

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

22 MR. GREENBAUM: How many complaints 162

1 do you get from a major election?

2 MS. ROGERS: We get -- gosh, without  
3 having the form in front of me. We could get  
4 anywhere from a hundred or more questions,  
5 complaints. They could range from a hundred to  
6 200. What we do now, we have started this since  
7 2004, we have so many people taking calls on  
8 Election Day, and when you can't get through to  
9 say our office or a county office, then even the  
10 calls are spilling over from elections agencies  
11 into other divisions of the Secretary of State's  
12 Office. It's like whoever they can get a call  
13 to on that day. We have actually provided forms  
14 to everyone that may take a call, and then we go  
15 through after the fact and they have to  
16 identify, does this person need a call back,  
17 were they satisfied, was there anything here  
18 that needs immediate action or that needs to be  
19 forwarded to us immediately. And we follow up  
20 on every single complaint that we can not find  
21 out right then was unjustified. And some of  
22 them maybe couldn't find the polling place. 163

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

2 But we take all of those complaints and then  
3 follow through. It is time-consuming and it is

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

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

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

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

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

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

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

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

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

15 MR. SEREBROV: See, here's where the  
16 system's bogged down in at least any state that  
17 there are election judges. In Arkansas, you get  
18 a complaint, right, someone files suit. It goes  
19 to the circuit court judge. Circuit court judge  
20 is elected. Now, up to three years ago, the  
21 circuit court judge was elected on a ballot.  
22 So the circuit court judge never rules the way

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

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

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

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

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

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

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1 I don't care what party you are.

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

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

11 MR. WEINBERG: No, not much.

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

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

22 And the problem is the Supreme Court of

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

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

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

14 MS. WANG: They informally do that.

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

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

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

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

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

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

10 MS. ROGERS: We call them  
11 policymakers.

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

17 MS. WANG: In other directions.

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

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

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

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

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

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

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

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

7 MS. WANG: None.

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

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

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

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

1 that there should be some uniform laws?

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

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

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

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

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

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

8 MR. GREENBAUM: Of voter fraud?

9 MS. WANG: Complaints.

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

13 institutionally in that category.

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

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

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

22 MR. CORTES: I think in terms of

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

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

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

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

21 complaints.

22 MS. WANG: Do they keep records? 174

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

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

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

19 Just like to give a statement against  
20 interest, having a paper audit trail to machines  
21 is less based on empirical data that electronic  
22 machines are wrong and more based on a 175

1 confidence builder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 validity to the public and to election  
2 officials.

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

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

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

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

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

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

4 So the notion of agreeing on what the  
5 problem is, is going to be really, really tough,

6 which to me goes back to the issue of having  
7 people, where the fraud or intimidation takes  
8 place from both parties, since they are the ones  
9 that are starting all the problems that  
10 challenge the legitimacy of the election.

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

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

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

□ 180

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

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

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14 want overall.

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

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1 to quantify and identify those issues.

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

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

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

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

21                   MR. GINSBERG: If people's  
  Page 135

22 perceptions of this don't matter, then why are 182

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

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

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

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

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

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

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

20 MR. ROKITA: No, this business.

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

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

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

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

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

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

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

14 notice. Just random thoughts.

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

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

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

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

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

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

22 that.

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

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

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

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

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

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

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

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

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

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

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

Transcript 051806

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

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

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

22 MR. HEARNE: What is the next step 189

1 from here?

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

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

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

20 I thank you.

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

0  
1 how far this would fly. If you're trying to  
2 query on developing statistical data, why don't  
3 you put a question on the ballot? Everybody  
4 walk in, I believe this election was fair. No,  
5 I believe there was fraud here. Just ask them.

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

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

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

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

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

19 MS. SIMS: well, the next step is  
20 that our two consultants would be consolidating  
21 the preliminary research that they have and also  
22 the working group's deliberation in his order to  
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0  
1 present a report to our Commissioners. And our  
2 Commissioners will, obviously, take a look at  
3 that.

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

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

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

20 CHAIRMAN DEGREGORIO: We have also  
21 set some peer review groups for many of our  
22 studies that have a balance of folks, academics

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1 particularly, to take a look at the work that's  
2 being done by folks to make sure we're being  
3 looked at by people who have different  
4 philosophies, different viewpoints.

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

15 their advice in an earlier stage.

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

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

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

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

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

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

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

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

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

20 MS. WANG: Thank you so much.

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

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CERTIFICATE OF COURT REPORTER

3

4

I, Jackie Smith, court reporter in and for  
5 the District of Columbia, before whom the foregoing  
6 meeting was taken, do hereby certify that the  
7 meeting was taken by me at the time and place

Transcript 051806

8 mentioned in the caption hereof and thereafter  
9 transcribed by me; that said transcript is a true  
10 record of the meeting.

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Jackie Smith

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

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

MONTH ONE (beginning the date contracts are finalized):

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

MONTH TWO:

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

MONTH THREE:

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

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

MONTH FOUR:

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

Potential Working Group Members – Initial Suggestions:

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

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

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

MONTH ONE (beginning the date contracts are finalized):

- I. Draft project work plan
- II. Develop list of potential members of the working group; have EAC vet and approve names (Tova, Job, EAC)
- III. Define Fraud/Intimidation (Tova and Job)
  - a. Discussion among consultants to:
    - i. Determine what we believe the parameters of the terms fraud and intimidation should be for our research purposes.
    - ii. Create a list of state and local officials, third party representatives, attorneys, scholars, etc. to interview and/or survey to assist in this process of definition
  - b. Analysis of existing research (Tova and Job)
- IV. Obtain research assistance (e.g. interns, law clerks) (EAC)

MONTH TWO:

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

MONTH THREE:

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

MONTH FOUR:

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

MONTH FIVE:

- XII. Initial working group meetings

MONTH SIX:

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

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

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

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

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

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



**U.S. ELECTION ASSISTANCE COMMISSION**

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

**May 17, 2006**

**Deliberative Process  
Privilege**

**008780**

## INTRODUCTION

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

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

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

## FOCUS OF CURRENT RESEARCH

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

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

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

## DEFINITION OF ELECTION FRAUD

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

## LITERATURE REVIEW

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

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

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

Other items of note:

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

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

### **Recommendations**

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

### **INTERVIEWS**

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

### **Common Themes**

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

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

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

#### **Common Recommendations:**

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

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

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

### NEWS ARTICLES

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

#### **Absentee Ballots**

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

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

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

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

## **Voter Registration Fraud**

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

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

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

## **Voter Intimidation and Suppression**

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

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

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

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

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

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

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

#### **"Dead Voters and Multiple Voting"**

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

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

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

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

### **Vote Buying**

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

### **Deceptive Practices**

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

### **Non-citizen Voting**

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

### **Felon Voting**

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

### **Election Official Fraud**

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

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

### **Recommendation**

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

## **CASE LAW RESEARCH**

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

### **Recommendation**

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

## **PROJECT WORKING GROUP**

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

## **FINAL REPORT**

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

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

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

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

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

**Robert Bauer**

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

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

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

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

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

*EAC Invited Technical Advisor:*

**Craig Donsanto**

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



# **Voting Fraud-Voter Intimidation Preliminary Research**

## **Status Report**



# **Voting Fraud-Voter Intimidation Research STATUTORY AUTHORITY**

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

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



# **EAC Voting Fraud-Voter Intimidation Research**

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



# **EAC Voting Fraud-Voter Intimidation Research**

## **CURRENT RESEARCH FOCUS**

2 consultants (bipartisan) focused on:

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



# **EAC Voting Fraud-Voter Intimidation Research LITERATURE FINDINGS**

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



## **EAC Voting Fraud-Voter Intimidation Research LITERATURE FINDINGS**

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



## **EAC Voting Fraud-Voter Intimidation Research LITERATURE FINDINGS**

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



# **EAC Voting Fraud-Voter Intimidation Research LITERATURE FINDINGS**

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



# **EAC Voting Fraud-Voter Intimidation Research INTERVIEWS**

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

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



# **EAC Voting Fraud-Voter Intimidation Research INTERVIEW FINDINGS**

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



# **EAC Voting Fraud-Voter Intimidation Research INTERVIEW FINDINGS**

## **Intimidation/Suppression –**

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



## **EAC Voting Fraud-Voter Intimidation Research INTERVIEW FINDINGS**

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



## **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLES**

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



## **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

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

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



## **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

**Absentee ballots** reportedly were abused in a variety of ways:

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



## **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

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

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



# **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

## **Dead Voters and Multiple Voting**

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



# **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

## **Multiple Voting**

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



# **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

## **Dead Voters –**

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



# **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

## **Vote Buying**

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



# **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

## **Deceptive Practices**

- Numerous reports in 2004 of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote.
  
- Misinformation came in the form of
  - flyers,
  - phone calls,
  - letters, and
  - people going door to door.
  
- Many of the efforts reportedly targeted at minority communities.
  
- Disproportionate number of them came from key battleground states



# **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

## **Non-citizen Voter Registration & Voting**

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

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



# **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

## **Felon Voting**

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



# **EAC Voting Fraud-Voter Intimidation Research NEWS ARTICLE FINDINGS**

## **Election Official Fraud**

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



# **EAC Voting Fraud-Voter Intimidation Research CASE LAW**

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

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

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



## **EAC Voting Fraud-Voter Intimidation Research WORKING GROUP**

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

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



# **EAC Voting Fraud-Voter Intimidation Research WORKING GROUP IDEAS**

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



## **EAC Voting Fraud-Voter Intimidation Research WORKING GROUP IDEAS**

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



## **EAC Voting Fraud-Voter Intimidation Research WORKING GROUP IDEAS**

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



# **EAC Voting Fraud-Voter Intimidation Research WORKING GROUP IDEAS**

- Analyze
  - Phone logs from toll-free lines for election concerns
  - Federal observer reports
  - Local newspapers
  
- Conduct academic statistical research
  
- Research search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud



# **EAC Voting Fraud-Voter Intimidation Research WORKING GROUP IDEAS**

- Research state district court actions
- Broaden scope of interviews to include district attorneys and more local election officials
- Explore the concept of election courts
- Develop model statutes



## **EAC Voting Fraud-Voter Intimidation Research**

- **Do we have a complete picture?**

*No! Preliminary research provides some pieces of the puzzle.*

- **Will we ever have a complete picture?**

*Probably not, but additional research could provide enough additional pieces so that we have a better sense of the whole picture.*



## **EAC Voting Fraud-Voter Intimidation Research NEXT STEPS**

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



**U.S. ELECTION ASSISTANCE COMMISSION**

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

**May 17, 2006**

**Deliberative Process  
Privilege**

**008825**

## INTRODUCTION

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

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

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

## FOCUS OF CURRENT RESEARCH

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

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

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

## DEFINITION OF ELECTION FRAUD

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

## LITERATURE REVIEW

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

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

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

Other items of note:

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

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

### **Recommendations**

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

### **INTERVIEWS**

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

### **Common Themes**

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

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

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

#### **Common Recommendations:**

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

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

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

## NEWS ARTICLES

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

### Absentee Ballots

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

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

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

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

## **Voter Registration Fraud**

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

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

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

## **Voter Intimidation and Suppression**

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

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

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

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

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

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

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

### **“Dead Voters and Multiple Voting”**

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

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

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

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

### **Vote Buying**

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

### **Deceptive Practices**

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

### **Non-citizen Voting**

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

### **Felon Voting**

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

### **Election Official Fraud**

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

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

### **Recommendation**

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

## **CASE LAW RESEARCH**

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

### **Recommendation**

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

## **PROJECT WORKING GROUP**

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

## **FINAL REPORT**

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

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

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

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

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

**Robert Bauer**

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

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

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

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

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

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

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

Tova Wang/EAC

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

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

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

3d bullet.

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

4<sup>th</sup> bullet

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

Page 6 - first bullet

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

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

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

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

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

**Deliberative Process  
Privilege**

008837



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

## **Voting Fraud – Voter Intimidation Working Group Meeting Summary**

### *Overview of Current Research Project*

- Current research performed Tova Wang and Job Serebrov
  - the current research has been a challenge because of the need for the information to be collected and analyzed in a scientific manner
    - especially when working the “perception” of intimidation
- Both consultants cross-checked each others work in order to maintain a bipartisan balance
- Literature was anecdotal, not much follow-up on the articles
- No interviews with DA’s and only one interview with a judge
- Absentee ballots seemed to be the biggest problem
- The articles found that most of reported vote buying is concentrated in the Midwest and the South
- Very little non-citizen voting, dead voting and impersonation was reported

### *Purpose of Current Working Group*

- To provide background information for current research
- To brainstorm for potential research ideas

### *Talking Points of Working Group*

- Discussion of value of research because of the language of section 241 of HAVA; where is the methodology?
- History of the definition of “fraud”
- Most voter fraud happens outside of the polling centers
- Research must address existing problems, not perceived problems
- Intimidation is a subset of suppression, and considered to be physical or economic threat and/or coercion
- Suppression that is not a form of intimidation is intended to interfere with voting rights and the election process without physical or economic threat and/or coercion
- Department of Justice primarily investigated individual cases of voter fraud
- Risk analysis can be used as an indicator of legitimacy for the need to allocate funding to research in the area of voter fraud
- Current statewide database list will be useful in the deterrence of voter fraud

### *Ideas for Future EAC Activities*

- Bipartisan observers/poll watchers
  - Used in the collection of data
  - Used to deter fraud
- Surveys
  - Survey of state laws
    - Specific states
  - Survey of local election officials
  - Voter surveys (this suggestion was rejected by the panel)
  - Survey state election offices
  - Survey use of administrative complaint procedures
- Follow up on initial reports of fraud/intimidation from the survey of news articles
- Better poll worker training
- Longer hours for polling centers
  - Including hours on weekends
- Fewer polling center locations
  - More qualified poll workers
- Absentee balloting process
  - Methodology of “for cause” absentee voting
- Risk-analysis for voting fraud
  - Who?
  - What part of process?
    - ease of use
  - Which elections?
- Broaden scope of interviews to local officials and district attorneys
- Analysis
  - Phone logs from toll-free lines for election concerns
  - Federal observer reports
  - Local newspapers
  - State District Court Cases
  - Determination of challenging a voter at the polls (in some states there is little or no cause required to challenge a voters eligibility)
- Academic statistical research
- Search and match procedures for voter registration list maintenance and voter fraud identification (subject to confirmation)
- Election courts
- Model statutes

## Voter Fraud and Voter Intimidation

<u>EAC</u>	<u>Primary</u>	<u>Project</u>	<u>Est. End</u>	<u>Total FY05</u>	<u>HAVA</u>	
<u>C.O.R.</u>	<u>Contractor</u>	<u>Contact</u>	<u>Start Date</u>	<u>Date</u>	<u>Funds</u>	<u>Mandate</u>
	T. Wang	T. Wang			\$100,000	Section
P. Sims	J. Serebrov	J. Serebrov	09/01/05	5/5/2006	(FY05)	241(b)(6)(7)

<u>Month</u>	<u>Key Deliverables</u>
<b>September 05</b>	Draft project work plan, develop list of potential members for Working Group
<b>October-05</b>	Define Fraud/Intimidation, parameters of terms, creation of working written description of what each term includes and does not include
<b>November-05</b>	EAC vets and approves working group names, formal requests made, agree on number and list of appropriate parties to interview or survey to assist in process of definition, research and review of existing research completed by T.Wang, J. Serebrov and EAC law clerk (case law/journal articles)
<b>December-05</b>	Face to face meeting at EAC re: review of November tasks, examine the feasibility of quantifying the level of incidence of different types of fraud
<b>January-06</b>	Interviews with state and local officials, 3rd party groups, election lawyers to assess perceived prevalent problems
<b>February-06</b>	Draft working group topics, written summary of background research. Initial working group meeting.
<b>March-06</b>	Develop project scope of work, project work plan and draft summary report on key findings of preliminary study of voting fraud and intimidation with input from working group.

Working Group meeting – proposed materials and agenda:

- I. Materials to be sent third week in April
  - a. Cover letter from Peg
  - b. Agenda
  - c. List of interviewees
  - d. Summaries of interviews
  - e. Nexis charts + news summaries
  - f. Case charts
  - g. Summaries of existing literature
  - h. Methodology summary
  - i. Proposed fraud definitions
  
- II. Agenda
  - a. Overview and purpose of the project, including the phase 2
  - b. Purpose of the working group
  - c. Considering only the research performed by Job Serebrov and Tova Wang to date, what at this point say can we say about the incidence of fraud and intimidation since the 2000 election?
    - i. How much are certain forms of fraud being committed, including but not limited to:
      1. voter registration fraud
      2. polling place fraud
      3. vote buying
      4. absentee ballot fraud
      5. fraud in ballot counting
    - ii. How much are certain forms of voter intimidation and suppression being committed, including but not limited to:
      1. deceptive practices
      2. poll worker misconduct
      3. challengers
    - iii. Are there notable regional variations?
    - iv. Who seems to be committing these acts?
      1. voters
      2. political parties
      3. third party organizations
      4. elections officials
      5. candidates
    - v. Do local, state and federal authorities appear to be handling these matters effectively?

- d. What does the research to date fail to tell us that we still need to know?
- e. What are the group's thoughts on the proposed definitions of fraud?
- f. What is the most useful step(s) the EAC could take with respect to this issue?
- g. Specific advice on moving forward
  - i. Other than nexis and case research, are there other research tools available to investigate this topic? How could the nexis and case research be improved or expanded upon?
  - ii. Who else should be interviewed? Categories of people as well as specific recommendations
  - iii. What are your thoughts on the proposed social science methodologies? Do you have other suggestions?
  - iv. Should there be a review of state and federal statutes on this and an analysis of the strengths and weaknesses of existing laws?
  - v. Generally, what else could be done to more effectively get at the necessary data and information?

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## Voting Fraud-Voter Intimidation Working Group

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Indiana Secretary of State

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

### **Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

### **J.R. Perez**

Guadalupe County Elections Administrator, TX

### **Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

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

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

National Counsel for Voter Protection, Democratic National Committee

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Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

### **Mark (Thor) Hearne II**

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

National Counsel to the American Center for Voting Rights

### **Barry Weinberg**

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

Department of Justice

*EAC Invited Technical Advisor:*

### **Craig Donsanto**

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

May 12, 2006

J.R. Perez  
Guadalupe County Elections Administrator  
307 Court Street West  
Seguin, TX 78156-1346

Dear Mr. Perez:

Thank you for agreeing to participate in the Voting Fraud-Voter Intimidation Working Group Meeting. This meeting will take place from 1:00 PM to 5:30 PM on Thursday, May 18th, 2006 at the offices of the U.S. Election Assistance Commission (EAC), 1225 New York Avenue, NW, 11<sup>th</sup> Floor, Washington, DC.

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

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

EAC's Board of Advisors recommended that the agency make research on these matters a high priority. Subsequently, the Commission contracted with two consultants (Job Serebrov and Tova Wang) to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;

008846

May 12, 2006

Kathy Rogers  
Director of Elections  
Office of the Secretary of State  
West Tower, Suite 1104  
2 Martin Luther King Jr. Drive, SE  
Atlanta, GA 30334-1505

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