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15 numbers, they don't look good to us. We go in
16 and look at them, and what we find is one
17 candidate pounded the pavement with the absentee
18 ballots maybe didn't commit fraud literally. In
19 Georgia, the candidate did fill out the top part
20 of the form. You can check the box and say I
21 don't need excuse, and you can sign it.

22 MR. DONSANTO: Voter has to sign it.

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1 You can pre print them.

2 MR. HEARNE: You can pre print it
3 with the vote on it.

4 MR. DONSANTO: No, the application.
5 That was a big thing in Florida. Both parties
6 pre printed applications for absentee ballots
7 and mailed them.

8 MS. ROGERS: And one of the biggest
9 problems we see is the fraud is not occurring at
10 the federal candidates. DOJ is not as
11 interested in this.

12 MS. WANG: Well, actually, that is
13 not true.

14 MR. DONSANTO: That's not necessarily
15 the case.

16 MS. ROGERS: I'm not saying you are
17 not interesting.

18 MR. DONSANTO: If it happens in a
19 non-federal election, we don't have the statutes
20 to do anything about it.

21 MR. GREENBAUM: It doesn't have to be
22 a federal candidate.

1 MS. WANG: From the news articles,
2 this is the one type of fraud that is more often
3 investigated, and there are indictments, and
4 prosecutions, and convictions, and guilty pleas,
5 and stuff.

6 So you actually can take a look at
7 actual cases to see how it's being done, and try
8 and come up with better measures to prevent it
9 and catch it. You have Oregon, and they claim
10 that they have no problem. That is disputed on
11 a lot of levels but the one thing we can't know
12 about Oregon is the extent of which the coercion
13 problem happens.

14 MR. ROKITA: You can't know?

15 MS. WANG: Right.

16 MR. DONSANTO: Public voting, every
17 ballot, public vote.

18 MS. ROGERS: Unfortunately, it takes
19 so long to bring these cases to a resolution, we
20 find, time after time, by the time the case goes
21 to an actual court, a lot of these folks no
22 longer tell the same story. A year or two goes

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1 by, and those people who were coerced, they are
2 just not saying that anymore. They change their
3 tune, and then again, many of them are very old
4 and very elderly, and not a hundred percent have
5 all their faculties to begin with, so two years
6 makes a huge difference.

7 I think we see a lot of cases closed
8 simply because you are unable to have the data
9 that you need to follow through.

10 MR. ROKITA: Maybe the EAC should
11 study the methodology of for cause absentee
12 voting as a way to cure it.

13 MS. WANG: That is where you wind up
14 against the politics of it, which seems like a
15 train that's left the station.

16 MR. HEARNE: Your point, if I
17 understand, was in looking at the data where you
18 did find broader, documented evidence of fraud
19 was in the concept of absentee ballots, is that
20 correct?

21 MS. WANG: Yes.

22 MR. HEARNE: So the sense would be is
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1 there a way to study it. And the question for
2 us now is, how do we study that phenomenon.

3 MS. WANG: Given that it's something
4 that is spreading rapidly, are there measures we
5 can come up with to make the ballots more
6 secure. The coercion issue is difficult to get
7 at, but in terms of the forgeries and those
8 types of things, and even actually with the
9 coercion, are there measures that can be taken
10 to make absentee ballots and mail-in ballots
11 more secure?

12 MR. BAUER: One thing I want to go
13 to, what we were just discussing, some of the
14 recommendations.

15 MS. WANG: Bob, you raised your
16 point.

17 MR. BAUER: One of the interesting
18 proposals or suggestions made by the
19 interviewees, his name is Weisner.

20 MS. WANG: Weisner. Wendy Weisner.

21 MR. BAUER: We though that
22 establishing any degree of concreteness on voter
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1 fraud would be difficult to establish. We
2 suggest that an effort be made to simply -- I am
3 not quite sure exactly what the methodology name
4 is.

5 MS. WANG: Risk analysis.

6 MR. BAUER: Risk analysis, and
7 determine based on the assumption that people
8 act rationally in this area, what we would most
9 expect to see, what kinds of fraud is most
10 potentially likely, and then just rank it. You
11 are not making a judgement there at that point
12 that's, in fact, what is happening. It is just
13 a very interesting way of trying to sort of
14 order your thoughts about what you might be
15 looking for, and it can be marked up with other
16 numbers to bolster their significance.

17 MR. GINSBERG: How could you figure
18 out how you do the risk analysis.

19 MR. BAUER: I don't know, and I don't
20 have any expertise.

21 MS. WANG: I started to get books on
22 risk analysis but I didn't want to read about
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1 the diseases and environmental calamities.

2 MR. BAUER: Just from a standpoint of
3 debate, what we had in perspective, we find
4 using it to help ask questions was something
5 concrete you can do. I don't think it's a bad
6 thing to do. It is affirmatively a good thing.

7 MR. WEINBERG: I thought that was
8 interesting, although I didn't understand what
9 it said.

10 MR. PEREZ: You're a county clerk,
11 and you are in the ballot. You have got
12 something to gain right away. If you're not on
13 the ballot and you don't work for somebody on
14 the ballot, where is the risk analysis involved,
15 the direct relationship?

16 MS. WANG: Let me try to explain it
17 from the little I understand about it. You
18 take, for example, in the environmental field,
19 if a corporation is trying to decide what
20 measures to takes, how much is that worth, how
21 likely is it that some bad outcome is going to
22 happen versus the cost of preventing it. So you

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1 would sort of do a cost benefit analysis of each
2 type of voter fraud that we have listed. So
3 what's the risk of filling out a fraudulent
4 absentee ballot versus the risk of getting
5 caught, or the penalty involved, the cost
6 involved of doing so.

7 And by going through that method,

8 determining what are the types of fraud that are
9 most likely to be committed, because as Bob
10 says, people are presumed to be rational actors
11 and to engage in those types of activities that
12 they think they can get away it.

13 MR. PEREZ: You're talking about the
14 actual voter. I'm talking about the actual
15 groups trying to get something passed.

16 MR. GREENBAUM: It could be either.
17 You could do it at the level of the voter or the
18 level of an organization.

19 MR. PEREZ: The voter is going to be
20 intimidated, but the organization has an agenda.

21 MR. GREENBAUM: But I think some
22 people here would say that a portion of the

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1 fraud is being committed by individual voters,
2 without necessarily being part of a greater
3 agenda. I think you would have to analyze it
4 both ways.

5 MR. SEREBROV: We found very little
6 though.

7 MS. WANG: There is only very little
8 who found there was anything conspiratorial
9 going on, one which was actually theories that
10 indicated that there was anything conspiratorial
11 happening.

12 MR. BAUER: A cross the board?

13 MS. WANG: Right. The ACVR report
14 allude to some coordination of voter
15 registration fraud among some of the voter

16 registration groups.

17 MR. SEREBROV: What was stated was
18 groups versus individual. That's what I was
19 saying, was we found very little individual
20 activity as opposed to organizational activity.

21 MR. BAUER: I'm sorry. Just so we
22 can define these terms, and I apologize, very 134

1 little individual voters committing fraud.

2 MR. BAUER: Just because they wanted
3 to.

4 MS. WANG: Well, actually, in the
5 articles, you do find individuals on the
6 absentee vote just submitting an absentee ballot
7 in the name of somebody else or in the name of
8 somebody who died.

9 MR. GREENBAUM: Like some of the
10 stuff in Texas.

11 MR. DONSANTO: Somebody committing
12 voter fraud is not going to make as big a splash
13 in the newspaper as some organization.

14 MR. HEARNE: Some organization that
15 is paying somebody to do something that they
16 know is fraudulent, then that's different than
17 the individual engaging in that activity.

18 So if somebody is paying for fraudulently
19 submitted voter registration forms and they
20 understand those are fraudulent, that would be
21 then that type of activity.

22 MR. DONSANTO: Paying for piece work 135

1 and getting fraudulent documents, but that is
2 not the intent.

3 MR. GREENBAUM: I would say another
4 thing you want to measure in terms of doing a
5 risk analysis is the conditions of the elections
6 in which it tends to happen.

7 MS. WANG: Right.

8 MR. GREENBAUM: Like I think a lot of
9 people believe that voter fraud, no matter who
10 it's committed by, tends to happen most often
11 when you have very competitive elections.
12 Because people, the winner -- the fraud may
13 actually make a difference in terms of who wins
14 or who loses the election.

15 MR. ROKITA: I'd like to follow-up on
16 that to say that this risk analysis, I think,
17 might fit very well in a corporation that was
18 trying to figure out what jobs they were having
19 people do, to see if OSHA would be violated or
20 something like that. When you pour on top of
21 that the serum like you're saying of any
22 election that has its emotions in candidates'

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1 political parties tied to it, I think that risk
2 analysis is less useful.

3 MS. WANG: We can't presume people
4 are rational.

5 MR. HEARNE: With elections.

6 MR. ROKITA: And, too, you want to be
7 careful of the impression you leave. If you're

8 doing a risk analysis, you are weighing, and
9 that's something that might be acceptable.

10 MS. WANG: No, not acceptable, you
11 look for ways to address it. It's a more
12 practical way of getting at solutions rather
13 than trying to gauge with a number.

14 MR. ROKITA: You said a ranking.

15 MS. WANG: Not more important,
16 easier.

17 MR. SEREBROV: Todd, can't we presume
18 that they act rationally as to the means, not
19 necessarily the motive?

20 MS. WANG: I mean, people don't want
21 to go to jail.

22 MR. BAUER: I think the public

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1 presents itself with amalgamation, but when
2 people try to win elections, targeting, I think
3 it's all about going to great length. I think,
4 in close analysis, I don't think at the end of
5 the day you're quite right, it has the same
6 application here as it might in other field but
7 I think it might be illuminated.

8 MS. WANG: We could get someone who
9 is actually an expert in risk analysis here
10 rather than someone who is a political scientist
11 who focuses on elections. That would give an
12 even better neutrality color to it.

13 MR. PEREZ: If you're trying to find
14 out a point where you want to review who is
15 going to be doing something, the only instances

16 I have with this has been in early voting where
17 they used the mail ballot in a particular
18 instance, where trying to get a particular
19 candidate or pass something that is going to
20 avoid money. When they do the particular issue,
21 some company's going to come into town and gain
22 a big contract. That's when I have seen the

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1 mail ballot application trying to be defrauded
2 because they are trying to pass a particular
3 issue that was very obvious to us before we went
4 into it. What he did was tried to make sure we
5 did not let them do anything illegal. They
6 tried to put people in the polls. We ran them
7 out. They tried to put applications in. We
8 looked at the applications, the same
9 handwriting, anything that we could gauge.
10 Luckily, we have a lot better laws in terms of
11 what applications we have to take. We have gone
12 through with two years legislation to improve
13 the mail application process, and we have almost
14 got it down.

15 MS. ROGERS: It still can change.

16 MR. BAUER: Do you think you see more
17 fraud for initiative elections?

18 MS. WANG: You're talking about
19 money.

20 MR. PEREZ: It's like a business, who
21 is going to get money and how much money are
22 they going to get. Nobody can come to me and

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1 say, hey, Jerry, are you going to throw that
2 election. I'm not going to get any money, why
3 should I care who gets elected.

4 MS. WANG: The conditions under which
5 somebody is trying to get elected. It's also
6 the smaller elections.

7 MR. PEREZ: Where you can throw it
8 much easier.

9 MR. GINSBERG: But you can have
10 people paying people to register where the
11 stakes are higher, and therefore, have an higher
12 incidence of false registrations.

13 MR. PEREZ: The risk analysis is it
14 costs too much money, whereas if you have a
15 small election, you can spend \$10,000 and throw
16 the election, whereas on a national election, it
17 would cost.

18 MS. ROGERS: The people who are doing
19 this to be paid are simply taking a phone book
20 or making up names and making up -- used to be
21 able to collect social security numbers, making
22 up social security numbers. They didn't do it

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1 for the purpose of trying to defraud the
2 election. They did it for the purpose of
3 putting money in their pocket.

4 MR. GINSBERG: Isn't that also the
5 incubator where you get false voters coming in?

6 MR. DONSANTO: No, no. I haven't
7 seen it.

8 MR. HEARNE: One situation we had a
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9 tandem effort where there was a petition for a
10 recall. They were trying a recall petition but
11 to do that you had to be a registered voter.
12 They were forcing the recall petition as well as
13 turning in the registration. This was, in
14 effect, using that same process, certainly
15 affecting the election process through that
16 petition effort.

17 MS. ROGERS: The ones that we saw
18 mailed out something and it came back
19 undeliverable, these people did not exist.

20 MS. WANG: In the ones that we
21 interviewed, almost nobody that has phoney
22 registration forms led to illegal votes. It's

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1 not to say it's not a problem, but messing up
2 the voting rolls creates a problem of
3 confidence.

4 MR. PEREZ: That's hard to do now
5 because you have to have a drivers license,
6 social security number, a lot of data. We watch
7 three criteria. If it's not good, they kick it
8 out. That person is in limbo until we can
9 verify something.

10 MS. WANG: Exactly.

11 MR. DONSANTO: We have had several
12 investigations involving these sort of bogus
13 registrations generated through the bounty
14 hunting system of paying people. In most of
15 these cases, complainants were election
16 registrars. The reason it came to our attention

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17 was because the people did not get on the rolls.

18 It's still a crime.

19 MS. WANG: Right.

20 MR. DONSANTO: But the system worked.

21 MS. WANG: The biggest problem is it

22 drives administrators crazy.

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1 MR. HEARNE: Well, if they go to the
2 phone books, they are taking sometimes names of
3 legitimate registered voters.

4 MS. WANG: with the statewide
5 database, now it's going to get knocked out.

6 MS. ROGERS: They were making up the
7 social security number, but a lot of them took
8 phone books and they started saying, Apartment
9 1, Apartment 2.

10 MR. DONSANTO: Turn them in, get the
11 two dollars.

12 MR. BAUER: It answers an interesting
13 question. 150 years ago, it wasn't a question.
14 High intensity, high party electoral process,
15 intense, passionate people would march through
16 the street with passion, widespread cheating,
17 you name it, there was a belief in the outcome.
18 Now, we're in a high stake press, low, weak
19 party process. Voter applicant is such that he
20 really actually wouldn't expect an enormous
21 amount of voter fraud because benefits are not
22 seen.

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1 MS. WANG: If you read Laura Minete's
2 report, she comes to that conclusion, that the
3 structural conditions that led to such fraud in
4 earlier times in our history are no longer
5 present, especially weakening of the party
6 system that so organized these efforts. It is
7 pretty interesting.

8 should we try to move on to the next
9 steps?

10 MS. SIMS: A lot of the public record
11 doesn't have a lot of information on what they
12 meant by voting fraud. Secretary Rokita had
13 asked us to take a look at the legislative
14 history on that.

15 LAIZA: I have the conference reports
16 and I highlight where they use the word fraud.
17 You're welcome to take a look at it. What I can
18 do is e-mail them to you. I can make copies
19 right now or e-mail them to you.

20 MR. HEARNE: You don't need to
21 highlight, just e-mail it.

22 MR. SEREBROV: Actually, can you 144

1 e-mail that to everyone?

2 MS. SIMS: You will see fraud crops
3 up in a lot of other sections, and it's equally
4 unlikely just because they use it in terms of
5 the NIS support to help us prevent fraud, the
6 report that we have already done on the uniform
7 overseas voters issues best practices to avoid
8 fraud there, that sort of thing pops up in a lot

9 of different places.

10 MR. DON SANTO: We have never seen a
11 problem having to do with anything having to do
12 with fraud of any kind. It is not structurally
13 set up that way, put that low on your list. All
14 we have is a criminal statute that deals with
15 fraud.

16 MS. WANG: Its been such a
17 deterrence. These are just my own thoughts
18 about things that I'd like to see done, that we
19 build upon the research that we've done. As I
20 mentioned, and I have mentioned a lot of these
21 already, I would greatly broaden the scope of
22 the type of interviews that we've done to the

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1 local people, and also to include the federal
2 district election officers and district
3 attorneys like we have discussed a lot, the
4 follow-up on the nexus research to see if there
5 had been some further resolution, follow-up on
6 the reports and books written to see, again,
7 whatever happened to those instances that were
8 cited.

9 I also wanted to talk about both the
10 election protection materials and also the 1800
11 my vote analysis. I don't know how many of you
12 are familiar with this but they took, in 2004,
13 200,000 phone calls and they have created a
14 database in which they have separated out the
15 types of complaints, whether it be a
16 registration problem, intimidation, improperly

17 asking for ID. They have them all systematized
18 from all across the country. They also have
19 over 50,000 audio phone messages that were left
20 that they have also culled through and assigned
21 categories for what type of complaint or
22 allegation was made. And I had thought that

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1 looking at that data further might be useful.
2 And I have spoken to the people who ran that
3 project, who are willing to share that with me.
4 I also would love to be able to get more and
5 analyze more data and information from the
6 Department of Justice, such as information from
7 the database what's called the interactive case
8 management system that they have on complaints
9 received and how they were dealt with, which I
10 referred to earlier they did not feel
11 comfortable sharing with us. The election data
12 which we also were not able to get, and also
13 reports done by the district election officers
14 who are in every jurisdiction.

15 I also think it would be great to
16 attend the next session of the ballot accessing
17 symposium.

18 MR. DONSANTO: No, that is not
19 possible. That is classified. I didn't set up
20 the rules for this. Believe me, there is no
21 chance.

22 MS. WANG: I think it would be useful

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1 to do a complete analysis of the federal
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2 observer errors from 2002, 2004 and 2006.

3 MR. GREENBAUM: Let me give you a
4 little warning about that. Assuming that you
5 have got them.

6 MS. WANG: That were millions of
7 them, I know, but there might be some way to do
8 a sampling or something.

9 MR. GREENBAUM: You would have to
10 have -- I mean, we did -- for our report on the
11 Voting Rights Act, we did have people go through
12 the ones that we had, and it was a lot of people
13 and a few reports, a few different elections,
14 let's put it that way.

15 MS. WANG: I know. And also, again,
16 as I mentioned before, I think it's important
17 that we have an academic institution or
18 individual that focuses on statistical methods
19 for political science research. And I certainly
20 know a bunch of people like that, and would be
21 very interested in working with someone like
22 that in the second phase.

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1 Those are my suggestions.

2 MR. SEREBROV: Yes. And I had three
3 suggestions. I think two may have gotten up
4 there. One was a survey of state laws.

5 MS. SIMS: I've got that.

6 MR. SEREBROV: One was a survey of
7 district court cases, which I think you may have
8 gotten, survey of district court cases not in
9 specific states. And then the other thing is

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10 looking at local newspapers in various states
11 and running searches on election issues. I
12 think right now what we need to do is bear down
13 on the local level. Sometimes those are missed
14 in the nexus search. I think we need to plug
15 the holes.

16 MR. HEARNE: One thing that was
17 mentioned here was working with the database to
18 compare, I think it was referenced in the dead
19 voters, just doing a statistical match. Being
20 able to run the voter role versus the dead,
21 divorces, those that did cast ballots,
22 essentially, three data fields, and see where

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1 you get an overlap.

2 MS. WANG: That is part of the second
3 to the last page.

4 MS. SIMS: So we're looking -- I know
5 we covered some of that over at the FEC, but
6 looking at list maintenance procedures.

7 MR. HEARNE: I mean, you hear the
8 allegation and there's been reports in the
9 Detroit News where they went through and did
10 this process where they marked and found a bunch
11 of votes in the name of those who were dead, and
12 they found the people.

13 MS. ROGERS: That's not going to work
14 unless you actually go back to wherever the
15 voter filled it out because the election
16 official may have actually tagged that dead
17 voter by mistake, instead of the other voter,

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18 even though the dead voter didn't show up.
19 You have to go to the documentation at the
20 polling place to determine whether they gave
21 credit to the right or wrong voter. There is a
22 huge opportunity for error.

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1 MR. HEARNE: But if you did that and
2 said, let's take the list of everyone who is a
3 registered voter in whatever area we're looking,
4 whatever state, let's say Texas, then I take
5 that and run it against the social security
6 death list, and get those.

7 MR. PEREZ: Following along, it might
8 be easier, NVRA requires us to put it in
9 suspense because we have to keep them for four
10 years. People can go through and pick out those
11 people and then commit voter fraud based on the
12 fact that those people aren't there any more.
13 That data can be quantitatively checked
14 throughout the state. You can say how many
15 suspense voters did you have in the last
16 election.

17 MR. HEARNE: Then you print that out.

18 MR. PEREZ: But you have such a large
19 number. How many of them were really updating
20 their record and how many of them were not.
21 That would be harder to prove. That's a big
22 hole that we've got.

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1 MS. WANG: I would want to talk to a

2 political scientist about that. They can figure
3 out ways of doing it, margins of error.

4 MS. ROGERS: I would feel comfortable
5 doing that after this year. We're implementing
6 poll books instead of a manual credit. So the
7 person who actually voted will get the credit
8 for voting. It won't be something going through
9 slips of paper, trying to do that manually for
10 four million voters, but until everyone had an
11 automated process of that sort --

12 MS. WANG: Well, none of that is
13 going to happen any time soon.

14 MR. GREENBAUM: What percentage come
15 out to the polls?

16 MS. ROGERS: In the presidential
17 election, you get a large number of inactive
18 voters.

19 MR. PEREZ: They become inactive, yet
20 they show up to vote, so it would be hard to
21 tell which ones were not legitimate voters.

22 MR. HEARNE: You can run that against
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1 the social security death list.

2 MR. PEREZ: Well, the state does that
3 automatically.

4 MS. SIMS: I know Kentucky was one of
5 the first big states that did that statewide,
6 and they did have one instance that the mother
7 of a state legislator was listed as dead and she
8 wasn't.

9 MR. HEARNE: I assume you would have

10 some errors.

11 MS. SIMS: It gives you something to
12 start with, and that's subject to confirmation,
13 helps you target.

14 MS. ROGERS: I think you might get
15 better data if you match data state to state,
16 try to determine who the double voting and dead
17 voters are.

18 MS. WANG: I'm sorry. We have a side
19 bar going on. Anyway, I'm sorry about that.
20 So those are our suggestions for next steps that
21 the second phase could undertake.

22 Anything else that we can think of? 153

1 MR. GREENBAUM: I am still worried
2 about -- one of our big areas of concern is
3 deceptive practices. And I am struggling with
4 how to measure that, how to define it. It's not
5 something that you're going to find in the cases
6 so far, for various reasons.

7 MS. WANG: You do find it in the
8 news.

9 MR. GREENBAUM: You do find it in the
10 news.

11 MR. DON SANTO: There is also a range
12 of different types. These things range from
13 relatively innocuous communications to ones that
14 are a terribly pernicious.

15 MR. GREENBAUM: Kind of how you sort
16 that. I don't know if you have any ideas.

17 MR. DON SANTO: A series of letters

18 that are circulated saying something stupid like
19 Republican are not allowed to vote in this
20 election, which is idiotic. Another on the
21 other end would be something that suggests to
22 people that the polling places in one fact when,
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1 in fact, it is another, or Republicans vote on
2 one day and Democrats vote on another.

3 MR. GREENBAUM: You saw it all but
4 how do you measure that?

5 MR. DONSANTO: In terms of their
6 damage.

7 MS. WANG: Although that is the kind
8 of things that organizations could provide more
9 eyes and ears on. Well, actually there you have
10 real evidence. You have phone calls.

11 MR. GREENBAUM: I brought some of the
12 fliers with me, if anyone wants to look at it.

13 MR. DONSANTO: We have some on board
14 of elections stationary. Somebody got a hold of
15 board of elections stationary.

16 MR. GREENBAUM: Unfortunately.

17 MS. SIMS: We have got the idea of
18 looking at some of the phone calls because we
19 have phone logs here that we keep for calls
20 related to election.

21 MR. GREENBAUM: Can I get a stapler?

22 MS. SIMS: I don't know if we have
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1 access to groups' outside phone logs. I know we
2 have had problems with that before, phone logs
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3 for other groups.

4 MS. WANG: Well, you guys would share
5 your stuff with us, right?

6 MR. GREENBAUM: Yes, except for the
7 identifying information of the individual who
8 called in.

9 MS. SIMS: So we could at least get
10 an indication.

11 MR. GREENBAUM: That stuff is
12 available. I can give you the website.
13 The one that I think that I will say is that we
14 will do the -- the quality of the data will be
15 better in the future than it was in 2004.

16 MS. WANG: Deceptive practices is one
17 area where you have some piece of evidence. So
18 you are not necessarily having that problem,
19 allegation versus reality, whereas we actually
20 made the decision not to go through election
21 protections data during this phase because of
22 the problem of trying to weed out allegation

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1 from reality. I think deceptive practices is
2 one area where we can use the data from various
3 organizations out there monitoring the situation
4 without any controversy.

5 MR. SEREBROV: You also might be able
6 to get some from the either the secretary of the
7 states office or state board of election
8 commissions.

9 MS. SIMS: That was a question I have
10 since we have two state officials here.

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11 Should we look at the feasibility of getting
12 reports? You already put reports together, and
13 I know that's not the case in all states.

14 MR. SEREBROV: Arkansas does.

15 MS. WANG: It could be part of the
16 Election Day survey.

17 MS. SIMS: Well, that's something we
18 could explore.

19 MS. HODGKINS: There are several
20 states that have voter fraud units to
21 investigate these matters where there is at
22 least an opportunity for people to report, at

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1 least. We did keep reports on what would then
2 be transmitted to the District Attorneys Office
3 for prosecution.

4 MR. SEREBROV: Arkansas didn't have
5 that. I assume Louisiana did. Do you know
6 which states have it or which states don't?

7 MS. HODGKINS: I don't.

8 MR. SEREBROV: Is there any way you
9 can get a list?

10 MS. HODGKINS: I'm sure there is.

11 MR. DONSANTO: Do a survey.

12 MS. WANG: I also think there is
13 unity in getting a case management system for
14 the voting system.

15 MS. ROGERS: In terms of state law,
16 what does each secretary of state or state
17 election board -- how do they handle complaints
18 at the time it hits the door; who makes the

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19 determination of whether that is a valid
20 complaint or invalid complaint. I think we
21 found that varied.

22 MS. ROGERS: It varies. We have even
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1 changed our own internal policies since I became
2 director. The former director actually sort of
3 looked at some of these, and you just don't
4 always have enough information to do that.

5 MR. SEREBROV: I think you have to
6 start with the foundational question is, does
7 the secretary of state or the state board have
8 the authority to handle complaints at all.

9 MS. ROGERS: Right. And at some
10 point, I realize that in any event, the question
11 would be, what do you do when the complaint
12 comes, period.

13 MS. WANG: We asked that of all the
14 administrators that we interviewed, and we got a
15 different answer from everybody.

16 MR. WEINBERG: I actually asked the
17 state election directors that through NASAD a
18 few years back, and they distributed the
19 question to the state election directors. And
20 it turned out that hardly any state election
21 directors, at least in 2001, I think, had much
22 authority at all to do anything about anything.
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1 MS. WANG: They don't have authority.
2 What we heard is they will get complaint but

3 then they will throw them out to whoever does
4 have authority.

5 MR. WEINBERG: By the way, I don't
6 know what Department of Justice case management
7 system you're referring to, but if it's as good
8 as the one they have had for the last 40 years,
9 I wouldn't suggest you waste time on it.

10 MR. SEREBROV: John Tanner didn't say
11 a lot of anything.

12 MS. WANG: No. He didn't want to
13 share a lot.

14 MR. PEREZ: Peggy, are you sure this
15 wasn't a typo?

16 CHAIRMAN DEGREGORIO: Each state,
17 under HAVA, is required to post complaints.
18 Every polling place in the country in federal
19 elections is to post its administrative
20 complaint procedures. I look for that when I go
21 out to places all over the country. The chief
22 election authority is the one who sends it out.

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1 MS. WANG: I would be curious to know
2 the extent states are implementing
3 administrative complaint procedures under HAVA,
4 because I don't think they all are.

5 MS. ROGERS: I can tell you we have
6 it, and it's just sitting out there.

7 MS. WANG: Even if they informed
8 HAVA, I don't think people even know about it to
9 use it, and I think maybe that's something else
10 that's not my bailiwick, but something ought to

11 be looked at.

12 MR. PEREZ: State of Texas made
13 posters four feet by three feet. They go to
14 each poll, red, white, and black, and they do
15 call, because I have got several calls and they
16 ask me what happened.

17 MS. SIMS: That is another research
18 project we have somebody working on. We have a
19 Design For Democracy group to try to help
20 election officials make them simple and clear so
21 people can see this information a lot better
22 than what we do now.

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1 MS. WANG: Also, it might be wise for
2 the EAC to undertake as another project to
3 investigate or do a survey of whether the states
4 are actually implementing the administrative
5 complaint procedure and whether that can be used
6 as another tool for quantifying or deferring or
7 investigating these types of activities.

8 MR. PEREZ: You could query the law,
9 see how many complaints.

10 MS. WANG: If they were actually
11 using the complaint procedure.

12 MR. PEREZ: But that would give you
13 something to look at.

14 MS. ROGERS: It's not that we don't
15 get complaints. It's just that not too many
16 fall under administrative complaints under HAVA.
17 There is a narrow window there.

18 MS. WANG: Right, but at least you

19 would know of the complaints, whether you refer
20 them out to another entity, at least you could
21 have that much information.

22 MR. GREENBAUM: How many complaints 162

1 do you get from a major election?

2 MS. ROGERS: We get -- gosh, without
3 having the form in front of me. We could get
4 anywhere from a hundred or more questions,
5 complaints. They could range from a hundred to
6 200. What we do now, we have started this since
7 2004, we have so many people taking calls on
8 Election Day, and when you can't get through to
9 say our office or a county office, then even the
10 calls are spilling over from elections agencies
11 into other divisions of the Secretary of State's
12 office. It's like whoever they can get a call
13 to on that day. We have actually provided forms
14 to everyone that may take a call, and then we go
15 through after the fact and they have to
16 identify, does this person need a call back,
17 were they satisfied, was there anything here
18 that needs immediate action or that needs to be
19 forwarded to us immediately. And we follow up
20 on every single complaint that we can not find
21 out right then was unjustified. And some of
22 them maybe couldn't find the polling place.

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1 They moved it. I just didn't know.

2 But we take all of those complaints and then

3 follow through. It is time-consuming and it is

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4 taking up more time and energy than we have ever
5 put to it in the past.

6 MR. SEREBROV: Does anyone in your
7 office have the authority to do something about
8 complaints?

9 MS. ROGERS: Well, we probably take
10 more authority than we really have under the
11 law, if you want to get right down to it. We
12 have monitors and observers out there. They
13 contact us immediately, and we do apply some
14 immediate pressure if we think something's
15 happened. We act like we have it.

16 MR. SEREBROV: One thing we asked the
17 interviewees, I think that is the way it is in a
18 lot of states -- should there be some kind of
19 administrative judges or anyone specifically
20 trained in this area who would quickly dispose
21 of these things, what do you all think about
22 that?

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1 MS. WANG: I think they say in
2 Pennsylvania they have special courts.

3 MR. HEARNE: Election courts, it is
4 mostly Philadelphia. It may be mostly there
5 that they get used but they have special
6 election courts set up, an election court.

7 MR. SEREBROV: Are they the same
8 judges that sit as normal?

9 MR. HEARNE: Most states, they would
10 have a separate procedure for designating when
11 it gets to that level. What Philadelphia has is

12 they have this whole host of election -- they
13 call them judges. They are not a full court
14 judge, but they act in that capacity.

15 MR. SEREBROV: See, here's where the
16 system's bogged down in at least any state that
17 there are election judges. In Arkansas, you get
18 a complaint, right, someone files suit. It goes
19 to the circuit court judge. Circuit court judge
20 is elected. Now, up to three years ago, the
21 circuit court judge was elected on a ballot.

22 So the circuit court judge never rules the way

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1 just a completely neutral judge should rule. It
2 just doesn't happen, so all those cases get
3 appealed to the Supreme Court of Arkansas.
4 Supreme Court of Arkansas is elected. Then you
5 get have very strange things go every which way
6 when it comes to election cases.

7 MS. WANG: Do you have any sense
8 maybe this is one more thing to investigate
9 further, whether the Pennsylvania system works.

10 MR. HEARNE: I have the general sense
11 I guess it sort of works and it sort of doesn't,
12 and there is not a whole lot of confidence in
13 it.

14 MS. WANG: Maybe it is something to
15 look at though. I know they certainly have that
16 system. Maybe you and Craig would know better.
17 They have election courts in other countries.

18 MR. HEARNE: The biggest problem is
19 having real clear rules beforehand so that

20 whoever is making that decision, it is not
21 perceived of as a biased perception, but that
22 it's just, hi, here it is. We have a procedure.

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1 I don't care what party you are.

2 MR. WEINBERG: In most countries
3 where you have an election procedure, it is
4 centralized, and so they get immediate
5 responses. They do have courts, but on Election
6 Day, it is whoever is running the election tells
7 the people the polling stations' precinct people
8 to get it right.

9 MS. WANG: So election courts aren't
10 used on Election Day.

11 MR. WEINBERG: No, not much.

12 MS. ROGERS: Each county has to sit
13 until the election has closed out for the day
14 for the purposes of hearing something like a
15 polling place should remain open, but any
16 allegation of fraud would not necessarily be
17 there that day. It would be more to mitigate,
18 and we need to hold that polling place open.

19 MR. SEREBROV: See, in Arkansas, 99
20 percent of the problems used to occur on the day
21 of election that they were sued over.

22 And the problem is the Supreme Court of

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1 Arkansas, in its infinite wisdom, has decided
2 that election law is discretionary after the
3 election. So if a violation occurs on the day

4 of the election and you file the day after the
5 election, they don't have to apply the law.

6 MR. WEINBERG: Everybody does that,
7 that's throughout the whole country, mandatory
8 before, discretionary after. But, you know, I
9 always thought that it would be good for the
10 state supervisor of elections office to have the
11 authority to get the word down to the polling
12 place to stop doing it wrong and start doing it
13 right, I have always thought.

14 MS. WANG: They informally do that.

15 MR. WEINBERG: Hardly anybody has any
16 authority.

17 MS. ROGERS: Don't tell them that.

18 MR. WEINBERG: But I have always
19 thought that if everybody did in the polling
20 place what state law said they should do, you
21 wouldn't have any problem.

22 MR. PEREZ: Secretaries of states are
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1 going in reviewing the situation. It is up to
2 the local mission.

3 MS. ROGERS: To take them before the
4 state election board. If we find an infraction
5 at the poll worker level, then we bring it to
6 the state investigation board. It goes forward
7 for administrative hearing.

8 MR. SEREBROV: The legislature won't
9 permit them to have an attorney.

10 MS. ROGERS: we call them
11 policymakers.

12 MR. GREENBAUM: We're seeing in some
13 states consolidation for giving the head
14 secretary of state or whatever statewide
15 election official more authority, so it is
16 moving towards that direction.

17 MS. WANG: In other directions.

18 MS. SIMS: We should be able to get
19 into that, if we do a survey of state laws
20 and/or regulations.

21 MS. ROGERS: Like Georgia, there are
22 little counties that won't comply with absentee
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1 battling deadlines. We were the ones that
2 entered into the consent order with the DOJ. So
3 states should need more authority.

4 MR. PEREZ: Looking at voting fraud,
5 a type command structure from the top down would
6 wrinkle it out real fast. I'm not sure that's
7 the problem. At the lower level, it is more of
8 a dysfunctional structure thing more than voter
9 fraud. Voter fraud is going to be committed by
10 parties outside. We need a tighter command but
11 that's not going to be in you all's recommend
12 because that is not really voter fraud.

13 MR. HEARNE: Where it goes to voter
14 fraud would be for the statewide half, for the
15 agent of the state to keep that clean, current
16 and accurate, that is the biggest reason
17 somebody shows up at the poll. So if you have a
18 clean, current, accurate, statewide list.

19 MR. PEREZ: In that respect, you're

20 right, but the rest of it is still not there for
21 the state of Texas, so they cannot fix a bad
22 problem. San Antonio had problems for decades. 170

1 The secretary of state knew about them, could
2 not do anything about them.

3 MR. ROKITA: One methodology that you
4 might want to investigate is to determine across
5 the states what kind of data facilitation there
6 is from a county level to the state level.

7 MS. WANG: None.

8 MR. ROKITA: Actually, that is not
9 accurate because Indiana --

10 MS. WANG: well, not many states.
11 we had to ask a lot of people. No. Go ahead.

12 MR. ROKITA: We just passed a law
13 that is going to require county clerks, any
14 voter challenge that is made, any precincts in
15 their county, a record has to be transmitted to
16 the state level. Anything can be passed on to a
17 prosecutor. We have the statewide voter files
18 as vehicles to quickly pass that information.
19 So you may want to investigate.

20 MR. SEREBROV: well, I think what are
21 you suggesting that there should be -- I almost
22 don't want to use this word. Are you suggesting 171

1 that there should be some uniform laws?

2 MR. ROKITA: No, no, no -- whoever
3 the reporter is.

4 MR. HEARNE: I think he said it three
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5 times, for the record.

6 MR. ROKITA: Paul knows from whence I
7 come in other meetings, but I guess, again, to
8 identify methodologies, this may be where you
9 can get that kind of data, then have
10 quantitative analysis to use, something that we
11 as a state all by our lonesome figured out we
12 can do.

13 MR. CORTES: Perhaps not a uniform
14 law, but perhaps for us to look at some model
15 statutes in different states, because I don't
16 think all states are at the point where they are
17 taking the initiative to do that. And so if
18 they have some model statutes to look at, they
19 can say, oh, this might fit our situation or
20 this might not fit, and we can adjust
21 accordingly.

22 MS. WANG: We're talking about for 172

1 the purposes of data collection and doing
2 research, I am curious if anyone knows which
3 states are the ones that already are collecting
4 data, county level data, at the state level,
5 because my impression has been that they are not
6 doing that, but you're telling me something
7 else.

8 MR. GREENBAUM: Of voter fraud?

9 MS. WANG: Complaints.

10 MR. HEARNE: There's been particular
11 investigations after different elections that I
12 am aware of, but not as a practice

13 institutionally in that category.

14 MS. ROGERS: I don't go through and
15 put it all in a spread sheet, but we do maintain
16 the complaints.

17 CHAIRMAN DEGREGORIO: In the state
18 plans that were filed with us, did any detail
19 complaint procedures?

20 MS. SIMS: Reporting back to the
21 state, that I don't know.

22 MR. CORTES: I think in terms of 173

1 going back a second to the administrative
2 complaint procedure, that being a tool for this,
3 I think part of the problem that we run into is
4 that HAVA only requires that those complaints
5 procedure be for complaints and implementation
6 of Title 3 requirements. Some states have
7 though taken it a step further, and in creating
8 the administrative complaints procedure that
9 they need to under HAVA, have expanded it and
10 made that their standard complaint procedure for
11 anything that goes on dealing with any
12 complaints dealing with elections.

13 MS. SIMS: California has a combo
14 form, a form for Title 3 complaints and other
15 things that might go voting rights.

16 MS. WANG: I would love to see the
17 forms.

18 MR. CORTES: So there are some states
19 that combine that, and have one procedure, and
20 use one form that's available for all sorts of

21 complaints.

22 MS. WANG: Do they keep records? 174

1 MR. CORTES: I'm just telling you the
2 administrative complaint procedure, some states
3 have done that. Some states will only take the
4 very specific thing that HAVA asked them do and
5 have other procedures that they use for state
6 specifically complaints.

7 MS. SIMS: No more ideas, we're all
8 worn out?

9 MR. ROKITA: I have some thematic
10 thoughts, if I can share them, what we haven't
11 talked about today yet, but I did see some up in
12 some of the interviews, is the idea of some of
13 these deterrents or perceived deterrents to
14 fraud being confidence builders for the entire
15 prospect of going to the polls and having your
16 vote count but only once. I think that should
17 be a significant part or central to the work
18 certainly of the EAC and of this report.

19 Just like to give a statement against
20 interest, having a paper audit trail to machines
21 is less based on empirical data that electronic
22 machines are wrong and more based on a

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1 confidence builder.

2 MS. WANG: Although I would say that
3 we're trying to stick with empirical data and
4 not feel-good measures. So I would feel it a

5 little risky of making a recommendation purely
6 so people would feel better.

7 MR. ROKITA: Again, I am having a
8 very difficult time articulating today.

9 MS. WANG: Maybe I am not
10 understanding.

11 MR. ROKITA: Well, let me finish, and
12 that is to say that, let's take, for example,
13 the risk analysis, if you rank something like
14 that as to what's easier, what is harder to do,
15 we have it look at it from a wholistic approach
16 as well. And that is, every methodology, if it
17 is valid, that could help deter fraud needs to
18 be looked at from the goal of building
19 confidence in our elections, where that
20 confidence is deserved. And I would hope that
21 that gets into some of the thoughts and the
22 language and the semantics of this report.

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1 MR. GREENBAUM: I think what I would
2 say in response to that is if you're going to
3 look at that, I would also want to look at to
4 what degree certain measures might also impact
5 access to the ballot. Because if you take a
6 certain measure where there is no empirical data
7 saying this is something that needs to be done
8 but it may add to voter confidence, but on the
9 flip side, that particular measure may impair or
10 prevent access to the ballot for certain people,
11 that need to be looked at as well.

12 MS. WANG: That's what I was trying

13 to get at. Once you start doing something
14 purely on what the general public perceives to
15 be the biggest problems, rather than trying to
16 take an empirical approach and find out what the
17 problems really are, and addressing what the
18 problems really are, you start not expending
19 your resources in the most efficiency way.

20 MR. ROKITA: Well, we have already
21 decided at the beginning and throughout this
22 discussion that it is very difficult to get

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1 empirical data, especially on this particular
2 issue, which has the syrup on top it of it that
3 doesn't include dispassionate actors.

4 Having said that, the point here is,
5 whether you have an actual conviction of voter
6 fraud or whether you have someone who was in
7 line at the polling place who thinks they saw
8 voter fraud, it is the same effect. It is
9 equal, and that is, they don't come back to
10 participate in the process. So you can't ignore
11 that fact and just focus on the data that you
12 might have, and that's part of the human
13 involvement interaction in the electoral
14 process.

15 And as long as humans are involved in
16 the process, you're going to have a dichotomy
17 there. Again, the effect is exactly the same.
18 No convictions for in person fraud at the poll,
19 no relation to whether or not its happened.
20 Your interviews even say that it's very hard to

21 detect, so you have got to incorporate that
22 reality into this report, if it's going to have 178

1 validity to the public and to election
2 officials.

3 MR. PEREZ: Brings up the semantics
4 because you're saying no system should go out
5 having a voter verifiable paper trail.
6 Every system in Texas has a paper trail.

7 The large part of perception and real
8 fraud is the perception of a paper trail or not.
9 The same thing semantics can be possibly
10 incorporated in there to educate them.

11 MS. WANG: That is the approach I
12 would prefer to take, is to educate people as to
13 what the problems really are, rather than you
14 trying to address problems that they think only
15 exist but may not in reality.

16 MR. ROKITA: I'm not asking you to
17 make up a fix. I'm asking you to realize that
18 there is a very real issue out there. whether
19 fraud is perceived or you have a real
20 conviction, the effect is the same.

21 MR. GINSBERG: The problem that I
22 think you have with this is fraud and 179

1 intimidation become two sides of the same coin
2 and they are used for political purposes. They
3 are used for get-out-to-vote purposes.

4 So the notion of agreeing on what the
5 problem is, is going to be really, really tough,
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6 which to me goes back to the issue of having
7 people, where the fraud or intimidation takes
8 place from both parties, since they are the ones
9 that are starting all the problems that
10 challenge the legitimacy of the election.

11 MR. GREENBAUM: Our counterpart's not
12 here anymore.

13 MR. GINSBERG: I waited for just that
14 moment.

15 MR. HEARNE: The point's coming up
16 and I think it's one when I was an advisor to
17 Carter Baker, the underlying point of this
18 effort is to increase voter confidential. It is
19 also to convince the winner of an election that
20 he won. The trick is to make the loser knows
21 that it was a fair election, so long as you come
22 out after every election process saying it was

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1 stolen or they intimated my base, whatever it
2 is, is an erosive charge.

3 I understand the EAC's charge is to
4 come up with a way to look at that process,
5 quantify it, develop a process to say it does or
6 don't exist to this degree, here's what
7 happened, and here's ideas on places to go to
8 address it so the next election and the one
9 after and the one after, we're going to say it
10 may or may not have been the one I wanted, but I
11 at least felt the voters decided, not some
12 special group, or lawyers, or judges
13 manipulating. I think that's the objective we

14 want overall.

15 Perception is important, and the
16 empirical information we're starting with is to
17 say, how did we find out, where do we hear about
18 to go to find it. I like Ben's suggestion of
19 why don't we look at the next election as a
20 model, whatever way we can come up with a
21 statistically -- have people going to the
22 polling places, to look at that as a way to try

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1 to quantify and identify those issues.

2 MS. WANG: I guess I would reiterate
3 John's point about making sure that when you try
4 and engage in confidence building measures that
5 you aren't at the same time disenfranchising
6 more people than you're giving confidence too.

7 MR. GINSBERG: There are a whole
8 bunch of assumptions built into that statement
9 that demonstrate why you may have difficulty
10 getting any sort of agreement on what you're
11 saying.

12 MR. GREENBAUM: If you want to go
13 back to what the language earlier before we had
14 a recitation of what the language is that the
15 EAC is supposed to be doing. If it's methods of
16 identifying, deterring, and investigating, voter
17 fraud, I just don't see where people's
18 perceptions come into that.

19 MR. ROKITA: I am looking at 20
20 interviews worth of perceptions.

21 MR. GINSBERG: If people's
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22 perceptions of this don't matter, then why are 182

1 we doing this. You want to have confidence in
2 the system.

3 MR. WANG: You want a system that's
4 actually fair and accurate.

5 MR. GINSBERG: Listen, what you just
6 said means that your definition of what is fair
7 and accurate is not going to be universally
8 accepted. It's still two sides of the coin of
9 the issue, and your perception of that is not
10 going to be shared.

11 MR. PEREZ: What if we put a third
12 person in that, Republican, Democrat,
13 independent?

14 MR. GREENBAUM: Not even independent,
15 nonpartisan.

16 MR. ROKITA: That animal doesn't
17 exist in this business.

18 MR. GREENBAUM: Doesn't exist in your
19 business.

20 MR. ROKITA: No, this business.

21 MS. ROGERS: I tend to look at the
22 logistics of the things instead of the lofty 183

1 ideas. You talk about the observers, that's not
2 a bad thing. We work, at the lawyers committee,
3 we work with them on that but elections within
4 the next decade are not going to occur on
5 election day. Elections are already now

6 occurring in the week or two weeks leading up to
7 Election Day. They are occurring by mail. So
8 putting all your resources in Election Day is
9 not going to be an answer for very much longer.
10 Then how many resources do you have to extend
11 that out to two-week period to insure that you
12 have all these monitors. In addition to that,
13 you have got to be so careful that -- how do you
14 determine who gets to observe and who doesn't.
15 Obviously, Democrats and Republicans want a
16 place at the table. Well, in our state, the
17 green carding and libertarians want a place at
18 the table as well.

19 Parties are allowed to appoint two
20 poll watchers and then the independent
21 candidates, one. We have got a lot of other
22 voter verifiable and paper audit trail folks who

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1 want to send in observers as well. We get
2 questions from overseas. Very quickly, you can
3 overwhelm a polling place where they are going
4 to feel intimidated or suppressed when they walk
5 in the door.

6 It can work, but in order for there
7 to be any support from my peers, there would
8 have to be a lot of caveats that went with it,
9 as far as the training, who got to observe, who
10 they notified of what they see on Election Day,
11 do they notify their party, the national party,
12 and then you get a fax that says we just found
13 out blah, blah, blah and we're putting you on

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10 they notified of what they see on Election Day,
11 do they notify their party, the national party,
12 and then you get a fax that says we just found
13 out blah, blah, blah and we're putting you on

14 notice. Just random thoughts.

15 MR. GINSBERG: All of that's correct.
16 We all agree that there is a problem with fraud
17 and intimidation taking place in elections. The
18 question is how many prosecutions are there on a
19 regular basis that show that there is either
20 fraud or intimidation.

21 MR. DONSANTO: I don't think that is
22 a measure of anything. There is a hell of a lot
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1 more out there than we ever find, and there is a
2 hell of a lot more, we don't have the resources.

3 MR. GINSBERG: And rumors about it
4 are greater than the actuality.

5 MR. DONSANTO: There is a lot more
6 out there than we ever catch, and the rumors are
7 even more.

8 MR. GINSBERG: Exactly. So if you
9 want to deal with the problem of the electors
10 having confidence in their elections, you have
11 got to deal with all the rumors that are out
12 there. And I love academic studies and surveys,
13 but you've got to have people on the ground in
14 the polling places or watching the two-week
15 process that takes place, and verifying that.
16 And all the academic studies in the world are
17 not going to get at that public perception
18 issue.

19 MS. WANG: Definitely, a lot of the
20 people we talked to recommended more monitoring,
21 including Joe Rich, who was a big proponent of

22 that.

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1 MR. HEARNE: I think the point was
2 made increasingly and the trend is there, we're
3 going into more and more absentee balloting, and
4 the one point is a pretty broad consensus here,
5 where vote fraud does go on, that there is a lot
6 of it in absentee balloting, an area that merits
7 scrutiny, and understanding, involvement, and
8 that's going to be an area that increases in
9 terms of availability of those kinds of avenues.

10 MR. ROKITA: My other point to that
11 would be just because we identify or focus on
12 absentee fraud as an area where there are
13 problems, and I certainly agree, we, I think,
14 have to be careful of leaving the impression of
15 that means it is not occurring in other areas
16 because we just don't know.

17 MR. DONSANTO: Right, it does occur
18 in other areas. Absentee ballots happens to be
19 the methodology of the moment.

20 CHAIRMAN DEGREGORIO: You know,
21 Craig, you have served as an observer, and I
22 know you have. It just so happens this morning

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1 from 8 to 9:30, I met with the head of OSC, who
2 was here because they had a little team here.
3 They are going to send a team to observe in
4 November. They have a method they have used
5 when you go observe an election. You have a
6 form you fill out. They have people, long-term

7 observers, who go six weeks before the election,
8 and short-term, who go for a week, and all this
9 material is brought in election night. All
10 night long they calculate it, then they issue a
11 statement at 1:00 the next day saying whether
12 the elections were free and fair, whether you
13 have can confidence/no confidence in the winner.
14 And in Ukraine, they didn't have confidence in
15 the winner, brought down the Government.
16 They had another election six weeks later but
17 they use that method of observation because of
18 perception that people have whether the
19 elections are free and fair.

20 Jimmy Carter has done similar things
21 in Central America. The Carter Center does that
22 too, but they have a method to do that. You

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1 have been part of it and I have been part of it,
2 to try to make that judgement call, and they are
3 all independent people from different countries
4 that go to do it.

5 MS. WANG: Maybe that's what we need
6 is international observers.

7 MR. GREENBAUM: It's a problem
8 because they can't get in the polling place in a
9 lot of the states. They even said that as part
10 of their report.

11 MR. ROKITA: Don't we add value to
12 this entire process, if you go and look at what
13 Paul just described and analyze it and present
14 it as an idea, isn't that what this is?

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15 MS. SIMS: That would be in the next
16 phase.

17 MS. WANG: All of this is in the next
18 phase.

19 MS. SIMS: Looking at the project
20 that the Commission decides to pursue and the
21 boards are happy with that idea.

22 MR. HEARNE: What is the next step 189

1 from here?

2 MS. SIMS: If we're all done with
3 ideas.

4 MR. ROKITA: I just wanted to get a
5 couple more things done to finish up my last
6 point. We're not sure that fraud at the polling
7 place doesn't exist. We can't conclude that.
8 That is my last point.

9 There has been a discussion about a
10 political science professor being utilized. I
11 think the EAC needs to be very careful in who
12 they select, because all the time and effort and
13 money that's been spent up to date and would be
14 spent in the future could be invalidated by a
15 wrong selection in the eyes of some group. So
16 whether you have two folks, political science
17 professors, however you decide to work it,
18 please research, you, as a taxpayer, to be
19 careful who you pick.

20 I thank you.

21 MR. PEREZ: I'd like to make a
22 statement. I am not a lawyer so I don't know

1 how far this would fly. If you're trying to
2 query on developing statistical data, why don't
3 you put a question on the ballot? Everybody
4 walk in, I believe this election was fair. No,
5 I believe there was fraud here. Just ask them.

6 MR. DONSANTO: How are they supposed
7 to know that until the election has been run?

8 MR. PEREZ: They have already been
9 intimidated while they are casting their ballot.

10 CHAIRMAN DEGREGORIO: How about if
11 there is a none of the above on the ballots?

12 MR. GINSBERG: It would be really
13 good for business.

14 MR. PEREZ: If they come in, I would
15 want to vote for that one. Really, you're
16 trying to get statistics from the voters, trying
17 to get them outside, trying to catch them
18 inside, catch them on the ballot.

19 MS. SIMS: well, the next step is
20 that our two consultants would be consolidating
21 the preliminary research that they have and also
22 the working group's deliberation in his order to
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1 present a report to our Commissioners. And our
2 Commissioners will, obviously, take a look at
3 that.

4 And then when you deem it's ready,
5 we'll have it sent out to our Board of Advisors
6 and our Standards Board for their review and

7 comment. HAVA does mandate that our research
8 efforts are supposed to be reviewed by our
9 boards. Depending on what we get back, and what
10 the Commissioners decide to do, and what kind of
11 budget we get, then we may be able to prioritize
12 some of the ideas or determine which ones we can
13 do. Inevitably, they are going to have to be
14 below a certain dollar limit. And so we would
15 put the project out, put an RFP up.

16 In terms of people who would lean one
17 way or another, we would take a look at that
18 when we're writing the RFP to determine that the
19 team has different points of views.

20 CHAIRMAN DEGREGORIO: We have also
21 set some peer review groups for many of our
22 studies that have a balance of folks, academics
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1 particularly, to take a look at the work that's
2 being done by folks to make sure we're being
3 looked at by people who have different
4 philosophies, different viewpoints.

5 MS. SIMS: And depending on what
6 we're able to do, we may or may not get a
7 working group to work with us on that.
8 Generally, speaking it is wiser to get the
9 working group further in on the beginning.
10 We're bringing you in as the tail group, is a
11 little bit different than I am used to doing at
12 FEC. So we may take a look at that on whatever
13 we decide to do next on bringing the working
14 group together in the earlier phase to offer

15 their advice in an earlier stage.

16 Any questions about that? Well, I
17 want to thank you all very much for coming. I
18 know our consultants have really -- I'm sure
19 they have gotten a lot out of it. I have.

20 CHAIRMAN DEGREGORIO: I also want to
21 thank you too on behalf of the Commissioners who
22 couldn't be here today, to Tova and Job for your
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1 work thus far. This is an important item for
2 the Commissioners, and the we'll move on it
3 quickly. I suspect -- I don't know that we have
4 anything budgeted for 2006 for this but October
5 1 starts, we will have some funds, and we can do
6 some of the things that you all suggested we
7 should do to come up with further detailed study
8 of this. But this has been helpful just sitting
9 through here the last hour-and-a-half.

10 I was director of elections in St.
11 Louis County. Craig, we had some federal
12 prosecutions. We had plenty of nursing home
13 absentee fraud. I was in St. Louis County, but
14 a lot of it came at the local level. When
15 you're running for police chief in the city,
16 that's where we saw a lot of the election fraud
17 too, but it occurred in the federal elections.
18 We had people voting in 1988. So those things
19 happened, so I have seen it myself.

20 I am also aware of things that you
21 pointed out here, these kinds of things. This
22 is awful for people to try to trick people in
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1 ways like this, to keep them from participating
2 in our democracy. That's just not right. It's
3 wrong.

4 MR. DONSANTO: I am aware of this
5 one.

6 CHAIRMAN DEGREGORIO: We don't want
7 that to happen.

8 MR. DONSANTO: We're unable to find
9 out who did it.

10 CHAIRMAN DEGREGORIO: We appreciate
11 your work, hope this will continue in some
12 fashion, that you all can be participants in
13 what we do next. Thank you for your time today.

14 MS. SIMS: I also want to know for
15 those who are traveling out of town, Devon put
16 an information package for you on how you turn
17 over the receipts that we need, so we can make
18 sure you get money. And if you have any
19 questions, please contact her about that.

20 MS. WANG: Thank you so much.

21 (Whereupon, at approximately 5:00 o'clock,
22 p.m., the meeting adjourned.)

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CERTIFICATE OF COURT REPORTER

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I, Jackie Smith, court reporter in and for
the District of Columbia, before whom the foregoing
meeting was taken, do hereby certify that the
meeting was taken by me at the time and place
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8 mentioned in the caption hereof and thereafter
9 transcribed by me; that said transcript is a true
10 record of the meeting.

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Jackie Smith

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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
Wade Henderson, Lawyers Committee for Civil Rights

To: Peggy Sims, Gavin Gilmour, Karen Lynn-Dyson and Tom Wilkey
From: Tova Wang, Job Serebrov
Re: Work Plan
Date: October 5, 2005

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

MONTH ONE (beginning the date contracts are finalized):

- I. Draft project work plan
- II. Develop list of potential members of the working group; have EAC vet and approve names (Tova, Job, EAC)
- III. Define Fraud/Intimidation (Tova and Job)
 - a. Discussion among consultants to:
 - i. Determine what we believe the parameters of the terms fraud and intimidation should be for our research purposes.
 - 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
 - b. Analysis of existing research (Tova and Job)
- IV. Obtain research assistance (e.g. interns, law clerks) (EAC)

MONTH TWO:

- V. Interview individuals identified in month one about the scope of fraud and intimidation (Job and Tova);
- VI. Create working written description of what fraud and intimidation means, includes/does not include (Job and Tova)
- VII. Examine the Feasibility of Quantifying the Level of Incidence of Different Types of Fraud
 - a. Look at how we can develop a statistically sound research instrument
 - i. Discussion with political and social scientists, legal scholars in the field (Tova)
 - b. Preliminary survey of case law of recent prosecutions for fraud/intimidation (Job/law clerk)
 - c. Interviews with state and local officials, third party groups, election lawyers to assess what they believe are the most prevalent problems (Job and Tova)

MONTH THREE:

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- VIII. 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)

MONTH FOUR:

- IX. Written summary of background research on voting fraud and intimidation (Tova and Job)
- X. Development of a work plan and set of issues for examination for the working group (Tova and Job)
- XI. Finalize working group membership and set meeting dates

MONTH FIVE:

- XII. Initial working group meetings

MONTH SIX:

- XIII. Develop project scope of work and project work plan
- XIV. Draft summary report describing key findings of this preliminary study of voting fraud and voter intimidation

Contact James Joseph, Arnold & Porter – (202) 942-5355,
james_joseph@aporter.com

**Tova Andrea Wang, Co-Author of the Voter Fraud and Voter Intimidation Report
for the Election Assistance Commission, Calls for an End to the Censorship**

Over the last few weeks, there has been a developing controversy in the press and in the Congress over a report on voter fraud and voter intimidation I co-authored for the Election Assistance Commission (“EAC”). It has been my desire to participate in this discussion and share my experience as a researcher, expert and co-author of the report. Unfortunately, the EAC has barred me from speaking. Early last week, through my attorney, I sent a letter to the Commission requesting that they release me from this gag order. Despite repeated follow-up, the EAC has failed to respond to this simple request. In the meantime, not only can I not speak to the press or public -- it is unclear under the terms of my contract with the EAC whether I can even answer questions from members of Congress.

My co-author and I submitted our report in July 2006; the EAC finally released its version of the report in December 2006. As numerous press reports indicate, the conclusions that we found in our research and included in our report were revised by the EAC, without explanation or discussion with me, my co-author or the general public. From the beginning of the project to this moment, my co-author and I have been bound in our contracts with the EAC to silence regarding our work, subject to law suits and civil liability if we violate the EAC-imposed gag order. Moreover, from July to December, no member of the EAC Commission or staff contacted me or my co-author to raise any concerns about the substance of our research. Indeed, after I learned that the EAC was revising our report before its public release, I contacted the EAC, and they refused to discuss with me the revisions, or the reasons such revisions were necessary.

Stifling discussion and debate over this report and the critical issues it addresses is contrary to the mission and goals of the EAC and to the goal of ensuring honest and fair elections in this country. Commissioner Hillman stated in her defense of the EAC’s actions that the EAC seeks to “ensure improvements in the administration of federal elections so that all eligible voters will be able to vote and have that vote recorded and counted accurately.” I share this aspiration. But I believe that the best way to achieve that end is not by suppressing or stifling debate and discussion, but by engaging in a thoughtful process of research and dialogue that ultimately arrives at the truth about the problems our voting system currently confronts.



U.S. ELECTION ASSISTANCE COMMISSION

**Status Report on the
Voting Fraud-Voter Intimidation Research
Project**

May 17, 2006

**Deliberative Process
Privilege**

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INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

Recommendations

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

INTERVIEWS

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

Voter Registration Fraud

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

Voter Intimidation and Suppression

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

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- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio, and Pennsylvania.

"Dead Voters and Multiple Voting"

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

Vote Buying

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

Deceptive Practices

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

Non-citizen Voting

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

Felon Voting

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

Election Official Fraud

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

Recommendation

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

CASE LAW RESEARCH

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

Recommendation

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

PROJECT WORKING GROUP

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

FINAL REPORT

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

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Attachment A

Voting Fraud-Voter Intimidation Project Working Group

The Honorable Todd Rokita

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

Kathy Rogers

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

J.R. Perez

Guadalupe County Elections Administrator, TX

Barbara Arnwine

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)

Robert Bauer

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

Benjamin L. Ginsberg

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

Mark (Thor) Hearne II

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

Barry Weinberg

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

EAC Invited Technical Advisor:

Craig Donsanto

Director, Election Crimes Branch, U.S. Department of Justice

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Voting Fraud-Voter Intimidation Preliminary Research

Status Report



Voting Fraud-Voter Intimidation Research STATUTORY AUTHORITY

The Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].



EAC Voting Fraud-Voter Intimidation Research

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.



EAC Voting Fraud-Voter Intimidation Research

CURRENT RESEARCH FOCUS

2 consultants (bipartisan) focused on:

- Drafting a definition of election fraud;
- Conducting background research (literature, news stories, case law, interviews of knowledgeable persons from the public and private sector); and
- Convening a working group of bipartisan and nonpartisan representatives of election officials, advocates, and the legal community to review preliminary research and brainstorm ideas for future EAC activities.



EAC Voting Fraud-Voter Intimidation Research LITERATURE FINDINGS

- Little of the research is truly systematic or scientific.
- Many documents make allegations but have little follow up.
- Books written about this subject seem to have a political bias and a pre-existing agenda that make them somewhat less valuable.



EAC Voting Fraud-Voter Intimidation Research LITERATURE FINDINGS

- There is substantial concern about **absentee balloting** and the opportunity it presents for fraud.
- There is tremendous disagreement about the extent to which **polling place fraud** (e.g. double voting, intentional felon voting, noncitizen voting) is a serious problem.



EAC Voting Fraud-Voter Intimidation Research LITERATURE FINDINGS

- **Voter intimidation** continues to be focused on minority communities, although one report mentions schemes against a major political party.
- **Deceptive practices** (e.g.: targeted flyers and phone calls providing misinformation) were reported to be a major problem in 2004.



EAC Voting Fraud-Voter Intimidation Research LITERATURE FINDINGS

- **Federal law** governing election fraud and intimidation is varied and complex; yet may be insufficient or subject to too many limitations to be as effective as it might be.



EAC Voting Fraud-Voter Intimidation Research INTERVIEWS

Consultants interviewed numerous individuals from the **public** and **private** sector who have some experience in researching, investigating and prosecuting, or observing incidents.

They included experts from the **legal, election official, advocacy, and academic** communities.



EAC Voting Fraud-Voter Intimidation Research INTERVIEW FINDINGS

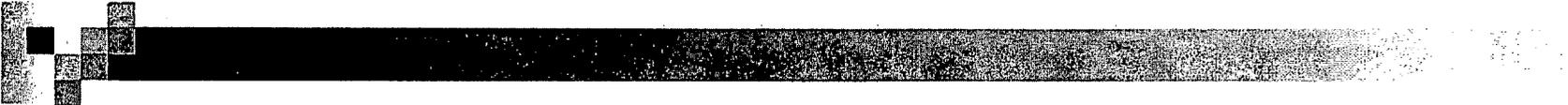
- Virtually universal agreement that **absentee ballot fraud** is the biggest problem.
- **Vote buying** and **voter registration fraud** are considered the next most common problems
- Some disagreement over prevalence of **polling place voting fraud**.



EAC Voting Fraud-Voter Intimidation Research INTERVIEW FINDINGS

Intimidation/Suppression –

- Biggest intimidation/suppression concerns: abuse of challenger laws and abusive challengers.
- Some continued outright intimidation and suppression, especially in some Native American communities, and of poll workers engaging in harassment of minority voters.
- Other concerns: polling places being moved at the last moment; videotaping of voters at the polls; and targeted misinformation campaigns.



EAC Voting Fraud-Voter Intimidation Research INTERVIEW FINDINGS

- Common problems: badly kept **voter registration lists**, with both ineligible voters remaining on the rolls and eligible voters being taken off.
- A few people also troubled by voters being on registration lists in two states.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLES

- Nexis search of related news articles published between January 1, 2001 and January 1, 2006.
- Downside: often could not verify the truthfulness of the reports or how often actual convictions result from activities reported.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

The most common allegations of **voter registration fraud** were:

- Registering in the name of dead people;
- Fake names and other information on voter registration applications;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms, depending on the party with which the voter registered.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Absentee ballots reportedly were abused in a variety of ways:

- Campaign workers, candidates and others coerced the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers, and individuals attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Activities most commonly reported as **voter suppression** included:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;
- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Dead Voters and Multiple Voting

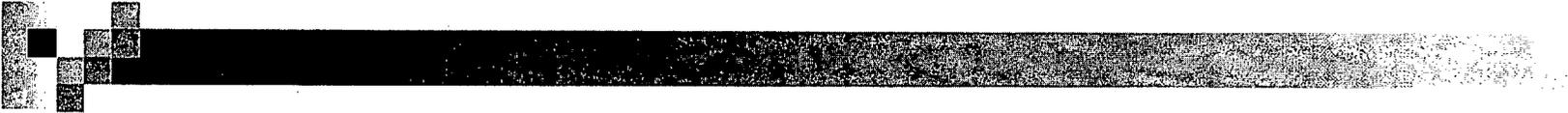
- High number of articles.
- Often the problem resulted from administrative error: poll workers mismarking or failing to mark voter lists; flawed voter registration lists; and/or errors made in the attempt to match names of voters on the list with the names of the people who voted.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Multiple Voting

- Most cases involved a person voting both by absentee ballot and in person.
- A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists.
- In many instances, person charged claimed not to have voted twice on purpose.
- Small handful of cases involved a voter voting in more than one county, and there was one substantiated case involving a person voting in more than one state.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Dead Voters –

Problem lay in the voter registration list not being properly maintained (i.e.; the person was still on the registration list as eligible to vote, and a person took criminal advantage of that).



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Vote Buying

- More official investigations, indictments and convictions/pleas reported in this area.
- Numerous of articles, a few of which involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia).



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Deceptive Practices

- Numerous reports in 2004 of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote.

- Misinformation came in the form of
 - flyers,
 - phone calls,
 - letters, and
 - people going door to door.

- Many of the efforts reportedly targeted at minority communities.

- Disproportionate number of them came from key battleground states

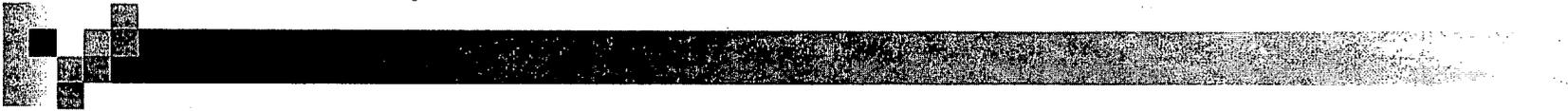


EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Non-citizen Voter Registration & Voting

Few articles regarding noncitizen registration and voting
– just 7 cases in 7 different states across the country:

- 1 case - charges were filed against 10 individuals.
- 1 case - judge in a civil suit found there was illegal noncitizen voting.
- 3 instances - prompted official investigations.
- 2 cases - remained just allegations.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Felon Voting

- 13 cases of felon voting, some involving large numbers of voters.
- In several states, the main problem was the large number of ineligible felons that remained on the voting list.



EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS

Election Official Fraud

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is an administrative mistake or a crime.



EAC Voting Fraud-Voter Intimidation Research CASE LAW

Consultants reviewed cases from Federal courts and state courts of appeals from 2000 to the present.

Greatest areas of fraud and intimidation shifted from past patterns of stealing votes to present problems with:

- voter registration;
- voter identification;
- the proper delivery and counting of absentee and overseas ballots;
- provisional voting;
- vote buying; and
- challenges to felon eligibility.



EAC Voting Fraud-Voter Intimidation Research WORKING GROUP

8 member working group included bipartisan and nonpartisan members, and representatives of the election official, advocacy, and legal communities

Met May 18 to review preliminary research and brainstorm ideas for future EAC action.



EAC Voting Fraud-Voter Intimidation Research WORKING GROUP IDEAS

- Conduct surveys of:
 - All state laws
 - All state election offices
 - Specific states
 - Local election officials
 - State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to identify examples of procedures for other than HAVA Title III complaints
 - Voters



EAC Voting Fraud-Voter Intimidation Research WORKING GROUP IDEAS

- Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review
- Research absentee balloting process issues, including methodology of “for cause” absentee voting



EAC Voting Fraud-Voter Intimidation Research WORKING GROUP IDEAS

- Conduct risk-analysis for voting fraud & voter intimidation
 - Who?
 - What part of process?
 - Which elections?
 - Ease of committing the fraud