them prior to that? I  
7 don't recall that I did, no.

8 Q Did you ever meet with Fall River Commission regarding --

9 A No.

10 Q -- any kind of voting issues during your tenure as  
11 Secretary of State?

12 A No.

13 Q Why not? You knew about all the voting issues going on  
14 down in Shannon County. Why not go visit with the county  
15 commission. You are in the middle of all this  
16 litigation.

17 A Because my primary liaison within the county was through  
18 the county auditor. I mean that was -- that was  
19 literally our point of contact for every county. It  
20 would be very rare for us to communicate directly with a  
21 county commissioner other than there were several times  
22 when we were invited to the County Commissioners  
23 Association where we would address all of them. But so  
24 far as individual contact, that would be rare, if  
25 anywhere.

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1 go through with them the election process from A to Z.  
2 Then the counties would have a spring meeting in May and  
3 a fall convention usually in September or October. We  
4 would make two- to three-hour presentations to the county  
5 auditors at each of those meetings. And then numerous  
6 written communications, either by e-mail or regular mail  
7 with county auditors leading up to elections, and then  
8 answering hundreds of questions via telephone.

9 Q Did you ever invite any of the tribes to any of that  
10 training?

11 A No. The only -- the only time when there was -- what we  
12 considered something that was really new was when we  
13 rolled the AutoMARKs out that had the Lakota language  
14 feature on it. Again, as we talked this morning, sent  
15 out a letter to all the tribes asking them to come out  
16 and demonstrate that for them.

17 Q So were you required to do anything in particular for  
18 counties that fall under the Voting Rights Act as  
19 Secretary of State?

20 A Not that I can recall. I believe most of the  
21 requirements fell squarely on the counties. Now, there  
22 are some things that we agreed to do, yes. But so far as  
23 being required to do, I can't think of any.

24 Q Did you support the passage of HAVA?

25 A No.

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1 Q Why not?

2 A To me it was one more additional federal mandate. And it

3 was really the largest intrusion of the federal

4 government into state election procedures.

5 Q I hear a philosophical response coming.

6 A Yes. And that is entirely what it is, yes. It was the

7 largest federal intrusion into really the details of how

8 states conduct elections. We didn't have the punch card

9 problems that Florida saw and a lot of those types of

10 things. And I was not a proponent of it. Also set up a

11 new federal agency, Election Assistance Commission. Not

12 something that I saw that was needed.

13 Q Why?

14 A Because I felt that, you know, states had it within their

15 jurisdiction to do a good job of conducting elections.

16 Q You were -- what was your title before becoming Secretary

17 of State again?

18 A For 13 years I was state election supervisor. And then

19 in that period from June of 2002 to the end of 2002, I

20 was an assistant Secretary of State, but I didn't deal

21 with any of the federal or state elections because I was

22 running for Secretary of State.

23 Q While you were an election supervisor, how did you voice

24 your opposition to HAVA?

25 A My recollection is that we wrote letters to our

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1 congressional delegation. They would not have been

2 signed by me, but rather by Secretary Hazeltine would be

3 my recollection. But I know we voiced our opposition or

4 concern.

5 Q How did you assist the former Secretary Hazeltine with

6 these letters?

7 A Probably in gathering information, and most likely

8 drafting them.

9 Q You assisted in the drafting of the opposition memos?

10 A That would have been normal. Do I recall specifically

11 doing that ten years ago, no, but that would have been a

12 normal thing for me to do.

13 Q Any conversations with Governor Janklow regarding

14 opposition to HAVA? He was pretty vocal on it.

15 A Boy, I don't remember him saying anything about HAVA. I

16 just -- I don't remember that note, nor do I recall any

17 conversations with him.

18 Q Besides writing letters for Secretary of State Hazeltine

19 in opposition to the enactment of HAVA, anything else you

20 did in opposition to the enactment?

21 A Probably the only other thing we did was communicate to

22 the county auditors. And, again, I don't remember

23 specific communications, but that would have been the

24 kind of thing that we would have done, is to communicate

25 with them; here is what is being contemplated in

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1 Congress.

2 Q Do you recall asking for their support in opposing this?

3 A I don't recall specifically, but it wouldn't have

4 surprised me if we did.

5 Q What kind of opposition or what kind of support for the

6 opposition could the county auditors render?

7 A Only their contacting their Congress folks also.

8 Q Has HAVA made it easier to administer elections in South

9 Dakota?

10 A Yes and no. There's been some good things that have come

11 out of HAVA. There is no doubt about that. It's made --

12 it's made some things more difficult to administer, but

13 there were some good things that came out of it,

14 certainly.

15 Q What are the good things you are referring to?

16 A Provisional ballots. That's not something that I was an

17 advocate for, but in hindsight that has worked very well

18 in South Dakota. The requirement for verification of new

19 registered voters, the fact that we have got to make sure

20 that everybody that is registered is a real person that

21 is alive and not under current felony conviction, that

22 computer check has worked very, very well, and has served

23 to keep our registration lists much cleaner than they

24 would be otherwise. And the fact that it requires a

25 statewide voter list and all the things you can do there

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1 to keep a clean list I think are good.

2 Q Has HAVA made it easier to administer elections in

3 Shannon County?

4 A No. I wouldn't say that. And really the -- the hardest

5 part of implementing HAVA was the requirement for the

6 AutoMARKS and the voter assist terminals. And that was

7 obviously a huge financial expenditure, but it was the

8 first time the technology actually went to the polling

9 place. Prior to that you had pencils and you had paper

10 and you had books, and that was it.

11 Now all of a sudden you have got this machine that is

12 going to each polling place, and it has got to work, and

13 you have got to have election workers that are trained on

14 how to use it, how to fix it if there are problems, and

15 those type of things. So that was really a huge

16 challenge to implement.

17 Q How did the state qualify for funding under HAVA?

18 A There was a formula in HAVA. My recollection is that the

19 governor had to send a letter specifically asking -- I

20 know the governor was involved in that somehow. But

21 exactly what the formula was, I don't recall. I do know

22 that the Title I monies, there was a minimum of five

23 million per state, and so we did very, very well being a

24 small state getting five million because that was an

25 established minimum.

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1 Q How often were you required to submit a new state plan,  
2 the state HAVA plan?

3 A My understanding was if there were significant changes in  
4 how HAVA was going to be administered or there were  
5 significant changes in what we were doing with it, it  
6 wasn't a hard and fast rule, but as I think you have  
7 noted, we have probably submitted four, five different  
8 plans as things changed.

9 Q Were there any funds during your administration provided  
10 through HAVA that the state gave directly to the counties  
11 without requiring the counties to spend their own funds  
12 and seek reimbursement?

13 A No.

14 Q Always had to spend it first, then you would reimburse  
15 it?

16 A That's correct. And the reason for that was so that we  
17 could check on what it was being spent on.

18 Q Who tracks the expenditures besides your HAVA  
19 coordinator?

20 A Within my office -- I don't know how it's being done  
21 today, but when I was Secretary, that was the person who  
22 was solely responsible for that. And then once -- once  
23 she would approve the submission form, then that  
24 information would go to our fiscal officer who would  
25 actually do the necessary paperwork for the money to be

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1 transferred from the state to the county.

2 Q After May 25th, 2008, did your office ever deny funding  
3 to a county based upon improper expenses on their  
4 reimbursement form?

5 A I'm sure we probably did, but I don't recall any specific  
6 instances. I know there were periodically times when  
7 something was asked for that wasn't within the  
8 parameters, and we would deny it.

9 Q What does your office do or your former office do if it  
10 catches an expense that violated the HAVA?

11 A We would, first of all, contact the county and try to  
12 learn more about what it was they spent money on, how  
13 they thought that it applied, why they thought it should  
14 be reimbursed, and then make a final determination on  
15 whether we would reimburse or not.

16 Q Did Shannon County ever issue a reimbursement form or  
17 receipt for an expense that wasn't covered by HAVA?

18 A I don't recall. I don't know county-by-county how --  
19 what might have happened.

20 Q But you can't think of a single incident where Shannon  
21 County submitted an expense that wasn't under Title II?

22 A I don't know. I know there were instances that we did  
23 not reimburse, but whether Shannon County was involved in  
24 any of that, I don't know.

25 Q Do you know of anyone who has ever misused HAVA funds in

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1 the State of South Dakota during your tenure as South  
2 Dakota Secretary of State?

3 A Well, as I indicated, there were attempts for  
4 reimbursement that we denied because it was not something  
5 that would have been allowable. But other than that, I  
6 don't know of any.

7 Q But you can't think of a single incident where  
8 reimbursement was denied?

9 A I know there were incidents, but I -- one that I can  
10 think of, I can't tell you what county, they wanted to  
11 buy briefcases for every polling place. I don't even  
12 remember the reason. And that was not something that we  
13 thought was necessary.

14 Q But that wasn't Shannon County, was it?

15 A I doubt it. I don't know what county it was.

16 Q Any other instance -- instances that you can remember  
17 here today where HAVA funds --

18 A I can't. And, again, it was the HAVA coordinator that  
19 reviewed all those, and, you know, would only come to me  
20 if she had a question -- he or she had a question in  
21 their mind as to what it should be.

22 Q In the 2000 state HAVA plan, I think you talked about  
23 this a little bit earlier, the Secretary of State's  
24 Office said some of the expenses are consistent for each  
25 county regardless of registered voters. What are those

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1 expenses?

2 A Those are the things I've talked about; programming for  
3 voting machines, maintenance of voting machines,  
4 insurance on voting machines, those kinds of things.  
5 They are pretty significant expenditures, particularly  
6 for the smaller counties.

7 Q Has the state ever had any HAVA violations alleged by the  
8 federal government?

9 A No. Not that I am aware of.

10 Q Have you ever went through an audit for HAVA funds?

11 A We went through a state audit, but we have not yet been  
12 audited by the feds. That is coming at some point, but  
13 hasn't happened yet.

14 Q There was not a single audit from the feds during your  
15 tenure?

16 A I don't believe so. No.

17 Q And who initiated the state audit?

18 A I think that was just a normal part of what legislative  
19 audit does. My understanding was, I'm thinking back, it  
20 had something to do with the fact that we were using  
21 federal money, and there was some trigger that if you had  
22 over X number of dollars of federal money in your grant  
23 program, that automatically the state would have to do an  
24 audit. I don't remember the particulars, but that had  
25 something to do with triggering it.

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1 And then, frankly, the only thing that I remember  
2 coming out of that was they said -- because up to that  
3 point I wasn't requiring counties to submit any  
4 documentation for their requested reimbursement. Just  
5 fill out the form, and we will take your word for it.  
6 And legislative audit said, no, you have got to do about  
7 a ten percent audit, and have them send in their  
8 documentation.  
9 Q When did you begin implementing that?  
10 A I don't remember when that was.  
11 Q But that was before you left office?  
12 A Oh, certainly. Yeah. That -- that was probably middle  
13 of my -- my tenure.  
14 Q Has there ever been any misuse of any HAVA funds to your  
15 knowledge?  
16 A In South Dakota or elsewhere?  
17 Q In South Dakota, sir.  
18 A Not that I am aware of. And I think part of that is, you  
19 know, the review that we do when those reimbursement  
20 requests come in, and so that if there is something that  
21 appears to be outside of what is allowable, we can have  
22 those conversations with the county and come to an  
23 agreement on whether it is or isn't covered.  
24 Q But, no, there hasn't been a single misappropriation of  
25 HAVA funds that you know of --

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1 A Considered?  
2 Q Yes.  
3 A Not that I recall, no.  
4 Q Why not?  
5 A I don't know.  
6 Q You said in the 2005 plan that "South Dakota has a very  
7 efficient, reliable and trusted election process."  
8 A Yes.  
9 Q Is that true?  
10 A Yes.  
11 Q True in every county?  
12 A I think so. Not that we haven't had our bumps along the  
13 way and issues to work through, but I think by and large  
14 we have got a very, very good election system in this  
15 state.  
16 Q That is true of Shannon County?  
17 A Yes.  
18 Q Can you tell from those reports in front of you, I think  
19 it's Exhibits 129 through 132, is there -- do you know  
20 how much HAVA funds, how much interest was earned off  
21 HAVA funds while you served as Secretary of State?  
22 A I don't think I can give you the total figure, but what I  
23 can do is give you the figure from each of these three  
24 years. In 2000 -- this would be federal fiscal year  
25 2007. On the Title I money, we earned \$624,178 of

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1 A No.  
2 Q -- since becoming Secretary of State?  
3 A No. If there was a request for that reimbursement and it  
4 wasn't appropriate, we would deny it, and end of issue.  
5 Q Did you have a selection process for the initial task  
6 force that was selected under the 2005 state HAVA plan?  
7 A No. Nothing beyond what we have already talked about.  
8 Q What criteria -- it was your discretion. What criteria  
9 did you utilize?  
10 A Well, I -- I'm not sure that I had a criteria, but I know  
11 I wanted the state Board of Elections involved. I knew  
12 that I wanted the county auditors from both the two  
13 largest counties involved. I knew I wanted somebody from  
14 both political parties involved. I knew I wanted some  
15 folks from the legislature to be involved. And then  
16 because a large focus of HAVA was on assistance to folks  
17 that had disabilities, we wanted representatives from  
18 those communities involved.  
19 Q Did you consider any other tribal members besides  
20 Mr. LaPlant?  
21 A Lapointe.  
22 Q Lapointe.  
23 A Not that I recall.  
24 Q Were any of the people from the Shannon County or Todd  
25 County Commissions?

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1 interest. On the Title II money we earned \$638,372.  
2 MR. WILLIAMS: That's a compound of the previous  
3 years?  
4 THE WITNESS: No. That would be for that particular  
5 fiscal year.  
6 Q Roughly how much interest per year?  
7 A Well, the total of those two is going to be in excess of  
8 1.2 million. Now, let me just check. There is a  
9 footnote.  
10 Q You are saying that is not cumulative?  
11 A Well, I don't believe so, but let me go to the next year  
12 and see what that indicates. Federal fiscal year 2008,  
13 Title I monies shows us earning 868,676. And Title II,  
14 985,430. And then going to 2010, Title I monies,  
15 1,326,429.  
16 The fact that those numbers keep going up indicates  
17 to me that that may well be a cumulative number. But I  
18 don't know exactly how this report is put together. The  
19 2010 report for Title II money reports total interest at  
20 1,688,266.  
21 I'm reading through the commentary to try to  
22 determine if that interest money is a cumulative figure  
23 or just for that fiscal year. I'm not seeing any  
24 commentary on that.  
25 Q Okay. Did you do a turnover with Jason Gant when he

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1 started where you discussed early voting, absentee voting  
2 in Shannon or Todd?  
3 A I don't recall discussing that issue, no.  
4 Q Ever had any conversations with him about it?  
5 A No. I would doubt it.  
6 Q How come? Seems like it's always a big issue.  
7 A That was not something that I recall him asking about on  
8 the few occasions that we met prior to my leaving office.  
9 And so it wasn't something we discussed.  
10 Q When did you first learn that there were some voting  
11 issues or some contested issues of any kind in Shannon  
12 County?  
13 A I don't recall.  
14 Q When did you -- what year was the first lawsuit you were  
15 involved in?  
16 A The first one, and that would be the one that I  
17 inherited, was the Quiver suit dealing with preclearance.  
18 But at the end of the day, that -- I mean that suit  
19 required the county to submit statutes for preclearance.  
20 And at the end of the day, we agreed -- I agreed to  
21 submit on the county's behalf all of the statutes and  
22 administrative rules that had been passed over since  
23 1975, and submitted everyone of those, over 3,000, and  
24 everyone was precleared. But that's -- that's the first  
25 lawsuit that I was -- well, as I said, inherited.

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1 Q You disagreed with that?  
2 A I don't recall -- I don't recall my thought process on  
3 that.  
4 Q Here today?  
5 A I'm not sure that I would agree with that, no.  
6 Q You don't agree with it?  
7 A No.  
8 Q Why?  
9 A I'm not sure the evidence supported that. And it --  
10 realizing that was evidence a lot of years ago, but I'm  
11 not sure that it supported that.  
12 Q That Indians vote as a block down there, you don't agree  
13 with that?  
14 A No. I know there was evidence submitted that showed  
15 otherwise, but obviously that is not what the judge  
16 found.  
17 Q Did you agree with the Court's conclusion that non-Indian  
18 voters in District 26 vote in a block to defeat the  
19 Indian-preferred candidate? Did you agree with that?  
20 A No.  
21 Q How come?  
22 A I don't believe the evidence supported that.  
23 Q What evidence?  
24 A The evidence that was put forth by the plaintiffs.  
25 Q Did you agree with the Court's conclusion that there was

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1 Q Do you think there is limited voting opportunities  
2 historically to Shannon County residents?  
3 A As compared to anywhere else, no.  
4 Q You were involved in Bone Shirt versus Hazeltine?  
5 A Yes.  
6 Q Did you read the conclusion?  
7 A I read the judge's final decision, yes.  
8 Q Did you agree, sir?  
9 A There were parts that I probably agreed with and parts I  
10 didn't.  
11 Q What did you agree with?  
12 A I don't recall the specifics. That's been a lot of years  
13 ago, and that was a long decision.  
14 Q Generally?  
15 A I don't recall.  
16 Q What did you disagree with?  
17 A I don't recall.  
18 Q Nothing?  
19 A I mean obviously I disagreed with the decision because  
20 that wasn't the position we were arguing. But what the  
21 specific findings were that I disagreed with, I don't  
22 recall.  
23 Q Did you agree with the Court's conclusion that American  
24 Indians in South Dakota are politically cohesive?  
25 A I don't recall that I agreed with that, no.

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1 a long history of official discrimination?  
2 A No. Absolutely not.  
3 Q Did you agree with the Court's conclusion that there is a  
4 long history of unofficial discrimination in South Dakota  
5 that has touched upon the rights of Indians to be  
6 involved in the political process?  
7 A I don't know that I formed an opinion on that.  
8 Q No opinion?  
9 A I -- no, I don't think so.  
10 Q No opinion here today?  
11 A No. My concern was whether there was official  
12 discrimination on the part of government officials, and I  
13 don't believe that was proven.  
14 Q And no position regarding unofficial discrimination in  
15 South Dakota that has touched upon the rights of Indians  
16 to be involved in the political process?  
17 A The thing that I remember is there was -- there were a  
18 number of witnesses that testified to that. And that's  
19 ultimately what the Court found. I'm not going to  
20 disagree with that because I remember there was testimony  
21 to that effect.  
22 Q Did you agree with the Court's conclusion that the county  
23 political structure hindered Indians from running for and  
24 getting elected to public office?  
25 A No. I remember there was testimony to that effect, but

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1 I'm not sure that I agreed with that testimony.  
 2 Q Any opinion here today?  
 3 A No. I don't agree with that.  
 4 Q No, you don't agree to that?  
 5 A No.  
 6 Q Why?  
 7 A Because I don't think the evidence submitted supported  
 8 that.  
 9 Q Did you agree with -- do you agree with the Court's  
 10 conclusion that Indians in South Dakota bear the effects  
 11 of discrimination in such areas as education?  
 12 A I don't know that I can answer that. I don't remember  
 13 the testimony in that particular area because that  
 14 wasn't -- my concern was on the election process. It  
 15 wasn't in those other areas, so I don't recall what the  
 16 testimony was.  
 17 Q Do you have an opinion here today?  
 18 A I do not.  
 19 Q And what the Court's statement was is "Indians in South  
 20 Dakota bear the effects of discrimination in such areas  
 21 as education, employment, and health which hinders their  
 22 ability to participate effectively in a political  
 23 process." Do you agree with that?  
 24 A No.  
 25 Q Why?

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1 A In Indian Country, there are Native Americans that run  
 2 for office and win office.  
 3 Q How many Indians are there in the House and Senate  
 4 currently in the state? What percent?  
 5 A I can think of three. I believe there were more prior to  
 6 Bone Shirt. There may have been four. But I can think  
 7 of three today.  
 8 Q Three out of how many?  
 9 A One hundred five.  
 10 Q Or 4 out of 105?  
 11 A Three or four, yes.  
 12 Q So less than 3 or 4 percent?  
 13 A That is correct, yes.  
 14 Q And you don't think that that's indicative of some  
 15 problems in the existing system?  
 16 A I don't think it's indicative of problems with the  
 17 system. People who win and lose elections, it comes down  
 18 to how they run their campaigns, comes down to the issues  
 19 they talk about, comes down to how they appeal to the  
 20 electorate. There are a whole myriad of issues that  
 21 determine who win and lose elections, not the procedure  
 22 of the election itself.  
 23 Q And you don't think race is one of those variables in  
 24 this state?  
 25 A No.

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1 A Because I believe the political process is open to all  
 2 South Dakotans.  
 3 Q And that the education and employment and health issues  
 4 down in Shannon County don't affect that?  
 5 A No. That is correct.  
 6 Q Do you agree with the Court's conclusion there is some  
 7 evidence of racial appeals in political campaigns in  
 8 South Dakota?  
 9 A No. I don't.  
 10 Q Why?  
 11 A I don't believe that testimony supported that.  
 12 Q Do you agree with the Court's conclusion that there is  
 13 overwhelming evidence of unresponsiveness by the South  
 14 Dakota legislature on legislative issues of particular  
 15 interest to Indians?  
 16 A No. I don't believe the testimony supported that at all.  
 17 Q Why?  
 18 A Because, as I recall, there was evidence submitted of  
 19 responsiveness of the legislature.  
 20 Q Do you agree with the Court's conclusion that the fact  
 21 that few Indians have run for legislative office is  
 22 evidence that the existing system is discriminatory?  
 23 A No.  
 24 Q Why do you think a lot of Indians don't run for office in  
 25 this state?

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1 Q Do you think the State of South Dakota has a history of  
 2 limiting political participation in Shannon County  
 3 residents?  
 4 A Certainly there was a time in South Dakota's history when  
 5 that was true. Has it been true during the time that I  
 6 have been involved in the process, no.  
 7 Q When do you think that period of time was when that --  
 8 when that discrimination existed? During what era?  
 9 A There was a time period in the early 1900s, late 1800s  
 10 when my understanding was Native Americans were not  
 11 allowed to vote. And certainly that was wrong. You  
 12 know, we are talking the period a hundred years ago.  
 13 Q So for the last hundred years, you don't think there is a  
 14 history of discrimination in this state?  
 15 A My testimony is during the time that I was involved in  
 16 the process, I did not observe that.  
 17 Q Do you believe there is tension between white and Native  
 18 American communities in South Dakota, the border towns?  
 19 A Among certain individuals, probably.  
 20 Q Distinguish between certain individuals and the towns  
 21 themselves.  
 22 A You know, I don't know that a town itself can be  
 23 classified that way. Individuals might harbor feelings  
 24 and opinions, but I don't know that a town as such can.  
 25 Q What is your understanding of the causes of the tension

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1 in individuals?

2 A I don't know. It could be history, it could be

3 personality, a number of different things. It's not

4 something that I have ever sat down with somebody to try

5 to peel out of them, you know, what is your issue with a

6 white person, what is your issue with a Native American.

7 It's not something that I have ever -- I'm not a

8 sociologist. I've never delved into that.

9 Q Do you think that the tension between white and Native

10 Americans in Shannon County impact the voting behavior of

11 Shannon County Indians?

12 A No.

13 Q Why not?

14 A Voting behavior, voting turnout, is driven primarily by

15 the interest or lack thereof in the candidates in the

16 races. That is an absolute fact. That is the primary

17 driver. And you only need to look back at the 2004

18 general election in South Dakota when we had the high,

19 high profile Senate race. Everybody was interested in

20 it, and turnout in Shannon and Todd County, and

21 statewide, even more so in Indian country, skyrocketed.

22 Q Are you familiar with the concept of border towns?

23 A Generally.

24 Q What do you know about it?

25 A Well, if I were to describe a border town, I would say

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1 come and participate in the process.

2 Q Do you agree elections in the State of South Dakota are

3 racially polarized?

4 A No.

5 Q You don't?

6 A No.

7 Q Do you know what percent of the folks in Shannon County

8 are Democrat?

9 A I -- probably 90 to 92 percent maybe.

10 Q That's the highest in the state?

11 A I would think so. Probably.

12 Q How long have you known it's been that high?

13 A Well, I have worked with voter registration numbers ever

14 since I began as election supervisor in '89. So starting

15 then, you know, you get a general understanding for voter

16 registration trends in each of the counties.

17 Q Right. And most of the Indians are Democrat in Shannon

18 County?

19 A Well, I don't know that I -- I don't know that I could

20 say that. But when you have got 90 to 92 percent of the

21 registrations are Democrat and a large percentage of the

22 population is Native American, my presumption would be

23 that, certainly.

24 Q Right. But that doesn't impact your decision on whether

25 or not elections in South Dakota are racially polarized?

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1 it's a town that is not on the reservation, but is close

2 to it. That is my understanding. Whether that is right

3 or not, I don't know.

4 Q Haven't read anything on the relationships between folks

5 in border towns and reservations?

6 A No.

7 Q Never looked into it?

8 A No. Nothing other than whatever testimony there might

9 have been in the Bone Shirt case, and I don't recall any

10 of that today. I know that the issue was talked about,

11 but I don't recall the specifics.

12 Q After you heard all that testimony in the Bone Shirt

13 case, and then you are the Secretary of State, why didn't

14 you go out and investigate that? What is the

15 relationship between these communities and the potential

16 impact upon voting?

17 A Because, again, my interests, and I believe that my

18 responsibility as Secretary of State was to make sure

19 that the election process was conducted correctly. And

20 let me just be very clear, I did not believe and do not

21 believe it's the Secretary of State's responsibility to

22 drive voter turnout. Voter turnout is driven by

23 candidates, campaigns, and voters interest. The

24 responsibility of the Secretary of State and election

25 officials is to provide a mechanism whereby voters can

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1 A No.

2 Q Do you agree that access to early voting should generally

3 be expanded when possible?

4 A Access -- I mean access to early voting, to absentee

5 voting, is prescribed in statute, and whatever is

6 prescribed in statute needs to be available. And as we

7 have already been through in those two counties that we

8 are talking about, in the county, absentee, it's the

9 purview of the county commission.

10 Q But do you agree that access to early voting should

11 generally be expanded when possible?

12 A Expanded beyond what? Expanded beyond what?

13 Q Grow it when you can.

14 A No. I think that is -- that is too broad of a statement.

15 Q Why?

16 A Well, then it begs the question, why not 50 days, why not

17 60 days, why not a hundred days, why not 24 hours a day.

18 At some point there has to be a practical limit to what

19 taxpayers can afford to provide. And so that is why I

20 asked beyond what.

21 Q Okay. Do you agree that access to early voting in

22 Shannon County should be generally expanded when

23 possible?

24 A I think that's -- if the county commission determines

25 that that is the best for their county, I have no problem

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1 with that. I support them fully.

2 Q But I'm asking you, as former Secretary of State, do you

3 agree that access to early voting in Shannon County

4 should generally be expanded?

5 A I believe in respecting the decision-making authority of

6 those county commissioners to determine what is best for

7 their county. I think it's wrong for a Secretary of

8 State sitting in Pierre to make a decision different than

9 the five elected county commissioners from that county

10 that are given that -- that authority by state statute.

11 Q Do you agree that early voting, absentee voting,

12 in-county increases voter turnout?

13 A No.

14 Q You don't?

15 A I don't believe absentee voting increases turnout,

16 period.

17 Q Why not?

18 A Because numbers don't show that. Turnout is driven by,

19 as I've said before, by the candidates, by the interest

20 in the campaigns, by how the campaigns are run, by what

21 campaigns do. That's what drives turnout.

22 Q I thought I heard you say earlier today that all that

23 machinery that you are talking about, if they only have

24 one day to do it versus 30 or more days to do it, then it

25 is a factor?

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1 been offered in Shannon County, it increased voter

2 turnout?

3 A I don't know that I studied that or could make that

4 correlation. Again, as we have talked about today, I am

5 not aware sitting here today exactly how many days it was

6 available for each of the different elections.

7 Q Why have you never looked that up? Why during your --

8 the four elections or five elections that you were a part

9 of --

10 A Right.

11 Q -- why didn't you ever go ahead and just check out how

12 many days of early voting the Shannon County folks got

13 before the primary or the general, before any of those

14 election cycles?

15 A At the time I probably would have known. That is the

16 type of thing the auditor probably would have

17 communicated to me in some manner, but it's not something

18 that I studied, then did a -- some type of a statistical

19 study to see whether that actually increased turnout.

20 Q Why not?

21 A That wasn't something that I did.

22 Q Do you agree that driving from Shannon County to Hot

23 Springs to absentee vote is a hardship for Shannon County

24 voters?

25 A How do you define "hardship"?

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1 A It's a factor in the percentage that vote absentee. I

2 don't know that it's a percentage (sic) in the number of

3 people that actually turn out to vote.

4 Q Have you ever researched that?

5 A I've done some -- I've done some comparison of numbers as

6 to -- I've looked at numbers, and I have not become

7 convinced that absentee voting drives up turnout. And

8 I'll give you an example. When we expanded and took away

9 the reasons for having to vote absentee, we doubled the

10 number of people that voted absentee, but we didn't

11 increase turnout. Obviously turnout increased

12 dramatically in 2004 because of the candidate election,

13 but I could never see evidence that -- and there has been

14 national studies done on this, that show that you can

15 make voting easier, and that's all a good thing, but it

16 doesn't ultimately increase turnout.

17 Q What national studies?

18 A I have read them. I can't quote them to you. I don't

19 know who did them, but I know that I have read them years

20 ago.

21 Q Don't know how old they were?

22 A I don't.

23 Q Don't know who wrote them?

24 A I don't.

25 Q Do you agree that early voting, when early voting has

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1 Q How do you define it?

2 A Something that would be an extraordinary burden.

3 Q Let's ask the question different then. Do you agree

4 driving from Shannon County to Hot Springs to absentee

5 vote makes it harder for Shannon County folks to go ahead

6 and vote?

7 A Harder than what?

8 Q Than the people in Fall River.

9 A It would -- it would be more difficult to vote in person

10 because the distances are probably longer. But so far as

11 having access to absentee balloting, both have access

12 through the mail.

13 Q Does it make it more difficult for a Shannon County voter

14 to vote in person than any other person in the State of

15 South Dakota?

16 A To vote absentee in person, they're probably going to

17 have to drive farther than most. Going back to the Faith

18 and Sturgis example, not in every case, but farther than

19 most cases.

20 MR. SANDVEN: Can you read back the question, please.

21 (Last question read back by the reporter.)

22 A To vote in person absentee or at the polling place?

23 Q In person absentee, sir.

24 A They would have to drive more miles than some voters in

25 the state, and probably less miles than others, depending

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1 on where they are at in Shannon County. So I can't make  
2 an absolute blanket answer to that question.

3 Q Never researched driving distances for Shannon County  
4 voters as opposed to other voters in the State of South  
5 Dakota?

6 A No, I have not.

7 Q Why not?

8 A It wasn't something I endeavored to do.

9 Q Judge Schreier was asking Jason Gant some questions in  
10 the March preliminary injunction hearing. One of the  
11 questions -- some of the questions dealt with how much  
12 money was spent, HAVA money. And Jason Gant answered,  
13 "If memory serves, in 2010 Shannon County spent \$20,000  
14 of their HAVA funds." Does that sound about right?

15 A It could be. I -- it could be.

16 Q Then he said, "I believe the year before they spent about  
17 10,000."

18 A I don't have any reason to disagree with that.

19 Q When did you first learn that the voters in Shannon  
20 County did not have the same number of days of early  
21 voting in Shannon County as other counties?

22 A That probably would have been something that I would have  
23 become aware of in 1992 when the legislature was  
24 considering that statute, if not before. But certainly  
25 in 1992.

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1 Q So how many election cycles did you go through with that  
2 understanding?

3 A Well, '92 through 2010.

4 Q Do you know how many election cycles that is?

5 A Two, four, six, eight, ten; two, four, six, eight, ten,  
6 ten cycles.

7 Q Ten cycles you have known that?

8 A Yes.

9 Q Did you hear about the post office closings in Shannon  
10 County?

11 A No.

12 Q Didn't know anything about that?

13 A No.

14 Q That was after you left?

15 A I don't know. I didn't hear anything about it.

16 Q When did you first learn that private parties were  
17 donating money to pay for absentee voting in Shannon  
18 County?

19 A I think that first came up in 2004.

20 Q Why didn't -- what was your reaction?

21 A Well, as we talked about this morning, my first question  
22 was is this legal. And once we determined that it was,  
23 then my reaction was to work with the county auditor on  
24 any questions they might have on how to actually make it  
25 happen.

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1 Q During your tenure working with elections and being  
2 Secretary of State, are you aware of any private group or  
3 non-profit going ahead and paying for elections?

4 A Not aware. I mean that is why in 2004, when this  
5 proposal came forth, we asked the question, is this  
6 something that can be done. It was not something I was  
7 accustomed to.

8 Q Something you have never heard about in South Dakota  
9 before?

10 A Correct.

11 Q Once you found out it was legal, did you communicate it  
12 was legal?

13 A I presume that I did.

14 Q When you say "presume," does that mean you don't  
15 remember?

16 A I don't remember, but I'm sure that I did because that  
17 was a question that the counties had, and I asked for an  
18 opinion on that.

19 Q Did you put anything in writing and talk to the county  
20 auditors, nope, that's fine, you can take that private  
21 money?

22 A I don't recall if we put it in writing or not.

23 Q Did that raise the red flag to you that someone must be  
24 really hurting for money in order for them to take  
25 private donations to fund an election?

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1 A I don't know that I call it a red flag, but that was --  
2 you know, the county had said, you know, we don't have  
3 the funds to do this. We are not going to authorize  
4 this. And then a private group came forward and said  
5 we'll help you out with it. And it happened.

6 Q Why didn't you jump in and say I'll help you out with  
7 HAVA after May 25th, 2008? That is covered by HAVA, you  
8 don't need to take private money.

9 A We did. That was the whole genesis of that May 1st, 2008  
10 e-mail to those two counties saying after May 25th, you  
11 can use your HAVA money to pay for those things.

12 Q So those county commissions, instead of taking the  
13 private money, could have went ahead and submitted a  
14 reimbursement form to you and you would have paid it?

15 A Correct.

16 Q Was there a cap on how much money you would have  
17 allocated in 2004?

18 A They could have submitted for reimbursement for their  
19 actual expenditures anything up to what they had in their  
20 HAVA account.

21 Q So the cap was whatever money they had in their account?

22 A Correct.

23 Q All right. And then with the Title II monies that were  
24 freed up on May 25th of 2008, was there a cap on the  
25 amount of HAVA monies that could be requested for

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1 absentee voting in Shannon County?

2 A It would be the same answer. Whatever they had available

3 in their account, they could request reimbursement for

4 those expenditures.

5 Q What if the actual expenditures exceeded the amount in

6 that account?

7 A Then county taxpayers would have to pay for that.

8 Q Why wouldn't you go ahead and authorize additional HAVA

9 funds?

10 A As I have already indicated, our distribution of those

11 funds were done on an even basis for every county.

12 Q Even though Shannon County has more expenses associated

13 with absentee voting than other counties?

14 A That is -- that is correct. Other counties are paying

15 for their in-person absentee voting with county taxpayer

16 dollars.

17 Q Right. It's cheaper for 64 of the 66 counties to do

18 absentee voting than it is Shannon or Todd, correct?

19 A For the in-person, that is correct.

20 Q Why is that?

21 A Because there -- they don't have to travel outside of

22 their office to do that.

23 Q So if they depleted their -- the monies that were

24 currently sitting in their accounts, it's your

25 discretion, why wouldn't you authorize additional funding

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1 A Correct.

2 Q And the people who do live there on the parcels of fee

3 lands usually aren't quite as wealthy as a lot of the

4 folks living in big houses in Lincoln or Minnehaha

5 County, correct? There is a lot less taxable income in

6 that county?

7 A You are asking about specific landowners, and I can't

8 answer that question. But generally, is that statement

9 accurate; yes.

10 Q Okay. So why do you have to be equal in your

11 distribution of HAVA funds if the need is not equal?

12 A Because that was the way that I determined I was going to

13 do it. And, again, I go back to the point, the purpose

14 of HAVA, of the HAVA money, was not to offset local tax

15 dollars. That wasn't the purpose of it. So that is not

16 a road that I went down.

17 Q Do you have the '08 and '10 distribution plans or HAVA

18 plans in front of you?

19 A I have got the '08 plan. Here is the '010. Yes.

20 Q Where in the '08 and '10 plans does it say that we have

21 to do this equally? Are you looking at '08 first?

22 A I'm looking at '08 first, yeah. Okay. In the 2008 plan,

23 Page 4 of 9, first full paragraph talks about the fact

24 the state credited 4,000 from the state election fund to

25 each county's state-held balance. And so that was a

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1 for absentee voting in-county?

2 A Because my policy was to provide an equal amount to each

3 county, and it was then the county's determination how

4 they were going to utilize that.

5 Q Where is that policy written?

6 A In the HAVA state plan.

7 Q It says that it's the policy, no matter what?

8 A It says that is how we did it, or how we were going to do

9 it. Yes.

10 Q No exceptions?

11 A I don't believe so.

12 Q Why?

13 A I don't know that the "why" is addressed in the state

14 plan.

15 Q I'm asking you as Secretary of State -- these are extreme

16 circumstances at Todd and Shannon County -- why wouldn't

17 you allocate more money in that situation?

18 A We -- because my belief was that the right thing to do is

19 allocate money equally among the counties, and then

20 periodically we would transfer additional funds to all

21 the counties. That is what we did at the end of 2010.

22 Q Understood. But you have got counties with a lot of big

23 houses and a lot of taxable land, and you have got

24 Shannon County and Todd County that are vastly trust land

25 that aren't taxable, correct?

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1 statement of how it was done at that point. And then the

2 next paragraph also talks about that equal distribution.

3 Q Mr. Nelson, where on Page 4 of 9 did you just read from?

4 A The first full paragraph.

5 Q Right. That talks about the distribution of that

6 \$264,000, correct?

7 A Right.

8 Q That says how the state credited that amount?

9 A Correct.

10 Q All right. Where does it say that it's the policy to go

11 ahead and always do that?

12 A You are not going to see the word "policy" in here. This

13 is simply a report of how it was being done.

14 Q Right. That's the HAVA plan.

15 A Right.

16 Q So you said it was "my policy to do it equally." So

17 where was that policy implemented or did you promulgate

18 rules or did you do anything like that?

19 A No. We did not.

20 Q Why not?

21 A We just did it because that was within my discretion.

22 Q This was a Chris Nelson rule that we are going to do it

23 equally, and it's not written anywhere that we have to do

24 it that way?

25 A That is correct. It's reported here as to how it was

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1 done. But that's -- that's where it's properly reported.  
 2 Q Why didn't you ever promulgate a rule on this? Why  
 3 didn't you ever take this to your election commission and  
 4 say this is a big, big chunk of money, millions of  
 5 dollars, why don't we go ahead and promulgate a rule on  
 6 how it's distributed?  
 7 A Because that -- the distribution of that was something  
 8 that was under the purview of the Secretary of State, not  
 9 the state Board of Elections.  
 10 Q You didn't have to go through anybody else; it was all  
 11 your call?  
 12 A That is correct.  
 13 Q All right. So --  
 14 A Now, if I might -- if I might finish. As I mentioned  
 15 this morning, it was something that was talked about with  
 16 the county auditors. Since this was a change in the way  
 17 we had originally distributed the money, I know that we  
 18 talked with them about that, said here is what we are  
 19 observing, here is how I believe it ought be done from  
 20 now on. Did not get any negative feedback that I can  
 21 remember, and so determined that that would be the way we  
 22 would do it from here on.  
 23 Q Who did you do that -- who did you expect or who did you  
 24 see if there was any feedback from -- feedback from who?  
 25 A With county auditors.

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1 correct, what portion was designated to the counties?  
 2 A The portions of that was the amount that they put forth a  
 3 match for.  
 4 Q Did you put a ceiling on the amount they could match?  
 5 A My recollection, we had X number of state dollars that  
 6 had been put forward, and the counties picked up all the  
 7 rest of it. I don't remember what that amount was, but  
 8 they picked up everything else as I recall.  
 9 Q All right. We will just work with an easy number. \$10  
 10 million. Let's just say that is the total amount of  
 11 Title I and Title II that have come in.  
 12 A Okay.  
 13 Q All right. What you did is you allocated or designated a  
 14 portion of that to the 66 counties, correct?  
 15 A A portion of the Title II, correct.  
 16 Q All right. How did you come up with the amount that you  
 17 were going to apportion to the counties and the portion  
 18 that you weren't going to designate?  
 19 A If I might, I believe that is spelled out pretty well --  
 20 okay. It's pretty well spelled out on Page 246. We had  
 21 the 11 million. We then bought --  
 22 Q Can I take a look at 246. Are you done with it before I  
 23 look at it?  
 24 A No.  
 25 Q Why don't you get done with it. Then I will look at it.

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1 Q At a meeting?  
 2 A I presume it was.  
 3 Q "Presume" means you don't remember?  
 4 A I don't remember what specific meeting, but I remember  
 5 that we had the discussion with county auditors that this  
 6 is the change that I would like to see in how this money  
 7 was distributed, and did not get negative feedback that I  
 8 recall.  
 9 Q All right. So this is after the \$5 million chunk?  
 10 A This is after the -- the initial 3 million.  
 11 Q All right.  
 12 A This is after the 2005 initial distribution.  
 13 Q And the initial distribution was 5 million, correct?  
 14 A It was -- I think it was in the 3 million range that was  
 15 distributed to each of the counties.  
 16 Q Then the next large distribution was 11 million?  
 17 A Okay. We are talking about two different things.  
 18 Q Title I and Title II.  
 19 A Right. The 5 million was a distribution from the federal  
 20 government to the state, 11 million from the federal  
 21 government to the state. What I was referring to is the  
 22 3 million of that 11 million that was distributed to the  
 23 counties.  
 24 Q Right. And you -- you had the discretion, first of all,  
 25 out of that 11 million, what part was designated,

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1 A We had approximately 11 million. We purchased the  
 2 AutoMARK machines. The remainder of that, the counties  
 3 put up their match of 411,000 to get their share, and  
 4 that left 3 million for the state.  
 5 Q So it just kind of worked out that way; it was the cost  
 6 of machines?  
 7 A Yeah. It just worked out that way because of the amount  
 8 of match that the state put up. The state -- the  
 9 legislature said appropriate 198,000. And so that match  
 10 got the state their share of those dollars. The counties  
 11 put up the rest of the match. And then the machines were  
 12 purchased, and the money that was left then went to the  
 13 counties.  
 14 Q All right. So there wasn't anything in writing on your  
 15 policy on how much goes -- is apportioned to each county  
 16 other than what you have referred to in the HAVA plan,  
 17 nothing in writing?  
 18 A I'm not going to say that. There may have been e-mail  
 19 communications to the counties.  
 20 Q Do you know of anything in writing here today that goes  
 21 ahead and indicates that you had a policy where the money  
 22 was divided in this manner for Title II to the 66  
 23 counties in the State of South Dakota?  
 24 A Other than what is in the state plan and on this  
 25 questionnaire, I'm not aware of anything here that talks

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1 about that, no.

2 Q Are you aware of anything anywhere?

3 A Not specifically, but I --

4 Q Generally.

5 A Obviously we would have communicated that to the counties

6 in some fashion, either in a regular letter or by e-mail,

7 probably from the HAVA coordinator to the counties.

8 Q So you must have a letter out there somewhere that -- on

9 the Secretary of State letterhead that this is my policy,

10 this is how I divvy up that HAVA money?

11 A Or an e-mail doing that. One of the two.

12 MS. FRANKENSTEIN: Can we go off the record for one

13 second.

14 (Off the record discussion.)

15 EXAMINATION BY MS. FRANKENSTEIN:

16 Q Mr. Nelson, I'm going to ask you a few questions

17 regarding a document. I'm going to hand it to you. It's

18 been marked D000 --

19 MR. SANDVEN: I've got to stop this. If I'm going to

20 be restricted to 4:30, then I don't want to give up my 10

21 minutes right now.

22 THE WITNESS: I will give you ten minutes.

23 MR. SANDVEN: Until 4:40.

24 THE WITNESS: 4:40.

25 (Deposition Exhibit A marked for identification.)

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1 projected costs, thus the nice round numbers.

2 The first item listed on the far left, it indicates

3 "election board." And those are the costs to pay for the

4 election board that each county must have. And you can

5 see it's not listed as an anticipated HAVA reimbursement.

6 A Correct.

7 Q So it's listed at the very far right as something the

8 county must pay for out-of-pocket. With our new

9 understanding as of May 25th, 2008, that HAVA funds --

10 that the EAC backed off its requirement that HAVA funds

11 could not supplant county funds, would this election

12 board expense of a projected 16,000 now be reimbursed

13 through HAVA?

14 MR. WILLIAMS: Sara, we are assuming this is while

15 Chris -- Mr. Nelson was Secretary of State, not binding

16 Mr. Gant?

17 MS. FRANKENSTEIN: Absolutely. Yes.

18 Q All these questions, just assume that, for discussion

19 purposes, this would be true before you left office.

20 A Could the current secretary make that determination and

21 be in compliance with federal law, I believe the answer

22 is yes. But if he were to decide to reimburse Shannon

23 County for 16,000, he would certainly have to reimburse

24 every other county for their election board expenses

25 also.

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1 Q I don't know if I got the full Bate stamp number on the

2 record, but, Mr. Nelson, would you read it for me in the

3 bottom right-hand corner.

4 A D000222.

5 Q Now, I don't expect you to be able to verify or know the

6 information in this document because I will represent to

7 you that it was created by Sue Ganje in anticipation --

8 MR. SANDVEN: Can I get a copy of this?

9 MS. FRANKENSTEIN: I don't have a copy of it.

10 MR. SANDVEN: After you are done, can I have your

11 copy of it?

12 MS. FRANKENSTEIN: Yeah. It was disclosed before the

13 hearing I believe.

14 Q I will represent to you that it was created by Sue Ganje

15 in preparation for the 2012 election year in order to

16 form some kind of budget to anticipate the 2012 election

17 costs. I will also represent to you, as you can see at

18 the very bottom with an asterisk, that she is basing her

19 presumptions about which costs will be reimbursable

20 through HAVA based upon her experience with 2010 election

21 costs which were or were not reimbursed through HAVA.

22 So with those representations I'm giving you in mind,

23 I'm going to allow you to have this in front of you so we

24 can talk about some issues that are addressed on this

25 document. And of course this is a budget. It's

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1 Q Other counties probably have about the same costs in

2 election board expenses or would there be reason to think

3 Shannon County would be different?

4 A They vary based upon the number of polling places. Some

5 counties would be less, others would be more.

6 Q The second item there, it says, "HAVA salaries," I

7 represent to you that is the cost that was incurred in

8 2010 for the Lakota coordinator salary.

9 A And does that include the 20 assistants or just the

10 coordinator?

11 Q No. This would have been what was reimbursed.

12 A Okay.

13 Q So I'm sure not. You can see that is anticipated to be

14 HAVA reimbursable. Does that jibe with your

15 recollection?

16 A That would have been per my policy, yes.

17 Q The next one says "HAVA assistant's wage" -- assistant's

18 as in apostrophe S -- for a \$1,300 amount. And you can

19 see that Sue Ganje did not anticipate this to be HAVA

20 reimbursable based on her experience in 2010. Does that

21 comport with your recollection?

22 A That would have been my policy at the time, correct.

23 Q So your policy at the time was one Lakota coordinator

24 salary was reimbursable, but not if she had an assistant?

25 A Correct.

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1 Q Any particular reason other than that was your internal  
2 policy?

3 A As I looked at the responsibilities laid out for that  
4 coordinator, I could not conceive that that person would  
5 come anywhere close to needing an assistant to do that.  
6 It's simply -- there simply was not that much work to do.

7 Q My understanding is the assistant was required when the  
8 Lakota coordinator had to go to KILI radio or to elder  
9 meetings, things pursuant to the memorandum of  
10 understanding with the Department of Justice. So during  
11 those time periods, she left the polling site vacant.

12 With that understanding or assumption, do you think  
13 that a HAVA assistant -- I shouldn't say HAVA  
14 assistant -- a Lakota coordinator/early voting assistant  
15 could have her wages reimbursed through HAVA?

16 A What do you mean by "left the polling place"?

17 Q Well, there would be a location, a satellite office  
18 within Shannon County. And under the Department of  
19 Justice memorandum of understanding, that Lakota  
20 coordinator had to at times leave to do KILI radio  
21 transmissions or meet with elder groups. So -- but she  
22 also needed to be there should someone want to early  
23 vote.

24 A So that was -- this was part of the requirements of the  
25 HAVA coordinator that --

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1 see an e-mail which has been Bate Stamped 0042 that I'm  
2 handing you here. You touched upon it earlier today.  
3 I've highlighted relevant portions if you want to read  
4 through that.

5 A This is from Jennifer Headlee to Sue Ganje. "Yes, you  
6 would include the matching FICA, Medicare for Francis's  
7 wages on the Title II reimbursement form. The Lakota  
8 coordinator wages would be included on Line 17, SOS  
9 approved project to approve county's administration of  
10 federal elections. Then in the yellow description of  
11 Rule 17 Project box you would need to put a Project 17-12  
12 costs associated with providing Lakota language  
13 assistance."

14 So apparently, according to this, some question must  
15 have been asked. And it indicates this person was being  
16 paid a wage as opposed to a contract. For some reason I  
17 was thinking there was a contract involved. But if they  
18 were actually an employee, then certainly FICA would be  
19 part of that.

20 Q So perhaps it is HAVA reimbursable?

21 A Well, according to this, yeah, that would have been our  
22 policy at the time.

23 Q Okay. Thanks. The next couple of entries indicate  
24 insurance at \$200 and publishing at 3,000. And Sue has  
25 got them listed under the general fund. I will represent

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1 Q The Lakota coordinator.

2 A The Lakota coordinator, that they would be available to  
3 do absentee balloting from 8:00 to 5:00 or from what  
4 hours?

5 Q I'm not sure what the hours are, but it's spelled out  
6 very detailed in the memorandum with the Department of  
7 Justice. Just asking you to presume along with me that  
8 should that assistant wage be to cover the office when  
9 the Lakota coordinator needs to leave so that somebody is  
10 there to allow for absentee voting, would make you think  
11 that the 1300 assistant wage could be HAVA reimbursable?

12 A If that is required under that federal memorandum,  
13 perhaps. But, again, going back to the amount of work  
14 involved there, I just can't imagine that somebody would  
15 need an assistant to do that.

16 Q The next one says "FICA" for 600, and it shows it's not  
17 anticipated to be HAVA reimbursable. I did see an e-mail  
18 on that topic. Can you shed any light on that subject?

19 A I can't. If that was for the Lakota coordinator, I don't  
20 know why it wouldn't be. Unless that person was doing  
21 contract work. And if that -- as a matter of fact, was  
22 that person a contractor? My recollection is that person  
23 was a contractor, and in that case would not be entitled  
24 to FICA.

25 Q I'm not sure of the answer to your question, but I did

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1 to you that her publishing and presumably also her  
2 insurance expenses include early voting publishing and  
3 insurance as well because it attaches to the polling  
4 site.

5 A So what is the insurance for? What are they insuring?

6 Q I'm not entirely sure.

7 A I'm not sure I can answer the question. Certainly  
8 insurance on the voting machine, vote counting machines  
9 and on the AutoMARKs, that is something that is  
10 definitely reimbursable.

11 Q And how about the publishing cost, she has got it listed  
12 as all being not reimbursable.

13 A That would be correct. That would be something that is a  
14 normal primary or general election expenditure for all  
15 counties, not something required by HAVA, and something  
16 that is a county expense.

17 Q How about after May 25th, 2008 with the EAC backing off  
18 of that stance, could this potentially be reimbursable  
19 today?

20 A It would be the same answer as the election board. It  
21 wouldn't violate federal law to reimburse for that, but  
22 if the state were to reimburse Shannon County for their  
23 publication costs, they would certainly have to reimburse  
24 every county for them.

25 Q I'm going to skip over the next two because they show

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1 that they are HAVA reimbursable. Unless you believe that  
2 has changed, we won't talk about that.

3 A I don't know what has changed since I left.

4 Q The next entry is for rent. It indicates it's under the  
5 general fund for \$500, not HAVA reimbursement. Do you  
6 know why that would be?

7 A My presumption is that is rent for polling places on  
8 election day which is a normal general election  
9 expenditure from county taxpayer funds.

10 Q And the same as far as the EAC backing off, it would fall  
11 in the same category as election expenses as far as  
12 potential HAVA reimbursability, if that's a word?

13 A That is correct. But if the state determined they were  
14 going to reimburse Shannon County, I would think they  
15 would have to reimburse every county for their polling  
16 place expenditures.

17 Q Supplies, do you know why the \$15,000 amount is fully  
18 listed as not reimbursable?

19 A I'm presuming that those are the normal election day  
20 supplies.

21 Q It would be non-HAVA mark -- supplies or AutoMARK  
22 supplies, correct?

23 A Right. That is a very, very large figure. I'm wondering  
24 if ballot printing is included in that. I'm not sure  
25 what's all included in that. But my presumption is since

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1 she has got it under general fund, that those are normal  
2 election day supplies, not required by HAVA.

3 Q Election travel listed as \$350, not reimbursable. Would  
4 that be your presumption, that that has to do with  
5 election day?

6 A Correct.

7 Q Next one is coordinator travel. That would be the Lakota  
8 coordinator travel expense. HAVA reimbursable. Any  
9 issues with the way that is listed?

10 A No.

11 Q The Fall River salary reimbursement is the next line.  
12 And it indicates early vote expense of \$18,656. And I'll  
13 represent to you that under anticipated HAVA  
14 reimbursement, only \$7,326 is listed because that is the  
15 overtime payments that she typically received reimbursed  
16 through HAVA, and the remaining \$11,330 was the normal  
17 eight-hour per day costs that it took for Fall River  
18 officials to work a satellite office in Shannon County.  
19 Does that make sense to you?

20 A It would, yes. That 11,000 figure is going to be county  
21 taxpayer money that is going to be expended for their  
22 salaries, whether there is an election going on or not.

23 Q Shannon County and Todd are slightly different than other  
24 counties in that when they have absentee voting  
25 locations, they also have absentee voting at their

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1 courthouse in addition to that satellite office. True?  
2 A Right.

3 Q So you can understand where, for instance, Fall River  
4 county needs somebody in their county auditor office to  
5 maintain their business hours while having somebody  
6 else -- can't be the same person -- also at the satellite  
7 office?

8 A Certainly. But what I'm saying is take October of a  
9 non-election year. Whoever that person is, they are  
10 getting paid by county taxpayer dollars. I don't see  
11 that that should change when you come to an election  
12 year. That is budgeted as part of the county  
13 expenditures. And, again, the purpose of HAVA is not to  
14 offset what would be normal, regular county expenditures.

15 Q The next two have to do with travel in order to staff the  
16 absentee satellite offices. Any issues that you see with  
17 how it's listed here?

18 A No.

19 Q The meals have to do with those people who are traveling  
20 as well?

21 A Sure.

22 Q So in the end, we see that at least Sue Ganje anticipated  
23 a total county 2012 election year cost of \$79,259.76, of  
24 which HAVA would reimburse only \$30,974.76. Does that  
25 all comport with your understanding of how at least your

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1 internal policies would dictate these types of expenses  
2 and its reimbursable aspect through HAVA?

3 A Yes.

4 Q Now, should the current Secretary of State chose to,  
5 within his discretion, allow additional reimbursement for  
6 some of these things listed on the far right, then we  
7 could see those costs decrease for Shannon County,  
8 correct?

9 A Correct.

10 Q But, of course, their HAVA fund set aside for Shannon  
11 County would deplete?

12 A Correct.

13 Q Should it deplete --

14 MR. SANDVEN: Counsel, how much longer are you going  
15 to go? It's 17 minutes.

16 MS. FRANKENSTEIN: A couple more minutes.

17 MR. SANDVEN: Okay.

18 Q Should it deplete the Shannon County HAVA account to  
19 nothing or next to nothing, I believe you have indicated  
20 today that it would be within Secretary of State's --  
21 Secretary of State Gant's discretion to replenish it in  
22 some manner?

23 A That is my understanding, yes.

24 Q Do you know of any reason that he couldn't transfer state  
25 funds to Shannon County's funds or transfer funds already

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1 in somebody else's county fund to Shannon County's fund?  
 2 A Let me take the latter first. Transferring some other  
 3 county's money to Shannon County, money for which that  
 4 other county had put up the match, no, I don't believe  
 5 that he could do that. Could he choose to take other  
 6 state held Title II monies and distribute that to the  
 7 county, yes. That is exactly what I did the last week I  
 8 was in office and distributed 10,000 to each county.  
 9 Q So for him -- for Secretary Gant to say it looks like  
 10 Minnehaha County has plenty of money, let's just transfer  
 11 some money out, that creates issues with the match?  
 12 A Oh, my goodness, yes, and fairness and a whole lot of  
 13 issues.  
 14 Q But no similar problem transferring money from the state  
 15 HAVA account to Shannon County's account?  
 16 A That is -- that is correct.  
 17 MS. FRANKENSTEIN: Might be done. Give me just a  
 18 minute.  
 19 (Brief pause.)  
 20 Q Back to the document I handed you just a minute ago, are  
 21 there any costs listed where Sue Ganje anticipated they  
 22 would not be HAVA reimbursable which would have been  
 23 under your discretion when you were Secretary of State?  
 24 Was she in error anywhere here?  
 25 MR. WILLIAMS: That question was in reference to

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1 Exhibit A?  
 2 MS. FRANKENSTEIN: Yes.  
 3 A It looks accurate to me.  
 4 Q You testified earlier a bit regarding absentee voting on  
 5 election day up until 3:00 o'clock.  
 6 A Yes.  
 7 Q If any county, including Shannon County, were to offer,  
 8 as they do, absentee balloting up to 3:00 o'clock on  
 9 election day without an electronic poll book, how does  
 10 one assure that somebody doesn't walk in and cast an  
 11 absentee ballot and then just go walk down to his regular  
 12 polling place and vote again?  
 13 A That is -- that's an issue. What would happen is that  
 14 they put the ballot in the box at their polling place,  
 15 and then at whatever point their election board is  
 16 processing the absentee ballots, they would discover that  
 17 this person has already voted, and presumably at that  
 18 point would not go ahead to process the absentee ballot.  
 19 I mean they have attempted to vote twice. That absentee  
 20 would not go in the box.  
 21 Q Is it helpful for absentee satellite offices, for  
 22 instance, one in Pine Ridge in Shannon County, on  
 23 election day to have an E-poll book in order to keep that  
 24 problem at bay?  
 25 A If the E-poll book were electronically tied to a central

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1 database, the answer is yes, assuming that every polling  
 2 place in the county had similar setup. If every county  
 3 had an E-poll book that was tied electronically realtime  
 4 to a central database so that if I show up in Sharps  
 5 Corner and I vote there, and then I show up at the  
 6 coordinator's office in Pine Ridge and they go in and  
 7 check, they would see, oh, you have already voted today.  
 8 But it would require that realtime electronic connection.  
 9 Q If Sue Ganje has expressed concerns that to have a  
 10 satellite office in Shannon County for absentee voting on  
 11 election day up to 3:00 o'clock, she would prefer an  
 12 E-poll book, is that a legitimate concern for her?  
 13 A Yes.  
 14 Q I saw in one of the e-mails --  
 15 MR. SANDVEN: How much longer?  
 16 MS. FRANKENSTEIN: I don't know. I have a couple  
 17 more questions.  
 18 MR. SANDVEN: I'm going to jump back in if my time is  
 19 going to be restricted. As I courtesy I said ten  
 20 minutes.  
 21 THE WITNESS: Steve, I'll get you your ten minutes.  
 22 I may have to make a phone call before I give it to you,  
 23 but I will give it to you.  
 24 Q I saw in an earlier e-mail from one of your staff that  
 25 indicated HAVA would not reimburse the rent for a

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1 training facility in Shannon County. Do you recall that?  
 2 A I don't recall that.  
 3 Q I will hand you a Document 0040. I believe it's the  
 4 second --  
 5 A Oh, right. Because election training of the precinct  
 6 workers is a normal part of conducting a primary or  
 7 general election, and is something that would be normally  
 8 paid for by county taxpayers.  
 9 Q Earlier a question came, and it said something to the  
 10 effect that for Lakota translators the feds would pay for  
 11 it. You said yes. Was the "feds paying for it" HAVA or  
 12 was it some other program?  
 13 A It would have to be HAVA, yes.  
 14 MS. FRANKENSTEIN: That's all the questions I have.  
 15 Thank you.  
 16 (Brief pause.)  
 17 FURTHER EXAMINATION BY MR. SANDVEN:  
 18 Q You said earlier the HAVA plan, you don't consider it a  
 19 policy?  
 20 A Yeah. I do consider it a policy, but you were asking if  
 21 I had another written policy separate from that, and the  
 22 answer is no.  
 23 Q Okay. The only thing in writing that you are aware of  
 24 besides an e-mail or a letter somewhere regarding the  
 25 allocation of Title II funds to individual counties is in

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1 that plan?  
 2 A That is correct.  
 3 Q And it's been that way for your full eight years as South  
 4 Dakota Secretary of State?  
 5 A Correct.  
 6 Q All right. So the \$5 million plus of Title II funds that  
 7 are currently not allocated to the individual counties,  
 8 it's entirely within the South Dakota Secretary of  
 9 State's discretion on how to distribute that to counties?  
 10 A As long as it's used for either Title III requirements or  
 11 other things to improve the administration of federal  
 12 elections.  
 13 Q That could be -- that does include absentee voting in  
 14 Shannon County?  
 15 A Yes.  
 16 Q All right. You were asked some questions about E-poll  
 17 books.  
 18 A Yes.  
 19 Q All right. That is not a requirement under South Dakota  
 20 law or any law right now?  
 21 A Correct.  
 22 Q And there is no greater risk about -- for Shannon County  
 23 going ahead and someone voting twice than anywhere else,  
 24 correct?  
 25 A Correct.

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1 STATE OF SOUTH DAKOTA )  
 2 : CERTIFICATE  
 3 COUNTY OF MINNEHAHA )  
 4  
 5 I, Kerry Lange, Court Reporter and Notary Public, do  
 6 hereby certify that the witness was first duly sworn by me to  
 7 testify to the truth, the whole truth, and nothing but the  
 8 truth relative to the matter under consideration; that the  
 9 reading and signing of the deposition was not waived by the  
 10 witness for reasons as hereinbefore stated; that the  
 11 foregoing pages 1 - 302, inclusive, are a true and correct  
 12 transcript of my stenotype notes.  
 13 I further certify that I am not a relative or employee  
 14 or attorney or counsel of any of the parties or a relative or  
 15 employee of such attorney or counsel, and that I am not  
 16 financially interested in this action.  
 17 In testimony whereof, I have hereto affixed my signature  
 18 this 30th day of July, 2012.  
 19  
 20  
 21  
 22  
 23  
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 25

\_\_\_\_\_  
 Kerry Lange  
 Commission Expires: 7/12/17

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1 Q The satellite location in Wall, there is no greater risk  
 2 of someone running to a satellite and then their polling  
 3 place than Shannon County?  
 4 A Correct.  
 5 Q No greater risk than any of the other 63 counties?  
 6 A Correct.  
 7 MR. SANDVEN: Thank you.  
 8 MR. WILLIAMS: You have the right to read and make  
 9 changes to your transcript. You can also waive that  
 10 right. I will leave that up to you.  
 11 THE WITNESS: I would like to review the transcript.  
 12 (Witness excused at 4:48 p.m.)  
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1 Pursuant to the Rules of Civil Procedure, I have read  
 2 the foregoing pages 1 - 302, inclusive, and have noted any  
 3 and all changes in form or substance desired in my testimony,  
 4 and have signed below on the \_\_\_\_ day of \_\_\_\_\_, 2012.  
 5  
 6 Page & Line No. Change in Answer Reason for Change  
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 24 Notary Signature: \_\_\_\_\_  
 25 My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
 Chris Nelson

\$	107/18 110/3 '05 [1] 135/12 '06 [7] 60/22 65/3 76/17 76/24 76/25 115/11 243/10 '07 [2] 98/5 113/20 '08 [9] 65/3 76/24 115/13 243/10 279/17 279/19 279/20 279/21 279/22 '10 [5] 65/4 166/15 243/10 279/17 279/20 '5 [1] 32/7 '6 [1] 118/11 '7 [3] 32/12 33/10 34/9 '8 [3] 32/13 33/10 34/9 '89 [1] 267/14 '92 [1] 274/3	13 [2] 5/24 245/18 13.1 percent [1] 66/9 130 [3] 3/8 165/13 166/3 1300 [1] 290/11 131 [4] 3/9 4/3 165/13 166/15 132 [5] 3/10 3/19 237/14 237/15 255/19 134 [2] 3/23 4/4 137 [1] 127/18 14 [3] 122/4 122/6 239/18 15 [13] 42/3 42/9 42/14 43/6 43/14 44/4 44/21 45/4 45/5 65/1 65/11 102/1 200/23 150 [4] 3/12 132/22 170/21 170/22 151 [7] 3/13 90/20 91/5 94/6 96/9 132/15 132/20 152 [4] 3/14 95/21 96/11 100/8 153 [3] 3/16 100/12 102/13 154 [4] 3/17 112/17 115/2 115/22 155 [3] 3/19 116/7 132/22 156 [2] 3/20 117/13 157 [8] 3/22 115/24 118/13 121/12 122/12 122/17 131/3 131/10 158 [8] 3/23 132/15 132/20 134/4 134/4 134/16 134/18 135/9 159 [2] 4/3 131/21 16 [2] 101/25 102/11 16,000 [2] 287/12 287/23 160 [7] 4/4 90/20 134/18 134/21 134/22 135/14 135/19 165 [1] 3/6 166 [2] 3/8 3/9 1673 [2] 61/2 61/12 16th [5] 5/3 176/17 176/20 176/22 176/23 17 [7] 102/1 122/5 237/7 291/8 291/11 296/15 303/22 17-12 [2] 236/18 291/11 170 [1] 3/12 18 [8] 3/3 136/21 137/14 137/22 137/24 165/20 187/15 188/1 1800s [1] 264/9 187 [1] 3/3 1900s [1] 264/9 1975 [1] 257/23 198,000 [1] 284/9 1989 [3] 6/2 6/3 78/3 1990 [1] 65/5 1990s [1] 82/11 1992 [5] 85/4 86/7 88/11 273/23 273/25 19th [1] 219/8 1p [2] 115/23 116/1 1st [20] 118/16 121/16 123/12 124/23 127/10 141/23 148/9 150/13 157/22 170/15 173/7 173/7 173/16 173/16 173/19 174/21 175/17 177/1 178/20 276/9
\$1,300 [1] 288/18 \$1,618 [1] 134/6 \$10 [1] 283/9 \$10,000 [2] 69/4 156/8 \$100 [1] 223/17 \$100,000 [1] 38/13 \$11 [5] 121/13 128/11 128/11 130/23 135/8 \$11 million [5] 121/13 128/11 128/11 130/23 135/8 \$11,330 [1] 294/16 \$11,567,067 [1] 123/1 \$11,912,112.56 [1] 134/24 \$114,511 [1] 137/24 \$119,909.89 [1] 102/19 \$12,000 [1] 74/3 \$15,000 [1] 293/17 \$18,656 [1] 294/12 \$20,000 [1] 273/13 \$200 [1] 291/24 \$242,797 [2] 94/10 95/5 \$25,000 [2] 74/5 74/13 \$250,000 [1] 159/17 \$264,000 [1] 280/6 \$29,736 [1] 131/4 \$3,235,652.80 [1] 172/1 \$30,974.76 [1] 295/24 \$323,900 [1] 91/21 \$350 [1] 294/3 \$4,000 [4] 157/22 158/2 181/1 182/5 \$4,714,557 [1] 98/2 \$4,714,557.60 [1] 98/1 \$4,876,367 [1] 135/15 \$4.4 [1] 100/25 \$4.4 million [1] 100/25 \$4.6 [3] 118/10 135/11 153/15 \$4.6 million [3] 118/10 135/11 153/15 \$4.7 [2] 98/15 100/8 \$4.7 million [2] 98/15 100/8 \$40,500 [1] 188/1 \$400 [3] 222/23 223/17 224/1 \$413,000 [1] 92/20 \$413,061.04 [1] 92/6 \$5 [13] 100/20 133/18 133/22 136/11 136/16 161/3 161/7 161/15 164/19 180/13 183/21 282/9 301/6 \$5 million [10] 100/20 133/18 133/22 136/11 136/16 161/3 161/15 164/19 180/13 183/21 \$5,039,273.71 [1] 97/4 \$50,000 [10] 68/21 69/15 70/3 70/24 73/23 74/13 77/11 161/24 162/2 185/22 \$500 [1] 293/5 \$6,499,467.23 [1] 195/20 \$624,178 [1] 255/25 \$638,372 [1] 256/1 \$660,000 [1] 156/8 \$7 [1] 135/6 \$7 million [1] 135/6 \$7,006,009.55 [1] 135/3 \$7,007,824 [1] 166/5 \$7,326 [1] 294/14 \$79,259.76 [1] 295/23 \$8,071,582 [1] 166/18 \$89,161.04 [1] 92/24	- -vs [1] 1/12 0 0040 [1] 300/3 0042 [1] 291/1 0276 [1] 144/12 0345 [1] 199/22 0354 [1] 199/23 0358 [1] 219/8 0399 [3] 224/22 229/6 236/3 0410 [2] 235/4 236/2 054 [1] 199/23 08 [1] 3/10 1 1,326,429 [1] 256/15 1,673 [1] 60/14 1,688,266 [1] 256/20 1.2 million [1] 256/8 10 [6] 96/15 122/20 146/10 202/14 202/16 285/20 10,000 [3] 182/10 273/17 297/8 10-dollar [1] 177/15 100 [1] 121/1 102 [1] 3/16 105 [1] 263/10 10g [1] 91/20 10h [1] 92/19 10n [1] 122/19 10o [2] 100/20 131/17 10p [1] 100/8 10th [11] 91/12 91/19 96/7 97/18 144/16 146/17 149/6 149/13 173/18 173/19 222/22 11 [3] 134/24 235/3 282/20 11 million [5] 282/16 282/22 282/25 283/21 284/1 11,000 [1] 294/20 11,587 [1] 132/23 11,596,803 [1] 128/2 11.6 million [1] 131/6 112 [1] 3/17 114,511 [2] 136/23 138/8 116 [1] 3/19 117 [1] 3/20 118 [1] 3/22 11:01 a.m [1] 127/22 11th [1] 236/8 12 [2] 236/18 291/11 12-19-53 [3] 83/18 194/14 243/8 12-5003 [1] 1/4 12/1/08 [1] 3/10 129 [5] 3/6 165/13 165/17 165/21 255/19 12:10 [1] 165/8 12:11 p.m [1] 165/11 12th [1] 241/9	152 [4] 3/14 95/21 96/11 100/8 153 [3] 3/16 100/12 102/13 154 [4] 3/17 112/17 115/2 115/22 155 [3] 3/19 116/7 132/22 156 [2] 3/20 117/13 157 [8] 3/22 115/24 118/13 121/12 122/12 122/17 131/3 131/10 158 [8] 3/23 132/15 132/20 134/4 134/4 134/16 134/18 135/9 159 [2] 4/3 131/21 16 [2] 101/25 102/11 16,000 [2] 287/12 287/23 160 [7] 4/4 90/20 134/18 134/21 134/22 135/14 135/19 165 [1] 3/6 166 [2] 3/8 3/9 1673 [2] 61/2 61/12 16th [5] 5/3 176/17 176/20 176/22 176/23 17 [7] 102/1 122/5 237/7 291/8 291/11 296/15 303/22 17-12 [2] 236/18 291/11 170 [1] 3/12 18 [8] 3/3 136/21 137/14 137/22 137/24 165/20 187/15 188/1 1800s [1] 264/9 187 [1] 3/3 1900s [1] 264/9 1975 [1] 257/23 198,000 [1] 284/9 1989 [3] 6/2 6/3 78/3 1990 [1] 65/5 1990s [1] 82/11 1992 [5] 85/4 86/7 88/11 273/23 273/25 19th [1] 219/8 1p [2] 115/23 116/1 1st [20] 118/16 121/16 123/12 124/23 127/10 141/23 148/9 150/13 157/22 170/15 173/7 173/7 173/16 173/16 173/19 174/21 175/17 177/1 178/20 276/9
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