Democracy At Risk: The November 2004 Election in Ohio
Democratic National Committee

In December 2004, the DNC announced a comprehensive investigative study and analysis of election administration issues arising from the conduct of the 2004 general election in Ohio. The DNC decided to undertake this study because of the many reports, made to the Democratic Party, appearing in the press and made to advocacy groups, immediately after the election, of problems in the administration of the election in that state—problems that prevented many Ohio citizens who showed up at the polls to be able to vote and to have their vote counted. This study was intended to address the legitimate questions and concerns that have been raised and to develop factual information that would be important and useful in crafting further necessary election reforms.

Most Pertinent Findings

- Overall, 28 percent of Ohio voters reported problems with their voting experience, including ballot problems, locating their proper polling place and/or intimidation.
- Twice as many African American voters as white voters reported experiencing problems at the polls (52 percent vs. 25 percent).
- Scarcity of voting machines caused long lines that deterred many people from voting. Three percent of voters who went to the polls left their polling places and did not return due to the long lines.
- Statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes.
- Overall, 20 percent of white Ohio voters reported waiting more than twenty minutes, while 44 percent of African American voters reported doing so.
- Of provisional voters in Cuyahoga County, 35 percent were African American, compared to 25 percent of non-provisional voters, matched by geography. African American voters were 1.2 times more likely than white voters to be required to vote provisionally.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. Although only 7 percent of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37 percent) reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification.
- African American voters statewide were 47 percent more likely to be required to show identification than white voters. Indeed, 61 percent of

African American men reported being asked to provide identification at the polls.
- 6 percent of all voters reported feelings of intimidation.
- Statewide, 16 percent of African Americans reported experiencing intimidation versus only 5 percent of white voters.

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

Most Pertinent Recommendations

- States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
- States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
- States should adopt legislation to make clear and uniform the rules on voter registration.
- States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.
- State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.
- States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
- State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
- States should make voter suppression a criminal offense at the state level, in all states.
- States should improve the training of pollworkers.
- States should expend significantly more resources in educating voters on where, when and how to vote.
- Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.

DOJ Public Integrity Reports 2002, 2003, and 2004

General Background

The Public Integrity Reports are submitted to Congress pursuant to the Ethics in Government Act of 1978, which requires the Attorney General to report annually to Congress on the operations and activities of the Justice Department's Public Integrity Section. The Report describes the activities of the Public Integrity Section. It also provides statistics on the nationwide federal effort against public corruption. The Public Integrity Section was created in 1976 in order to consolidate in one unit of the Criminal Division the Department's oversight responsibilities for the prosecution of criminal abuses of the public trust by government officials. Section attorneys prosecute selected cases involving federal, state, or local officials, and also provide advice and assistance to prosecutors and agents in the field regarding the handling of public corruption cases. In addition, the Section serves as the Justice Department's center for handling various issues that arise regarding public corruption statutes and cases. An Election Crimes Branch was created within the Section in 1980 to supervise the Department's nationwide response to election crimes, such as ballot fraud and campaign financing offenses. The Branch reviews all major election crime investigations throughout the country and all proposed criminal charges relating to election crime.

One of the Section's law enforcement priorities is its supervision of the Justice Department's nationwide response to election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

The Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes.

Divisions of the Election Crimes Branch

As affecting the present EAC study, the appropriate divisions of the Election Crimes Branch are:

Vote frauds-During 2002 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and

Wisconsin in handling vote fraud matters that occurred in their respective districts. This assistance included providing expertise in the evaluation of allegations to determine whether investigation would produce prosecutable federal criminal cases, helping to structure investigations, providing legal assistance with respect to the formulation of charges, and assisting in establishing task force teams of federal and state law enforcement officials to investigate vote fraud matters.

During 2003 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. This assistance included providing expertise in the evaluation of allegations to determine whether investigation would produce prosecutable federal criminal cases, helping to structure investigations, providing legal assistance with respect to the formulation of charges, and assisting in establishing task force teams of federal and state law enforcement officials to investigate vote fraud matters.

During 2004 the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

Litigation-The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

District Election Officer Program-The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these

prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

Ballot Integrity Initiative-Beginning in September of 2002, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases.

As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addressees on the importance of protecting voting rights and the prosecution of election cases.

On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving

voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

Federal Election Crimes

During 2002 the Public Integrity Section continued its nationwide oversight role regarding the handling of election crime allegations. As part of a general Department effort to increase its effectiveness in this important area, the Section assisted in the planning and execution of the Department's 2002 Ballot Integrity Initiative. The purpose of this ongoing Initiative is to increase the Department's ability to deter, detect, and prosecute election crimes and voting abuses by prioritizing election crime cases. As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section.

During 2002 the Section closed two election crime matters and continued its operational supervision of the following election crime case: *United States v. Woodward and Jordan*, Northern District of Alabama. Jimmy Woodward, the former Sheriff of Jefferson County, Alabama, and Albert Jordan, an attorney from Birmingham, were indicted in 2000 for conspiring to obtain criminal history records from the National Crime Information Center (NCIC) for use in an election contest, for converting NCIC records, and for accessing government computers without authority. The indictment charged that Woodward and Jordan conspired to use Sheriff's office personnel to access NCIC computers to run criminal history checks on hundreds of voters in Jefferson County who had voted by absentee ballot in the 1998 general election, in the hopes they would find criminal histories they could use to challenge the qualifications of voters who cast votes for Woodward's opponent. The charges were dismissed in 2000 on procedural grounds. The Department appealed the dismissal of the charges. In 2001 the case was argued before the Eleventh Circuit Court of Appeals by the Appellate Section of the Criminal Division. The Court of Appeals subsequently reversed the trial court's dismissal of the charges and remanded the case for retrial. The former United States Attorney for the Northern District of Alabama was recused from the case. The case is being prosecuted by an Assistant United States Attorney under the supervision of the Public Integrity Section.

The following cases are the result of an extensive federal investigation into vote-buying in the May 1998 primary election in Knott County, Kentucky, an Appalachian county in the Eastern District of Kentucky. The primary was contested by two slates of candidates. The ballot included the race for the position of Knott County Judge Executive, which controls local government hiring, contracting, and services. The ballot also included a primary contest for the office of United States Senator, conferring federal jurisdiction

over vote buying in the election even though the electoral corruption was directed at local races.

The following cases are being handled jointly by the Section and the United States Attorney's Office for the Eastern District of Kentucky:

United States v. Calhoun. On March 28, 2003, a federal grand jury indicted Jimmy Calhoun on two counts of vote-buying. On August 19, 2003, Calhoun pled guilty to two counts of vote-buying on behalf of a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. Calhoun paid two persons to vote by absentee ballot. On April 7, 2004, Calhoun was sentenced to six months in prison and two years of supervised release. Calhoun pled guilty to two counts of vote-buying on behalf of a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. Calhoun paid two persons to vote by absentee ballot.

United States v. Conley. On March 28, 2003, a federal grand jury indicted Jimmy Lee Conley on five counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. Conley was charged with paying five persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive. During the investigation, Conley allegedly made false statements to an agent of the FBI. A jury acquitted Conley on June 19, 2003.

United States v. Johnson. On April 24, 2003, a federal grand jury indicted Newton Johnson on four counts of vote-buying, one count of making a false statement in a matter within federal jurisdiction, and two counts of obstructing justice. On June 2, 2003, Johnson pled guilty pursuant to a plea agreement to one count of vote-buying, and one count of obstructing justice. Johnson paid four persons to vote by absentee ballot in the May 1998 Knott County, Kentucky primary election. Johnson paid the voters to vote for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive. During the investigation of this vote-buying, Johnson made a false statement to an agent of the FBI, and pressured grand jury witnesses to falsely deny that he bought their votes. Pursuant to his plea agreement, Johnson pled guilty to paying one of the voters for her vote, and to endeavoring to obstruct the grand jury investigation by urging her to lie under oath. Johnson agreed to cooperate with the government. On October 6, 2003, Johnson was sentenced to three years of probation. Johnson had previously testified at the trial of Donnie Newsome to the nature and extent of the broader conspiracy to approach and pay numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for the slate of candidates headed by Newsome. Newsome offered Johnson a road improvement and a county job in exchange for participation in the conspiracy. Johnson, who is impoverished, illiterate, and unable to leave his remote mountain hollow without the road improvement, agreed and purchased the votes of four persons. A jury convicted Newsome on all counts.

United States v. Madden. On March 28, 2003, a federal grand jury indicted Patrick Wayne Madden on three counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. On October 6, 2003, Madden pled guilty to one count of vote-buying. Madden paid three persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. During the investigation of this vote-buying, Madden made a false statement to an agent of the FBI. On February 2, 2004, Madden was sentenced to 20 months in prison and two years of supervised release. Madden pled guilty to one count of vote-buying. Madden paid three persons to vote by absentee ballot for a slate of candidates headed by Newsome.

United States v. Newsome, Pigman, and Smith. On April 24, 2003, a federal grand jury indicted sitting County Judge Executive Donnie Newsome and two of his supporters, Willard Smith and Keith Pigman, on one count of conspiracy to commit vote-buying. The grand jury further charged five substantive counts of vote-buying, one count charging Newsome, two counts charging Smith, one count charging Smith and Pigman, and one count charging all three defendants. Newsome, Pigman, and Smith, working together and with other conspirators, approached and paid numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for Newsome by absentee ballot, resulting in a large increase in the rate of absentee voting, and long lines at the County Clerk's Office. Newsome won the election to remain the County Judge Executive.

On July 8, 2003, Pigman pled guilty pursuant to a plea agreement to conspiracy to commit vote-buying, and one count of vote-buying. Pigman cooperated with the government following his plea, and provided substantial assistance by testifying against Newsome and Smith. Pigman explained the nature and extent of the broader conspiracy to approach and pay numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for the slate of candidates headed by Newsome. Pigman further explained that such voters were purposefully chosen because they would present severe credibility problems for the government in any investigation and prosecution of their conspiracy. Newsome offered and ultimately gave Pigman a county job in exchange for Pigman's participation in the conspiracy. On October 30, 2003, Pigman was sentenced to four months of imprisonment, four months of community confinement, and two years of supervised release. On October 1, 2003, a jury convicted both Newsome and Smith on all counts. Newsome, while in office as a Kentucky State Representative, became a candidate for County Judge Executive. Newsome, Pigman, and Smith, working together and with other conspirators, approached and paid numerous persons to vote for Newsome and certain other candidates by absentee ballot, resulting in a large increase in the rate of absentee voting, and long lines at the County Clerk's Office. Newsome, who won the primary election and subsequent elections, was ordered detained pending sentencing, together with Smith, in light of threats to government witnesses during the trial.

On March 16, 2004, Newsome, the former County Judge Executive for Knott County, Kentucky, was sentenced to 26 months of in prison, a $20,000 fine, and three years of supervised release. Smith was sentenced to 24 months in prison, a $5,000 fine, and three

years of supervised release. A jury previously convicted Newsome and Smith on all counts of an indictment that charged them with conspiracy to buy votes and five counts of vote-buying. Pigman, previously pled guilty to the conspiracy charge, and was sentenced to four months in prison, four months of community service, and two years of supervised release.

United States v. Ronnie Slone and Brady Slone. On March 28, 2003, a federal grand jury indicted Ronnie Neal Slone and Brady Warren Slone (who are brothers) on three counts of vote-buying, and on one count each of making a false statement in a matter within federal jurisdiction. The Slones allegedly paid three persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome. During the investigation of this vote-buying, each of the Slones allegedly made a false statement to an agent of the FBI. On August 15, 2003, a jury acquitted both defendants.

United States v. Phillip Slone. On March 28, 2003, a federal grand jury indicted Phillip Slone (who is not directly related to Ronnie and Brady Slone) on seven counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. On June 4, 2003, Slone pled guilty pursuant to a plea agreement to one count of vote-buying. Slone paid seven persons to vote for a slate of candidates headed by Homer Sawyer, the unsuccessful incumbent candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. During the investigation of this vote-buying, Slone made a false statement to an agent of the FBI. On October 15, 2003, Slone was sentenced to ten months in prison and two years supervised release. Slone appealed his sentence and the district court's jurisdiction, and that appeal is pending.

Prosecution Of Electoral Fraud Under United States Federal Law

By Craig Donsanto

In Prosecution of Electoral Fraud, Donsanto discusses what sort of conduct is currently considered to be actionable as vote fraud, the historical background for the role of the criminal prosecutor in this area, and the various federal laws and juridical precedents governing the prosecution of vote fraud. It is a very useful document for understanding the current Department of Justice's view of its mission in this area, its interpretation of the federal laws governing its work, and how the Department has and has not been able to utilize applicable provisions.

Donsanto stresses that because electoral administration is primarily a state rather than a federal matter, the federal government usually only has authority over electoral issues where: federal candidates are standing for election; a corrupt act occurs; a federal instrumentality is employed in the fraud; the fraud involves the participation of public officials "acting under color of law" in such a manner that the constitutional right to Due Process and/or Equal Protection is violated; and/or the fraud is motivated by an intent to deprive a class of voters who's rights have been specifically guaranteed by the United States Constitution.

Donsanto defines election fraud as "a substantive irregularity relating to the voting act---such as bribery, intimidation, or forgery---which has the potential to taint the election itself." Specifically, this includes:

* Preventing voters from participating in elections where a federal candidate is on the ballot, or when done "under color of law" in any election—18 U.S.C. sections 241 & 242.

* Vote buying, 42 U.S.C. section 1973i(c).

* Voting more than once, 42 U.S.C. section 1973i(e).

* Fraudulent voting, 42 U.S.C. sections 1973i(c), 1973i(e) & 1973gg-10.

* Intimidating voters through physical duress in any election, 18 U.S.C. section 245(b)(1)(A), or through physical or economic threats in connection with their registering to vote or their voting in federal elections, 42 U.S.C. section 1973gg-10, or to vote for a federal candidate, 18 U.S.C. section 594.

* Malfeasance by election officials acting "under color of law" for actions such as ballot-box stuffing, falsely tabulating votes, or preventing valid voter registrations or votes from being given effect in any election, 18 U.S.C. sections 241 & 242, as well as in elections where federal candidates are on the ballot, 42 U.S.C. sections 1973i(c), 1973i(e) & 1973gg-10.

* Submitting fictitious names on voter registration roles, 42 U.S.C. sections 1973i(c) & 1973gg-10.

* Knowingly procuring eligibility to vote for federal office by persons who are not entitled to vote under applicable state law, 42 U.S.C. sections 1973i(c) & 1973gg-10 (criminal voting—prohibited in approximately 40 states) and 42 U.S.C. sections 1973i(c), 1972gg-10, 18 U.S.C. 1015(f) & 611 (non-citizen voting).

* Knowingly making a false claim of United States citizenship to register to vote in any election, 18 U.S.C. section 1015(f), or falsely claiming United States citizenship for registering or voting in any election, 18 U.S.C. section 911.

* Providing false information concerning a person's name, address or period of residence in a district in order to establish that person's eligibility to register or to vote in a federal election, 42 U.S.C. sections 1973i(c) & 1973gg-10.

* Causing the production of voter registrations that qualify alleged voters to vote for federal candidates, or the production of ballots in federal elections, that the actor knows are materially defective under applicable state law, 42 U.S.C. section 1973gg-10.

* Using the United States mails, or interstate wire facilities, to obtain the salary and emoluments of an elected official through any of the activities mentioned above, 18 U.S.C. sections 1341 & 1343.

* Ordering, keeping or having under one's authority or control any troops or armed men at any polling place in any election. The actor must be an active civilian or military officer or an employee of the United States government, 18 U.S.C. section 592.

* Intimidating or coercing a federal employee to induce or discourage "any political activity" by that employee, 18 U.S.C. section 610.

Other Points of Interest

- Most election fraud is aimed at corrupting elections for local offices, which control or influence patronage positions. Election fraud occurs most frequently where there are fairly equal political factions, and where the stakes involved in who controls public offices are weighty -- as is often the case where patronage jobs are a major source of employment, or where illicit activities are being protected from law enforcement scrutiny
- Vote buying offenses have represented a sizable segment of the federal election crime docket in modern times.
- Voter intimidation requires proof of a difficult element: the existence of physical or economic intimidation that is intended by the defendant and felt by the victim. The crime of voter "intimidation" normally requires evidence of threats, duress, economic coercion, or some other aggravating factor which tends to improperly induce conduct on the part of the victim. If such evidence is lacking, an

alternative prosecutive theory may apply to the facts, such as multiple voting in violation of 42 U.S.C. ' 1973i(e). As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation that is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.

- Section 1973gg-10(2) is a specific intent offense. This means that the offender must have been aware that citizenship is a requirement for voting and that the registrant did not possess United States citizenship. In most instances, proof of the first element is relatively easy because the citizenship requirement is stated on the voter registration form, and the form requires that the voter check a box indicating that he or she is a citizen. Proof of the second element, however, may be more problematic, since the technicalities of acquiring United States citizenship may not have existed in the culture of the registrant's country of birth, or otherwise been evident to him, and because the registrant may have received bad advice concerning the citizenship requirement. These issues can also usually be overcome by the fact that all voter registration forms now require a registrant to certify that he or she is a citizen. Section 611 is a relatively new statute that creates an additional crime for voting by persons who are not United States Citizens .It applies to voting by non-citizens in an election where a federal candidate is on the ballot, except when: (1) non-citizens are authorized to vote by state or local law on non-federal candidates or issues, and (2) the ballot is formatted in a way that the non-citizen has the opportunity to vote solely for the non-federal candidate or issues on which he is entitled to vote under state law. Unlike section 1015(f), section 611 is directed at the act of voting, rather than the act of lying. But unlike section 1015(f), Section 611 is a strict liability offense in the sense that the prosecution must only prove that the defendant was not a citizen when he registered or voted. Section 611 does not require proof that the offender be aware that citizenship is a prerequisite to voting.

Election Protection 2004

By the Election Protection Coalition

Election Protection – the Program

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included:

- A toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box.
- Distribution of more than five million "Voters' Bills of Rights" with state-specific information
- 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states.
- Civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

Voter Intimidation and Suppression Stories (Abridged)

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in Colorado: Officials with the Election Protection Coalition, a voter-rights group, also said some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct

- Election Protection received a report from Florissant County, Missouri from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters. Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.

- Election Protection received a report from Boulder County, Colorado that a poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away. The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind

her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).

- The Election Protection hotline received reports from Pinellas County, Florida that individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."

- The Election Protection Coalition received a report from a woman whose sister lives in Milwaukee and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.

- An illiterate, older and disabled voter in Miami-Dade asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.

- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in Lexington, South Carolina claiming they those who are behind on child support payments will be arrested as the polls.

- Minority voters from Palm Beach County, Florida reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.

- A volunteer for Rock the Vote reported that two illiterate voters in Michigan requested assistance with their ballots but were refused and reportedly mocked by poll workers.

- The hotline received a call from a radio DJ in Hillsborough County, Florida, who stated that he has received many calls (most of which were from African-Americans) claiming that poll workers were turning voters away and not "letting" them vote.

- The hotline received a call from Pima County, Arizona, indicating that Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location. Voters have had to be transported en masse in order to correct the problem.

- A caller from Alabama claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.

- Poll monitors in Philadelphia reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.

- In Cuyahuga, Ohio, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.

- Two months ago, suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote — were traced to the Republican headquarters in the Eastern Panhandle. On Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.

- In Tuscon, Arizona a misleading call informing voters that they should vote on November 3 has been traced back to the state GOP headquarters. The FBI is investigating.

- A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit, until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.

- The Election Protection hotline has received a report from individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd.

- In Massachusetts, the EP Hotline has received a report that a radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets.

- In Richland, South Carolina Election Protection has received a report of a poll manager turning away individuals who do not have photo ID issued to the county or a driver's license; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.

- In Greenville, a caller reported that a white poll worker was asking Blacks for multiple form of I.D. Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.

- In Allegheny County, Pennsylvania, an official looking flyer advises Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3

- The week before the election, flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time." The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that "If you violate any of these laws you can get ten years in prison and your children will get taken away from you."

- There is a Jefferson County flyer which tells voters "See you at the Poles![sic]"... on November 4.

Existing Literature Reviewed

Reports

The Long Shadow of Jim Crow, People for the American Way and the NAACP

The New Poll Tax, Laughlin McDonald

Wisconsin Audit Report, Voter Registration Elections Board

Preliminary Findings, Milwaukee Joint Task Force Investigating Possible Election Fraud

Building Confidence in U.S. Elections, National Commission on Federal Election Reform (Carter/Baker Report)

Response to the Report of the 2005 Commission on Federal Election Reform (Carter/Baker Report), The Brennan Center and Professor Spencer Overton

Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?, Chandler Davidson

A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law, Alec Ewald

Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election, American Center for Voting Rights

America's Modern Poll Tax, The Advancement Project

Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General, The Brennan Center and Professor Michael McDonald

Democracy at Risk: The November 2004 Election in Ohio, Democratic National Committee

Department of Justice Public Integrity Reports 2002, 2003, 2004

Prosecution of Election Fraud under United States Federal Law, Craig Donsanto

Election Protection 2004, Election Protection Coalition

The Federal Crime of Election Fraud, Craig Donsanto

Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote, General Accounting Office

Securing the Vote: An Analysis of Election Fraud, Lori Minnite

Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, People for the American Way, NAACP, Lawyers Committee for Civil Rights

Books

Stealing Elections, John Fund

Steal this Vote: Dirty Elections and the Rotten History of Democracy in American, Andrew Gumbel

Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004, Tracey Campbell

A Funny Thing Happened on the Way to the White House, David E. Johnson and Jonny R. Johnson

Fooled Again, Mark Crispin Miller

Legal

Indiana Democratic Party vs. Rokita

Common Cause of Georgia vs. Billup

U.S. Department of Justice Section 5 Recommendation Memorandum (Georgia voter identification)

Fooled Again, Mark Crispin Miller

Fooled Again sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and alleged malfeasance in the process seriously enough.

Miller identifies a number of statistical anomalies based on polling and turnout results that he alleges puts the validity of the 2004 election in doubt. He accuses Republicans of committing crimes and improprieties throughout the country. These include deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions; misinterpretation of voting laws by elections officials to the detriment of Democratic voters; dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions; machine irregularities in Democratic jurisdictions; relocating polling sites in Democratic and minority areas; suspicious mishandling of absentee ballots; refusing to dispense voter registration forms to certain voter registration groups; intimidation of students; suspicious ballot spoilage rates in certain jurisdictions; "strategic distribution of provisional ballots," and trashing of provisional ballots; harassment of Native American voters; a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats; illegitimate challenges at the polls by Republican poll watchers; improper demands for identification in certain areas; Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls; wrongful purging of eligible voters from voting rolls; partisan harassment; the selective placement of early voting sites; and the failure to send out absentee ballots in time for people to vote.

Miller details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised. Miller says that most of the military voters would be Republicans and most of the overseas civilians Kerry voters.

In this book, Miller clearly tries to prove the Republican Party won the 2004 through illegitimate means. This must be kept strongly in mind in making any use of this work. However, the book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at.

Summary and Relevant Excerpts From Georgia Voter ID Litigation

Complaint For Declaratory And Injunctive Relief

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State .

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters

The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is:

. . . to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times:

I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) (www .gainesvilletimes .com).

There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.

The pretextural nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C .G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to $10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O .C .G.A.§ 21-2-417 .

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office .

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O .C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

EXHIBIT B

Letter from Secretary of State Cathy Cox to Governor Sonny Purdue, April 8, 2005

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244 - the elimination of voter ID fraud at the polls is an unfounded justification I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day. As a practical matter, there is no possibility that vote fraud of this type would have gone undetected if it had in fact occurred because there is a list of registered voters at each polling place that is checked off as each person votes. If the impersonates voted first and the legitimate voter came to the polling place later in the day and tried to vote, he or she would be told that they had already voted and would not be allowed to vote a second time in the same day . It is reasonable to suspect that a voter who cared enough to show up at the polls to cast a ballot would almost certainly have complained - but there have been no such complaints. If the opposite occurred, and the legitimate person came to the polls first and cast his ballot, the impersonator who showed up later would not be allowed to vote for the same reason and the attempted fraud would have been prevented.

In addition, this slate has adopted severe criminal sanctions for the type of vote impersonation that is purportedly of concern and it is evident t hat such penalties have been a sufficient deterrent. In essence, there is no voter fraud problem currently in existence that House Bill 244 addresses.

In contrast to the lack of voter fraud relating to impersonation of voters at polls during my tenure the State Election Board has reviewed numerous cases of voter fraud relating to the use of absentee ballots.

State Defendants' Initial Brief In Opposition To Plaintiffs' Motion For Preliminary Injunction

There are 159 counties and an even larger number of municipalities in Georgia that conduct elections. Neither the Secretary of State nor her staff can be physically present at the polling places for those elections and therefore could not possibly be aware of all in-person voter fraud that might occur. (Cox Decl. ¶ 6.)

Under the prior law before enactment of HB 244, it is beyond argument that in person voter fraud could have taken place. (Id. ¶ 5.) The Secretary of State's view of the scenario in which voter fraud would occur is when an imposter votes at the polling place and the actual voter shows up later and is unable to cast a ballot. (Id. ¶ 5.) However, the Secretary of State agrees that the scenario she describes is only one instance of potential voter

fraud, and both her scenario and others were possible under the law as it existed prior to the enactment of HB 244. (Id.) As stated by the Director of Elections for the Forsyth County Board of Elections, the typical case of in-person voter fraud would be committed by identifying persons who do not typically vote and then having other individuals vote as those persons. (Smith Decl. ¶ 4.)

The Executive Director of the Richmond County Board of Elections has been aware of such complaints, but has been unable to gather evidence to prove the violations because the nature of the conduct makes such evidence hard to develop. (Bailey Decl. ¶ 9.) Indeed, past incidents of fraudulent registrations in Forsyth County and Fulton County were reported to the District Attorneys' offices in those respective counties. (Smith Decl. ¶ 6; MacDougald Decl. ¶ 4.) In Fulton County, the fraudulent registrations were also reported to the United States Attorney for the Northern District of Georgia, and he has opened an investigation of the fraudulent registrations. (MacDougald Decl. ¶ 4.)

Order for a Preliminary Injunction

As part of the order, Judge Murphy describes the testimony of Harry MacDougald, a member of the Fulton County Board of Registration and Election. Mr. MacDougald had stated he had observed voter registration fraud, which he referred to the U.S. Attorney and the District Attorney. In addition, since some precinct cards the Board sent out in 2004 were returned as undeliverable, MacDougald believes they were not eligible voters, yet they were allowed to vote.

Although the Secretary of State said she knew of no incidents of impersonation at the polls, she and her staff are not physically present in every polling site. Secretary Cox stated local officials are in the best position to know of such incidents. The State Election Board has received a number of complaints of irregularities with respect to absentee ballots. Cox is also aware of a case of vote buying of absentee ballots. She is also aware of efforts to submit fraudulent registrations.

According to Secretary of State Cox, Georgia has procedures and practices in place to detect voter fraud. Those procedures include verifying the voter's correct address, as well as the voter's name, during the check-in process for in-person voters. Georgia also imposes criminal penalties for voter impersonation. Most violations of Georgia election laws are punishable as felonies. No evidence indicates that the criminal penalties do not sufficiently deter in-person voter fraud.

The integrity of the voter list also is extremely important in preventing voter fraud. The Atlanta Journal Constitution published an article indicating that Georgia had experienced 5,412 instances of voter fraud during a twenty-year period. Secretary of State Cox's office undertook an investigation in response to that article. The investigation revealed that the specific instance of voter fraud outlined in the Atlanta Journal-Constitution, involving a report that Alan J. Mandel had voted after his death, actually did not occur. Instead, an individual with a similar name, Alan J. Mandle, had voted at the polls, and the poll worker had marked Alan J. Mandel's name rather than marking Alan J. Mandle, the name of the individual who actually voted. Secretary of State Cox's office compared the

signature on the voter certificate to the voter registration card of the living individual, and concluded that the living individual, Alan J. Mandle, rather than the deceased Alan J. Mandel, had voted.

The Secretary of State's Office subsequently attempted to ensure that voter records were maintained and up to date. The Secretary of State's Office sends information concerning dead voters to local elections officials on a monthly basis, and now has the authority to remove the names of deceased voters from the voter rolls if the local elections officials fail to do so in a timely manner. Secretary of State Cox is not aware of any reports of dead individuals voting since her office received authority to remove the names of deceased individuals from the voter rolls.

There seems to be little doubt that the Photo ID requirement fails the strict scrutiny test: accepting that preventing voter fraud is a legitimate and important State concern, the statute is not narrowly drawn to prevent voter fraud. Indeed, Secretary of State Cox pointed out that, to her knowledge, the State had not experienced one complaint of in-person fraudulent voting during her tenure. In contrast, Secretary of State Cox indicated that the State Election Board had received numerous complaints of voter fraud in the area of absentee voting. Furthermore, the Secretary of State's Office removes deceased voters from the voting rolls monthly, eliminating the potential for voter fraud noted by the Atlanta Journal-Constitution article alleging that more than 5,000 deceased people voted during a twenty—year period.

Further, although Defendants have presented evidence from elections officials of fraud in the area of voting, all of that evidence addresses fraud in the area of voter registration, rather than in-person voting. The Photo ID requirement does not apply to voter registration, and any Georgia citizen of appropriate age may register to vote without showing a Photo ID. Indeed, individuals may register to vote by producing copies of bank statements or utility bills, or without even producing identification at all. The Photo ID law thus does nothing to address the voter fraud issues that conceivably exist in Georgia.

"Job Serebrov" [redacted]
11/15/2005 07:23 PM

To jthompson@eac.gov
cc
bcc
Subject Re: Question

History: This message has been replied to.

Hey Julie, go home---you just got out of bed from being sick! The other project mentioned was the creation of an RFP for some large organization to develop a solution to the problem. My feeling is that we can do that without the need to farm out an RFP.

Job

--- jthompson@eac.gov wrote:

> Job,
>
> I am afraid that I don't have an answer to this
> question, as I am not sure
> what the follow up contract would be for. I will
> speak with Karen about
> whatever follow up work there would be to this
> project and get back with
> you.
>
> Juliet E. Thompson
> General Counsel
> United States Election Assistance Commission
> 1225 New York Ave., NW, Ste 1100
> Washington, DC 20005
> (202) 566-3100
>
>
>
> "Job Serebrov" [redacted]
> 11/15/2005 05:02 PM
>
> To
> jthompson@eac.gov
> cc
>
> Subject
> Question
>
>
>
>
>
>
> Julie:
>
> With everything worked out, this may be too early to
> ask but I need some idea as soon as
> possible---everyone mentioned that there may be
> another six month contract to follow this one. What

> do
> you see as the chances of that?
>
> Job
>
>
>

"Job Serebrov" [redacted]
11/15/2005 05:02 PM

To jthompson@eac.gov
cc
bcc
Subject Question

History: This message has been replied to and forwarded.

Julie:

With everything worked out, this may be too early to ask but I need some idea as soon as possible---everyone mentioned that there may be another six month contract to follow this one. What do you see as the chances of that?

Job

"Job Serebrov" [redacted]
11/10/2005 06:28 PM

To jthompson@eac.gov
cc wang@tcf.org
bcc
Subject Contract

History: This message has been forwarded.

Julie:

I just read my contract and it is fine except for the termination clause. I have two issues with it. First, I am concerned with a short-term contract for personal services like this that can be terminated without cause. That really makes this no contract at all. Second, I am just as concerned with the two week notice provision. We are paid every thirty days. Termination should require thirty days. Of course, the second point is moot if termination is for cause only.

Please let me know what you think.

Job

"Job Serebrov" [redacted]>
10/31/2005 03:26 PM

To jthompson@eac.gov
cc psims@eac.gov
bcc
Subject Addition

Julie/Peggy:

In addition to my question about completion of our contracts---I am wondering whether you had a chance to address the working group issue and the law clerk issue?

Also, Peggy have you been able to get a response from DOJ?

Regards,

Job

"Job Serebrov" [redacted]
10/19/2005 12:18 PM

To jthompson@eac.gov
cc
bcc
Subject Working Group List

Julie:

Here is my working group list. I still have not heard from two people but due to the size limitations I am sending what I have now:

Cleta Mitchell (DC)
Patrick Rogers (NM)
Mark (Thor) Hearne II (MO)
Mark Braden (DC)
David Norcross (DC)
Ben Ginsberg (DC)
Todd Roketa, Sec of State, Indiana (IN)

I recommend that since we are limited to three Republicans and three Democrats that we pick Roketa, Rogers, and Hearne. We can use the rest for interviews.

Also, got an e-mail from Peggy but no info on what is needed for invoices. I assume our contracts will be signed in time to get us paid for this month.

Regards,

Job Cleta Mitchell Bio.doc W0528922.DOC Benjamin L Ginsberg.doc E. Mark Braden.doc TER.official.shortbio.7.15.05.doc
David A Norcross.doc Thor_Hearne_Resume_5_05.pdf

011093

Dear Job Serebrov

Some additional information: I have put together and run election day / ballot security programs in Oklahoma and North Carolina; I testified before the House Judiciary Committee on HAVA and also worked closely with Sen. Kit Bond's office & staff on the drafting of the Senate version of the legislation. I now serve as outside counsel to the National Republican Senatorial Committee and have been putting together the preliminary outline of the ballot security program for the 2006 election cycle, working with the Office of Public Integrity of the Dept of Justice on this very topic. Let me know if you want/need more information. Thanks! Cleta

Cleta Mitchell

Washington, D.C.

[redacted]

P 202.295.4081

Cleta Mitchell
Partner

Cleta Mitchell is a partner in the Washington, D.C. office of Foley & Lardner LLP as a member of the firm's Public Affairs Practice Group. Ms. Mitchell has more than 30 years of experience in law, politics and public policy. She advises corporations, nonprofit organizations, candidates, campaigns, and individuals on state and federal election and campaign finance law, and compliance issues related to lobbying, ethics and financial disclosure. Ms. Mitchell practices before the Federal Election Commission and similar federal and state enforcement agencies.

Ms. Mitchell was a member of the Oklahoma House of Representatives from 1976-1984 where she chaired the House Appropriations and Budget Committee. She served on the executive committee of the National Conference of State Legislatures.

Ms. Mitchell was in private law practice in Oklahoma City in litigation and administrative law until 1991 when she became director and general counsel of the Term Limits Legal Institute in Washington, D.C. She litigated cases in state and federal courts nationwide on congressional term limits. She served as co-counsel with former U.S. Attorney General Griffin Bell in the U.S. Supreme Court case on

term limits for members of Congress.

Ms. Mitchell represents numerous Republican candidates, campaigns and members of Congress, including Senator Elizabeth Dole (R-NC), Sen. Jim Inhofe (R-OK) Sen. David Vitter (R-LA), Rep. Roy Blunt (R-MO) and Rep. Tom Cole (R-OK), among others. She is legal counsel to the National Republican Senatorial Committee. Ms. Mitchell served as co-counsel for the National Rifle Association in the Supreme Court case involving the 2002 federal campaign finance law.

Ms. Mitchell has testified before Congress several times and is a frequent speaker and guest commentator on election law and politics. In 1999, she authored *The Rise of America's Two National Pastimes: Baseball and the Law*, published by the *University of Michigan Law Review.*

Ms. Mitchell received her B.A. (high honors, 1973) and J.D. (1975) from the University of Oklahoma. She is admitted to practice in the District of Columbia, the State of Oklahoma, the Supreme Court of the United States and federal district and appellate courts.

PATRICK J. ROGERS

PROFESSIONAL EMPLOYMENT

1988-Present	Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico
1993-1995	Executive Committee, Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico
1983-1988	Associate Attorney, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico
1981-1983	Legislative Assistant to U.S. Senator Harrison H. Schmitt
1976-1981	Land Law Examiner, Bureau of Land Management, Santa Fe, New Mexico and Washington, D.C.

EDUCATION

J.D.	GEORGETOWN UNIVERSITY SCHOOL OF LAW, Washington, D.C. - December, 1981 Dean's List, Law Fellow
B.A.	UNIVERSITY OF NEW MEXICO, December, 1976 Magna Cum Laude Major - Political Science/Economics

PROFESSIONAL ORGANIZATIONS/ACTIVITIES

1997-2002	Mountain States Legal Foundation, Litigation Board of Directors
1991-2003	General Counsel to the New Mexico Republican Party, Executive Committee Member
1993-2000	Counsel to the Bernalillo County Republican Party, Executive Committee Member
1983-Present	Albuquerque Bar Association
1983-Present	New Mexico Bar Association
1983-Present	American Bar Association, Litigation and Trial Sections
1988	Law Day Chairman, State Bar of New Mexico

COMMUNITY ACTIVITIES

2000-2003	Dismas House Board of Directors
1997-2000	Economic Forum Board of Directors
1990-1995	Governor's Organized Crime Prevention Commission
1989-Present	Kiwanis
1985-1998	YABL Basketball Coach; NWRG - Alameda Soccer Coach
1987-1991	Special Assistant District Attorney, Bernalillo County
1989-1991	Metropolitan Court Judicial Selection Committee

PRACTICE AREAS (AV Rated Martindale-Hubbell)

Commercial, Administrative and Constitutional Litigation
Lobbying: (Representative clients: Newmont Mining Company, Duke Energy North America and Verizon Wireless)

PUBLICATIONS

Survey of the New Mexico Privacy and Related Claims against the Media for the National Libel Research Defense Counsel

Reporters Committee for Freedom of the Press: New Mexico Open Records, Open Meetings and Related Constitutional Issues

New Mexico Reporter=s Handbook on Media Law

Reporters Committee for Freedom of the Press: ATapping Officials= Secrets@

ELECTION LAW EXPERIENCE

The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures.

Miguel Gomez v. Ken Sanchez and Judy Chaves; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge.

Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues.

Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues.

Decker, et al v. Kunko, et al; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues.

Kunko, et al v. Decker, et al; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues.

In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

Larrogoite v. Vigil-Giron and Archuletta; First Judicial District Court of Santa Fe County, New Mexico (1990); petition challenge, U.S. House of Representatives

Benjamin L. Ginsberg represents numerous political parties, political campaigns, candidates, members of Congress and state legislatures, Governors, corporations, trade associations, vendors, donors and individuals participating in the political process.

In both the 2004 and 2000 election cycles, Mr. Ginsberg served as national counsel to the Bush-Cheney presidential campaign; he played a central role in the 2000 Florida recount. He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and National Republican Congressional Committee. He serves as counsel to the Republican Governors Association and has wide experience on the state legislative level from directing Republican redistricting efforts nationwide following the 1990 Census and being actively engaged in the 2001—2002 round of redistricting.

In addition to advising on election law issues, particularly those involving federal and state campaign finance laws, ethics rules, redistricting, communications law, and election recounts and contests, Mr. Ginsberg represents clients before Congress and state legislatures.

Before entering law school, he spent five years as a newspaper reporter on The Boston Globe, Philadelphia Evening Bulletin, The Berkshire (Mass.) Eagle, and The Riverside (Calif.) Press-Enterprise. He has been adjunct professor of law at the Georgetown University Law Center lecturing on law and the political process.

Education

- Georgetown University Law Center, J.D., 1982
- University of Pennsylvania, A.B., 1974

Bar Admissions

- District of Columbia

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Washington, DC 20037
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E. Mark Braden
Of Counsel
mbraden@bakerlaw.com

Education:

J.D., Washington and Lee University School of Law, 1976

B.A., Washington and Lee University, 1973

Bar Admissions:

U.S. Supreme Court, 1983

U.S. District Court, District of Columbia, 2002

District of Columbia, 1989

Ohio, 1976

Summary:
E. Mark Braden concentrates his work principally on election law and governmental affairs. This field includes work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting. Each is an area in which he has substantial knowledge and unusual experience.

Mr. Braden spent ten years as Chief Counsel to the Republican National Committee prior to joining Baker & Hostetler. He has worked intimately with many elected officials, the major national political consultants and pollsters providing successful, and often highly innovative, legal guidance. For example, in campaign finance, he can rightly claim to be the father of "soft money" as now used in national political campaigns. In redistricting, he has argued successfully at the U.S. Supreme Court and has been involved in litigation across the nation. In addition to his experience in the area of federal election law, Mr. Braden is widely recognized as an authority on state election laws, having served as Chief Counsel to the Ohio Elections Commission and Election Counsel for the Secretary of State in Ohio. He has been a principal lawyer in many of the largest recounts in our political history.

Mr. Braden was a key negotiator for the site city agreements and many of the other contracts for four Republican National Conventions and has been special counsel to the House Administration Committee. He has also worked with many nonprofit organizations on government affairs issues.

Mr. Braden has testified before congressional committees and the Federal

Election Commission on numerous occasions. His experience in these areas has been recognized by numerous invitations to be a guest lecturer at universities and institutes across the nation.

Mr. Braden is a member of the adjunct faculty of George Washington University and a former Captain of the United States Army Reserve.

Washington, D.C. Office
202.861.1504 - phone
202.861.1783 - fax

SECRETARY OF STATE
STATE OF INDIANA

TODD ROKITA
SECRETARY OF STATE

Indiana Secretary of State Todd Rokita
Biographical Information

At the age of 35, Secretary Rokita is the second youngest Secretary of State in the country. First elected to the third highest office in state government in 2002, Secretary Rokita served for a year as the youngest Secretary of State in the nation.

As Indiana's chief election official, Secretary Rokita continues to work on reforming Indiana's election practices to ensure Indiana's elections are as fair, accurate and accessible as possible. By embracing technology and accountability, Secretary Rokita is leading the effort to make Indiana a 21st century election administration model. Rokita serves on the nine-member Executive Board of the Election Assistance Commission Standards Board, charged by federal law to address election reform issues. Secretary Rokita has testified about Indiana's voting reform efforts before the United States Congress.

Secretary Rokita also serves as Indiana's chief securities fraud investigator. Secretary Rokita's office has uncovered investor fraud scams and helped secure numerous felony convictions and thousands of dollars in restitution.

In his role as the head of Indiana's Business Services Division, Secretary Rokita has continued making Indiana a pioneer in e-government initiatives.

As Secretary of State, Rokita visits each of Indiana's 92 counties at least once each year. Rokita continues to serve as a precinct committeeman during each election, and was recently named as one of the "40 under 40" by the Indianapolis Business Journal.

A native of Munster, he holds a law degree from Indiana University School of Law-Indianapolis and a Bachelor of Arts degree from Wabash College. At Wabash, Rokita earned distinction as an Eli Lilly Fellow. After law school, Secretary Rokita worked as a practicing attorney.

Rokita began serving in the Secretary of State's office in 1997. As the Deputy Secretary of State and in other positions, Rokita helped implement user-friendly e-government services, provided tougher securities enforcement, and championed significant election reforms.

Secretary Rokita is active in the National Association of Secretaries of State, having served in 2004 as the Chair of the Voter Participation Committee and serving in 2005 as the Vice Chair of the organization's Securities Committee.

Secretary Rokita is a member of the Director's Circle of the Indiana Council for Economic Education, the state and local bar Associations, the Knights of Columbus, and the National Rifle Association. A commercial-rated pilot, Secretary Rokita volunteers his time by flying people in need of non-emergency medical care to hospitals and clinics throughout the Midwest for treatment.

Secretary Rokita lives in Indianapolis with his wife, Kathy and they are members of St. Thomas More Parish.

###

David A. Norcross
Present:

National Committeeman, New Jersey Republican State Committee
elected March 14, 1992

Attorney at Law, Blank Rome LLP, Trenton NJ, Washington D.C.
Senior Principal, Blank Rome Government Relations LLC

Previous:

Chairman, New Jersey Republican State Committee, 1977 – 1981

General Counsel, Republican National Committee, 1993 – 1997

General Counsel, International Republican Institute

Counsel, The Center for Democracy

Vice Chairman, Commission on Presidential Debates

Executive Director, New Jersey Election Law Enforcement Commission

Member, Twentieth Century Fund Task Force on the Presidential Debate Process

RNC:

RNC Northeastern State Chairmen's Association, 1977 – 1981;
Chairman, 1980 – 1981

Counsel, RNC Chairman Frank Fahrenkopf, 1983 – 1989

Counsel, Republican National Convention, 1988

RNC Committee on Arrangements, Republican National Convention, 1996

RNC Special Task Force on Primaries and Caucases, 1996

Chairman, RNC Campaign Finance Task Force, 1997

Delegate, Republican National Convention, 1980, 1992, 1996, 2000, 2004

RNC Committee on Rules and Order of Business, Republican National Convention,
1992, 1996, 2000; 2004

Chairman, RNC Committee on Arrangements, Republican National Convention, 2004

RNC Committee on Rules and Order of Business, 1992 -
Chairman, 2005 -

Personal:

Spouse: Laurie L. Michel
Children: Spencer, Victoria
Education: B.S., University of Delaware; L.L.B. Unversity of Pennsylvania

Office: c/o Lathrop & Gage, L.C.
10 South Broadway; 13th Floor
Saint Louis, Missouri 63102

e-Mail – [redacted]
Office Direct Dial – (314) 613-2522
Office Facsimile – (314) 613-2550

Home: [redacted]

Home – [redacted]
Cell – [redacted]

MARK F. (THOR) HEARNE, II

Professional

1997 – Current Partner - Member Saint Louis, Missouri

Lathrop & Gage, L.C.

- **General Counsel to Closely Held Businesses:** Clients concentrated in real estate and technology. As general counsel represented clients in negotiating complex commercial transactions, advised clients in general corporate matters including succession-planning, tax matters and litigation. Manage and supervise other counsel assisting in this representation. Counsel clients in public policy matters and the formation and management of private foundations, trusts, faith-based organizations and philanthropic enterprises. Lead litigation counsel in state and federal court (trial and appellate) and oversaw and managed litigation in state and federal court. Experienced in overseeing and managing significant state and federal litigation in Missouri, Michigan, Ohio, Florida, New Mexico, Wisconsin, Minnesota, Pennsylvania, Nevada, California, Georgia, Indiana, Iowa and other states.
- **Constitutional Law, Election Law and Government Relations:** General Counsel to various federal, state and local candidates, political parties and campaigns. State and national litigation counsel to candidates for state and federal office. Expertise in compliance with state and federal campaign finance regulation, matters concerning the conduct of an election and litigation concerning these issues. Advise businesses on compliance with state and federal campaign finance regulation and political activity. Representation of clients in matters concerning compliance with regulatory action by Federal Election Commission and the Missouri Ethics Commission. Village Attorney and Prosecutor, Town of Grantwood Village, Missouri (1995 – Present). Representation of clients in various municipal law matters and related litigation. Regional counsel to major national wireless-PCS telecommunications firm on matters of federal Telecommunications Act and state and local government litigation and regulation. Committee Member to Help America Vote Act committee appointed by Missouri Secretary of State Matt Blunt to advise on implementation of Help America Vote Act and related state legislation and rulemaking.
- **Real Estate, Banking and Property Rights:** Counsel to Federal and State financial institutions in complex real estate transactions and related financings involving governmental approvals, tax,. environmental or other regulatory complexities. Successfully negotiated numerous multi-million dollar real estate transactions and represented clients in related real estate development, land use proceedings and litigation involving zoning and takings cases. Lead counsel to

class of property owners in landmark federal Rails-to-Trails takings cases in U.S. Court of Claims.

- **Recent Professional Accomplishments:** Counsel to Republican National Committee, National Counsel to American Center for Voting Rights, National election counsel to Bush-Cheney, '04. Testified before U.S. House Administration Committee hearings into conduct of Ohio presidential election. Academic Advisor to Commission on Federal Election Reform (Baker-Carter Commission), General Counsel to Missouri Governor Matt Blunt and Missourians for Matt Blunt, Congressman Kenny Hulshof and Congressman Todd Akin. Advice campaigns on various matters of campaign finance (state and federal), litigation before Missouri Ethics Commission and campaign communication and political advertising. Counsel for successful intervenors in *Hawkins v. Blunt* federal litigation concerning Missouri provisional ballot procedures and the Help America Vote Act. Counsel for Bush-Cheney-2000 in *Bush-Cheney, 2000, Inc. v. Baker* 34 S.W.3d 410 (Mo. App, 2000), successful emergency appeal quashing Circuit Court order holding polls open beyond legal closing hour. Counsel for Plaintiffs in *Corbett v. Sullivan*, St. Louis County redistricting litigation (federal civil rights action) in U.S. District Court. Successful redistricting on behalf of Republican plaintiffs and NAACP intervenors. Counsel for Missouri Senator Bill Alter in successfully defending victory in 2005 Missouri Senate Special Election recount, Counsel to U.S. Congressmen Todd Akin in *Akin v. McNary*, successful defense of Congressman Akin's primary election recount. Counsel for Town of Grantwood Village in successful Fifth Amendment takings case in U.S. Court of Claims, *Grantwood Village v. United States*, 45 Fed Cl. 771 (Cl. Ct. 2000), (consolidated for partial summary judgment sub nomina *Glosemeyer v. United States*). Counsel for plaintiff in *Lowe v. American Standard*, federal jury trial in February 2005. Jury returned verdict for Plaintiff in full amount of claim in excess of $500,000.

1988–1997 Partner - Principal Saint Louis, Missouri

Ziercher & Hocker, P.C.

- **General Counsel Closely Held Businesses** (*see description above*) Additionally, significant real estate related environmental experience including federal Clean Water Act – Wetlands issues.
- **Constitutional Law and Government Relations:** Village Attorney, Town of Grantwood Village (1995 –Present).

Political Experience

- **2005:** National counsel to American Center for Voting Rights, Academic-Advisor to Commission on Federal Election Reform (Baker-Carter Commission), Counsel to Republican National Committee, counsel to Missouri Governor Matt Blunt and Missourians for Blunt. Campaign counsel to Congressman Kenny Hulshof, and Congressman Todd Akin. Testified before U.S. House Administration Committee in hearings into conduct of Ohio presidential election.
- **2004:** National election counsel to Bush-Cheney '04. Advised campaign on issues of national election law and litigation strategy and recruited and organized local counsel and oversaw election litigation in all battleground states. Delegate to Republican National Convention, Missouri State Republican Convention and Chairman of Missouri Republican Platform Committee and member of National Republican Platform Committee. General Counsel to Missouri Governor-elect Matt Blunt, Congressman Kenny Hulshof, and Congressman Todd Akin.
- **2003 – 2004:** Vice-President and Director of Election Operations for Republican National Lawyers Association, Chair of National Election Law School and Seminar, Orange County, California, August 2003 and Milwaukee, Wisconsin in July 2004. Advisor to California State Party counsel on Governor Arnold Schwarzenegger campaign and California recall election on Election Day operations and litigation.
- **2000 - 2002:** Republican National Lawyers Association, Vice-President-Director Election Operations, Counsel to Bush-Cheney – 2000, Inc., Coordinated Missouri Election Day Legal Team and counsel in *Bush-Cheney, 2000, Inc. v. Baker* (*see above*), Broward County, Florida Recount Team – Observer, Counsel to U.S. Congressman Todd Akin and Missouri Republican Party, Missouri State Republican Convention – Alternate – Clayton Township
- **1988:** Republican Candidate U.S. Congress, Missouri 3rd Cong. Dist – Successfully raised in excess of $200,000 and received campaign fundraising support from former Secretary of Interior, Don Hodel, former U.S. Senator Bill Armstrong and former U.S. Congressman Tom Curtis, Chairman.
- **1986-1987** - Reagan Administration – U.S. Department of Education, Office for Civil Rights, Attorney-Advisor-Law Clerk.
- **1984 -1980** - Missouri Republican Convention, Alternate
- **1976** – National & Missouri Republican Convention, Page

Professional Memberships

Admitted to practice before: U.S. Supreme Court, Michigan Supreme Court, Missouri Supreme Court, U.S. Court of Appeals - 8th Circuit, U.S. Court of International Trade, U.S. Court of Claims, U.S. Court of Appeals for the Federal Circuit, U.S. Court of Appeals for the Second Circuit. Member: Michigan Bar Association (tax, aviation and real estate law committees), Missouri Bar Association, Bar Association of Metropolitan St. Louis, American Bar Association; Named as one "Up and Coming Young Attorneys," St. Louis Business Journal. Named on of top ten attorneys in 2004 by Missouri Lawyers Weekly. Member, Republican National Lawyers Association.

Mark F. (Thor) Hearne, II – cont.

Education

Washington University, School of Law – St. Louis, Missouri -- 1986, *Juris Doctorate*

Washington University – St. Louis, Missouri -- 1983, B.A. Biology - Psychology

University of Tulsa – Tulsa Oklahoma -- 1979 – 1980, Biology – Psychology

Interests

FAA Licensed Pilot, Sunshine Mission – former member Board of Directors (faith-based inner-city ministry) and current advisory board member, Member Philanthropy Roundtable, National Public Radio – Political Commentator St. Louis Affiliate KWMU, Republican National Lawyers Association, former vice-president and board member, Westminster Christian Academy – former member Board of Directors.

"Job Serebrov" [redacted]
10/18/2005 05:37 PM

To jthompson@eac.gov
cc
bcc
Subject Lists

Julie:

I just got an e-mail from Tova. She does expect me to add Republicans to the interview list. Tova and I are going to talk tomorrow. I think that making the final interview list will take some time as we need to see who is vetted off or removed from the working group list due to funding issues or other issues.

I do not intend to mention anything we discussed in my conversation with Tova. Please let me know how the Commissioner's discussion with the complaining party went.

Job

"Job Serebrov" [redacted]
10/18/2005 05:15 PM

To jthompson@eac.gov
cc
bcc
Subject Add to Tova's Working Group List

Julie:

Tova added this name to her list a few days ago.

Donna Brazile

Donna Brazile is Founder and Managing Director of Brazile and Associates, LLC. Brazile, Chair of the Democratic National Committee's Voting Rights Institute (VRI) and an Adjunct Professor at Georgetown University, is a senior political strategist and former Campaign Manager for Gore-Lieberman 2000 - the first African American to lead a major presidential campaign.

Prior to joining the Gore campaign, Brazile was Chief of Staff and Press Secretary to Congresswoman Eleanor Holmes Norton of the District of Columbia where she helped guide the District's budget and local legislation on Capitol Hill.

Brazile is a weekly contributor and political commentator on CNN's Inside Politics and American Morning. In addition, she is a columnist for Roll Call Newspaper and a contributing writer for Ms. Magazine.

A veteran of numerous national and statewide campaigns, Brazile has worked on several presidential campaigns for Democratic candidates, including Carter-Mondale in 1976 and 1980, Rev. Jesse Jackson's first historic bid for the presidency in 1984, Mondale-Ferraro in 1984, U.S. Representative Dick Gephardt in 1988, Dukakis-Bentsen in 1988, and Clinton-Gore in 1992 and

1996.

In addition to working on political campaigns, Brazile has served as a senior lecturer and adjunct professor at the University of Maryland and a fellow at Harvard's Institute of Politics.

Brazile is the recipient of numerous awards and honors, including Washingtonian Magazine's 100 Most Powerful Women in Washington, D.C. and the Congressional Black Caucus Foundation's Award for Political Achievement.

Brazile, a native of New Orleans, Louisiana earned her undergraduate degree from Louisiana State University in Baton Rouge.

"Job Serebrov" [redacted]
10/18/2005 05:12 PM

To jthompson@eac.gov
cc
bcc
Subject Meeting

Julie:

As we just discussed, at this time and in light of the recent inquiry, I think it prudent to postpone our meeting in DC until the first or second week of November in order to:

1. Finalize the Working Group list (I am still waiting to hear from Kay James and Governor Barbour);
2. Finalize the Interview list;
3. Finish the search on existing voter fraud research;
4. Assure participation from the Department of Justice; and,
5. Get everyone on the same page and assure all outside parties that this will not be a radical venture

What do you think and can we get agreement on this with Peggy?

Regards,

Job

"Job Serebrov" [redacted]

10/18/2005 04:50 PM

To jthompson@eac.gov
cc
bcc
Subject lists

Democrat Working Group List.doc interview_list.doc

Bob Bauer, Perkins Coie, Democratic attorney
Cathy Cox, Secretary of State, Georgia
Barbara Arnwine, Lawyers Committee for Civil Rights under Law
Daniel Tokaji, Moritz College of Law, The Ohio State University
Wade Henderson, Leadership Conference for Civil Rights
Laughlin McDonald, ACLU Voting Rights Project
Wendy Weiser, Brennan Center

TW List of Experts to Interview

Bob Bauer, Perkins Coie, Democratic attorney
Cathy Cox, Secretary of State, Georgia
Barbara Arnwine, Lawyers Committee for Civil Rights under Law
Daniel Tokaji, Moritz College of Law, The Ohio State University
Wade Henderson, Leadership Conference for Civil Rights
Laughlin McDonald, ACLU Voting Rights Project
Wendy Weiser, Brennan Center
Donna Brazile, Brazile and Associates, LLC
Christopher Edley, Dean, Boalt Hall School of Law
Joseph Sandler, Sandler, Reif & Young
Chandler Davidson, Rice University
Jay Eads, Deputy Secretary of State, Mississippi
Allan Lichtman, American University
Miles Rapoport, Demos
Jonah Goldman, Lawyers Committee
Ralph Neas, PFAW
David Orr, Clerk, Cook County (Chicago)
Connie McCormick, Los Angeles County Registrar
John Ravitz, Board of Elections, New York City
Dan Seligson, Electionline
Lorri Minnite, Barnard College
Kevin Kennedy, Director of Elections, Wisconsin
Lisa Artison, Milwaukee Director of Elections
Barbara Burt, Common Cause
Sam Reed, Secretary of State, Washington
Alaina Beverly, NAACP
Hilary Shelton, NAACP
Glenda Hood, Secretary of State, Florida
Ned Foley, Ohio State University
Ellick Hsu, Deputy Secretary of State, Nevada
Harry VanSickle, Commissioner of Elections, Pennsylvania
Chris Nelson, Secretary of State, South Dakota
Heather Dawn Thompson, Native American Bar Asssociation
Nina Perales, MALDEF
Margaret Fung, AALDEF
Pam Karlan, Stanford Law
Bill Lann Lee, former head of the Civil Rights Division, DOJ
Deval Patrick, former head of the Civil Rights Division, DOJ
Joseph Rich, former head of the Voting Section, DOJ
Jeffrey Toobin, The New Yorker
Mike Alvarez, Caltech
Steve Ansolobohere, MIT

Local prosecutors where there were serious allegations of voter fraud and/or intimidation/deceptive practices

"Job Serebrov" [redacted]
09/06/2005 11:46 AM

To twilkey@eac.gov, klynndyson@eac.gov, sda@mit.edu, wang@tcf.org, jthompson@eac.gov
cc
bcc
Subject Once again

I neglected to send the last attachment as a .doc.
Please ignore it.

Job Task Contractor Sch.doc

011116

Task	Contractor Deadline	EAC Response	Contractor Cure Time
Project Plan	10 days after contracts signed	5 business days	5 business days
Case research Search terms For law clerk	1 week after contracts signed		
First meeting	within 3 weeks of approved project plan		
Defining fraud expert testimony	30-60 days after first meeting		
Defining fraud listing types	1 week after testimony	5 business days	5 business days
Case research by law clerk	60 days: to begin when the project plan is approved		
Case division and analysis	30 days		
Assemble working group	60 days after project plan is approved	5 business days	10 business days
Meet with working group	within 3 weeks after working group is assembled		
Set up secure blog	within 1 week after working group meets		
Finalizing the			

issue	**30 days after meeting with the working group**	
Division of labor for summary report and drafting of report including possible solutions	**within 45 days of meeting with the working group**	**10 business days 5 business days**

"Job Serebrov" [redacted]
09/06/2005 11:42 AM

To twilkey@eac.gov, klynndyson@eac.gov, sda@mit.edu, wang@tcf.org, jthompson@eac.gov
cc
bcc
Subject Draft Schedule Proposal for Vote Fraud Group

I have attached a draft proposed schedule of events for our discussion today. Please keep in mind that this is only a proposal but I thought that we needed somewhere to start from.

Regards,

Job Task Contractor Deadline EAC

"Job Serebrov" [redacted]
08/26/2005 03:35 PM

To klynndyson@eac.gov, sda@mit.edu, wang@tcf.org
cc twilkey@eac.gov, nmortellito@eac.gov, jthompson@eac.gov
bcc
Subject Re: Kick off activities for the EAC Voting fraud/voter intimidation project

Karen:

Either day is fine for me.

Job

--- klynndyson@eac.gov wrote:

> All-
>
> Although Tom Wilkey and I are still working to
> process each of your
> contracts on this project, we would like to
> tentatively schedule an
> in-person meeting on September 12, here in
> Washington.
>
> In the meantime, I'd like to propose that we all
> have a short
> teleconference call next Wednesday or Thursday at
> 1:00 PM to begin to talk
> through the scope of this project and the respective
> roles and
> responsibilities each of you might take on.
>
> Could you let me know your availability for a 45
> minute call on August 31
> or September 1 at 1:00?
>
> Thanks
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>

Deliberative Process Privilege

Margaret Sims/EAC/GOV
11/03/2006 07:38 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: Job and Tova

History: This message has been replied to.

I can review them over the weekend and attempt to summarize what they tell us.--- Peggy

---

Sent from my BlackBerry Wireless Handheld
Juliet E. Hodgkins
----- Original Message -----

From: Juliet E. Hodgkins
Sent: 11/03/2006 06:14 PM
To: Margaret Sims
Subject: Re: Job and Tova

I think we should use the content of those articles or some summary of them as a background of what we know about VF and VI. I just didn't want to have to read all of those articles to be able to make some generalized statements about their contents.

Sent from my BlackBerry Wireless Handheld
Margaret Sims
----- Original Message -----

From: Margaret Sims
Sent: 11/03/2006 06:11 PM
To: Juliet Hodgkins
Subject: Re: Job and Tova

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/03/2006 05:42 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the

articles/books that she read as they are listed in Appendix 2?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Margaret Sims /EAC/GOV
11/03/2006 07:11 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: Job and Tova

History This message has been replied to

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins /EAC/GOV
11/03/2006 05:42 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the articles/books that she read as they are listed in Appendix 2?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Margaret Sims /EAC/GOV
11/02/2006 01:45 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: did job and tova ever send us their working papers

I'll have to send him an email to find out. I never heard from Tova on that subject. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/02/2006 12:37 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: did job and tova ever send us their working papers

I thought what he was talking about was pretty comprehensive, like all the cases they read, etc. It's been at least a month or more since we had that conversation, probably 2 months.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV
11/02/2006 12:33 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Re: did job and tova ever send us their working papers

I'm not sure what he means by working papers. Job has already provided his spreadsheets on the case law reviewed and participated with Tova in drafting the pieces of the report they submitted. If he means his notes, and they were delivered during my absence, they might be in my in box. Job was moving from Arkansas to Nevada and may not have wanted to take them with him. How long ago did he ask about this? --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/01/2006 11:39 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject did job and tova ever send us their working papers

Job called me once and asked me about how to send in the working papers. Did you receive those?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Margaret Sims /EAC/GOV
11/02/2006 01:33 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: did job and tova ever send us their working papers

History This message has been replied to.

I'm not sure what he means by working papers. Job has already provided his spreadsheets on the case law reviewed and participated with Tova in drafting the pieces of the report they submitted. If he means his notes, and they were delivered during my absence, they might be in my in box. Job was moving from Arkansas to Nevada and may not have wanted to take them with him. How long ago did he ask about this? --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins /EAC/GOV
11/01/2006 11:39 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject did job and tova ever send us their working papers

Job called me once and asked me about how to send in the working papers. Did you receive those?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"Tova Wang" <wang@tcf.org>

01/10/2007 12:06 PM

To jhodgkins@eac.gov
cc
bcc
Subject RE:

I believe I have everything I need already, but will let you know if I discover that's not the case. Thank you!

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005
(202) 741-6263
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

From: jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]
Sent: Wednesday, January 10, 2007 12:03 PM
To: wang@tcf.org
Subject: RE:

Based on your answer, I assume then that you are not asking us for any documents. Please confirm that this is correct.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"Tova Wang" <wang@tcf.org>

01/10/2007 12:00 PM

To jhodgkins@eac.gov
cc twilkey@eac.gov, "'Tova Wang'" <wang@tcf.org>
Subject RE:

Thanks Julie. Actually, I ended up doing all of the Nexis research myself on The Century Foundation's account. Using one of your interns to do it never worked out, as Job can also tell you. I assume that takes care of that issue. Thanks again. Tova

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005
(202) 741-6263
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

From: jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]
Sent: Wednesday, January 10, 2007 11:50 AM
To: wang@tcf.org
Cc: twilkey@eac.gov; 'Tova Wang'
Subject: Re:

Tova,

I see no reason why we cannot allow you to have the research for your use. The one caveat to that is that this research was obtained on our Westlaw/Nexis accounts. Therefore, we would have to have an agreement from you that you would not reproduce or distribute those copyrighted materials. I will have one of my law clerks work on getting the information burned to a CD and drafting an agreement concerning the use of these documents.

I will be in touch with you next week to let you know when we will have these documents and agreement available.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"Tova Wang" <wang@tcf.org>

01/08/2007 09:24 AM

To twilkey@eac.gov, jhodgkins@eac.gov
cc "'Tova Wang'" <wang@tcf.org>
Subject

Dear Tom and Julie,

Happy New Year. I hope you both enjoyed the holidays.

As you know, I am well aware that the research Job and I produced belongs to the EAC. Nonetheless, I was wondering whether there might be some way I can use just the Nexis material solely for my own further research purposes. Anything I might publish using that underlying data as enhanced by my further research would be in my name and my name only, not that of the EAC. I put a tremendous amount of work into collecting and organizing that data and I would like the opportunity to continue this research on an ongoing basis. It would be a shame if it was not put to some further use.

Is there something we might arrange in this regard? Thanks so much.

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005
(202) 741-6263
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

"Tova Wang" <wang@tcf.org>

01/10/2007 12:00 PM

To jhodgkins@eac.gov
cc twilkey@eac.gov, "'Tova Wang'" <wang@tcf.org>
bcc
Subject RE:

History: This message has been replied to and forwarded.

Thanks Julie. Actually, I ended up doing all of the Nexis research myself on The Century Foundation's account. Using one of your interns to do it never worked out, as Job can also tell you. I assume that takes care of that issue. Thanks again. Tova

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005
(202) 741-6263
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

From: jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]
Sent: Wednesday, January 10, 2007 11:50 AM
To: wang@tcf.org
Cc: twilkey@eac.gov; 'Tova Wang'
Subject: Re:

Tova,

I see no reason why we cannot allow you to have the research for your use. The one caveat to that is that this research was obtained on our Westlaw/Nexis accounts. Therefore, we would have to have an agreement from you that you would not reproduce or distribute those copyrighted materials. I will have one of my law clerks work on getting the information burned to a CD and drafting an agreement concerning the use of these documents.

I will be in touch with you next week to let you know when we will have these documents and agreement available.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"Tova Wang" <wang@tcf.org>

01/08/2007 09:24 AM

To twilkey@eac.gov, jhodgkins@eac.gov

cc "Tova Wang" <wang@tcf.org>

Subject

Dear Tom and Julie,

Happy New Year. I hope you both enjoyed the holidays.

As you know, I am well aware that the research Job and I produced belongs to the EAC. Nonetheless, I was wondering whether there might be some way I can use just the Nexis material solely for my own further research purposes. Anything I might publish using that underlying data as enhanced by my further research would be in my name and my name only, not that of the EAC. I put a tremendous amount of work into collecting and organizing that data and I would like the opportunity to continue this research on an ongoing basis. It would be a shame if it was not put to some further use.

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"Tova Wang" <wang@tcf.org>

01/08/2007 09:24 AM

To twilkey@eac.gov, jhodgkins@eac.gov

cc "'Tova Wang'" <wang@tcf.org>

bcc

Subject

History: This message has been replied to:

Dear Tom and Julie,

Happy New Year. I hope you both enjoyed the holidays.

As you know, I am well aware that the research Job and I produced belongs to the EAC. Nonetheless, I was wondering whether there might be some way I can use just the Nexis material solely for my own further research purposes. Anything I might publish using that underlying data as enhanced by my further research would be in my name and my name only, not that of the EAC. I put a tremendous amount of work into collecting and organizing that data and I would like the opportunity to continue this research on an ongoing basis. It would be a shame if it was not put to some further use.

Is there something we might arrange in this regard? Thanks so much.

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"Tova Wang" <wang@tcf.org>

12/05/2006 09:09 AM

To jhodgkins@eac.gov

cc [redacted]

bcc

Subject RE: fraud and intimidation report

History: This message has been replied to.

Thanks Julie. What if we both agreed to sign a confidentiality agreement, embargoing any discussion of the report until after it is released? Tova

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005
(202) 741-6263
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

-----Original Message-----
From: jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]
Sent: Monday, December 04, 2006 4:57 PM
To: wang@tcf.org
Cc: serebrov@sbcglobal.net
Subject: Re: fraud and intimidation report

Tova & Job,

As you know, because the two of you are no longer under contract with the EAC, EAC is not afforded the same protections as if you were still functioning as EAC employees. As such, releasing the document to you would be the same as releasing it to any other member of the public.

Thus, EAC will not be able to release a copy of the proposed final report to you prior to its consideration and adoption by the Commission. The Commission will take up this report at its meeting on Thursday, Dec. 7. I will have a copy available for you immediatley following their consideration - assuming that they do not change the report during their deliberations and voting on Dec. 7. If changes are made, I will have a copy available to you as soon as possible following that meeting.

In the final report, you will see that EAC took the information and work provided by the two of you and developed a report that summarizes that work , provides a definition for use in future study, and adopts parts or all of many of the recommendations made by you and the working group. In addition, you will note that EAC will make the entirety of your interview summaries, case summaries, and book/report summaries available to the public as appendixes to the report.

I know that you are anxious to read the report and that you may have questions that you would like to discuss following the release of the report. Please feel free to contact me with those questions or issues.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission

1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

wang@tcf.org

12/01/2006 02:07 PM

To
jthompson@eac.gov

cc
"Job Serebrov"
[redacted]

Subject
fraud and intimidation report

Julie,

I understand from Tom Wilkey that you are planning on releasing our report at the public meeting next Thursday, December 7. As we discussed, I respectfully request that Job and I be permitted to review what you are releasing before it is released. I would like us both to be provided with an embargoed copy as soon as possible so we have time to properly review it before Thursday. I can be contacted by email, cell phone at 917-656-7905, or office phone 202-741-6263. I hope to hear from you soon. Thanks.

Tova

"Tova Wang" <wang@tcf.org>

11/09/2006 04:54 PM

To bbenavides@eac.gov, [redacted]
cc twilkey@eac.gov, jhodgkins@eac.gov
bcc
Subject RE: Conference call

Sounds good. I will come by the EAC since its literally a few feet from my office. I look forward to seeing you. Tova

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

From: bbenavides@eac.gov [mailto:bbenavides@eac.gov]
Sent: Thursday, November 09, 2006 4:21 PM
To: wang@tcf.org; [redacted]t
Cc: twilkey@eac.gov; jhodgkins@eac.gov; bbenavides@eac.gov
Subject: Conference call

Tova, Job -- I have scheduled 6:00 PM EST on Wednesday, November 15 for a conference call with Tom Wilkey and Julie Thompson-Hodgkins.

Conference call in # is 866-222-9044, Passcode 63114#

Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
202-566-3114

"Tova Wang" <wang@tcf.org>

11/18/2005 09:45 AM

To jthompson@eac.gov
cc
bcc
Subject FW:

I understand Job asked you a question about including voting rights violations. This was my reply to his last email, just so you know where I'm coming from. Thanks.
-----Original Message-----
From: Tova Wang
Sent: Friday, November 18, 2005 9:44 AM
To: Job Serebrov
Subject:

The name of our project is voter fraud and voter intimidation. When its intimidation practices, thats us. I agree that we're not going to get into stuff like not having sufficient language materials at the polls, but nasty treatment of minorities clearly qualifies as part of our mandate.

Tova Andrea Wang
Senior Program Officer and Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

Click here to receive our weekly e-mail updates.

"Tova Wang" <wang@tcf.org>

09/07/2005 05:14 PM

To klynndyson@eac.gov, twilkey@eac.gov

cc jthompson@eac.gov, nmortellito@eac.gov, sda@mit.edu, "'Job Serebrov'" [redacted], wang@tcf.org

bcc

Subject work plan

Hi Karen and Tom,

As we discussed yesterday, attached is a preliminary work plan/division of labor for your review. Please let us know if this is sufficient for the present and if you have any comments or questions.

In terms of hours dedicated to the project, Job and Tova are able to commit to 15-20 hours per week assuming that includes reimbursed periodic travel. Steve can do approximately 2 hours per week. We have tentatively scheduled to meet at your offices in DC, if that is convenient for you, on September 20. We will be able to confirm that within the next day or so.

All of us are very eager to get started on this important work as soon as possible. However, because we also have other work related responsibilities, we are a bit reluctant to do so before having an opportunity to review our contracts. We look forward to receiving them so we can get going right away.

Thanks so much. Speak to you soon.

Tova, Job and Steve

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, September 02, 2005 3:19 PM
To: klynndyson@eac.gov; nmortellito@eac.gov
Cc: jthompson@eac.gov; nmortellito@eac.gov; sda@mit.edu; Job Serebrov; twilkey@eac.gov; wang@tcf.org
Subject: Re: Kick off activities for the EAC Voting fraud/voter intimidation project

All-

In anticipation of our 45-minute conference call scheduled for Tuesday, September 6 at 4:00 PM, I would ask the three consultants (Steve, Job and Tova) to come prepared to talk about the following:

The major topics and issues which you see as needing immediate attention, definition,delineation,etc.
Rough timelines and timeframes for addressing these major issues and topics
Your major roles and responsibilities and the timelines you envision for meeting your major deliverables

We all realize that this conversation is just a start; I look forward to this beginning and to framing the tasks that lie ahead of us between now and September 30.

Have a wonderful holiday!!

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005

tel:202-566-3123 tw plan 0907.doc

To: Karen Lynn-Dyson and Tom Wilkey
From: Tova Wang, Job Serebrov, Stephen Ansolabehere
Re: Preliminary Work Plan
Date: September 7, 2005

The following is a preliminary work plan and division of labor for the project on voter fraud and voter intimidation:

MONTH ONE (beginning the date contracts are finalized):

I. Defining Fraud/Intimidation
   a. In person meeting and discussion among consultants to:
      i. Determine what we believe the parameters of the terms fraud and intimidation should be for our research purposes. (All)
      ii. Create a list of state and local officials, third party representatives, attorneys, scholars, etc. to interview and/or survey to assist in this process of definition (All)
   b. Interviews of individuals identified as having expertise (Job and Tova)
   c. Analysis of existing research (Job and Tova)

II. Obtaining research assistance (e.g. interns, law clerks) (All)

MONTH TWO:

III. Examining the Feasibility of Quantifying the Level of Incidence of Different Types of Fraud
   a. Looking at how we can develop a statistically sound research instrument
      i. Discussion with political and social scientists, legal scholars in the field (Tova and Steve)
   b. Determination as to information that would be required for a potential survey; identification of potential survey states to ensure a fair representation of different systems (All)
   c. Preliminary survey of case law of recent prosecutions for fraud/intimidation (Job)
   d. Interviews with state and local officials, third party groups, election lawyers to assess what they believe are the most prevalent problems (All)

MONTH THREE:

IV. Preliminary assessment of the federal, state and local legal capacity to handle fraud and intimidation cases
   a. Case law research (Job)
   b. Survey of current state election codes (Tova and Job)
   c. Analysis of Department of Justice Civil Rights and Criminal Divisions work in this area (Tova)

d. Survey and assessment of who has enforcement responsibility and accountability in each state and the extent to which that entity exercises that authority (All)

MONTH FOUR:

V. Report of Preliminary Findings (Tova and Job)
VI. Assembling the Working Group
   a. Developing a list of potential members (All)
   b. Development of a work plan and set of issues for examination for the working group (All)

Potential Working Group Members – Initial Suggestions:

Lori Minnite, Barnard College
Allan Lichtman, American University
David Orr, Cook County Clerk (Chicago)
Judith Browne, The Advancement Project
Cathy Cox, Secretary of State, Georgia
Jonah Goldman, Lawyers Committee for Civil Rights
Christopher Edley, Dean, Berkeley School of Law
Daniel Tokaji, Moritz College of Law, The Ohio State University
Spencer Overton, George Washington School of Law

"Cameron.Quinn@usdoj.gov" <Cameron.Quinn@usdoj.gov>

07/20/2006 09:56 PM

To "jthompsonhodgkins@eac.gov" <jthompsonhodgkins@eac.gov>

cc

bcc

Subject FW: The EAC- Tova Wang piece on voter fraud and intimidation

History: This message has been replied to.

Julie - thought John had sent these to you.

From: Tanner, John K (CRT)
Sent: Friday, July 07, 2006 4:37 PM
To: Quinn, Cameron (CRT)
Cc: Agarwal, Asheesh (CRT)
Subject: The EAC- Tova Wang piece on voter fraud and intimidation

The EAC paper is ridiculous. I have a call in to Julie. Here are some notes

Tova Wang.wpd

Tova Wang/EAC

p 5. 2d bullet ..DOJ is bringing fewer intimidation and suppression cases now...

This clearly is a myth. The Department has brought two 11(b) cases, one of the two in this Administration. The focus of DOJ activity has shifted, in fact, to voter suppression as there are fewer cases over voter dilution (challenges to at-large election systems, etc.) being brought by anyone as the number of jurisdictions with at-large election systems has shrunk dramatically. This Administration has, in fact, brought far more voter-suppression cases in this Administration than ever in the past, including a majority ogf all cases under Sections 203 and 208 of the Act, and such key recent Section 2 cases as US v. City of Boston and US v. Long County, Georgia.

The Voting Section brings cases involving "systemic" discrimination because federal voting statutes focus on discriminatory action by local governments. It is criminal statutes that involve malfeasance by individuals. The difference is fundamental and key to understanding law enforcement

3d bullet.

The Voting Section of DOJ has taken action to address badly kept voter lists with recent lawsuits in Missouri and Indiana.

4th bullet

The Voting Section of DOJ has, by a large margin, included mandatory training of poll workers in avoiding discriminatory practices in more cases in this Administration than in its entire previous history.

Page 6 - first bullet

This is not true. Ms. Wang repeatedly declined to define intimidation, so that her questions were vague and unhelpful in defining or identifying problems. The facts:

The Voting Section is bringing more cases involving discrimination and violation of minority voters rights at the pols on election day than ever in its history - than in its entire history combined. That is indisputable.

The credibility of allegations depends on their specificity and corroboration. Questions as to intimidation and vote suppression are meaningless in the absence f a definition of discrimination.

Prior enforcement has indeed changed the landscape, especially in the Southeast; however, the fact that we are bringing record numbers of cases clearly shows that discrimination is not rare.

Challenges based on race and unequal implementation of ID rules are indeed actionable and we have brought lawsuits, such as in Boston and Long County; we have not identified instances of

such discrimination in which we have not taken action.

Deliberative Process Privilege

Donetta L. Davidson/EAC/GOV
12/11/2006 04:14 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: Draft response to Tova Wang

I am also fine with the changes made to the letter.
Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
12/11/2006 03:50 PM

To Paul DeGregorio/EAC/GOV@EAC
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC
Subject Re: Fw: Draft response to Tova Wang

Commissioners,

Consistent with the changes requested by both Commissioners DeGregorio and Hillman, I have revised the draft response. Please take one more look at the letter. If possible, it would be nice to get this out today.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Paul DeGregorio/EAC/GOV

12/11/2006 03:40 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC
Subject Re: Fw: Draft response to Tova Wang Link

Julie,

I am ok with the edits Commissioner made to the letter; however, I do think that because of the tone of

Tova's letter, which is likely to be supplied to others (as was their report to us). that we need a paragraph in the letter that makes it clear that the process used in producing this final report was consistent with the process we have used in all the reports and studies we have issued to date. What she needs to know (in writing) is that is that while we review the work of our researchers and consultants on a topic closely to draw various conclusions, our staff and the commissioners themselves have input into the final product that becomes the public report issued by a majority vote of the EAC. Since I've been on the EAC, we have consistently questioned statistics, statements and conclusions drawn by those doing work for the EAC. We have also drawn upon our collect resources and wisdom to produce the best report possible. I think that was true in this case as it has been with all the other reports we have issued. In the end, it is the EAC--and the commissioners in particular--who are held accountable for what we adopt and release; not our paid consultants or organizations we contract with to do studies.

Paul DeGregorio
Chairman
US Election Assistance Commission
1225 New York Ave, NW
Suite 1100
Washington, DC 20005
1-866-747-1471 toll-free
202-566-3100
202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov

Juliet E. Hodgkins/EAC/GOV

12/11/2006 11:40 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Paul DeGregorio/EAC/GOV@EAC

cc Gracia Hillman/EAC/GOV@EAC

Subject Fw: Draft response to Tova Wang

commisisoners,

See below edits that Gracia has offered to the letter. Let me know if you agree. I would like to send this out today. Also, in response to Gracia's question below, I believe that since her letter was addressed to the Commissioners that the Commissioners should respond (either collectively or through the Chairman). Please let me know if you agree with the edits. It would be nice to get this out today.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005

(202) 566-3100

---- Forwarded by Juliet E. Hodgkins/EAC/GOV on 12/11/2006 11:37 AM ----

Gracia Hillman/EAC/GOV

12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov

cc

Subject Re: Draft response to Tova WangLink

Julie and Jeannie:

Thank you for the quick turn around on drafting a response to Tova Wang.

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

BTW, who will sign the letter ?

[attachment "Tova Wang, Dec06.doc" deleted by Paul DeGregorio/EAC/GOV]

Gracia M. Hillman
Commissioner
U.S. Election Assistance Commission
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005
Tel: 202-566-3100
Fax: 202-566-1392
www.eac.gov

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tova wang response 121106.doc

December 11, 2006

Ms. Tova Wang
c/o The Century Foundation
1333 H Street NW, 10th Floor
Washington, DC 20005

Via U.S. Mail and Facsimile Transmission
202-483-9430

Dear Ms. Wang:

We are writing in response to your December 7, 2006 memorandum. As you know, the U.S. Election Assistance Commission (EAC) issued its first report on election crimes last week, based in large part on the work that was done for EAC by Job and you. The report contains the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. Rather than provide the synopsis of these interviews, EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.

As the agency responsible for these final reports, it is incumbent upon EAC to assure that the information contained in the reports is accurate and fairly presented. With each of the reports, best practices documents, quick start guides, and other documents that EAC publishes, EAC makes changes as needed to make certain that our constituents are receiving the best and most complete information. This due dilligence process is observed regardless of whether the document was created in-house or was created by consultants or contractors.

Upon reviewing initial information about the Department of Justice interviews contained in the status report that was provided to the EAC Standards Board and EAC Board of Advisors and the information provided at the working group meeting in May 2006, those persons interviewed at the Department of Justice did not agree with certain characterizations of their statements contained in these materials. Therefore, EAC exercised its responsibility to make clarifying edits. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.

The report on voting fraud and voter intimidation will stand as adopted on December 7, 2006. Again, we thank you for the contributions you made to the EAC's initial research of these important issues.

Sincerely,

Paul DeGregorio
Chairman

Donetta Davidson
Commissioner

Gracia Hillman
Commissioner

Deliberative Process Privilege

Margaret Sims /EAC/GOV
11/13/2006 10:27 AM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject VF-VI Another DOJ Objection

Julie:

I just remembered that there was one other DOJ objection. It was about the way the consultants described the Election Crimes Branch focus on cases. In the interview with Donsanto (the only interview I attended), he made reference to the fact that the Election Crimes Branch used to only go after conspiracies, not individuals. Now, however, they had begun prosecuting individuals for noncitizen and felon voting. The consultants heard an unexpressed "instead", which would mean that DOJ had dropped pursuing conspiracies in favor of going after individuals. Based on my previous experience, I heard and unexpressed "in addition", meaning that DOJ was not just prosecuting conspiracies, the department also had begun to prosecute individuals.

I had lengthy discussions with the consultants over this issue as well. Donsanto confirmed that he meant "in addition", and the lists of cases he provided indicates that the department continues to pursue conspiracies. (It doesn't make sense any other way, unless you believe that the government is out to get the little guy.) --- Peggy

Deliberative Process Privilege

Margaret Sims /EAC/GOV
11/12/2006 08:45 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject VF-VI Interviews

Sorry this is later than expected. I was missing the notes of one interview and had several computer crashes when I tried to retrieve archived email to determine if I had failed to file it after one of the consultants sent it. I finally gave up looking for it in favor of summarizing what I had.

Attached is a summary of points raised in the interviews. I found it more difficult to extract lessons learned from the interview notes, so I used a summary format. (The interview notes make it appear that the focus of the interviews differed from one person to another, perhaps because consultants were seeking different information from interviewees). I've also attached a list of interviewees with pertinent interview notes. (Some of the interview notes dealt with irregularities other than voting fraud and voter intimidation.) --- Peggy

EAC-Summary of Info from Interviews 11-06.doc EAC-Experts Interviewed Notes 11-06.doc

Voter Suppression & Intimidation:

- Voter suppression efforts are sometimes racially based, and sometimes based on partisan considerations
- Hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. Many instances of what some people refer to as voter intimidation are more unclear now (e.g.; photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera). It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation
- The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.
- Some advocates assert that, given the additional resources and latitude given to the DOJ enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.
- Examples:
    - spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures, such as claiming that if you do not have identification, you cannot vote, and providing false dates for the election
    - Observers with cameras, which people associate with potential political retribution or even violence
    - Intimidating police presence at the polls
    - open hostility by poll workers toward minorities (racial and language), or poll workers asking intimidating questions;
    - groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing;
    - challenges
        - There are cases where challenger laws have been beneficial and where they have been abused (Brennan is currently working on developing a model challenger law)
        - No way to determine whether a challenge is in good or bad faith, and there is little penalty for making a bad faith challenge. The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.
        - Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation
    - instances where civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.(AR, KY)
    - moving poll sites
    - having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters
    - intimidationat the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue. (AR)

Fraud in Voting:

NOTE: Many interviewees appear to have made claims regarding the quantity and type of voting fraud based on incomplete data, their personal experience, or their impressions (e.g.; voting fraud

has been confined to absentee ballots; there is no in person assumption of others' voter identities to vote).

- The most commonly cited example of voting fraud mentioned was absentee ballot fraud (e.g.; vote selling involving absentee ballots, the filling out of absentee ballots en masse, people at nursing homes filling out the ballots of residents, and union leaders getting members to vote a certain way by absentee ballot).
- Many assert that impersonation, or polling place fraud, is probably the least frequent type because:
    - impersonation fraud is more likely to be caught and is therefore not worth the risk
    - unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice
    - if one votes in the name of another voter, and that voter shows up at the polls, the fraud will be discovered
    - one half to one quarter of the time the person will be caught (there is a chance the pollworker will have personal knowledge of the person, Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well).
    - deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work
- Vote buying still occurs and, in some cases, it is hard to distinguish between intimidation and vote buying.
- Tampering with ballots in transit between poll and election office is a concern (AR)

Voter Registration:

- Some assert that registration fraud is the major issue (esp unsupervised voter registration drives by political parties and advocacy groups that pay workers to register voters)
- Some assert that various groups abuse the existence of list deadwood to make claims about fraudulent voting.
- Some assert that when compiling such lists and doing comparisons, which are used as the basis for challenges, sound statistical methods must be utilized, and often are not. Matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate —that's simply the nature of database work. Private industry has been working on improving this for years. .
- If someone is on a voter list twice, that does not mean that voter has voted twice.
- Many problems will be addressed by the statewide database required under HAVA

Enforcenent:

- States vary in their authority to intervene in and track voter intimidation-voter suppression and voting fraud cases (e.g.; in AR, enforcement is the responsibility of counties, in IN it is responsibility of State AG).
- Voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive
- Some believe that voter suppression matters are not pursued formally because often they involve activities that current law does not reach.
- Only two interviewees assert that current state and federal codes seem sufficient for prosecuting fraud, and are not under-enforced (no need for additional laws).
- Some advocacy groups assert that the government does not engage in a sustained investigation of voter suppression matters or pursue any kind of resolution to them. There is a perception that the Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation and fraud, and that choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are.
- Some advocates point out that, once the election is over, civil litigation becomes moot.

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- The development of a pre-election challenge list targeted at minorities (some claim this has never been pursued, yet Mr. Tanner said the DOJ was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama), long lines due to unequal distribution of voting machines based on race, list purges based on race, unequal application of voter ID rules, and refusal to offer a provisional ballot on the basis of race would be VRA violations.
- DOJ asserts there is a big gap between complaints and what can be substantiated
- DOJ Voting Rights Section - Federal Voting Rights Act only applies to state action, so the section only sues State and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. When deciding what to do with the complaint, the section errs on the side of referring it criminally because they do not want civil litigation to complicate a possible criminal case
- DOJ Election Crimes Branch – DOJ is permitted to prosecute whenever there is a candidate for federal office, but can't prosecute everything. Deceptive practices that are committed by individuals and would be a matter for the Public Integrity Section; local government would have to be involved for the voting section to become involved. The problem is asserting federal jurisdiction in non-federal elections. (In U.S. v. McNally, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to "fix" McNally, did not include voter fraud.)
- It is preferable for the federal government to pursue these cases for the following reasons:
  - federal districts draw from a bigger and more diverse jury pool;
  - the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected;
  - DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them;
  - DOJ can use the grand jury process as a discovery technique and to test the strength of the case.
- Some assert that election crimes are not high on the priority list of either district attorneys or grand juries; therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury.
- Political parties have devoted extraordinary resources into 'smoking out' fraudulent voters

Recommendations Re Laws & Procedures:

- It is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that effects what the remedy should be.
- Support Senator Barak Obama's bill for combating voter harassment and deceptive practices. (Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.)
- Support a new law that allows the DOJ to bring civil actions for suppression that are not race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.
- Support a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce (DOJ has drafted such legislation, which was introduced but not passed in the early 1990s.)
- Put stronger teeth in the voter fraud laws; step up enforcement against fraud and provide stiffer penalties as current penalties make the risk of committing fraud relatively low
- There should be increased resources dedicated to expanded DOJ monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.
- Some advocate that all election fraud and intimidation complaints should be referred to the State Attorney General's Office to circumvent the problem of local political prosecutions. The

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Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes

- Some advocate greater resources for district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution
- Would be useful to have recommendations for prosecutors investigating fraudulent activity
- Better trained poll workers
- Polling places should be open longer, run more professionally but there needs to be fewer of them so that they are staffed by only the best, most professional people (Voting Centers).
- Move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- A day should be given off of work without counting as a vacation day so that better poll workers are available.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Many assert that the best defense against fraud will be better voter lists.
    - States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle
    - Llinking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice
    - New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters; purging must be done in a manner that uses the best databases, and looks at only the most relevant information
    - The process for preventing ineligible ex-felons from casting ballots needs to be improved
    - statewide registration databases should be linked to social service agency databases
- Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse. (KY has list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge) Last minute challenges should not be permitted
- False information campaigns should be combated with greater voter education, the media could do more to provide information about what is legal and what is illegal
- Improve the protective zone around polling places: the further vote suppressers can keep people away from the polls, the better.
- States should be encouraged to:
    - codify into law uniform and clear published standards for voter registration, challenges, voter ID, poll worker training, use and counting of provisional votes, the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access
    - standardize forms
    - modify forms and procedures based on feedback from prosecutors
- Ensure good security procedures for the tabulation process and more transparency in the vote counting process
- Conduct post-election audits
- Many advocate eliminating "no excuse" absentee voting.
- Some recommend reducing partisanship in election administration, but others are skeptical of the feasibility of this

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- Some strongly recommend requiring voter ID, while others strongly oppose it as a voter suppression tactic, asserting that states should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.) and that states could use signature comparisons.
- Political parties should monitor the processing of voter registrations and purging of registered by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists or to challenge, unlawful purges and other improper list maintenance practices.

Future Study Recommendations:

- Just because there was no prosecution, does not mean there was no vote fraud; very hard to come up with a measure of voter fraud short of prosecution
- EAC should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data
- EAC should work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys
- EAC should talk to private election lawyers

EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Data Collection

Mr. Henderson had **several recommendations as to how to better gather additional information and data on election fraud and intimidation in recent years**. He **suggested interviewing the following individuals who have been actively involved in Election Protection and other similar efforts:**

- Jon Greenbaum, Lawyers Committee for Civil Rights
- Tanya Clay, People for the American Way
- Melanie, Campbell, National Coalition for Black Political Participation
- Larry Gonzalez, National Association of Latino Election Officers
- Jacqueline Johnson, National Congress of American Indians
- Chellie Pingree, Common Cause
- Jim Dickson, disability rights advocate
- Mary Berry, former Chair of the US Commission on Civil Rights, currently at the University of Pennsylvania
- Judith Browne and Eddie Hailes, Advancement Project (former counsel to the US Commission on Civil Rights)
- Robert Rubin, Lawyers Committee for Civil Rights – San Francisco Office
- Former Senator Tom Daschle (currently a fellow at The Center for American Progress)

He also recommended we **review the following documents and reports**:

- The 2004 litigation brought by the Advancement Project and SEIU under the 1981 New Jersey Consent Decree
- Forthcoming LCCR state-by-state report on violations of the Voting Rights Act
- Forthcoming Lawyers Committee report on violations of the Voting Rights Act (February 21)

Types of Fraud and Intimidation Occurring

Mr. Henderson said he believed that the kinds of **voter intimidation and suppression tactics employed over the last five years are ones that have evolved over many years**. They are **sometimes racially based, sometimes based on partisan motives**. He **believes the following types of activity have actually occurred, and are not just a matter of anecdote and innuendo**, and rise to the level of either voter intimidation or vote suppression:

- **Flyers with intentional misinformation, such as ones claiming that if you do not have identification, you cannot vote, and providing false dates for the election**
- **Observers with cameras, which people associate with potential political retribution or even violence**
- **Intimidating police presence at the polls**
- **Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation**
- **Unequal deployment of voting equipment, such as occurred in Ohio. Also, he has seen situations in which historically Black colleges will have one voting machine while other schools will have more.**

Mr. Henderson **believes that these matters are not pursued formally because often they involve activities that current law does not reach**. For example, there is no law prohibiting a Secretary of State from being the head of a political campaign, and then deploying voting machines in an uneven manner. There is no way to pursue that. Also, **once the election is over, civil litigation becomes moot**. Finally, sometimes upon reflection **after the campaign, some of the activities are not as sinister as believed at the time.**

Mr. Henderson believes **government does not engage in a sustained investigation of these matters or pursue any kind of resolution to**

Deliberative Process Privilege

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them. LCCR has filed a FOIA request with both the Civil Rights Division and the Criminal Division of the Department of Justice to examine this issue.

Election Protection activities will be intensified for the 2006 elections, although the focus may shift somewhat given the implementation of new HAVA requirements.

Recommendations for Reform

There was tremendous concern after the 2004 election about conflicts of interest – the "Blackwell problem" – whereby a campaign chair is also in charge of the voting system. We need to get away from that.

He also **supports Senator Barak Obama's bill regarding deceptive practices**, and is opposed to the voter identification laws passing many state legislatures.

- States should adopt **election-day registration**, in order to boost turnout as well as to allow eligible voters to immediately rectify erroneous or improperly purged registration records
- **Expansion of early voting & no-excuse absentee** voting, to boost turnout and reduce the strain on election-day resources.
- **Provisional ballot reforms**:
  - Should be **counted statewide** – if cast in the wrong polling place, votes should still be counted in races for which the voter was eligible to vote (governor, etc.)
  - Provisional ballots should also **function as voter registration applications**, to increase the likelihood that voters will be properly registered in future elections
- Voter ID requirements: **states should allow voters to use signature attestation to establish their identity**
- The **Department of Justice should increase enforcement of Americans with Disabilities Act and the accessibility requirements of the Help America Vote Act**
- **Statewide registration databases should be linked to social service agency databases**
- **Prohibit chief state election officials from simultaneously participating in partisan electoral campaigns** within their states
- Create and enforce **strong penalties for deceptive or misleading voting practices**

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

Brennan Center findings on fraud

The Brennan Center's primary work on fraud is their report for the Carter Baker Commission with commissioner Spencer Overton, written in response to the Commission's ID recommendations. Brennan reviewed all existing reports and election contests related to voter fraud. They believe the contests serve as an especially good record of whether or not fraud exists, as the parties involved in contested elections have a large incentive to root out fraudulent voters. Yet despite this, the incidence of voter impersonation fraud discovered is extremely low—something on the order 1/10000th of a percentage of voters. See also the brief Brennan filed on 11th circuit in Georgia photo ID case which cites sources in Carter Baker report and argues the incidence of voter fraud too low to justify countermeasures.

Among types of fraud, they **found impersonation, or polling place fraud, is probably the least frequent type, although other types, such as absentee ballot fraud are also very infrequent. Weiser believes this is because impersonation fraud is more likely to be caught and is therefore not worth the risk. Unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice.** She **believes perhaps one half to one quarter of the time the person will be caught**. Also, there is a chance the pollworker will have personal knowledge of the person. Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well. For example, **if one votes in the name of another voter, and that**

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voter shows up at the polls, the fraud will be discovered.
Weiser believes court proceedings in election contests are especially useful. Some are very extensive, with hundreds of voters brought up by each side and litigated. In both pre-election challenges and post-election contests, **parties have devoted extraordinary resources into 'smoking out' fraudulent voters**. Justin Leavitt at Brennan scoured such proceedings for the Carter Baker report, which includes these citations. Contact him for answers to particular questions.

Countermeasures/statewide databases

Brennan has also considered what **states are doing to combat impersonation fraud besides photo ID laws**, although again, it seems to be the rarest kind of fraud, beyond statistically insignificant. In the **brief Brennan filed in the Georgia case, the Center detailed what states are already doing to effectively address fraud.** In another **on the web site includes measures that can be taken that no states have adopted yet**. Weiser adds that an effort to look at strategies states have to prevent fraud, state variations, effectiveness, ease of enforcement would be very useful.

Weiser believes the **best defense against fraud will be better voter lists**—she argues the fraud debate is actually premature because states have yet to fully implement the HAVA database requirement. This should eliminate a great deal of 'deadwood' on voter rolls and undermine the common argument that fraud is made possible by this deadwood. This was the experience for Michigan, which was able to remove 600,000 names initially, and later removed almost 1 million names from their rolls. It is fairly easy to cull deadwood from lists due to consolidation at the state level—most deadwood is due to individuals moving within the state and poor communication between jurisdictions. (Also discuss with Chris Thomas, who masterminded the Michigan database for more information and a historical perspective.)

Regarding the question of whether the effect of this maintenance on fraud in Michigan can be quantified, Weiser would caution against drawing direct lines between list problems and fraud. **Brennan has found various groups abusing the existence of list deadwood to make claims about fraudulent voting.** This is analyzed in greater detail in the Brennan Center's critique of a purge list produced by the NJ Republican party, and was illustrated by the purge list produced by the state of Florida. **When compiling such lists and doing comparisons, sound statistical methods must be utilized, and often are not.**

The NJ GOP created a list and asked NJ election officials to purge names of ineligible voters on it. Their list assumed that people appearing on the list twice had voted twice. Brennan found their assumptions shoddy and based on incorrect statistical practices, such as treating individuals with the same name and birthdays as duplicates, although this is highly unlikely according to proper statistical methods. **Simply running algorithms on voter lists creates a number of false positives, does not provide an accurate basis for purging, and should not be taken as an indicator of fraud.**

Regarding **the Florida purge list, faulty assumptions caused the list to systematically exclude Hispanics while overestimating African Americans. Matching protocols required that race fields match exactly, despite inconsistent fields across databases.**

The kinds of list comparisons that are frequently done to allege fraud are unreliable. Moreover, **even if someone is on a voter list twice, that does not mean that voter has voted twice. That, in fact, is almost never the case.**

Ultimately, **even matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate —that's simply the nature of database work. Private industry has been working on improving this for years. Now that HAVA has introduced a matching requirement, even greater skepticism is called for in judging the accuracy of list maintenance.**

Intimidation and Suppression

Brennan does not have a specific focus here, although they do come across it and have provided assistance on bills to prevent suppression and intimidation. They happen to have **an extensive paper file of intimidating fliers and related stories from before the 2004 election**. (They can supply copies after this week).

Challengers

Brennan has analyzed cases where challenger laws have been beneficial and where they have been abused. See the decision and record

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from the 1982 NJ vs. RNC case for some of the history of these laws. **Brennan is currently working on developing a model challenger law.** Weiser believes **challenge laws with no requirement that the challenger have any specific basis for the challenge or showing of ineligibility are an invitation to blanket harassing challenges and have a range of pitfalls.** State laws are vague and broad and often involve arcane processes such as where voters are required to meet a challenge within 5 days. There **are incentives for political abuse, potential for delaying votes and disrupting the polls, and they are not necessarily directed toward the best result.** Furthermore, **when a voter receives a mailer alleging vote fraud with no basis, even the mere fact of a challenge can be chilling.** A voter does not want to have to go through a quasi-court proceeding in order to vote.

Brennan **recommends challenge processes that get results before election, minimize the burden for voters, and are restricted at polling place to challenges by poll workers and election officials, not voters.** They believe limitless challenges can lead to pandemonium—that once the floodgates are open they won't stop.

Recommendations

- **Intimidation— Weiser believes Sen. Barak Obama's bill is a good one for combating voter harassment and deceptive practices. Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.**
- **Fraud— Current state and federal codes seem sufficient for prosecuting fraud. Weiser doesn't consider them under-enforced, and sees no need for additional laws.**
- **Voter lists— New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters.**
- **Challengers—Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse.**

Also useful would be recommendations for prosecutors investigating fraudulent activity, How should they approach these cases? How should they approach cases of large scale fraud/intimidation? While there is sufficient legislative cover to get at any election fraud activity, **questions remain about what proper approaches and enforcement strategies should be.**

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Fraud in Indiana

Indiana has never charged or prosecuted anyone for polling place fraud. Nor has any empirical evidence of *voter impersonation* fraud or dead voter fraud been presented. In addition, there is **no record of any credible complaint about *voter impersonation* fraud in Indiana.** State legislators signed an affidavit that said there had never been impostor voting in Indiana. At the same time, the Indiana Supreme Court has not necessarily required evidence of voter fraud before *approving* legislative attempts to address fraud.

The **state attorney general has conceded that there is no concrete fraud in Indiana, but has instead referred to instances of fraud in other states.** Groth filed a detailed motion to strike evidence such as John Fund's book relating to other states, arguing that none of that evidence was presented to the legislature and that it should have been in the form of sworn affidavits, so that it would have some indicia of verifiability.

Photo ID law

By imposing restrictive ID measures, Groth contends you will discourage 1,000 times more legitimate voters than illegitimate voters you might protect against. He feels the implementation of a REAL ID requirement is an inadequate justification for the law, as it will not affect the upcoming 2006 election where thousands of registered voters will be left without proper ID. In addition, he questions whether REAL ID will be

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implemented as planned in 2008 considering the backlash against the law so far. **He also feels ID laws are unconstitutional because of inconsistent application.**

Statewide database as remedy

Groth believes **many problems will be addressed by the statewide database required under HAVA.** To the extent that the rolls in Indiana are bloated, it is because state officials have not complied with NVRA list maintenance requirements. Thus, it is somewhat disingenuous for them to use bloated voter rolls as a reason for imposing additional measures such as the photo ID law. Furthermore, the state has ceded to the counties the obligation to do maintenance programs, which results in a hit or miss process (see discussion in reply brief, p 26 through p. 28).

Absentee fraud

To the extent that there has been an incidence of fraud, these have all been confined to absentee balloting. Most notably the East Chicago mayoral election case where courts found absentee voting fraud had occurred. See: Pabey vs. Pastrick 816 NE 2nd 1138 Decision by the Indiana Supreme Court in 2004.

Intimidation and vote suppression

Groth is only aware of anecdotal evidence supporting intimidation and suppression activities. While he considers the sources of this evidence credible, it is still decidedly anecdotal. Instances he is aware of include **police cars parked in front of African American polling places**. However, **most incidents of suppression which are discussed occurred well in the past. Trevor Davidson claims a fairly large scale intimidation program in Louisville.**

Challengers

There was **widespread information that the state Republican Party had planned a large scale challenger operation in Democratic precincts for 2004, but abandoned the plan at the last minute.**

Last year the **legislature made a crucial change to election laws which will allow partisan challengers to be physically inside the polling area next to members of the precinct board. Previously, challengers at the polling place have been restricted to the 'chute,'** which provides a buffer zone between voting and people engaging in political activity. That change will make **it much easier to challenge voters**. As there is no recorded legislative history in Indiana, it is difficult to determine the justification behind this change. As both chambers and the governorship are under single-party control, the challenger statute was passed under the radar screen.

Photo ID and Challengers

Observers are especially concerned **about how this change will work in conjunction with the photo ID provision**. Under the law, there are at least two reasons why a member of the precinct board or a challenger can raise object to an ID: whether a presented ID conforms to ID standards, and whether the photo on an ID is actually a picture of the voter presenting it. The law does not require bipartisan agreement that a challenge is valid. **All it takes is one challenge to raise a challenge to that voter, and that will lead to the voter voting by provisional ballot.**

Provisional ballot voting means that voter must make a second trip to the election board (located at the county seat) within 13 days to produce the conforming ID or to swear out an affidavit that they are who they claim to be. This may pose a considerable burden to voters. For example, Indianapolis and Marion County are coterminous—anyone challenged under the law will be required to make second trip to seat of government in downtown Indianapolis. If the voter in question did not have a driver's license in the first place, they will likely need to arrange transportation. Furthermore, in most cases the election result will already be known.

The law **is vague about acceptable cause for challenging a voter's ID**. Some requirements for valid photo ID include being issued by state or fed gov't, w/ expiration date, and the names must conform exactly. The **League of Women Voters is concerned about voters with hyphenated names, as the Indiana DMV fails to put hyphens on driver's licenses potentially leading to a basis for challenge.** Misspelling of names would also be a problem. The other primary mode of challenge is saying the photo doesn't look like the voter, which could be happen in a range of instances. Essentially, the law gives unbridled discretion to challengers to decide what conforms and what does not.

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Furthermore, there is **no way to determine whether a challenge is in good or bad faith**, and ***there is* little penalty for making a bad faith challenge**. The **fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party challenger leads to the concern that challenge process will be abused**. The **voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.**
Groth suggests the political situation in Indianapolis also presents a temptation to abuse this process, as electoral margins are growing increasingly close due to shifting political calculus.

Other cases

Groth's other election law work has included a redistricting dispute, a dispute over ballot format, NVRA issues, and a case related to improper list purging, but nothing else related to fraud or intimidation. The purging case involved the election board attempting to refine its voter list by sending registration postcards to everyone on the list. When postcards didn't come back they wanted to purge those voters. Groth blames this error more on incompetence, than malevolence, however, as the county board is bipartisan. (The Indiana Election Commission and the Indiana election division are both bipartisan, but the 92 county election boards which will be administering photo id are controlled by one political party or the other—they are always an odd number, with the partisan majority determined by who controls the clerk of circuit court office.)

Recommendations

- **Supports nonpartisan administration of elections.**
- Indiana specific recommendations including a longer voting day, time off for workers to vote, and an extended registration period.
- He views the central problem of the Indiana photo ID law is that the list of acceptable forms of ID is too narrow and provides no fallback to voters without **ID**. At the least, he believes the state **needs to expand the list so that most people will have at least one**. If not, **they should be allowed to swear an affidavit regarding their identity, under penalty of perjury/felony prosecution. This would provide sufficient deterrence for anyone considering impersonation fraud. He believes absentee ballot fraud should be addressed by requiring those voters to produce ID as well, as under HAVA.**
- His personal preference would be **signature comparison**. Indiana has never encountered an instance of someone trying to forge a name in the poll book, and while this leaves open the prospect of dead voters, that danger will be substantially diminished by the statewide database. But if we are going to have some form of ID, he believes we should apply it to everyone and avoid disenfranchisement, provided they swear an affidavit.

Lori Minnite, Barnard College, Columbia University

Securing the Vote

In Securing the Vote, Ms. Minnite found very **little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years.** She stated that **for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud.**
Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that it is **important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that effects what the remedy should be. Often, voters are punished for fraud committed by voting officials.**

Other Fraud Issues

Ms. Minnite found **no evidence that NVRA was leading to more voter fraud**. She **supports non-partisan election administration**. Ms.

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Minnite has **found evidence that there is absentee ballot fraud**. She **can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.**

Recommendations

- **Assure there are accurate voter records and centralize voter databases**
- **Reduce partisanship in electoral administration.**

Neil Bradley, ACLU Voting Rights Project

Voter Impersonation Cases (issue the Georgia ID litigation revolves around)

Mr. Bradley asserted that Georgia **Secretary of State Cox** stated in the case at issue: that she clearly would know if there had been any instances of voter impersonation at the polls; that she works very closely with the county and local officials and she **would have heard about voter impersonation** from them if she did not learn about it directly; and that she said that she had not heard of "any incident"---which includes acts that did not rise to the level of an official investigation or charges.

Mr. Bradley said that it is also **possible to establish if someone has impersonated another voter at the polls. Officials must check off the type of voter identification the voter used. Voters without ID may vote by affidavit ballot. One could conduct a survey of those voters to see if they in fact voted or not.**

The type of **voter fraud that involves impersonating someone else is very unlikely to occur.** If someone wants to steal an election, it is **much more effective to do so using absentee ballots.** In order to change an election outcome, one must steal many votes. Therefore, one would **have to have lots of people involved in the enterprise, meaning there would be many people who know you committed a felony.** It's simply not an efficient way to steal an election.

Mr. Bradley is not **aware of any instance of voter impersonation anywhere in the country except in local races. He does not believe it occurs in statewide elections.**

Voter fraud and intimidation in Georgia

Georgia's **process for preventing ineligible ex-felons from casting ballots has been improved** since the Secretary of State now has the power to create the felon purge list. When this was the responsibility of the counties, there were many difficulties in purging felons because local officials did not want to have to call someone and ask if he or she was a criminal.

The **State Board of Elections has a docket of irregularity complaints. The most common involve an ineligible person mailing in absentee ballots on behalf of another voter.**

In general, Mr. Bradley **does not think voter fraud and intimidation is a huge problem in Georgia** and that people have confidence in the vote. The biggest problems are the new ID law; misinformation put out by elections officials; and **advertisements that remind people that vote fraud is a felony, which are really meant to be intimidating. Most fraud that does occur involves an insider, and that's where you find the most prosecutions. Any large scale fraud involves someone who knows the system or is in the courthouse.**

Prosecution of Fraud and Intimidation

Mr. Bradley stated that fraud **and intimidation are hard to prosecute.** However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that **with respect to US Attorneys, the message to them from the top is that this is not a priority.** The **Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation**

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and fraud. But, the Georgia ACLU has not contacted Craig Donsanto in DC with information of voter fraud.
Mr. Bradley believes that **voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive.**

Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers, and much of her budget is put into that work. **Increased and improved training of poll workers**, including training on how to respectfully treat voters, is the most important reform that could be made. Mr. Bradley also suggested that **increased election monitoring** would be helpful.

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Ms. Perales **did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences** and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

- **Santa Anna County, New Mexico-2004-intimidated voters by video taping them.**
- **San Antonio-One African American voter subjected to a racial slur.**
- **San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.**
- **San Antonio-Closed polls while voters were still in line.**
- **San Antonio-2003-only left open early voting polls in predominantly white districts.**
- **San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.**

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to Section **203 compliance (bilingual voting assistance)**, and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales **believes this in itself is a form of voter intimidation.**
Ms. Perales said it is **hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent.** There have continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.
When there is not enough language assistance at the polls, **forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.**
Ms. Perales is **not aware of deceptive practices or dirty tricks targeted at the Latino community.**
There have been **no allegations of illegal noncitizen voting in Texas.** Indeed, the **sponsor of a bill that would require proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill.** The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only **aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote.** Ms. Perales believes **proof of citizenship requirements discriminate against Latinos.**

Recommendations

Ms. Perales feels the **laws are adequate**, but that **her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government.** However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the **choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are. This may be because the administration is so ideological and partisan.**

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