

18 suggested that the challenge laws needed to be  
19 revised in some states. I was surprised to  
20 learn, in some states, you can challenge a  
21 person with little to no basis for doing so, and  
22 really sort of bog up the estimation that way.

28

1 There ought to be some serious look at the  
2 various challenge laws, and the ones that have  
3 that kind of thing going on that shouldn't be  
4 happening. People advocated for the deceptive  
5 practices bill currently sponsored by Burrock  
6 Obama. There was a surprising split whether  
7 partisan administration of elections would be  
8 helpful. Some people felt it was a good idea  
9 and some people thought partisan people, without  
10 the partisan tag. Some academics were  
11 advocating for going back to for cause only  
12 absentee voting, but that didn't seem  
13 politically practical right now. Two people  
14 advocated a national identification card.

15                   Anything I can answer? The great  
16 nexus undertaking adventure. Initially, Job and  
17 I came up with enormous search terms that could  
18 be used to try and do a nexus search that would  
19 come up with every case of fraud and  
20 intimidation that happened in the last five  
21 years. We determined quickly that would be  
22 impossible. We agreed I would do the nexus

29

1 search, trying to be a little more creative,  
2 using different combinations of terms that would

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3 hopefully yield the same kind of result. Job  
4 approved all of the search terms as I went  
5 along. As I collected them, and you have this  
6 on your CD, I have them on Excel spread sheets  
7 to try and break down the articles so they can  
8 be analyzed for patterns.

9           Each fraud was broken down by where  
10 it took place, the date, what the allegation  
11 was, the news publication it came from, and  
12 where there was a follow-up article, whether  
13 there had been any subsequent resolution to the  
14 allegations. I am currently working on further  
15 refining those, and I don't have it to produce,  
16 to try and break it down more carefully, analyze  
17 it. I want to include sub categories. So, for  
18 example, when you're talking about absentee, you  
19 have it broken down whether it was forgery of  
20 that person's name or something like that. I am  
21 also trying to refine it so you can see from the  
22 chart who made the allegation, whether there was  
□ 30

1 any type of investigation, criminal, civil  
2 action taken, whether there ought to be  
3 follow-up research to determine what happened in  
4 the case. For drawn out, complicated cases, you  
5 have a description of the case. South Dakota,  
6 Wisconsin, and Washington State.

7           Just to go over the highlights again  
8 of the articles, none of this has come as news  
9 to you, there are a bunch of ways that absentee  
10 ballot fraud is committed. This was one area in

11 news articles, there were a substantial number  
12 of official investigations and actual charges  
13 filed. In terms of voter registration files,  
14 again, you won't be surprised by the variety of  
15 ways in which people commit voter registration  
16 fraud using fake names, names of dead people.  
17 You also have voters being tricked by a  
18 particular party under false pretenses and also  
19 the description of voter registration forms,  
20 depending on your party. There was only one  
21 article of a non-citizen registering to vote.  
22 And, in general, many of the instances did

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1 include official investigations and charges  
2 filed, but from what I found in the initial  
3 search, few actual convictions.

4           On voter intimidation and  
5 suppression, this is a very thick chart because  
6 there were so many allegations during the 2004  
7 election, particularly on the challenge issue.  
8 Almost none of these cases of intimidation that  
9 were claimed in these articles were investigated  
10 criminally or prosecuted criminally. And like I  
11 said, with respect to the existing literature  
12 and the interviews, challenges, that was the  
13 number one topic but there was also, again, the  
14 classic examples of photographing people leaving  
15 the home, police presence, that kind of thing.  
16 And also it wouldn't surprise you to know most  
17 of these articles came out of battleground  
18 states.

19 In terms of dead voter, there were a  
20 lot of people voting in the name of the dead,  
21 big numbers of people committing these  
22 frauds, and relatively view of these allegations

32

1 turned out to be accurate, in terms of the  
2 verifications by the newspapers themselves,  
3 election officials, and criminal investigators.  
4 Often the problem turned out to be the result of  
5 administrative error, poll workers mismarking  
6 lists with the names of the people who voted.  
7 There were a few cases of actual charges and  
8 convictions of people voting or engaged in these  
9 kind of activities. Interestingly, it seemed  
10 that most of those cases involved the person  
11 voting by absentee and voting again at the  
12 polls. There were a handful of instances where  
13 people voted early, and voted on Election Day,  
14 although some of that seemed to be confusion  
15 about what you are allowed to do.

16 There were a number of vote fraud  
17 cases, and these are completely focused in the  
18 midwest and the south. And you will see in the  
19 vote buying summary that's in there, three or  
20 four locations where this seems to be a  
21 perennial problem, and it doesn't seem to be  
22 that much of a problem in other parts of the

33

1 country.

2 Deceptive practices, we saw a lot of

3 that come out in 2004. You probably all heard  
4 about it the fliers, and the phone calls with  
5 miss information about voting procedures. A  
6 disproportionate number of them from  
7 battleground states, in Florida, Ohio, and  
8 Pennsylvania, only one case, and this is just  
9 from news articles, was actually investigated.  
10 That was the case in Oregon where the FBI did  
11 investigate the destruction of voter  
12 registration forms that were filled out by  
13 people and then destroyed allegedly, according  
14 to one party, but there were no other reports of  
15 prosecutions on this case or on any of the other  
16 deceptive practices cases.

17           There were surprisingly few articles  
18 about non-citizen voting, something you heard a  
19 lot about, but not something that seems to  
20 happen very much.

21           On felon voting, there were only 13  
22 actual cases, but they all involved rather large

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1 numbers of people. You probably know this. A  
2 lot of it is coming out of the Washington State  
3 situation and the Wisconsin situation.

4           And, finally, with respect to fraud  
5 being committed by election officials, I think  
6 that's very hard to judge from news reports  
7 because it is very difficult to make that  
8 distinction between something was in error and  
9 when something was done purposely and with  
10 malfeasance in an actual crime. So that's

11 probably not the best way to look at that, and  
12 that's what I have for that.

13                   And, again, I know this is jumping  
14 ahead, but I will say it now because I feel the  
15 need to. These search terms that we used and  
16 what these search terms came up with, and there  
17 may be subsequent articles about these that  
18 would go further in telling you how the actual  
19 allegation was resolved, whether it turned out  
20 to be accurate or not. One of my main  
21 suggestions that I will talk about more later  
22 on, if there is a next phase of this, that using

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1 the charts that have already been created to  
2 follow up nexus research to see if there were  
3 further articles about the same cases to see  
4 what happened. Because although I have a slot  
5 in there, a column in there for subsequent  
6 resolution, you will see it's not filled in very  
7 often, and that's it.

8                   And if there are any questions.

9                   MR. ROKITA: Can you just review for  
10 me what the purpose of gathering all this was,  
11 in relation to our statutory guideline here?

12                   MS. WANG: Well, we're trying to just  
13 sort of get the lay of the land on this issue.  
14 And, obviously, doing the nexus search alone  
15 would not have provided that but we felt it  
16 would be one useful tool in trying to do an  
17 initial gauge of what's going on, also,  
18 including the interviews, including the existing

19 research and the cases that Job will be talking  
20 about.

21 MR. ROKITA: And the interviews we  
22 had, we asked them for their ideas for

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1 developing nationwide statistics and methods of  
2 identifying or developing ways of identifying or  
3 deferring, investigating voter intimidation, or  
4 did we just try to get color from them as to  
5 what the main issue was?

6 MS. WANG: No. We asked every single  
7 person we talked to what their thoughts were on  
8 how to improve the system, what ought to be done  
9 to reform it and solve some of these problems.  
10 It was an open-ended question. We didn't say do  
11 you favor the development of national statistics  
12 or something.

13 MR. ROKITA: Or how you would do it.

14 MS. WANG: That I will talk about  
15 later. We limited that aspect of it to talking  
16 to people who were basically political  
17 scientists, who I think are in the best position  
18 to tell us what is a scientifically sound method  
19 for trying to get some kind of accurate take on  
20 this.

21 MS. WANG: Chandler Davidson, and I  
22 have the list with me. It talks about other

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1 political scientists for the methodology issue.

2 MR. SEREBROV: Aside from DOJ cases,  
3 closed DOG cases, which were put in a separate

4 chart initially, I came up with a laundry list  
5 of search terms, and then Tova looked at that  
6 list and added another list of search terms.  
7 So by the time we got it to the Commission to  
8 run the electronic search, the terms were  
9 probably two pages long. And what, in essence,  
10 we came up with was the first hundred cases for  
11 each term. The result was about 44,000 cases  
12 that I had to go through and ferret out, and  
13 these were both federal and state cases, federal  
14 where both a felon, and the district cases,  
15 state cases were only appellant cases. These  
16 were all cases that impact on some aspect of  
17 voter fraud or voter intimidation. What emerged  
18 from this was almost striking because there were  
19 very few cases of the 44,00 cases or so that  
20 actually were on point. And the ones that are  
21 on point sometimes repeated categories. They  
22 are all in these chart forms.

□

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1                    what I suggest is done in the next  
2 phase is to concentrate on finding cases on the  
3 state district court level, because it seems  
4 like on a state level, a lot of voter fraud  
5 cases are brought there and end there. And you  
6 get a lot of information out of those cases, but  
7 they are never appealed, so you never get  
8 anywhere beyond that.

9                    without having to just go through  
10 this and verbatim read, the patterns have  
11 definitely shifted from outright stealing of

12 elections in the past to different kinds of  
13 problems, voter registration, identification,  
14 ballot counting, overseas ballot problems, vote  
15 buying, challenges to felon eligibility to vote.  
16 And those were really the main categories that  
17 went into the charts. And what I was surprised  
18 to find is that out of each search term and the  
19 cases under it, we had literally dozens and  
20 dozens that were inapplicable. Oh, and I need  
21 to add a caveat, in general, not all the time,  
22 but in general, when we had an election

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1 challenge case, in other words, someone lost an  
2 election and they were challenging, we almost  
3 always threw those out, unless they presented a  
4 unique situation that directly was impacted by  
5 the search term itself. In other words, if it  
6 wasn't just -- I won, you lost, but the reason  
7 was because there was X fraud done.

8 MR. SEREBROV: Right. So we threw  
9 out 99 percent of those cases. What we have are  
10 a number of charts with few cases, surprisingly  
11 few cases. And my suggestion at the next phase,  
12 they do a nationwide sampling of state cases on  
13 the district court or circuit court level to  
14 find out really what's going on.

15 Any questions?

16 MS. SIMS: No questions from the  
17 attorneys?

18 MR. ROKITA: How would the sampling  
19 be done.

20 MR. SEREBROV: Good question. What I  
21 think you need to do is actually go, pick both  
22 large counties and small counties, and you need 40

1 to go to the counties and you actually need to  
2 run the records, and you need to go back a  
3 certain amount of years and start looking at  
4 those files. You're looking at a lot of work, a  
5 lot of money going into this, but what we found  
6 at that level is inadequate to draw conclusions,  
7 unfortunately.

8 And as Tova said, I asked four  
9 different Supreme Court Justices to give us  
10 interviews. Three of them were afraid because  
11 this type of case may come up again.

12 MS. WANG: Although not really too  
13 much.

14 MR. SEREBROV: No, but it was very  
15 helpful in some other areas.

16 MS. SIMS: We're five minutes ahead  
17 of schedule. I don't know if you want to go  
18 through this definition or the findings first.  
19 Let's do the findings, I guess, first.

20 MS. WANG: So the next thing on the  
21 agenda is to hear back from all of you about  
22 your perceptions, given the research that we 41

1 did. I know that all of you have tremendous  
2 backgrounds in this, and we all come out with  
3 different experiences, but I think today it

4 would be helpful to focus -- the first question,  
5 I guess, is basically, given the research and  
6 the findings that we have, what at this point do  
7 you think we can say about how much fraud and  
8 intimidation there has been since the 2000  
9 election, and how much are certain frauds being  
10 committed as opposed to others?

11                   what is your sense of what the  
12 landscape is, anybody?

13                   MR. WEINBERG: I have a question to  
14 you. Given all this work that you have done,  
15 and it's a lot of work, what do you think is  
16 missing?

17                   MS. WANG: That's what I need to ask  
18 you.

19                   MR. SEREBROV: That comes later, we  
20 ask you that. We have talked about this.

21                   MS. WANG: We have talked about steps  
22 for further action, but are you thinking of

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1 something specific?

2                   MR. WEINBERG: Do you feel like  
3 there's areas of information that exist that you  
4 just didn't get to or do you feel like you, in  
5 your breath of what you did, sort of captured  
6 the information that's available out there?

7                   MS. WANG: Well, I think we will talk  
8 about this when we talk about further steps.  
9 They are kind of interrelated, but I feel like  
10 in terms of the nexus articles and the  
11 literature, I want follow-up on all of them

12 because a lot of them came out of the 2002, 2004  
13 elections where there was a lot thrown around.  
14 A lot of statements are made.

15           One of the things that we said about  
16 the literature is that the books that are  
17 written are of the least use because they have  
18 written by people with agendas on both sides.  
19 Allegations are made of things happening. And  
20 even I started to do just like for fun kind of  
21 looking at the allegations made at some of the  
22 books and reports, and doing my nexus search,

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1 and Google search, and finding out a month later  
2 there was a completely opposite allegation than  
3 what was suggested in the book on the report.  
4 That's what I feel like is missing because  
5 that's how the misinformation that's out there  
6 about what's really going on seems to be, is  
7 that people make a certain assumption right  
8 after Election Day, and I will tell you  
9 something, and this is sort of going off point,  
10 but I think actually journalists are actually  
11 somewhat responsible for this themselves.  
12 I know this will amaze you that journalists can  
13 be -- I'm trying to work on a separate project  
14 and they will write an article. There was X, Y,  
15 and Z, happened on Election Day, and then it  
16 turns out three weeks later that actually  
17 something completely different happened, but  
18 they don't report on that. Or it's like this  
19 side, the first one was on the front page, not

20 that this is particularly relevant. I am trying  
21 to get a grant to do journalist training  
22 seminars on these issues to try and solve some

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1 of the problems, but almost everybody does it.  
2 I mean, the stuff that lawyers committee comes  
3 out with, great. The ACVR came out with its  
4 report, but that's a snapshot in time, so  
5 whatever happened did not turn out to be true.

6 MR. SEREBROV: One thing we left out  
7 were allegations. We did not handle any  
8 particular allegations.

9 MS. WANG: It was too much.

10 MR. SEREBROV: And that's something  
11 that in the next phase, we may want done.

12 MR. HEARNE: What's the distinction?

13 MR. SEREBROV: We handled things that  
14 have become legal issues that went to trial.

15 MS. WANG: That's not really true.  
16 The articles is just everything that came out.

17 MR. HEARNE: It sounds like your  
18 search would pick up somebody alleged something,  
19 it gets reported in the paper. That would be  
20 picked up.

21 MS. WANG: What's in the charts, as  
22 you have them in and out. There is a category

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1 for subsequent resolution. As I am suggesting,  
2 what I would love to do actually, if we had the  
3 resources today, is now do a new nexus search  
4 that would specifically search for those cases

5 and see what the follow-up was. I was limited  
6 because we had an agreement on what search terms  
7 were. I couldn't go beyond that to look  
8 specifically to see if there was in this case  
9 some kind of further reporting.

10               So it was an allegation. Obviously,  
11 the cases were more official than that.

12               MR. SEREBROV: When we discussed this  
13 in the beginning, we were not going to deal with  
14 hundreds and hundreds and hundreds of  
15 allegations out there, except the nexus  
16 articles. That's something that one may or may  
17 not want to deal with. It's very tricky. You  
18 have to weigh the voracity of those allegations.

19               MS. WANG: And how do you do that.  
20 It's a problem we talked about with a lot of  
21 people we interviewed, how do you make that line  
22 of distinction between what is simply someone

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1 saying something, and something that at least  
2 has a kernel of merits.

3               MR. SEREBROV: For instance, we  
4 talked to Sharon Priest. She was Secretary of  
5 State from Arkansas. She indicated that the  
6 State Board of Election Commissioners had  
7 fielded, over a certain amount of years, a  
8 number of complaints, and they gave those to us  
9 but we didn't go through each individual  
10 complaint.

11               Now, that's something that may or may  
12 not be a valid thing, but if states keeps those

13 complaints on file, if they are categorized, if  
14 there is enough information, that may or may not  
15 be something that one wants to do. It's almost  
16 an adjusting linkage. The problem is people  
17 call in all the time, as Peggy well knows.

18                   When I was an election commissioner,  
19 people called in and complained about everything  
20 from my dog was stealing votes to --

21                   MS. WANG: Or my dog voted.

22                   MR. SEREBROV: Obviously, the

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1 machines have been frauded out, and where do you  
2 draw the line between a valid one and non-valid  
3 one.

4                   MR. PEREZ: I realize I am a resource  
5 person but I'd like to make a comment. I was  
6 very skeptical before I came to this group  
7 because of the issue, but I agree wholeheartedly  
8 with your research. I am glad you did it. The  
9 summaries, I think, were right on, and your  
10 notes here about structural forms of  
11 disenfranchisement and internal abuse of the  
12 system, you're hitting right on the key here.

13                   Most of the issues are not that  
14 somebody is stealing votes. It's just that poll  
15 workers are not trained properly. We see this  
16 time and time again. I am glad to see that  
17 you're coming out with the same conclusions that  
18 we have on the front line. It's not so much  
19 that there is a conspiracy. You're going to  
20 have vote buying. You're going to have some of

21 the things, but generally negligible, not enough  
22 to alter things. And if there is, they need to 48

1 be prosecuted and come up with stronger laws.  
2 But those of us that do this time and time again  
3 can see where people have just missed the boat  
4 in preparing either the people, the equipment,  
5 the programing or something, and the obligation  
6 should be laid squarely on the election  
7 official, not on the equipment.

8 MS. WANG: Or the voter.

9 MR. PEREZ: Or some other type of  
10 issue. we're playing the process on their  
11 shoulder, and not necessarily training them  
12 properly. So I am glad to see you're  
13 researching.

14 MS. WANG: Actually, I think I  
15 skipped over it but I was talking about the  
16 interviews. One of the most common things that  
17 was said was, generally, poll worker training,  
18 that could be the number one key to solving the  
19 problems we're talking about, and also longer  
20 voting times, and maybe having days other than  
21 Election Day that you can vote, not necessarily  
22 in terms of early voting, but like weekend 49

1 voting. Maybe combine this with fewer voting  
2 locations, because the thought was that you  
3 could then have the best and the brightest of  
4 the poll workers. That's something for another

5 study.

6 MR. SEREBROV: They are actually  
7 doing that in Arkansas. I didn't even know we  
8 had Saturday voting. We crossed a poll that was  
9 open, so I went in and voted. They have opened  
10 several, not a lot, but a few polls for Saturday  
11 voting.

12 MR. GREENBAUM: Would it be fair to  
13 say that taking up the issue of intimidation  
14 that you're finding suggests that most fraud  
15 occurs outside of the polling place?

16 MS. WANG: I would say yes, right.  
17 It's absentee ballot fraud which is troubling  
18 because there is this huge movement to expand  
19 that, frankly. And so while I think this is  
20 also probably going beyond what we're supposed  
21 to be talking about right now but, why not,  
22 everyone else is doing it. That is a political

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1 issue that I think is not going to go away.  
2 People seem to be pushing relentlessly for mail  
3 voting or more absentee voting, on both sides of  
4 the spectrum actually.

5 MR. GREENBAUM: I am including, when  
6 I say fraud, I am including all deceptive  
7 practices, the fliers, the calls, all of those  
8 things that came up during election process in  
9 2004.

10 MS. WANG: No. Well, there were  
11 people talking about poll workers engaging in  
12 fraud. Are you saying taking away the voter

13 intimidation?

14           MR. GREENBAUM: I'm saying take out  
15 the voter intimidation issues, in terms of the  
16 issue of fraud, in terms of the other things on  
17 both sides, whether you're talking about voters  
18 committing voter fraud or whether you're talking  
19 about actions that are designed to keep voters  
20 away, from deceptive practices, tearing up  
21 registration forms, those sorts of things. Most  
22 of that is happening outside of the polling

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1 place.

2           MS. WANG: I would agree with that.  
3 That's what almost everyone says.

4           MR. ROKITA: Thank you. I'd like to  
5 have a little bit of discussion around before we  
6 go too far down, subsequent matters, because I  
7 may be a little bit confused, figure out what  
8 our enabling legislature is here. I am reading  
9 the cover letter of my invitation, and I'll read  
10 it into the record, if you will bear with me.  
11 "Section 241 of the Help America Vote Act of  
12 2002 requires the EAC to conduct research on  
13 election administration issues."

14           Yes. Among the tasks listed in the  
15 statute is the development of the nationwide  
16 statistics and methods of identifying,  
17 deterring, investigating, voting fraud in  
18 elections for federal office, 241(e)(6), and  
19 secondly, ways of identifying, deterring, and  
20 investigating methods of voter intimidation,

21 241(b)(7).

22 And this kind of goes to the reason I  
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1 asked the question about the interviews. I'm  
2 hearing conclusions here about whether or not  
3 the EAC is going to determine whether or not  
4 there is voter fraud and where. And the statute  
5 seems to point out, it is assuming, whether  
6 right or wrong in the statute, Congress will  
7 assume voter fraud existed, and it is asking the  
8 EAC to develop nationwide statistics and methods  
9 of identifying, deterring.

10 MS. WANG: That's what we were going  
11 to try to do. We're not making the assumption.  
12 We're not saying there isn't fraud. We're  
13 trying to get a grasp of where that fraud tends  
14 to lie and what types of fraud actually seem to  
15 be occurring. I don't think that you can get to  
16 the point of identifying these other matters  
17 that you referred to in the statute without  
18 first doing the research to find out what is  
19 going on.

20 MR. ROKITA: It's not a comment on  
21 your research, whether it's good or bad, right  
22 or wrong, but I am trying to get us focused on  
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1 our mission here. From the preliminary comments  
2 I am hearing, it's whether or not there is fraud  
3 and where it is. And I think what you mentioned  
4 in your opening remarks is that we lack  
5 statistics. We lack methods for getting to

6 these statistics. And I would just like some  
7 feedback and input from this group as to if they  
8 agree or not that that should really be the  
9 focus, more developmental ideas how to get the  
10 information, rather than opinions of  
11 interviewees.

12 MS. WANG: This is an initial  
13 methodology. This combination of not just  
14 interviews but nexus of the cases is an initial  
15 step in a methodology. Later on, I will be  
16 going through with I found with the political  
17 scientists, further findings from more  
18 scientists with the methodology that can be  
19 added on to what we have already done. That is  
20 the next layer up.

21 MR. SEREBROV: The other thing you  
22 have to understand is we were limited in both

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1 time and funds. So what we were able to  
2 delivery is just a peek at what's going on.

3 MS. SIMS: It is only intended a  
4 preliminary research so we can decide how might  
5 we get to the next step, and that's why we need  
6 you in here to help us.

7 MR. SEREBROV: One area that we  
8 didn't touch that we were told don't touch is  
9 complaints or potential fraud having to do with  
10 computer voting with the machines themselves.

11 MS. WANG: Thank God.

12 MR. SEREBROV: That's true. That's a  
13 can of worms.

14 MR. HEARNE: I wasn't here the first  
15 15 minutes. My cab driver was somewhat lost,  
16 but that being said, so I didn't get the  
17 opportunity to hear exactly what the discussion  
18 was about the work product. At the end of the  
19 day, we have an objective of producing  
20 something.

21 I understood todd to be saying what  
22 we're supposed to be producing is given what

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1 information we have and the consensus within  
2 this group, what is a methodology for tracking,  
3 quantifying, and reporting these kinds of  
4 incidences going forward.

5 MS. SIMS: Well, you may not even  
6 have to come up with a methodology. What we're  
7 looking for, how do we meet this requirement.  
8 Or as I said, we also serve as a national  
9 clearinghouse for the administration of federal  
10 elections. There may be things that relate to  
11 this that we should be looking at, that relate  
12 to the issue of voting fraud. There may be best  
13 practices in certain areas that we maybe should  
14 be looking at that we haven't already started to  
15 look at.

16 MR. HEARNE: So the EAC is coming in,  
17 the working group says, give us some ideas.

18 MS. SIMS: Where we need to go.

19 MR. HEARNE: Tracking as we go  
20 through.

21 MS. SIMS: Please don't use a  
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22 four-letter word when you say where we need to

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1 go.

2 MR. BAUER: You made a comment. Did  
3 you have a concern about consulting experts?  
4 You were concerned we were talking to experts,  
5 getting opinions from experts, or you thought it  
6 was a methodological approach.

7 MR. ROKITA: I'm just trying to  
8 determine what our mission here is at the core  
9 level and whether it should be making a  
10 conclusory report as to whether or not something  
11 exists, or is our mission more plain language,  
12 the development of the methodologies that would  
13 lead to something like statistics and  
14 methodologies, not an amalgamation of opinions  
15 as to whether or not voter fraud exists and  
16 where it is. Because we could keep adding to  
17 that, then we're putting the EAC -- or EAC is  
18 going to be in a position of saying -- of adding  
19 to the universe of opinions.

20 MS. WANG: These are actually not  
21 just opinions. If you look at the people we  
22 spoke to, there were election officials.

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1 MR. ROKITA: All of whom have  
2 opinions. Yes, I understand.

3 MS. WANG: Well, opinions based on  
4 actual experience.

5 MR. BAUER: That's what my question

6 was.

7 MR. SEREBROV: But it is a method of  
8 identifying election fraud.

9 MS. WANG: Any political scientist.  
10 And if you look at the methodologies that were  
11 suggested to me, every single one of them talks  
12 about interviewing a range of people involved in  
13 the process.

14 MR. ROKITA: These might be  
15 experiences.

16 MR. SEREBROV: We originally had a  
17 political scientist on this group, a third  
18 person who had to withdraw, and that is Steve,  
19 who we actually interviewed after.

20 MS. SIMS: He can speak for the EAC  
21 that we're not expecting the group to say there  
22 is or there is not fraud. We're not expecting

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1 that. I think we know there are instances of  
2 it.

3 At this point in time, what we're  
4 trying to do is get a handle on how we can  
5 develop nationwide statistics, and investigating  
6 voter fraud and voter intimidation.

7 MS. WANG: To know how to investigate  
8 and deter fraud and intimidation, you have to  
9 first get some sort of a grasp as to what the  
10 actual problems were, and where your energy and  
11 resources ought to be focused.

12 MR. ROKITA: Yes, you have to do  
13 that. I am not basing things after our

14 experience, but we don't know that this  
15 experience is a fair sampling of what's out  
16 there. And as I read those interviews and what  
17 I heard you say at the beginning is we don't  
18 have statistics. So, in essence, even these  
19 experiences are based on non-quantifiable  
20 experiences and things that might have happened,  
21 and opinions.

22 MS. WANG: That's a major question of 59

1 this project, is any of this quantifiable. I  
2 don't think you're ever going to come up with a  
3 number, so how do you get at it?

4 MR. ROKITA: That's a fair agenda  
5 item for this discussion. Maybe at the end of  
6 day, we decide we stop spending taxpayer money  
7 or it's going to be too much to spend to find  
8 that kind of data.

9 MR. SEREBROV: I think we're going to  
10 find that's the answer.

11 MR. ROKITA: Otherwise, we will stop  
12 it here and recognize there is a huge difference  
13 of opinion on that issue of fraud when it occurs  
14 is obtainable, and that would possibly be a  
15 conclusion of the EAC.

16 MS. SIMS: I don't know if the EAC  
17 would come to a conclusion like that. Again,  
18 it's all going to have to go back to the  
19 Commissioners and they are going to have  
20 discussions about, what they can pursue in this  
21 area, but here are a couple things that I am

22 looking at. This is just from being in this

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1 field a long time. It may be difficult to -- I  
2 don't think it's going to be impossible to get  
3 exact statistics on voting fraud.

4           Can we take another step and get  
5 better statistics on voting fraud, that is one  
6 question. The other question is, is there a way  
7 of identifying at this point certain parts in  
8 the election process that are more vulnerable,  
9 that we should be addressing.

10           MS. WANG: That's what I am trying to  
11 say.

12           MR. GINSBERG: I guess I am curious  
13 about why there is some academic work being done  
14 about this when, in fact, in six months, you  
15 have got the ultimate laboratory. Why would you  
16 not come out with some sort of methodology to go  
17 into all the polling places where there may be  
18 an issue, with what amounts to a bipartisan  
19 team, and take a look at it.

20           MS. WANG: That was actually in a  
21 couple at least of the suggestions of  
22 methodologies from the political scientist, but

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1 imagine the resources that it would take to get.

2           MR. GINSBERG: Truthfully, minimum.  
3 I admit that my background and prejudices are  
4 probably not where the political scientist's  
5 are, as an academic matter.

6           MR. BAUER: Ben is a former  
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7 journalist.

8           MR. GINSBERG: In the last election,  
9 for example, in the Republican Party and the  
10 Democratic Party, there were pretty good  
11 samplings of precincts that had a Republican and  
12 Democrat, probably 10,000 precincts around the  
13 country more or less. Why would you not have a  
14 Republican and a Democrat in each one of those?  
15 With all due respect to the voters, a lot of  
16 those groups are going to be perceived as  
17 partisan, but I mean --

18           MR. GINSBERG: Maybe perceived but to  
19 make it valid, you need to have representatives  
20 of the parties conducting this and taking a look  
21 at precincts, any precinct anybody wants in the  
22 country where you're thinking there may be

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1 intimidation, where there may be fraud. And  
2 instead of turning it into some sort of  
3 political charge pre election, actually have  
4 observers from both parties in the places where  
5 this is most likely to occur, and see if it  
6 occurs and how it occurs.

7           MS. WANG: The problem with having it  
8 limited to those jurisdictions where you suspect  
9 that it's very likely bad things will happen is  
10 then you have a skewed result.

11           MR. GINSBERG: Well, I think you I  
12 said any precinct anybody wanted to put people.

13           MR. GREENBAUM: Which sometimes you  
14 don't know there's going to be problems. Who  
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15 knew that Dilluth, Minnesota. We certainly had  
16 no awareness that Dilluth, Minnesota was going  
17 to be an area where Indian voters were going to  
18 get intimidated at the polls.

19 My other concern is, a lot of times,  
20 that is things outside of what either party  
21 cares about. Sometimes there are maybe in  
22 places where you have partisan elections that

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1 are going to be very close. Sometimes the  
2 issues involve nonpartisan elections.

3 MR. GINSBERG: I don't disagree with  
4 that. It can be any place where anybody  
5 perceives a problem.

6 MR. SEREBROV: But one of the  
7 questions was absentee ballots, how do you deal  
8 with absentee ballots at a polling place.

9 MR. HEARNE: I think Ben's discussion  
10 is a good one. The point he is saying, we have  
11 a great laboratory coming up in terms of an  
12 election. We can go back through next Tuesday,  
13 that is all variable. I'm not saying it's not  
14 at all, but the concept of being able to say  
15 here's an election upcoming we're developing.  
16 If you're going to need to develop some  
17 methodology to study it, you can develop the  
18 methodology looking forward to the event.

19 MR. SEREBROV: wouldn't it be better  
20 to wait for 2008?

21 MR. HEARNE: If you look forward to  
22 that, and take the two stakeholders in the

1 election, which are going to be the party -- the  
2 two parties, and figure out a way where you find  
3 your hottest, most concerned polling places, we  
4 will find the ones. You could do some  
5 statistical analysis, find out ones that have  
6 the greatest aberration, and try to identify  
7 them, whatever way you want to do it.

8                   MR. BAUER: If I may, this is  
9 probably not the first time I have made an  
10 unwise suggestion. I think from a whole host of  
11 respects, it is very, very difficult to sell.  
12 First of all, I don't think the American public  
13 is going to want an election system where two  
14 parties are involved in the election system.  
15 Secondly, anybody who's served the parties would  
16 know how quickly they will arrive at  
17 understanding workers in polling places.

18                   I tend to get along with Republicans,  
19 but I doubt this would be anything other than  
20 attractive and efficient controversial effort.

21                   And the last point I would make is,  
22 you're introducing a variable into the very

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1 thing you want to study. If you announce  
2 political parties are going out into the field,  
3 you're going to affect behavior and you're going  
4 to end up changing the subject you are  
5 undertaking to study. It is not scientific,  
6 will have zero credibility, and it is not what a

7 U.S. Government enterprise should go through.

8 MR. GINSBERG: The point was, you're  
9 not looking to monitor the sanctity of American  
10 elections. What you're looking for is valid  
11 data to collect. And part of the problem that I  
12 think you've got with the data you're collecting  
13 is you're not sure how true it is. You are not  
14 sure how much is political charges. You are not  
15 sure, as you said, it is the charge that is made  
16 one day all over the front page but straightened  
17 out three weeks later. This is for data  
18 collection purposes. This isn't about  
19 monitoring the sanctity of the election.

20 MR. BAUER: The data collectors don't  
21 have any credibility. The two major party  
22 organizations in this country are not neutral

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1 collectors of data. Everything they are going  
2 to collect is going to be collected in a  
3 partisan way. That is true on your side. We're  
4 not going to be able to persuade anybody that  
5 this is anything different.

6 MS. WANG: We already have -- the  
7 Department of Justice has a major observer  
8 program.

9 MR. WEINBERG: The article lays out  
10 exactly how the justice department finds the  
11 polling places to put observers in. And it also  
12 collects examples of the observer report fields.  
13 So this -- and internationally, those of us who  
14 have done international stuff know we do pretty

15 much the same thing, and they use pretty much  
16 the same kind of forms. The fact of the matter  
17 is that I think you can get a lot of data, you  
18 can get it on a form. And the fact that people  
19 are two different political parties doesn't mean  
20 they are going to try to lie on forms. If it  
21 does, things are pretty sad.

22                   The other thing is that you do affect  
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1 the election, and that's not bad. One of the  
2 great, great saving graces of the observer  
3 function is it opens everything up. You have  
4 transparency. First time you don't have people  
5 wondering what's going on in the polling places.  
6 You have people knowing what is going on in the  
7 polling places. And there's ways to control  
8 them. They can sit in particular places. If  
9 they have complaints, they can complaint to the  
10 precinct chair.

11                   There are things that you can do and  
12 there are ways to organize it, and you can  
13 figure out which polling places, what goal  
14 you're trying to achieve that you can get  
15 information. If you get it every election,  
16 every year for the 25 years, I have seen and  
17 it's doable. Will it take a lot of people,  
18 sure. Take organizing, yes, but you know,  
19 organizing is what you want, if you're going to  
20 get data. Is it going to be scientifically  
21 reliable, I don't know. I don't know if there  
22 is anything that can be done, having read all

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1 that, that is going to end up scientifically  
2 reliable.

3           But what impressed me in reading  
4 through all this is that these problems are not  
5 -- you don't have the one solution fits all. If  
6 you've got things happening inside polling  
7 places, that's one thing. If you have things  
8 happening on absentee ballots, you're going to  
9 have a different approach. If you have  
10 intimidation of voters, polling signs put up,  
11 you're going to get deported if you vote, that's  
12 a different problem. And I don't think you're  
13 going to find a solution to either get data on  
14 or resolve any of those problems with the same  
15 solution.

16           MS. WANG: So you need multiple  
17 studies.

18           MR. DON SANTO: I will tend to agree  
19 with my friend Barry, and add to that a couple  
20 caveats. Number one, the program Barry  
21 honorably oversaw for a large part of his life  
22 is based on a federal statute that gives the

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1 Federal Government statutory authority to put  
2 federal observers in polling places when certain  
3 conditions are certified to exist by the  
4 Attorney General. Only a few states, I haven't  
5 done a count, not all states allow election  
6 monitors to be in the polls.

7           So you start out with the problem of  
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8 access in the polling place. This is a problem  
9 for us in law enforcement. We can know that  
10 something is going to go on. If we were told  
11 something was going to go on in Polling Place 3  
12 in Ward 4 in Chicago, we could send somebody in  
13 there. I guess we could. Bad example.

14 MS. WANG: That's the recommendation  
15 that we come out to change or encourage states  
16 to change that.

17 MR. DONSANTO: But in terms of your  
18 ability to employ something now, it's an  
19 obstacle you have to overcome.

20 Secondly, and I think Barry touched  
21 on this --

22 MR. SEREBROV: Maybe we'd overcome it  
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1 if you get a candidate to appoint you as a poll  
2 worker.

3 MR. DONSANTO: Then you get into a  
4 position where you're skewing data. That's  
5 where you're politicizing more so than just a  
6 party watcher.

7 MR. SEREBROV: You can get the  
8 parties to authorize you.

9 MR. DONSANTO: In Virginia, they  
10 don't have poll watchers in Virginia. If a  
11 candidate were to try to put a poll cashier in  
12 Virginia, he would be kicked out, and most  
13 states follow that rule, whatever.

14 The other thing is that I think it  
15 was brought up early on in what you all

16 presented here, the types of things that go  
17 wrong inside polling places are really not  
18 representative of the uniform of things that go  
19 wrong. The types of things -- there used to be  
20 a time when election fraud was committed by poll  
21 officers who just stole elections, but during  
22 the past 30 or 40 years that I've been watching 71

1 this stuff, the election administration business  
2 has become more professionalized. And when you  
3 have a professional sort of approach to the job  
4 of administering elections, although there may  
5 be something there that is representing a  
6 political party, your loyalty goes beyond that  
7 to the process. And it's becoming extremely  
8 rare, extremely rare today, to find polling  
9 officials that are complacent in election fraud,  
10 whereas 30, 40 years ago, it was not unusual at  
11 all.

12           So you know the kind of methodologies  
13 that you've been talking about are not, for  
14 example, going to allow you to capture  
15 information on things that take place at the  
16 polling place. It is not going to allow to you  
17 capture information on intimidating voters,  
18 absentee ballots. The situation is very hard to  
19 measure.

20           MR. WEINBERG: It will give you  
21 information on the difference in treatment of  
22 voters that happens frequently, and it will give 72

1 you other information about what happens as far  
2 as the process, and whether the process is being  
3 followed.

4           Professional balloting is a huge  
5 question that's come up. Nobody knows how that  
6 works anywhere, and whatever happens to those  
7 ballots, I mean, come on. There are things that  
8 you can learn about problems that contribute to  
9 the distrust of the election process, even  
10 though you probably wouldn't see a whole lot of  
11 direct fraud.

12           MS. WANG: Again, the provisional  
13 ballot is an interesting issue to raise.  
14 Michael McDonald, who worked on the election day  
15 study, he and I have talk about this a lot.  
16 Section 203 covered jurisdictions, there was  
17 more use of provisional ballots than in any kind  
18 of jurisdiction. Can you start to draw  
19 conclusions from that? So that's another thing  
20 that you can look at.

21           MR. WEINBERG: I'll just interject  
22 one more thing. There is the re-authorization

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1 of the Voting Rights act, that what we ought to  
2 do is cut loose the observing from the  
3 technically special covered jurisdictions and  
4 have them be able to be assigned nationwide with  
5 specific criteria, and that would help a lot of  
6 the problems.

7           MR. BAUER: Our mandate here is to

8 look at the research. I disagree with the  
9 secretary. I think some of the preliminary work  
10 is absolutely essential to the credibility, to  
11 the thoughtfulness and integrity of the effort,  
12 but I don't think that, as I read this, this  
13 means that our judgement is that we leave the  
14 work that's been done today and create a hybrid  
15 project which has as its aim to function as  
16 improvement on current observing programs.  
17 That's just not our mandate.

18 MR. GINSBERG: So our goal is to have  
19 bad elections so we can get good data?

20 MS. WANG: You may be familiar with  
21 this work by a woman named Susan Hyde,  
22 University of San Diego, doing a comparison

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1 where there are observers as compared to where  
2 there are not observers.

3 MS. ROGERS: I'd like to suggest, in  
4 addition to party observing, states put their  
5 own observing on the ground. When you come into  
6 a state, unless you immerse yourself in that  
7 state's laws and that state's procedures, often  
8 you don't know what you're observing. You don't  
9 know if what you're seeing is legal or illegal.

10 we did work with lawyers committee  
11 and election protection, and reviewed a lot of  
12 their information, sent back edits. We audited  
13 some of their training classes and gave feedback  
14 to those training classes. We had a lot of  
15 community hotline communication on Election Day

16 where they called to tell us what they received.  
17 Not everyone does that, but we're unable to  
18 quantify what is observed or what is alleged as  
19 fraud because the complaint doesn't come to us.  
20 It may go to either party and they not share  
21 that information with the local jurisdiction or  
22 with the state election official.

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1           We've put 80 to 100 observing from  
2 the Secretary of State's Office on the ground  
3 since 2002. We provide them with radios set up  
4 like a little war room. They call us when there  
5 is a problem and we immediately have someone  
6 there to find out what that problem is. They  
7 write up reports, and they are able to take  
8 those reports, and we know where we need to go  
9 and what areas need to be shored up. This  
10 allows us to have the ability to change the  
11 process, if something needs to be changed.

12           Another thing, as far as parties in  
13 our state, now the parties, rather than having  
14 to be appointed as a poll watcher by a  
15 candidate, each party is allowed to appoint up  
16 to 25 statewide poll watchers. These people can  
17 go anywhere they want to go. It seems to work  
18 very well.

19           MR. SEREBROV: I wanted to make two  
20 points. One was a reaction to some of the  
21 comments before. I know Arkansas and lot of  
22 southern states, both the parties and the

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1 candidates are allowed to have watchers in every  
2 poll. The other thing is, in Arkansas, the  
3 Secretary of State doesn't have the statutory  
4 authority to do what you're doing in Georgia. I  
5 wish they did. It would make my life a lot  
6 easier, especially in the past, and it would  
7 make Tim Humphrey's life a lot easier, if you  
8 knew Tim. But really it's a state by state  
9 problem. I don't have a gist -- and this is  
10 something we talked about, there was also a  
11 sampling of state law in the next phase to see  
12 where the bugs are in that system.

13 MS. ROGERS: In Georgia, some of you  
14 may know we have a state election board who has  
15 authority. I actually yesterday pulled a list  
16 of cases that we investigated in 2004. I don't  
17 have the 2005 ones on here, but I can tell you  
18 right now, of all of these cases right here, the  
19 state election board investigated the majority  
20 of these were absentee ballots.

21 MS. WANG: Well, I wish that every  
22 state did what you did, then we could just add

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1 them all up. One thing we found, of course,  
2 almost no states do that. Also, we spoke to  
3 your successor, John Tanner. And the Federal  
4 Government, the Department of Justice keeps a  
5 database of what comes in but they will not  
6 release that information to us. And they also  
7 would not release to us any more than a few  
8 dozen of the observer reports, which we also  
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9 think might be useful.

10 MS. ROGERS: We've seen a high  
11 success rate, not in deferring fraud, but in  
12 deferring the actions of election officials and  
13 poll workers. Those actions where you talked  
14 about you can't determine if they are fraud but  
15 yet they appear to be a lack of attention to  
16 detail. We bring these people up regularly.  
17 And when you bring them up in front of their  
18 peers, it is a huge deterrence. And you're  
19 correct, every case we have brought forward, it  
20 has not been an instance of fraud.

21 MS. SIMS: Well, I was wondering,  
22 before we continue on, because we're already

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1 getting some ideas for possible areas and it  
2 might be worthwhile just to put these ideas  
3 down, even though I am certainly not looking at  
4 this as all one project. Some of these things  
5 are not going to be one project, and some things  
6 will be more problematic and may not be  
7 something we can do right away.

8 For example, for a number of reasons,  
9 we couldn't do observers in this fall's  
10 election, not the least of which is financial.  
11 We probably won't have a budget, '07 budget, by  
12 then. But actually, before we go on to this,  
13 would it be okay if we talked about the  
14 definition of voting fraud. Particularly, I'd  
15 like to get into intimidation and suppression  
16 areas.

17                   If you don't have copies of that, we  
18 can quickly run off some copies. One of the  
19 reasons why I think this is of concern,  
20 obviously, it would be helpful if we all knew  
21 what we meant when we were talking about voter  
22 fraud or voter intimidation. As we progress in

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1 terms of what we want to research or how we want  
2 to identify it or develop projects to identify  
3 and deter and investigate, we have some common  
4 ground.

5                   MS. WANG: Did people get a chance to  
6 look at the definition, and were there  
7 objections?

8                   MR. DONSANTO: Comments. The  
9 definition in the opening paragraph of this is,  
10 I think, taken from something that's kind of the  
11 operational way that we articulate what voter  
12 fraud is as distinguished from the types of  
13 things that go on in the process. So that's how  
14 we define vote fraud.

15                   MS. WANG: It is the sincerest form  
16 of flattery.

17                   MR. DONSANTO: Well, whatever.  
18 However, since half of this program is not  
19 directed so much at fraud but focuses on  
20 intimidation, I think we need to define the term  
21 intimidation. Intimidation is a term that in  
22 the context of elections, in my experience, has

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1 no meaning at all. It can mean anything that  
2 happens to you in connection with voting that  
3 you don't like or that happens to somebody that  
4 supports you that you don't like to. And the  
5 other extreme, somebody who gets killed or a  
6 cross burned on his yard to retaliate against  
7 them for having exercised a franchise.

8           The word fraud is a word that  
9 connotes criminal. Criminal connotes that the  
10 remedy for doing it is to put somebody in jail,  
11 to afford that person all the procedural rights  
12 given to someone in a criminal trial, including  
13 the right to counsel, and obligation of the  
14 prosecutor to prove the case beyond a reasonable  
15 doubt.

16           When applied to the word  
17 intimidation, our research on the laws that  
18 exist at the federal level has been that the  
19 word intimidate in the criminal statutes means  
20 to apply physical or economic duress upon a  
21 victim in connection with a voting act. And if  
22 you're going to use the word intimidate as you

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1 have in the fourth and fifth bullet from the  
2 bottom on your page, I think accuracy would  
3 require that you limit it to that.

4           MS. WANG: well, that is to me  
5 personally -- I don't speak for Job. See if he  
6 agrees with me on this. This is a major matter  
7 of concern to me. One of the things that I have  
8 been exploring in my own head is the idea of

9 changing that so that you can broaden the  
10 criminal intimidation laws on the civil side.

11 MR. DONSANTO: That's a civil side,  
12 that's a different issue. That's not fraud.  
13 Fraud equals crime.

14 MS. WANG: well, the question --

15 MR. DONSANTO: Intimidation, there  
16 are a universe of activities that can be  
17 directed at people in a category of voter  
18 suppression which are not fraud, which are  
19 directed in the political process. Signs are a  
20 good example of that.

21 MS. WANG: I think they are not under  
22 the criminal law fraud, but if you think of

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1 fraud, and this is how we perceive fraud,  
2 anything that distorts the system, the process,  
3 then certainly, keeping people from voting has  
4 the same distorting impact.

5 MR. DONSANTO: Yes, I agree with you.  
6 The thing that you're leaving out is the word  
7 corrupted, to affect an election campaign or  
8 affects activities at the poll. Everything that  
9 affects activities at the polls is encompassed  
10 within your definition, and that encompasses  
11 everything that occurs from the nominating  
12 process on, criminal activity which is so  
13 anti-social in that it warrants the ultimate  
14 societal punishment, incarceration.

15 Now, I'm not going to tell you -- the  
16 word I am focusing on here is intimidation.

17 There is an entirely another area having to do  
18 with voter suppression which we're just  
19 beginning to explore. And I give you an example  
20 of how we're exploring this is the Tobin case  
21 was sentenced yesterday. It was in The Post  
22 yesterday. We're trying at justice to find ways

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1 to get at using the statutes, which we have to  
2 get at aggravated forms of voter suppression. A  
3 maliciously designed denial of service directed  
4 at a get-out-to-vote telephone bank sufficiently  
5 possessed criminal malfeasance that the person  
6 who does something like that should go to jail.  
7 Mr. Tobin, who is the executive director of the  
8 New England Region of the Republican Party, is  
9 facing ten months as a guest of the Attorney  
10 General of the United States. Somebody who puts  
11 -- maliciously circulates posters that contain,  
12 "Republicans vote on Tuesday, Democrats vote on  
13 Wednesday."

14 If we could find the people who do  
15 that sort of thing, that isn't voter  
16 intimidation. That is voter suppression. And,  
17 yes, that kind of conduct, if done for the  
18 design of deterring someone from voting, ought  
19 to be a crime. And I assure you we have  
20 investigated every single instance that has been  
21 brought to our attention, and every single  
22 instance, when we did an investigation, we were

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1 unable to find who did it.

2 MR. BAUER: I'd like to ask a  
3 question. I'm not sure about the distinction  
4 between suppression and intimidation.  
5 Intimidation is a vehicle for achieving  
6 suppression.

7 MR. DONSANTO: You're right.

8 MR. BAUER: In one sense, there may  
9 not be any difference in intent or effect.

10 MR. DONSANTO: Right.

11 MR. BAUER: The second question I  
12 wanted to ask you, if you deal with this  
13 definitional change, if you talk about physical  
14 or --

15 MR. DONSANTO: In the context of the  
16 term of intimidation, I would limit it that way.

17 MR. BAUER: But intimidation is  
18 related to suppression, in terms of Mr. Tobin.

19 MR. DONSANTO: No, his is not an  
20 intimidation. That's corrupt suppression.

21 MR. BAUER: Here's my question.  
22 Intimidation conducted on a systematic scale for  
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1 the purpose of driving people away from the  
2 polls has a suppressive nature.

3 MR. DONSANTO: I don't disagree, but  
4 the question becomes what methodology they are  
5 using to achieve that result.

6 MR. BAUER: The point you made about  
7 capping off the physical and economic portion.

8 MR. DONSANTO: As far as intimidation  
9 is concerned. Suppression is a broader term.

10 MR. BAUER: Let's talk about that  
11 part of intimidation because I think, quite  
12 frankly, intimidation isn't done for the  
13 psychological joy of the intimidator. It is to  
14 drive people away from the polls.

15 Granted, the justice department will  
16 be looking to converting it to criminally liable  
17 behavior. It has the feel, tone, color, of  
18 maliciously interfering with people's lives.

19 MR. DON SANTO: Corrupt. I think I  
20 see where you're going.

21 MR. BAUER: What if you have a party  
22 that dresses up people in para military so they

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1 look like military soldiers, and sends them into  
2 targeted polling places to yell at voters as  
3 they walk in, that they need to produce their  
4 IDs, showing it to these people. If you had  
5 that on a widespread, organized basis, and it is  
6 clearly an intimidating behavior, it is clearly  
7 malicious, you wouldn't say that that's outside  
8 the range of conduct you would be concerned  
9 about.

10 MR. DON SANTO: Under the laws we have  
11 to work with today, Bob, that's not corrupt.

12 MR. BAUER: But you think the laws  
13 you work with are supple enough?

14 MR. DON SANTO: We're trying to bend  
15 the ones we've got to address aggravated cases  
16 of voter suppression, and the Tobin case is an  
17 example of that. And you know how we do this,

18 if we won Tobin and we get a District Court  
19 opinion, although he was acquitted on the 241  
20 Count, if we got an opinion from the Court  
21 saying the statute applies to this conduct,  
22 that's the goal. You can bet the next time we

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1 have a denying of service attack, we're going to  
2 attack it the same way. Whether we can then  
3 take that case and make it apply to different  
4 facts, we'll try.

5 MR. BAUER: That's what I wanted to  
6 not.

7 MR. DONSANTO: But this is a work in  
8 progress.

9 MS. WANG: Does this argue for a new  
10 law?

11 MR. DONSANTO: I don't know that is a  
12 policy question.

13 MR. HEARNE: Let me ask a question to  
14 clarify that, to see where we are right now.

15 You mentioned the Tobin situation. The  
16 allegation was often made and sometimes occurs  
17 that an organization makes phone calls  
18 intentionally misdirecting a voter to the wrong  
19 poll, saying you have to bring eight forms of  
20 identification, voting is on Wednesday.

21 MR. DONSANTO: That's false.  
22 We would investigate that.

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1 MR. GREENBAUM: Craig, can I call you

2 directly?

3 MR. DONSANTO: FBI.

4 MR. GREENBAUM: We did that twice in  
5 2004. We had other instances we could have done  
6 it. And the FBI, they did not want to  
7 follow-up. We had the complainant.

8 MR. DONSANTO: which field division?

9 MR. GREENBAUM: In Arizona, in  
10 Florida. Florida, I think it was Palm Beach.

11 MR. DONSANTO: I'll tell you what  
12 I'll do, I am not here to protest or intake  
13 cases, but I write an awful FD 302.

14 MR. GREENBAUM: In Arizona --

15 MR. DONSANTO: If you can send me a  
16 paragraph on these, I will send it to the  
17 district election officer in that district and  
18 ask what happened. I won't be able to tell you  
19 what they responded to, but I will in fact  
20 query. Because what I said is true, if we can  
21 find out who does that sort of thing, I am eager  
22 to.

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1 MR. HEARNE: Craig, in your opinion,  
2 someone making those kind of false statements,  
3 is that within what you understand to be  
4 intimidation?

5 MR. DONSANTO: If it occurs within a  
6 federal election. That is the unique way the  
7 laws were written about, if it occurs in a  
8 federal election, that sort of behavior is a  
9 conspiracy to deprive the victim of their right

10 to vote for federal office.

11 MS. WANG: I have to say, in some of  
12 the interviews, we have heard similar complaints  
13 from the people from the advocacy organizations,  
14 that they have sent reams of documentation to  
15 the DOJ and not gotten a response.

16 MR. GREENBAUM: We did something to  
17 Tanner or to Alex Costa. Alex called back and  
18 said, "Talk to the FBI." With two of the  
19 instances, we talked to the FBI, and it was  
20 clear that they just had no intention of doing  
21 anything with it. Frankly, it turned us off  
22 after that.

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1 MR. DONSANTO: In Arizona, I am not  
2 entirely surprised, but that may be a personnel  
3 problem. And it also may be a problem with  
4 respect to how your facts fell insofar as the  
5 law. It may be the fact that your facts did not  
6 produce sufficient leads. These are all things.

7 MR. GREENBAUM: In one case we  
8 actually had -- the person actually had the  
9 number, because of caller ID and actually called  
10 the number back, and someone answered the phone  
11 and identified who they were affiliated with.

12 MR. DONSANTO: Right. This occurred  
13 in the 2004 general election?

14 MR. GREENBAUM: Yes, it did.

15 MR. HEARNE: I can give you another  
16 example that was presented to Congress, and it  
17 was not followed up. That was a phone call to a \*

18 sitting retired Ohio judge in Marion County,  
19 Ohio.

20 MR. DONSANTO: We did follow-up on  
21 that one.

22 MR. SEREBROV: Yes. There was the

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1 case I gave you.

2 MS. WANG: You might want to look at  
3 the summaries of the interviews, because a  
4 number of people have said they have given all  
5 this information to the Department of Justice,  
6 and they haven't done anything. I am just the  
7 bearer of the news.

8 MR. DONSANTO: And the other thing  
9 that bears in mind, we cannot prosecute  
10 everything. We try to, based on the degree of  
11 severity of the event and the need for  
12 deterrence.

13 MR. HEARNE: Craig, not to belabor  
14 the point but to make sure, in terms of the  
15 intimidation, that I think it's very important  
16 that we all understand, every election I ever  
17 remember hearing about, we have these  
18 allegations. And we always hear them and  
19 everybody says, well, hey, no one did anything.  
20 We're talking about calls to voters, like the  
21 Tobin situation. We just talked about the other  
22 situation, calls directed to voters trying to

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1 give them misinformation.

2 what about calls to other people  
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3 involved in the election, somebody calling and  
4 saying, if you participate as an observer, as a  
5 volunteer in an election, that we're going to  
6 sue you for doing that, not voting, just  
7 participating in the election process.

8           MR. DONSANTO: I'm not going to  
9 comment on whether that's a crime or not.  
10 That's probably more a statement of fact. The  
11 underlying thing is that is communicated, it has  
12 to be false. I understand why some people will  
13 be appalled of the fact that you intend to put  
14 poll observers in their precinct, and say want  
15 to sue you.

16           MS. WANG: My understanding is you  
17 don't think the way we have intimidation here is  
18 comports with what the legal definition is.

19           MR. DONSANTO: I think out of the  
20 exchange that I had, I think I have changed my  
21 thinking a little bit. Can I run it out a  
22 second time, see if it comes out better.

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1           The word intimidate is a word of art  
2 that connotes physical or economic duress in  
3 terms of criminal behavior, okay.

4           The word suppression is a work in  
5 progress. I can tell you it addresses denial of  
6 services, actions directed at get-out-to-vote  
7 drives. I can tell you it is directed at  
8 situations where maliciously false information  
9 is communicated to voters to prevent them from  
10 voting in election federal elections. Change  
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11 poll places, hiding the poll place, that's an  
12 old type of thing.

13                   So the point is the extent to which  
14 the word suppression can be translated into  
15 crime is a work in progress, with certain  
16 aspects of it that I have just summarized here  
17 being clearly within the definition but not  
18 necessarily having those being exclusive.

19                   MS. WANG: So is there some  
20 particular language that you might suggest?

21                   MR. DON SANTO: I think the word  
22 corruptly.

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1                   MS. SIMS: So the fifth bullet from  
2 the bottom.

3                   MR. DON SANTO: Intimidating practices  
4 involving the use of economic, physical duress  
5 to prevent or deter voting activity, and then a  
6 separate bullet having to do with suppression,  
7 corrupt activities or activities aimed at  
8 corruptly suppressing. Corruptly with a word  
9 that connotes specific intent. It's kind of  
10 like you know it when you see it.

11                   MS. WANG: Are we limited to the  
12 Department of Justice definition of  
13 intimidation?

14                   MR. DON SANTO: You can do anything  
15 that you want to do.

16                   MS. WANG: Because I would rather not  
17 have it be limited to economic or physical  
18 deprivation.

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19 MR. DONSANTO: This is what I am  
20 trying to avoid, is that there are some things  
21 that happen in the political process that aren't  
22 pleasant, and the rent-a-cop scenario is one of 95

1 those, the poll watcher who aggressively pursues  
2 his mandate and poll watches.

3 MS. WANG: That's what I'm talking  
4 about.

5 MR. DONSANTO: That's not a crime  
6 Fraud is a word that connotes crime.

7 MR. GINSBERG: You can't tune your  
8 definitions to create a political resolve,  
9 unless you want to make a political statement,  
10 which is fine, but then let's label it that way.  
11 And I hope that if you're going to manufacture a  
12 definition like that, you would have precise  
13 examples of what you're trying to bring in to  
14 this new term you're coming up with.

15 MR. GREENBAUM: Sure. In terms of  
16 this type of intimidation, actually the example  
17 that Craig gave, the over aggressive poll  
18 watcher, there are cases out there where those  
19 poll watchers have been thrown out, not  
20 necessarily because they committed a crime, but  
21 they may have violated a statute.

22 MR. DONSANTO: And that is the 96

1 appropriate remedy for that kind of offense.

2 MR. GREENBAUM: But that's part of

3 intimidation though.

4 MR. GINSBERG: Poll watchers who are  
5 being more aggressive than the local people in  
6 the polls think that should be intimidating, and  
7 that the poll watcher should leave.

8 Where does that fit into your definition?

9 Let's deal with that example.

10 MR. BAUER: Well, I want to go to  
11 something you earlier said, which is, we  
12 shouldn't be concerned with anything that isn't  
13 criminal, that couldn't be established to be  
14 criminal. Well, you just said -- Craig said  
15 they are -- it is a work in progress to begin  
16 with. That is not a boundary that is easily set  
17 here.

18 And the second thing, I don't believe  
19 that the EAC should announce that it's only  
20 dealing with criminal forms of illegal conduct.

21 MR. GINSBERG: You can't stretch  
22 definitions to achieve a political result here. 97

1 I was referring to the way she was trying to  
2 change it.

3 MS. ROGERS: Does the definition  
4 include conspiring to do any of these?

5 MS. WANG: That can certainly be  
6 added.

7 MR. HEARNE: Let me ask a question.  
8 When you use the word intimidation, a lot of  
9 people have come to me in different contexts and  
10 say, "I find it intimidating when I go in and

11 people with signs are sticking something in  
12 front of me."

13 MS. WANG: Well, how did you make the  
14 distinction in the report that you wrote?

15 MR. HEARNE: Well, the report would  
16 be somebody trying to prevent somebody from  
17 exercising their right. That's a component  
18 point. You work into it.

19 MS. WANG: Intimidating practices.

20 MR. HEARNE: I want to bring out the  
21 point, it is not just a perception that some  
22 hypothetical voter found it intimidating to go

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1 through the process, but it was intended by the  
2 person engaging in that act to deny that person  
3 their right to participate in the election.

4 MS. WANG: I had specifically wanted  
5 and I guess there had been some objection to  
6 having violations of the Voting Rights Act part  
7 of this definition, but I think Craig said what  
8 was the problem. I think there are some Section  
9 2 violations and there was an objection to that.

10 MR. DONSANTO: The problem that I've  
11 got with their definition is that the word fraud  
12 appears in the labelling definition, and I don't  
13 know what the Congress meant when it put that  
14 word in there.

15 I have been a prosecutor my whole  
16 life. To me, fraud is a crime. There is no  
17 such thing to me. Fraud connotes, yes, there is  
18 civil fraud, but civil fraud, I have always been

19 a believer in the fact that most civil frauds  
20 could be criminal fraud. Fraud is obtaining  
21 property from another through lying.

22 MS. WANG: Defining elect fraud and

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1 defining voter intimidation.

2 MR. GINSBERG: Let me go back to my  
3 hypothetical. Does the definition of a poll  
4 watcher in an unfriendly precinct, who gets  
5 intimidated, who goes about his duties under the  
6 statute to challenge voters that he or she  
7 thinks may be improper, and is intimidated out of  
8 that polling place from doing the poll watcher's  
9 job, does that fit in your definition?

10 MS. WANG: well, that goes back to  
11 the problem of where do you draw the line  
12 between allegations and something that would  
13 indicate that there was some merit to it, some  
14 sort of investigation or official action, which  
15 is a problem that you have in all of these  
16 examples, so I can't say this is where you draw  
17 the line in this particular instance the same  
18 way. I'm not sure how you draw the line when  
19 someone alleges that a felon has voted and they  
20 should be prosecuted and thrown in jail and it  
21 is the case that they did not know where they  
22 were not allowed to vote. There is line drawing

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1 that has to be done that isn't easy.

2 MR. DONSANTO: Couldn't you possibly  
3 address this by putting before the preface

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4 something to the effect that the definition that  
5 we're providing here is a definition that we're  
6 going to be using to define the scope of this  
7 project? Most of the activities described here  
8 are crimes, but that is not necessarily the case  
9 with all of them.

10 MS. WANG: I'm fine with that.

11 MR. DON SANTO: Something like that.

12 MR. HEARNE: Tova, let me make sure  
13 your point is one that I agree with, is to say  
14 let's look at we're not saying somebody finds it  
15 intimidating, but something intimidating enough  
16 to prevent somebody lawfully participating in  
17 the election process. Do we include just the  
18 voter or other people, volunteers, people  
19 participating, people driving them to the poll?  
20 If somebody wants to drive somebody to the polls  
21 and slashes their tires, does that count as a  
22 suppression or intimidation?

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1 MS. WANG: well, you know, we had  
2 that case already.

3 MR. HEARNE: when we look at that  
4 definition, what are we looking at?

5 MS. WANG: well, they are in jail  
6 now.

7 MR. DON SANTO: That's a Wisconsin  
8 case.

9 MR. GINSBERG: what's the distinction  
10 between that case and the phone case?

11 MR. DON SANTO: None. We wanted both  
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12 of them. We were prepared to take both of them,  
13 but we only had enough resources to pursue one,  
14 and the District Attorney in Milwaukee agreed to  
15 take operation elephant flat foot. That's what  
16 it was called. The name of it was called  
17 elephant flat foot. Instead of jamming the  
18 phone lines of the get-out-to-vote drive, they  
19 took the vans that were going to be used to  
20 deliver voters to the polls and wrecked them.

21 MR. GINSBERG: Is that intimidation?

22 MS. WANG: It probably doesn't count  
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1 because it does distort the ability to vote, so  
2 I would guess so.

3 MR. SEREBROV: Well, it's an  
4 intentional action, so it's included.

5 MR. DONSANTO: There is corrupt voter  
6 suppression, and those guys are all in jail.

7 MR. GINSBERG: And you don't have the  
8 federal precedent.

9 MR. DONSANTO: The same thing, the  
10 object of the scheme was to deprive the victim  
11 of their right to vote in a federal election,  
12 the right to vote for federal office. That was  
13 the object of it, same way as at the poll.

14 MS. WANG: Are there other comments  
15 or suggestions to the definition that we have,  
16 other than Craig's?

17 Is this a good time to take a break?

18 MS. SIMS: I wanted to mention that  
19 Secretary Todd ROKita had asked about

20 legislative history in connection with these two  
21 things. I had done some initial research and  
22 hadn't found it to be helpful. As I recall to a  
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1 certain extent, these were, I believe,  
2 amendments added on the floor of the House, and  
3 I don't know there was a lot of discussion  
4 associated with them.

5 MR. ROKITA: Was there any?

6 MS. SIMS: Other than I knew that the  
7 voter intimidation was a direct reaction to the  
8 voting fraud amendment. What a surprise. That  
9 was pretty clear, but there wasn't a lot in here  
10 that I could see. The meat of this bill, the  
11 discussions took place outside of public venue.

12 MR. ROKITA: If there is some way we  
13 can run a quick search on 241 and print off some  
14 legislative history.

15 MR. DONSANTO: 241 was enacted in  
16 1886.

17 MR. ROKITA: Help America Vote Act.

18 MS. SIMS: We have a volunteer ready  
19 to do that, but it may be a good time to do a  
20 break.

21 MR. HEARNE: Before we conclude that  
22 point, my sense was, is somebody going to  
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1 re-work it, are we going to break it into two?

2 MS. WANG: We're going to put this  
3 little preface. She got all this down.

4 MR. HEARNE: Is that transcript going  
5 to be available to us?

6 MS. SIMS: We can make it available  
7 to you, probably 15 days.

8 (Short Recess.)

9 MS. SIMS: As you notice, we have  
10 been joined by Paul DeGregorio and our Executive  
11 Director, Tom Wilkey, and Julie Thompson  
12 Hodgkins.

13 CHAIRMAN DEGREGORIO: Let me, first  
14 of all, thank you on behalf of the Commission  
15 for coming today and participating in this  
16 important working group. We know that Job and  
17 Tova have worked for many months now on this  
18 project, and some of you together, to discuss  
19 this important issue of voter fraud and voter  
20 intimidation that is required under HAVA for the  
21 EAC to take a look at. And we have taken our  
22 role very seriously to do, and believe they have

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1 brought together some of the best people in the  
2 country to take a look at these issues and to  
3 come forth with some ideas for the EAC.

4 Vice-Chairman Martinez wanted to be  
5 with us today, but his father is fairly sick in  
6 Austin, so he had to fly back yesterday evening  
7 to be with his father and so he couldn't be  
8 here, but I've asked our executive director, Tom  
9 Wilkey, raise your hand, and our legal counsel,  
10 Julie Hodgkins, to join us this afternoon.

11 I know that you all have had some

12 discussions already and we're really just going  
13 to listen, not to participate, because we know  
14 you are at the point where you're going to be  
15 talking about some recommendations and talking  
16 about some things that you want to direct to the  
17 EAC.

18                   So we thought it would be important  
19 just for us to sit back and to listen to the  
20 discussion so it can help us, as the consultant,  
21 to then move forward with recommendations to us  
22 in future months. Thank you, again, for

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1 participating. I don't know if you're going to  
2 have future working groups of this group, but  
3 certainly --

4                   MS. SIMS: Not for this phase, but if  
5 we have subsequent research, I'm sure that we'll  
6 need working groups to help us with that.

7                   CHAIRMAN DEGREGORIO: Peggy Sims and  
8 I go back twenty years when I was the director  
9 of elections in St. Louis County, and Thor was  
10 pretty young and maybe still in law school. I  
11 remember those days. I used to call Peggy when  
12 she worked for the Federal Election Commission  
13 in Franklin. Donsanto also goes back many, many  
14 years to IACREAT seminars when I used to hear  
15 him talk about voter fraud issues throughout the  
16 country. We have got some other people in our  
17 own staff who are participating in helping this  
18 along. Thank you, Peggy, for your work. I will  
19 let you go ahead and continue.

20 MS. SIMS: Okay. I just wanted to  
21 say as we get into ideas, because remember,  
22 we're not just talking about statistics, we're

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1 talking about identifying, deterring, and  
2 investigating voter fraud and voter  
3 intimidation. Some of that, in my mind, and  
4 this is, again, from my experience at FEC, will  
5 involve the process and how election officials  
6 run the process.

7 we're also working on management  
8 guidelines for voting systems. As you may know,  
9 the EAC recently released its voluntary voting  
10 system guidelines which are used to test voting  
11 equipment. Now, we're also focusing -- we're  
12 also working on updating those guidelines. That  
13 is going to be a constant process, but the  
14 companion piece, one that I know Tom Wilkey has  
15 urged us to do for a long time, is to develop  
16 management guidelines for the management of  
17 these voting systems. We're working on that  
18 right now.

19 Also, we have a project looking at  
20 state vote counting and recounting laws in  
21 contested elections. And the effort will also  
22 pick up best practices that apply to these

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1 areas.

2 we also have a report that is being  
3 -- I guess it is still in the draft stage for  
4 provisional voting, and one on voter ID that

5 might relate to some of these problems that we  
6 saw, that may actually relate more to how the  
7 process is administered rather than actual  
8 voting fraud. But if these processes are  
9 administered badly, they can leave open the  
10 opportunity for voting fraud.

11                   So I wanted to make sure you had that  
12 information available before we got into this  
13 discussion.

14                   MS. WANG: Okay. Well, as I kept  
15 referring to earlier, I did talk to a bunch of  
16 political scientists and other expert types in  
17 the field. You have in your materials sort of  
18 summaries of the recommendations that they made.  
19 As I said, if ever there was something everyone  
20 agreed to, this would be a complex undertaking.  
21 I am not a political scientist so I am sort of  
22 reluctant to myself recommend any one of these

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1 methodologies over another, which is why I think  
2 in Phase 2 it will be necessary to have someone  
3 of the nature of the people I interviewed  
4 involved in the process, someone who really  
5 knows how to do statistical work and do these  
6 kind of studies. And there are people out there  
7 like that, and I can make some recommendations  
8 in that regard.

9                   I would note that several of the  
10 recommended methodologies, sort of a  
11 multi-pronged approach we were getting at  
12 earlier, many of them include the elements of

13 conducting more interviews, doing a survey,  
14 which I know brings up issues for the EAC, but  
15 doing a survey of voters or administrators or  
16 both, and finally, analyzing and doing voting  
17 list comparisons.

18               So I'm happy to talk further about  
19 any of the particular methodologies that were  
20 suggested to me but I think I don't feel that I  
21 am necessarily in the position to judge which of  
22 these is best, and I would be open to any

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1 thoughts you have as to what seemed like they  
2 make the most sense.

3               MS. SIMS: The difficulties we have  
4 with surveys is because this agency, unlike FEC,  
5 is under the Paperwork Reduction Act  
6 requirement, which means we have to go through a  
7 process which Julie could tell you, if you need  
8 to know. But what it does is delays our ability  
9 to be able to do surveys quickly because we have  
10 to go through this process before we're allowed  
11 to conduct surveys.

12               MR. DONSANTO: Paperwork Reduction  
13 Act requires you to --

14               MS. SIMS: Make paperwork, yes. The  
15 only reason why I bring that up then is if we're  
16 going to have surveys as part of a research  
17 process, we have to build in time to be able to  
18 go through this process to get our surveys  
19 approved and ready to go.

20               I know people were already talking

21 about some ideas earlier. I will just go ahead  
22 and put them up. I know we had a discussion

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1 about observers, using observers or poll  
2 watchers. I'm not making any judgements on the  
3 cost of these or our ability to do this. I just  
4 want to make sure we put up our ideas.

5 MR. CORTES: In terms of that, could  
6 we define when we're talking about observers,  
7 what those people actually do in the polling  
8 place? I think there's different states have  
9 allowed different types of access to people and  
10 what they can do there. I believe you mentioned  
11 earlier that in Virginia there aren't observers  
12 allowed, but they do have people in the parties  
13 in there that keep track of who comes into the  
14 polling place.

15 So in terms of making those  
16 distinctions, if we could get some definitions  
17 for these, I think it would be helpful.

18 MS. SIMS: Would we be able to do the  
19 definitions or would these be defined by the  
20 states?

21 MR. SEREBROV: Part of our suggestion  
22 was a survey state wise.

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1 MR. HEARNE: In terms of what I think  
2 Ben was suggesting, I think Barry had a concept.  
3 what you were talking about, Barry, was sort of  
4 the rigorous questionnaire kind of thing that is

5 a uniform observation form that observers were  
6 given, with very quantifiable data, that they go  
7 in and observe the conduct of the election and  
8 report anything based on that sort of standard.  
9 That is what you're conceiving. So somebody  
10 would say, how many people are registered to  
11 vote here, how many machines are in this polling  
12 place, how long a wait, how many people came  
13 through the line, check off those objective  
14 factors, is that what you're thinking of?

15 MR. WEINBERG: Right, whatever else,  
16 comments observers want to make on the forms.

17 MR. GREENBAUM: At this point, we're  
18 just putting ideas on the table. We're not  
19 discussing how we feel about them.

20 MS. SIMS: That's correct. We know  
21 we don't have universal support.

22 MS. ROGERS: On the subject of

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1 observers, there seems to be two prongs; one,  
2 observers used in the collection of data, but  
3 two, observers used as a methodology in  
4 deterring fraud, which seems to me to be two  
5 different uses of observers, and I wanted to  
6 record that.

7 MS. WANG: Let's just talk about the  
8 methodology first because I have a list of  
9 things that we should do going forward.  
10 I am focusing on the methodologies first.

11 what do you all think about doing a  
12 survey?

13 MR. DONSANTO: Survey of what?  
14 MS. WANG: Well, you could do it a  
15 couple different ways. Some of them actually  
16 are described here.  
17 MR. BAUER: Voter surveys?  
18 MS. WANG: Voter surveys, what did  
19 you experience at the poll.  
20 MR. DONSANTO: Who are the people  
21 that would get the survey?  
22 MS. WANG: Well, it would be to have

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1 some sort of random survey that a political  
2 scientist would know how to devise.  
3 The other thing is having observers  
4 who either survey voters as they come out of the  
5 poll.

6 MR. WEINBERG: But is this a survey  
7 to determine fraud or to determine what happened  
8 in the poll? What's to come out of this, what  
9 is the survey supposed to tell us?

10 MS. WANG: Whether the person  
11 participated in -- or who knows how much they  
12 will self report, or observed some kind of  
13 practice, fraud, or intimidation practice.

14 MR. BAUER: Is this based on the  
15 Overton?

16 MS. WANG: Several of the experts  
17 interviewed that I spoke to suggested a survey.  
18 There was also a suggestion of a more massive  
19 survey of administrators that would be much more  
20 comprehensive than just trying to do interviews

21 of these people.

22 MR. GINSBERG: How many voters were 115

1 they willing to --

2 MS. WANG: No one was willing to come  
3 up with a number. They just said it would have  
4 to be big.

5 MR. DON SANTO: It would have to be  
6 huge.

7 MS. SIMS: When they referenced  
8 election officials, they were talking about  
9 local and state election officials.

10 MS. WANG: Well, at this point, local  
11 because the state election officials have been  
12 easy to have conversations with.

13 MR. BAUER: There is one kind of  
14 survey intended to determine whether or not the  
15 voters we talked to who say they were registered  
16 were, in fact, registered. As Overton  
17 described, this is a statistically  
18 representative sample of people who purported to  
19 report how they voted. And the other one,  
20 somewhere, you are basically converting them  
21 into eyewitnesses.

22 There are very different kinds of surveys for 116

1 very different purposes.

2 MR. GINSBERG: Did you commit fraud  
3 at the polling place?

4 MR. BAUER: Trying to transcend the  
5 anecdotal nature of what we do about frauds, it

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6 seems to me -- I am not an expert on polling  
7 methodology, but the potential for  
8 interpretation of an awful lot of data collected  
9 for marginal potential value, it doesn't tell  
10 you very much.

11 MR. GREENBAUM: Let me agree with  
12 Bob.

13 MS. WANG: Just for the record.

14 MR. WEINBERG: I think a better  
15 question would be whether anybody thinks the  
16 survey would be useful.

17 MR. DONSANTO: It is for the  
18 practical. It might be useful. It is just not  
19 practical.

20 MR. GREENBAUM: Except to the extent  
21 I am aware of all the things we have on there.  
22 How do we capture where most of the fraud's

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1 taking place, which is not in the polls.

2 MR. DONSANTO: Right.

3 MR. GREENBAUM: For the initial, I  
4 will state that it's my opinion.

5 MR. GINSBERG: But come up with a  
6 list about where you think the fraud is being  
7 committed, see if you can come up with a  
8 methodology.

9 MS. WANG: There was this bunch of  
10 people who independently came up with the idea  
11 of picking ten places where you know there have  
12 been a lot of problems, and some people where  
13 there haven't, make them match geographically,

14 demographically, and try to see where the  
15 differences are.

16 MR. GREENBAUM: It's tricky. I know  
17 this in terms of some of the stuff I have done,  
18 but sometimes you think that places are doing  
19 better than they really are, and sometimes you  
20 think that places are doing worse.

21 MR. HEARNE: Let me suggest an  
22 objective criteria that you might get in the

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1 first gathering. In Ohio, a lot of allegations  
2 were made that voters were intimidated or  
3 suppressed, the voter buys, taking older ones  
4 and not putting them in others. There was a  
5 U.S. House administration hearing, and officials  
6 in charge said, no, we had quality distribution  
7 based on number of voters. The lines were long  
8 in certain areas, as they were in others.

9 MS. WANG: We don't want to get into  
10 that particular example.

11 MR. HEARNE: That's the kind of  
12 objective observation to be quantified. If you  
13 had an observer in the polling place that would  
14 be -- ben had suggested a Republican and  
15 Democrat in interest. If you had an appropriate  
16 sampling of why it was taking this long to vote  
17 in this precinct, this long in this precinct.

18 MR. GREENBAUM: That's not even a  
19 fraud issue, I mean, not in my mind. And  
20 believe me, we have studied the Ohio elections  
21 administration very closely, given that we sued

22 the Secretary of State. That goes more to

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1 election administration as opposed to a fraud  
2 issue.

3 MR. ROKITA: So it doesn't fit under  
4 your definition of fraud.

5 MS. WANG: It depends on whether  
6 there was some reason to believe it was  
7 intention, in my personal opinion.

8 MR. GREENBAUM: Well, the problem in  
9 Franklin, Ohio, was determined how the machines  
10 were going to be allocated.

11 MR. HEARNE: Let me take that as an  
12 example. That is something that undermines a  
13 lot of people's confidence in the election  
14 process, when somebody is going into the process  
15 and saying, we're only going to put one polling  
16 machine for every thousand people in this  
17 polling place, and fifty of them for 500 people  
18 out here. That would be the kind of thing you  
19 can quantify. You can find out directly what is  
20 the data, what you think you can do that now.  
21 We know that now.

22 MR. HEARNE: And that would be

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1 helpful.

2 MS. SIMS: Maybe the question is how  
3 do we find out about that now. Right now, we  
4 find out through --

5 MR. ROKITA: The states and the

6 counties.

7 MS. SIMS: The states and the  
8 counties, and also calls made to the justice  
9 department.

10 MR. HEARNE: Or about the lines. You  
11 always get this allegation about long lines.  
12 Every voter is going to come out with a  
13 different perception, and you're always going to  
14 have these competing stories about long lines in  
15 different areas. If you had some teams in there  
16 watching this and timing it, you would get some  
17 objective criteria to evaluate those  
18 allegations.

19 MR. GREENBAUM: From my point of  
20 view, why would you want a Republican and  
21 Democrat, why won't you want a college student  
22 or someone else that people can agree doesn't go  
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1 in there with any sort of biases?

2 MR. SEREBROV: You can't necessarily  
3 get a college student in the polls.

4 MR. GREENBAUM: Right. The state  
5 laws are an impediment in a lot of places.

6 MS. SIMS: Well, some of these  
7 things, like the machine placement, that's just  
8 an example. A lot of things I personally see in  
9 the press before I see anywhere else. That gets  
10 to your following up on some of the press  
11 reports to find out whether or not something  
12 really happened, but that again is not a hundred  
13 percent reliable because we're only getting a

14 bit of the picture. And if you follow-up on  
15 those press reports, we may find out that an  
16 allegation of fraud was not fraud at all, it was  
17 a mistake.

18 MS. WANG: Well, that's the case. I  
19 don't know if we can come up with a methodology  
20 in here. None of us are political scientists at  
21 all either. So I just put these in front of you  
22 as the types of things that people came up with.

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1 I think, as we have talked about, it  
2 is going to be a combination of approaches which  
3 the work that we have already done will be one  
4 of those ingredients supplemented by something  
5 that political scientists would do.

6 We can get some more ideas flowing.  
7 Job and I talked about what we have thought  
8 about as being additional steps that could be  
9 taken. They are not methodologies but things  
10 that we think still need to be done, even just  
11 based on what we have already done. Should we  
12 move into that or stay on this?

13 MS. SIMS: We can certainly go on  
14 because we can come back to this too. One thing  
15 I would like to ask folks to consider again,  
16 even though we don't have complete data because  
17 this is a preliminary study, we do know of areas  
18 in the process itself that are more subject to  
19 attacks by voting fraud and are the studies EAC  
20 can do in those areas.

21 MR. GREENBAUM: Absentee.

22

MS. ROGERS: We haven't talked much

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1 about absentee ballot. We have talked about  
2 observers in the polling place, but the  
3 empirical data shows it is absentee balloting  
4 fraud, we're poised to see a tremendous amount  
5 of that grow.

6 Example, in Georgia, that's happening all  
7 over the nation which is now a no-excuse by mail  
8 absentee state. In addition to that, it was  
9 stuck in our law, it was a caveat that said that  
10 political parties could not attach campaign  
11 material to an absentee ballot application.  
12 That was taken out. It was also ruled that a  
13 postage stamp is not a thing of value. So if  
14 you put all of those together, we're going to  
15 see both parties flooding mail ballots with  
16 absentee ballot applications.

17 MS. WANG: Sarah Ball Johnson, who is  
18 in charge of elections in Kentucky, we  
19 interviewed, talked about the churches gathering  
20 people together to collectively fill out their  
21 absentee ballot, and being told if they don't  
22 vote in a certain way, they were going to hell.

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1 MR. DON SANTO: That's probably true.

2 MR. ROKITA: There is an example of  
3 something you can follow-up on.

4 MS. ROGERS: We have already seen a  
5 huge increase in -- I won't say fraud, but in  
6 complaints. This law was in place last year and

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7 we only had municipal elections in November.

8 Not everyone has really wised up to this but a  
9 few candidates did, and there was one particular  
10 election in Richmond County where going into the  
11 run off, the winner was clearly ahead by a lot  
12 of votes, and the losing candidate that was  
13 down, before he went to the run off, he found  
14 out about this little caveat, and he went  
15 knocking on every door with an absentee ballot  
16 application, and by George, he won, and won big.  
17 That's the area.

18                   And the problem is that you're trying  
19 not to make it harder on those who are disabled.  
20 At the same time, you don't want to keep adding  
21 levels and layers of security that prevents them  
22 from getting the access that they need, but as

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1 you take away those levels of security, it  
2 follows on the other side as well. I know we  
3 haven't really addressed that, but observers  
4 don't take care of that process.

5                   MR. HEARNE: You mentioned something  
6 that might be helpful in the sense of,  
7 statistically, you can look at an election and  
8 you can find results that you can look at and  
9 say, this doesn't make any sense, how you would  
10 get this kind of vote performance out of a  
11 particular vocational place or group of absentee  
12 ballots.

13                   MS. ROGERS: Well, some of the cases  
14 we have looked at, they said, look at these

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. 126

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. DON SANTO: 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. DON SANTO: 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. DON SANTO: No, no. I haven't  
7 seen it.

8 MR. HEARNE: One situation we had a

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 141

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

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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

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,

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?  
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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. DONSANTO: 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. DONSANTO: 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

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

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. 160

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