

16 wisconsin.

17 MS. WASOŁOWSKI: Thank you. I am Sandi
18 wasołowski. You pronounced it pretty close.

19 I am the Director of Clerk Services, City
20 Clerk for the city of Franklin, Wisconsin. As a local
21 election official election official I represent 1850
22 local election officials in the state of Wisconsin. I

0

79

1 have been involved in the administration of election
2 since 1976. So for some 30 years that has been my
3 desire my strong field.

4 I have been on the Standards Board since its
5 inception. I briefly was the State of Wisconsin
6 elections director and HAVA coordinator. I was-- I
7 returned to the city of Franklin after a new months of
8 doing that for the state. The weather in Washington has
9 taken my throat and voice.

10 You can see on the bio that I have been
11 involved with the state of Wisconsin HAVA State Plan
12 Committee. I was a former member of the SVRS, the State
13 Regulation Administration Steering Committee. I was-- I
14 am still on the Standards Board for the state of
15 Wisconsin. I am a member of the International Institute
16 of Municipal Clerks. I am also a member of the
17 Wisconsin Municipal Clerks Association. I am the past
18 president of the Metro Milwaukee Municipal Clerks

014386

19 Association.

20 I would be honored to fill the unexpired term
21 of Mike. And I will be brief and that is it.

22 MS. NIGHSWONGER: Thank you. You all have

80

1 weird names, Ed Szczesniak, they are worse than my
2 name Ed is from New York. He is Onondaga County
3 Commissioner of Elections for Syracuse.

4 MR. SZCZESNIAK: Thank you. Good afternoon.

5 The reason I responded positively I was
6 selected and I was honored by back in 2003, January, to
7 be selected to be as a local official on this Standards
8 Board.

9 what I have attempted to do over the years is
10 attend every meeting and be as active as I can in this
11 particular group. I think it is a meaningful role for a
12 very meaningful organization, the Election Assistance
13 Commission in terms of the revolutionary impact it is
14 having on elections administrations across this
15 country.

16 Being from New York as you see I feel a
17 little overwhelmed by three women and myself on this
18 floor of candidates here. But what I want to say
19 is rather than read through all my notes I have been
20 involved in all levels from the local town level as a

21 candidate, as a party official right through county
22 level, state level and national level in terms of

81

1 involvement in the party as well with elections.

2 I think I have a fair understanding what it
3 looks like at the County level. And I happen to be from
4 New York State. But we have had the distinction of
5 being the only state that has had DOG lawsuit against
6 it to enforce HAVA. And I won't take responsibility for
7 the lawsuit. But I know the difficulty that you all
8 are going through in terms of trying to make this work.
9 And the time lines that Congress has set for us to try
10 to make this work.

11 I think that participating in things like the
12 Standards Board goes a long way toward making sure
13 everyone understands how things are happening at the
14 local level to make this thing happen. I think our
15 mission, if there is one, is to have a can do attitude
16 to make this system work whether it is through Best
17 Practices or whatever. We can share that knowledge and
18 do it right at the county level as well as the state
19 level and of course it all becomes the Federal level.

20 So with that I would be honored if you would
21 consider me to be the replacement for the unexpired
22 term. Thank you very much.

1 MS. NIGH SWONGER: There are other people
2 trying to get rid of met to.

3 Last but not least Tonni Bartholomew, is the
4 City Clerk of Troy, Michigan.

5 MS. BARTHOLOMEW: Thank you very much for
6 letting me have this opportunity to speak to you. I too
7 am very interested in this Directors position on the
8 Executive Board. I am a local clerk for a Municipality
9 of about 90,000 people. I do everything from recruit
10 people to code the devices. I have been involved at
11 various levels in the State. I do instructions for the
12 MNL as well as the Michigan Tactical Association and I
13 have been involved on various advisory boards for the
14 state of Michigan. I am currently Voter File Advisory
15 Board. I was on the JEC for the State Devices for the
16 State of Michigan.

17 If you talk to people from Michigan they will
18 say I am a very detailed person. I am all about all
19 about code standards and laws and if it says do it they
20 we do it. I think I can lend that kind of expertise
21 from my experience which I am much older than I look, I
22 have been involved with elections since 1986, '87. And

1 I would really like the opportunity to serve you and
2 serve the people of the United States.

3 MS. NIGHSWONGER: Thank you, Tonni. How many
4 of us can say we are older than we look?

5 Okay. If there is no objections we will
6 proceed with the lucky new candidate to join us on this
7 Executive Board. Oh yes, did we get the ballots past
8 out? Would you pass the ballots out please and while
9 you are doing that I want to remind you to vote for
10 one, please do not over vote or under vote, vote for
11 one. And if you can you can fold your ballot in half
12 once. I am going to have Sarah and John collect the
13 ballots. Sarah I am going to ask you to take this side
14 of the room, on my right. John if you will collect the
15 ballots on the left side of the room please. Todd would
16 you like to get the map? So if you will mark your
17 ballot and fold it in half they will pick up your
18 ballot. And then we will have a group of people who
19 will be counting the votes and we will announce to you
20 on one of our breaks who the lucky person is.

21 Oh, yes, is there anyone in the room that did
22 not respond to the first roll call? That is one thing I

1 want to ask you. Julie as been running around trying to
2 track down her luggage. That is always a hard thing.

3 Sara John and Todd are going to be picking up
4 the ballots and I would like to remind you that voting
5 members only will be marking the ballots. Polls are
6 officially closed.

7 Again I would like to remind you before we
8 close this session of our meeting I would just like to
9 remind you if you are interested in serving on a
10 nominating committee before the next meeting we will
11 have to utilize a nominating committee in order to
12 get-- Phil I believe there are two more positions on
13 our Board that will be vacant by people-- Oh, three?
14 One State and two local. If you're interested in
15 serving on a nominating committee I would appreciate
16 getting information about that so we can do this
17 process appropriately at our next meeting.

18 Thank you so much. And we will move on into
19 the next portion of our meetings. If I can get
20 Commissioner Martinez' attention. He is in the hallway
21 there. We will move on to our next report on Getting a
22 report on Provisional Voting. So will the panel who

1 going to be talking on Provisional Voting if you can

2 come on up here we will give you our seats.

3 MR. MARTINEZ: We will move into our next
4 presentation. We are, by my watch, about 11 minutes
5 off schedule right now. So we will make up the time
6 during break, or at some point we will figure out how
7 to do that. I know some of you had plans after the
8 meeting is over to get out of the hotel and so forth.
9 So we will try to honor our agenda as closely as
10 possible.

11 Out next pane will give us an important
12 presentation on Provisional Voting. The Help America
13 Vote Act requires as all of you know that the EAC at a
14 minimum consider the development of voluntary guidance
15 on any of the Title 3 requirements the Title 3
16 requirements of course for those of us with voting
17 systems that require section 301, State Wide
18 Voter Registration Voter Data Basis and Voter ID for
19 certain voters that are in Section 303 and Section 302
20 which is Provisional Voting and Poling Place Signage.
21 So in looking at that mandate that the EAC developed
22 Voluntary Guidance on Provisional Voting, we felt we

1 needed to commission some sound research and analysis
2 on the issue of provisional voting.

3 we turned for that task to the Eagleton--
4 Tom, forgive me is it Eagleton Institute, yes, I almost

5 lost it there, at Rutgers University. And in turn
6 Eagleton Institute also brought in Moritz School of Law
7 at the Ohio State University and thus we have Professor
8 Edward Foley.

9 Tom O'Neil is the Project Manager, the lead
10 consultant, if you will, to the EAC for the study that
11 has been conducted on provisional voting. They will
12 give you the details. We have been working with Tom now
13 for perhaps the last eight or ten months perhaps longer
14 than that. Lots of discussions about the issue. Tom
15 will present, as well as professor Ed Foley who is the
16 director of Election Law at Moritz program, an expert,
17 well known national expert on election law issues
18 covering the whole gamut of election law from
19 redistricting to election administration.

20 we are very pleased to have their
21 participation in this project. And particularly please
22 to have them here today to present the draft product of

1 what they have been working on and to answer your
2 questions. what we have asked our presenters to do is
3 give you an audio visual presentation that will be
4 short and to the point we hope. After which our counsel
5 Julie Thompson-Hodgkins is here. She is listed as the
6 resource person and she will lead the discussion upon.

7 the end of the presentation. And we hope that you will
8 be-- that you will not be shy in asking questions and
9 give us your opinions and advice on the work product
10 you are about to hear about.

11 With that, Tom, I will give you the podium
12

13 DISCUSSION: DRAFT REPORT ON PROVISIONAL VOTING
14 Presenters: Thomas O'Neill, Provisional Voting/ Voter
15 Identification
16 Tim Vercellotti, Eagleton Institute.
17 Edward Foley, Election Law @ Moritz School
18 of Law .

19 MR. O'NEIL: Thank you Commissioner Martinez,
20 I am happy to be here. We regard the presentation we
21 are making at this meeting as phase of our research. We
22 are going to be presenting our final draft, report and

0

1 recommendations. And we hope that it will elicit from
2 you comments and questions that will become part and
3 parcel of our research efforts to understand the
4 dynamics of provisional voting in 2004 and going
5 forward. And we hope that the states have much to learn
6 from one another in the provisional voting process and
7 that we can do something to act as a catalyst in that
8 mutual learning exercise that all of you are engaged in
9 here as members of this Board.

10 As as Commissioner Martinez said we are
11 looking at provisional voting. We have been working on
12 this project just shy of a year. And today you're to
13 going to the see sum of what we have concluded and our
14 recommendations to the EAC. In term what we are
15 recommending to the EAC is that they make
16 recommendations for Best Practices to States and
17 localities to improve the functioning of the
18 provisional voting system.

19 Commissioner Martinez described the parties
20 that are doing this, the Eagleton Institute of Politics
21 at Rutgers State University in New Jersey, the Moritz
22 College of Law at the Ohio State University which is

89

1 well known for the website it maintains on election law
2 all around the county.

3 Ed Foley and I are happy to be up here on the
4 podium but we represent a larger group. This is the
5 project management team. The principal investigators
6 Dr. Ruth Mandel, the Director of the Eagleton Institute
7 of Politics. With us here today, from the Project
8 Management Team, are Ingrid Reed, Ansa Cadgie from the
9 Moritz College of Law and one of our lead researchers
10 Tim Bersolli, Assistant Director from the Center of
11 Public Interest Polling that undertook the survey of

12 local election officials on which some of our findings
13 are based.

14 We proceeded by looking at six questions that
15 the EAC raised with us. And those questions are
16 displayed on this slide they are basic, they are
17 important and some of them I have to tell you are very
18 hard indeed to answer.

19 How do states prepare for HAVA's
20 Provisional Voting Requirements?. How did preparation
21 and performance vary between states that previously had
22 some form of provisional ballot and those that did not?

90

1 We will be coming back to that issue several times via
2 this report. And so we have developed a short hand for
3 it. We call them Old states and New States. And I hope
4 you will bear with me. If you come from one of those
5 Old States we don't mean it personally.

6 How did litigation effect the implementation
7 of provisional voting? How effective was provisional
8 voting in enfranchising qualified? Did state and
9 local processes provide for consistent counting of
10 provisional ballots? Did local election officials have
11 a clear understanding on how to implement provisional
12 voting?

13 To answer those questions we undertook
14 several steps. Our aim being throughout this to provide

15 the EAC with a strategy to engage the states in a
16 continuing effort to strengthen the provisional voting
17 process and increase the consistency, this is
18 important, increase the consistency by which
19 provisional voting was administered. Particularly
20 consistency within the State as opposed to consistency
21 on the States.

22 We surveyed 400 local election officials. We

□

91

1 reviewed the EAC election day survey. We analyzed the
2 states experience with provisional voting mostly on a
3 statistical basis. We collected the provisional voting
4 statutes and regulations for each State in the country.
5 And in fact part of our deliverables to the EAC was a
6 continuum of those statutes and regulations. And they
7 will all be on one CD rom for easy access. And we
8 analyzed the litigation that took place concerning
9 provisional voting issues in 2004.

10 Summary of findings, again looking at this
11 consistency issue which is so important. There was
12 considerable variation among the States. HAVA allows
13 the States considerable latitude in how to implement
14 provisional voting including deciding who beyond the
15 required categories of voters should receive
16 provisional ballots. And how to determine which

17 provisional ballots should be counted. We had just shy
18 of two million ballots cast in 2004 and 63 percent of
19 them were counted.

20 Now the variation of among the States is
21 enormous. The percentage of provisional ballot in the
22 total vote varied by a factor of a thousand. From as

□

92

1 high as seven percent in Alaska to Vermont's six one
2 thousands of one percent. Now that's like the lobster
3 production between Maine and Utah. You don't find that
4 large a difference among States on measures like this.
5 So there is an enormous variation.

6 And the portion of the provisional ballots
7 counted varied significantly from 96 percent in Alaska
8 to 6 percent in Delaware. We don't need to tell you is
9 that the percentage of total votes cast rises in terms
10 of provisional votes being a greater that becomes more
11 and more significant in closer elections. If the
12 election margin of victory is two percent but seven
13 percent in provisional ballots that is a very
14 different scenario than if one percent was of ballots
15 are provisional but the victory was ten percent.

16 There are some sources of the variation among
17 the States. Number one that jumped out at us was
18 experience. The share of provisional ballots in the
19 total vote was six times greater in States that had

20 used provisional ballots before than in States where
21 the provisional ballot was new before.

22 MR. VERCELLOTTI: It is good to be an old

0

93

1 State.

2 MR. O'NEILL: In the 25 states, 25 States
3 that had experience with provisional balloting 18 were
4 new.

5 Administrative arrangements. Simple
6 administrative differences also I think go a long way
7 in explaining the variation in the use of provisional
8 ballots.

9 The time to evaluate ballots. How much time
10 after the election do you give officials to determine
11 whether a provisional ballot should be counted? States
12 that provided less than a week, counted a little bit
13 more of a third of the provisional ballots counted.
14 States that permitted more than two weeks counted 61
15 percent. That time factor is important.

16 And voter registration data basis. States
17 with voter registration data basis, and there were only
18 a few of them in 2004, counted an average of only 20
19 percent of the provisional ballots cast. States without
20 those data basis counted twice that number.

21 MR. FOLEY: If I can just underscore these two

22 points that you're going to hear throughout this

□

94

1 presentation the importance of both of them. In other
2 words the time to evaluate the ballots increasing the
3 the accuracy is a very important finding. And it leads
4 to an issue on how to trade off the value of accuracy
5 verses speed or completeness of finality of the
6 election. And we will be talking ore about that.

7 Likewise another theme that will run
8 throughout this presentation is the important
9 relationship between the provisional voting system as
10 one component of an overall election system with the
11 registration data basis. Those two subsystems if you
12 will are very much integrated as you know.

13 And they will be increasingly integrated
14 under HAVA and under centralized voter data basis.

15 MR. O' NEILL: Now turning from looking at
16 variation across States to variation within States.

17 We gathered county election-- provisional
18 ballot data for 20 States. Had we been able to get data
19 from all of the States at a county level the ranges and
20 variation I am reporting to you might be wider than
21 what we found. So bear that in mind. The rate of
22 counting provisional ballots within the same State

1 varied by as much as 90 to 100 percent among counties
2 in the State. The resources available to administer
3 provisional voting varied significantly within the same
4 State.

5 The election day study found that staffing
6 problems appeared to be particularly acute in
7 jurisdictions in the lower income and education
8 category. Small rural jurisdictions, large poor urban
9 jurisdictions have higher rates of inadequate training
10 for poll workers. The jurisdictions in poorer areas
11 reported more inactive voter registrations and more
12 provisional ballots cast. Richer areas had more poll
13 workers per polling place and reported lower rates of
14 staffing problems per precinct.

15 There are other effects that go beyond what
16 is going on at the State other than socio-economic. Some
17 reports from the States suggest possible sources of
18 lack of consistency. You know Iowa cast some
19 provisional not signed in the assigned precincts. Even
20 thought the States policy was to count only those
21 ballots cast in the correct precinct. So you could see
22 how that would enlarge the variation among counties in

□

96

1 the percentage of provisional votes that were cast.
2 Similar kinds of free lancing were going on in
3 Washington state.

4 MR. FOLEY:: Another theme that we found.
5 There is a difference between the rules on the books
6 and the rules as they were enforced in practice. And
7 that obviously is of concern potentially in respect to
8 litigation when we get to that point.

9 MR. O'NEILL: Turning to from this sort of
10 summary in terms of what the variation was all about to
11 some of the details of the answers we developed in each
12 of the questions that were put to us by the EAC.

13 First how did States prepare for the
14 provisional voting requirement? Most election
15 officials we talked to in our survey received
16 provisional voting instructions from State government.
17 But the type and amount of that instructions varied
18 very widely across the States. Almost all of them
19 provided training or written instruction to precinct
20 public poll workers. Only in about one in ten made
21 available to poll workers the voter registration data
22 base. Equally rare was training or written procedures

□

97

014492

1 for poll workers to understand how provisional ballots
2 would be evaluated.

3 Second question, how did preparation and
4 performance vary between States, the old States and the
5 new States? The local election officials in the old
6 States felt more confident about exercising their
7 responsibilities for provisional voting. As we earlier
8 18 States were new to provisional voting, 25 others had
9 experience.

10 The New State officials I thought they did
11 not receive enough information more frequently and felt
12 and felt more funding was necessary to educate voters
13 about, their rights to cast a provisional ballot.
14 Ballot .

15 Local Officials in the old states counted
16 more ballots, were better prepared to direct voters to
17 their correct precincts with maps and other types of
18 information. And regarded provisional voting as easy to
19 implement.

20 Officials from new states were more likely to
21 believe that voters needed more information where to
22 vote and to feel that provisional voting created

0

98

1 unnecessary problems. There was much less if a response
2 than from officials in the old states.

3 MR. FOLEY: One could abstract from that
4 provisional voting is a dynamic process. It is not
5 static, it's not that HAVA created provisional voting
6 and now we have it and we are done. There is a learning
7 curve here. It is not an all or nothing situation.
8 There are shades of gray involved. Sometimes it is sold
9 as a safety mechanism, or fail safe. But the ability
10 for it to perform as a fail safe is dependant on
11 various factors. It's not automatic.

12 MR. O'NEILL: Question three: How did
13 litigation effect the implementation of provisional
14 voting?

15 Litigation before the election clarified
16 voters rights. To sue in federal Court to remedy
17 violations of HAVA; to receive provisional ballots even
18 though they wouldn't be counted; have the voters be
19 directed to the right precinct. And most of the
20 litigations occurred to late to influence how states
21 implemented provisional voting in the year 2004. Even
22 with that finding I think it is a fair assessment to

1 say that pre election litigation was more successful in
2 changing the dynamic of at least the rules. And to
3 clarify what the rules were going into election day.
4 And therefore could be perceived as having some utility
5 in the process. Post election litigation only invited

052306

6 more complexity, more problems, more uncertainty and
7 usually unsuccessful from the litigants perspective and
8 obviously for complicated from the administrative
9 perspective as well.

10 How effective was provisional voting in
11 enfranchising qualified voters?

12 And I suggested at the outset some of these
13 questions were very hard to answer. And this was among
14 the hardest. To know the answer to how effective was
15 provisional voting in providing that fail safe that Ed
16 just mentioned and you show up and your not on the
17 registration rolls how effective is getting that
18 provisional to you? Ideally to know that we have to
19 know the decisions that were made in 200,000 precincts
20 around the country. And we would have to know the
21 criteria that the evaluators of provisional ballot used
22 when the process came to them to decide which ones

□

100

1 counted and which ones didn't. And there is a
2 considerable element of individual eccentricity in
3 making these decisions. It is hard to predict and
4 therefore we had to look for a more abstract way to
5 have some kind of number to attach effectiveness. If
6 that batter hits the ball one third of the time as it
7 comes across the plate it is .333. So we are aiming for

014405

8 something not quite as precise as Ted Williams 405 but
9 something that would at least put us in the order of
10 magnitude.

11 We know that 1.2 million voters, or about
12 one percent of the turnout, got to vote by provisional
13 ballot who otherwise would have been turned away. But
14 what is the denominator of that? What do you divide
15 into? Well in 2000 the CalTech MIT voting technology
16 estimated that two and a half million to four million
17 votes were lost in the 2000 Presidential election
18 because of registration mix ups or confusion at the
19 polling place.

20 Now registration mix up and confusion at the
21 polling place are pretty good description of what is
22 going to put someone in the line for provisional ballot

□

101

1 instead of to get on the regular machine. So 1.2
2 million voters casting a provisional ballot and maybe
3 two and a half to three million figure in the number of
4 them who were there but didn't get one, we figure that
5 provisional balloting might just have been 50 percent
6 effective in 2004. It's an approximation but it
7 indicates something I think we all will agree about
8 which is there is room for improvement.

9 Indeed legislative activity in the states
10 following the 2004 election leads us to believe that

11 the states themselves recognized that they were not
12 satisfied with the effectiveness of their provisional
13 voting systems and made efforts to improve that through
14 legislation.

15 Question five: Did state and local processes
16 provide for consistent counting of provisional
17 ballots?

18 Again this is a topic of considerable
19 interest. As we have already talked about there was
20 little consistency among states and within states. That
21 the use of provisional ballots was not distributed
22 evenly across the country. In fact six states accounted

□

102

1 for two thirds of all the provisional ballots cast. The
2 share of provisional ballots in the total vote was six
3 times greater in experiences states than in new states.
4 The more rigorous the state's voter ID requirements the
5 smaller percentage of provisional ballots that were
6 counted. And new states with registration data bases
7 counted 20 percent of the ballots past. Those without
8 data bases counted more than double that rate, 44
9 percent.

10 MR. FOLEY: And I can add to that. The most
11 common reason why a provisional ballot was not counted
12 in most states it was reported that the provisional

13 voter was not a registered voter. That was the reason
14 given. What is poorly understood unfortunately at this
15 point is what underlies the reason why that voter was
16 not registered according to the system, yet that voter
17 attested that to believing he or she was registered by
18 HAVA. And what our research has shown, as Tom just
19 suggested, is that there is a considerable variation
20 both among states and within states as the method for
21 checking whether or not the provisional voter is
22 registered.

□

103

1 The methods and the processes that the system
2 uses to try to verify whether this ballot should count
3 varied considerably. And there is very little rule
4 guidance as to what that methodology should be.

5 So an important part of our presentation
6 today is the need to better understand that and to
7 develop more guidelines. The theme here is there is
8 just a lot of difference just about the mechanics on
9 how to go about determining whether this voter is even
10 an eligible.

11 MR. O'NEILL: Continuing on with the
12 consistency question.

13 States that allowed out of precinct ballots
14 counted 65 percent of the provisional ballots cast.
15 States that recognized only ballots cast in the proper

16 precinct counted 42 percent. In old states the
17 difference was greater than that 52 percent were
18 counted in states requiring new district ballots and 70
19 percent were counted in those allowing other precinct
20 ballots.

21 This aspect of the consistency issue takes us
22 back to the time question. Fourteen states permitted

□

104

1 less than a week to evaluate provisional ballots, they
2 counted 35 percent of the ballots. Fifteen states
3 between one and two weeks, they counted 47 percent of
4 the ballot. And 14 states that permitted more than two
5 weeks they counted 61 percent of the ballots. Just the
6 administrative handling of the ballots makes a
7 difference in the performance of the state.

8 Conclusions with this? The states have
9 latitude on how they meet under the HAVA requirements.
10 A considerable degree of variation among the states are
11 to be expected. And here is the interesting observation
12 about that. If the variation among the states reflects
13 differences in their political cultures it is likely to
14 persist. If it reflects a learning curve for the new
15 states figuring out how to do this provisional ballot
16 thing then consistency among the states is likely to be
17 achieved much more quickly than if some states have a

18 fundamental philosophic objection to the concept of the
19 provisional ballot.

20 Questions six: Did local election officials
21 have a clear understanding on how to implement
22 provisional voting?

□

105

1 what we did was ask the local officials
2 themselves to characterize understanding. From a sample
3 of about 400 of them around the country eight out of
4 ten reported receiving instructions from state
5 government; four out of ten, only four out of ten I
6 should say, felt poll workers needed more training to
7 understand their responsibilities.

8 Moving back now from asking the local
9 officials themselves for some kind of objective
10 evaluation on how the process was managed. The lack of
11 consistency among and within states indicates the
12 differences in how our election officials understand
13 their responsibilities and managed the 2004 election.

14 In thinking through this body of information
15 we have to recognize the existence of inconsistency of
16 understanding between the states and within the states.
17 Particularly of concern are the inconsistencies within
18 a state. And that we need to forge away to approach
19 this as a learning experience, a way to understand and
20 explain the rules by which each state governs

21 provisional voting .

22 And we will phrase this as a set of

□

106

1 questions. Does the provisional ballot system
2 distribute, collect, record and tally provisional
3 ballots with sufficient accuracy as to be seen as
4 procedurally legitimate by both supporters and
5 opponents of the winning candidate. That is the acid
6 test here.

7 Second: Does the provisional balloting
8 system place administrative demands on local
9 jurisdictions that are realistically related to the
10 staff and other resources available to fulfill those
11 demand?

12 Third: Is the variation within state great
13 enough to cause concern that the system might not be
14 administered uniformly from county to county.

15 MR. FOLEY: I just want to act on Tom's point
16 about the acid test of legitimacy. The reason why
17 clarity is so important to that is again because the
18 provisional votes matter as you know when there is a
19 close race and when there is a dispute about what to do
20 with these ballots. Should they be verified or not?
21 And if the rules for that process are unclear and
22 disputable that casts everything in doubt. It casts the

0

107

1 process in doubt; it casts the results of the election
2 in doubt. So clarity is the first and most important
3 value for bringing legitimacy to the process. Because
4 it will be a process that unfolds after election day in
5 the heat of the moment. And to avoid litigation, and
6 particularly destabilizing litigation, clarity has to be
7 the first priority.

8 MR. O'NEILL: In looking for clarity a place
9 the states often turn to is the history of litigation.
10 Litigation coming out of the 2004 election clarified
11 the right of voters to receive provisional ballots even
12 though the election officials were certain they would
13 not be counted. And lawsuits prompted election
14 officials to take better care in instructing precinct
15 officials on how to notify voters about the needs and
16 go to the correct precinct in order to cast a countable
17 ballot. Those are the issues of clarity like we have
18 just been discussing.

19 We recommending to the EAC that it recommend
20 as Best Practices to states the promulgation of clear
21 standards for evaluating provisions ballots. And
22 provide training for the officials who will apply those

0

1 ballots. We believe they should provide materials to
2 local jurisdictions. To train polling workers on such
3 procedures as how to locate polling places for
4 potential voters who show up at the wrong place. And
5 to think that the only permissible requirement to
6 obtain a provisional ballot is an affirmation by that
7 voter standing in front of a local election official
8 that that voter is registered in the jurisdiction and
9 eligible to vote in an election for federal office. And
10 poll workers need the training to understand their duty
11 to give those voters a provisional ballot.

12 MR. FOLEY: And on that point, on the voters
13 affirmation, it's their sincere belief that they think
14 that they are registered. The polling place is not the
15 time or place to verify eligibility in determining
16 whether the voter is correct or not.

17 And in that sense as a working rule, as a
18 practical matter given long lines in a high turn out
19 election, you know if a voter asks for provisional
20 ballot they really ought to get one. Then you can
21 figure out what to do with it later the one question
22 that can be asked is: Do you really think you are

1 registered? If they think they are registered they
2 should get that provisional ballot. It should not be a
3 complicated process to administer provisional voting at
4 the precinct.

5 There maybe complexities that are unavoidable
6 after election day. And again it might be best to
7 minimize those complexities as we get into. But it is
8 very, very important to stream line the process at the
9 polling place itself. And so it should be virtually
10 automatic that if a voter says: I think I am entitled
11 to vote; that they get the provisional ballot.

12 MR. O'NEILL: We believe the general way the
13 states can most effectively pursue improvements in the
14 provisional voting process is to take a quality
15 improvement approach.

16 Defining quality begins in asking how well
17 the system works now. But figuring it out to how open
18 it is to error, recognition and correction. And by
19 asking how well our provisional voting process is
20 connected to the other parts of the machine that they
21 need to be well characterized to the registration and
22 voter identification names. So to do all that requires

1 a systematic quality improvement program that starts by
Page 100

014414

2 collecting data that is not now generally available.

3 The data collected should insure a list of
4 the specific reasons why provisional ballots were not
5 counted; measures of variance among jurisdictions,
6 counties or even precincts; a hard look at the time
7 actually required to evaluate the ballots by
8 jurisdiction and then comparing that to what the
9 statute or regulation allows in that state. If it is
10 simply unrealistic what kind of changes are needed? And
11 an accurate and timely report on provisional votes cast
12 and counted by jurisdiction down to the precinct level
13 so you can spot anomalies and take a look at where more
14 poll worker training may necessary to get them up to
15 the standard you would like the entire state operate
16 at.

17 MR. FOLEY: Just to give an example of this.
18 Most of you know about Washington State's experience
19 with its gubernatorial election in 2004. That
20 illustrated several things about this process. One of
21 which was this issue is the provisional voter
22 registered? And in some localities the answer came

□

111

1 back yes, and this was not true by the way of only
2 Washington State, this occurred in other states in
3 lower profile races. So the answer comes down back "no,

052306

4 we have looked at our data base, our files and we don't
5 have this voter as a registered voter." Then the
6 question arises well they are not in the system but did
7 you go back to the original voter registration card and
8 see for whatever reason that card for a new registrant
9 was not entered in the system in the run up to this
10 particular election? Sure enough it turned out there
11 were a substantial number of voters in Washington
12 state, and elsewhere, that had submitted timely
13 registration forms; that had submitted timely
14 registration forms; had submitted procedurally proper
15 registration forms and they should have been in the
16 system but were not through no fault of their own.

17 That's the very thing that a provisional
18 voting fail safe is supposed to protect against. But it
19 couldn't protect against it if the only checking
20 mechanism is to go back to the data base as opposed to
21 going back to the original voter registration card. The
22 reason why the poll book, the precinct official has,

0

112

1 didn't the registered voter is because they weren't in
2 the system to begin with. So there was a match between
3 what the poll book said and what the system said but
4 the misstep was getting that card entered in the system
5 in the first place given the high volume of new
6 registrations filed at the deadline.

Page 102

014418

7 The courts ordered those forms to be entered
8 into the system and ordered those provisional ballots
9 to count several weeks after the election had already
10 be certified.

11 So here is an example of where the
12 methodology used and the process used determined what
13 does it mean to be a registered voter really matters
14 which is why there has to specific standards on that.

15 And that gets into the finality point, or the
16 timing point that we have already talked about. If it
17 takes, five, six, eight weeks to add those hundreds of
18 voters to the certified total you run up against
19 serious deadlines. You have past certification
20 deadlines. In some cases you have past inauguration
21 deadline. You have past the Federal so called safe
22 harbor deadline for Presidential races.

□

113

1 So there was an ability to increase accuracy
2 that had outcome determinative effects in terms of who
3 was the winner of the governor's race in Washington.
4 That final certification occurred two days before New
5 Year's Eve. So again accuracy verses timing is a these
6 that needs to be evaluated as you specify what are best
7 practices for implementing the evaluation process.

8 MR. O'NEILL: The heart of this quality

9 approach for improving the provisional voting process
10 is to access each stage of the provisional voting
11 process. Before the election the better the voters
12 understand their rights and obligations the easier the
13 system will be to manage and the more legitimate the
14 appearance of the process.

15 At the polling place? Avoiding error at the
16 polling place will allow more voters to cast a regular
17 ballot and all others who requested cast a provisional
18 ballot. In the evaluation process the clarity of the
19 criteria for evaluating voter eligibility is critical
20 to a sound process for deciding which of the cast
21 provisional ballots should be counted.

22 And post election we believe the best practice

0

114

1 is for states to consider how to complete, as Ed was
2 just saying, all the steps in the evaluation of
3 ballots and challenges to that determinations within
4 the five weeks available in Presidential elections it
5 is important to provide timely information to voters
6 about the disposition of their provisional ballot. For
7 instance having cast a provisional ballot this time are
8 they now registered for future elections. They should
9 know that. If not what do they need to do to be
10 covered?

11 As I said at the opening we look at this
Page 104

014418

12 briefing as an opportunity to continue our research by
13 hearing from you. The detailed examination of each
14 stage in the provisional voting process we hope can lay
15 the foundation that each state needs to improve its
16 system.

17 Efforts to improve provisional voting may be
18 most effective as a part of a broader effort to
19 strengthen voting systems. Collecting and analyzing
20 data about those systems will enable states to
21 identify which aspects of the registration and
22 electoral process are most important into the

□

115

1 provisions voting process. Responsible officials
2 can then look to their registration system, their
3 identification requirements, poll worker training, as
4 ways to reduce the need for voters to cast their ballot
5 provisionally and evaluate them consistently. Thank you
6 and we are looking forward to our discussion.

7 MR. FOLEY: Likewise. Thank you.

8 And just one more general remark to share
9 with you before turning it over for questions and so
10 forth. If 2004 was a learning experience in terms of
11 the provisional voting process. And we saw stresses
12 imposed on that system and we were asking could the
13 provisional voting process handle the stresses of a

14 close election and the demands put on it. I think right
15 now, two years later in 2006 we are in an interesting
16 situation because there has been reaction to 2004, as
17 Tomb said. There has been new legislation.

18 Some of that new legislation has alleviated
19 some of the stresses that were imposed onto the
20 provisional voting system, having increased its ability
21 to be the fail safe that HAVA and Congress spoke of.

22 But some of the legislation and some of the

116

1 developments candidly put more stresses on the
2 provisional voting system. It is possible that as we go
3 forward in elections this Fall and in the future we
4 will see higher rates of provisional ballots past, not
5 lower rates more demands in terms of how to evaluate
6 them. Some of this again is maybe good and important
7 for understandable reasons, but as the data bases get
8 rolled out and as there are complexities in terms of
9 rolling out the data bases that may cause more
10 questions to be asked about the eligibility of a
11 registered voter. And that may cause that voter to cast
12 a provisional ballot whereas in the past the question
13 would not have been raised and would have cast a
14 regular ballot.

15 Likewise in the states without the voter ID
16 requirements those new requirements may raise questions

17 about eligibility causing more votes to be cast as
18 provisional votes in stead of regular votes.

19 So that has created a rather interesting
20 phenomenon and that HAVA said from a voting rights
21 perspective, if you will, said we saw the situation in
22 which a voter went to vote, turned up at the voting

□

117

1 place on election day believing that they were entitled
2 and then finding that they were purged, sometimes
3 erroneously purged, and they were turned away. So what
4 provisional voting was designed to do is to make sure
5 no one was ever turned away like that. They could at
6 least cast a provisional ballot and then we could ask
7 questions.

8 Some of the new legislation and some of the
9 new demands being put on the system have instead of
10 saying this is really for the voter. They are saying
11 this a reason to check eligible voters and therefore
12 instead of using a provisional ballot to give the voter
13 an opportunity so that they are not cast away we are
14 going to use this provisional ballot so that the voter
15 doesn't case a regular ballot. We are going to put
16 them in the question mark category rather than the yes
17 category which is different than putting them in the
18 question mark category rather than the no category. But

19 as that happens more questions marks get raised so
20 more stress gets put on the system. Thank you.

21 MS. HODGKINS: Thank you Mr. O'Neill and
22 Professor Foley. Members of the Standards Board we

0

118

1 have about 35 minutes until the end of this session
2 for your discussion, comments. I know many of you have
3 questions about perhaps the methodology, their
4 conclusions maybe experiences you would like to share.
5 I am going to be here to make sure this is an orderly
6 process. And as you had in your previous session there
7 are several hand held mics that are around the room.

8 If you will indicate to me that you're
9 interested in making a statement will recognize you and
10 then we bring a mic to you and let you speak. Please do
11 remember to identify yourself before you start speaking
12 Mr. Szczesniak?

13 MR. SZCZESNIAK: Yes. I guess through from
14 the presentation I got the sense that many states as
15 part of your survey have coworkers make the
16 determination as to whether or not the provisional
17 ballot was a good deal or not; is that correct, or was
18 I misunderstanding something.

19 MR. O'NEILL: We did not mean to imply that.

20 MR. SZCZESNIAK: That's good because it
21 didn't make any sense to me.

22 MR. FOLEY: It is after determination. And

□

119

1 sometimes it's two after the facts that the process
2 gets wrapped up. Sometimes it is two weeks. So there is
3 considerable variation on how long the boards take to
4 process the provisionals.

5 MR. O'NEILL: Another comment is many people
6 that do put that out are the old states. But it is
7 truly a fail safe provision and we focus that in the
8 training of the inspectors, poll workers so they
9 understand that nobody leaves the polling place
10 without having had the opportunity to vote either on
11 the machine, by court order or by provisional ballot.

12 MR. SZCZESNIAK: But many people cast a
13 ballot thinking they are registered voters and they
14 aren't. There is a requirement that we do not put in
15 our poll box any inactive voters whether active or not.
16 Many people who show up at the right place but they
17 just can't. We give them the affidavit and we check
18 them out and give them a chance.

19 Some reason they are not counted is that
20 people have moved within out jurisdiction. They are in
21 the right church and the wrong pew. They are still
22 eligible to vote but now with the new requirement and

0

120

1 because of federal lawsuits says right church wrong pew
2 that's okay. But if they are in the wrong church they
3 just can't be counted. So we tell them to go to the
4 right polling place if they want to get counted.

5 MS. HODGKINS: Mr. Kennedy?

6 MR. KENNEDY: Kevin Kennedy from Wisconsin. I
7 have a question about the methodology in the sense that
8 you have 43 states that do not include the six states
9 with election day registration?

10 MR. O'NEILL: That is correct, yes .

11 MS. HODGKINS: Yes, ma'am behind A1.

12 MS. ROUST: Sue Roust from South Dakota. On
13 page eight of your handout at the top that says: "EAC
14 should recommend to the states that they" and one of
15 the bullet points is: " Make clear the only permissible
16 requirement to obtain a provisional ballot is an
17 affirmation that the voter is registered in the
18 jurisdiction and eligible to vote in a federal
19 election."

20 Are you saying that you feel that the EAC
21 should recommend that on that question of do you have
22 to be at the right precinct or you just have to be

0

1 eligible to be registered anywhere in the jurisdiction.
2 Are you saying that the EAC should come down on the
3 side that if you go to the wrong precinct that your
4 registered somewhere in that jurisdiction that you
5 should be allowed to vote or that your provisional
6 ballot should count?

7 MR. FOLEY: Well first of all it is our
8 understanding in examining the case law that has
9 developed on this that HAVA itself does not require the
10 states to adopt the so called wrong precinct you count
11 the ballot rule.

12 So it couldn't be mandated as a matter of
13 what HAVA requires. In terms of-- if EAC considers
14 itself in a position to provide best practice type
15 recommendations that aren't necessarily HAVA
16 requirements then it could be considered whether or not
17 as a policy matter is there something advisable. And
18 actually in reference to the New York litigation it
19 seemed that a middle step position is that if a state
20 is going to allow for multiple precincts to exist
21 within the same location and the voter shows up at the
22 correct location but ends up in the wrong line at that

1 location could that be considered attributable to
2 administrative error as opposed to voter error? That
3 was the holding of the New York case.

4 So that the voter should get the benefit of
5 the doubt if they go to the right place even if they
6 ended up in the wrong line. And we thought as a policy
7 matter that was appropriate to recommend as best
8 practices. Beyond that probably it makes sense to say
9 that as a matter of Federalism in federal law it's
10 really up to the state whether to go beyond that.

11 MS. HODGKINS: Mr. Clark.

12 MR. CLARK: Bradley Clark from California.

13 I was just curious.

14 How you on methodology how you selected your
15 400 jurisdictions to survey?

16 MR. O'NEILL: It was a stratified random
17 sample we looked for size, a mix of size, a mix of
18 urban and suburban and then selected randomly from
19 within that. We have our poll director here if you
20 would like more details.

21 MS. HODGKINS: Mr. Sholl.

22 MR. SHOLL: Howard Sholl from Delaware. I

□

1 have a few comments.

2 First of all in your analysis you seemed to
Page 112

014426

3 forget there are different types of provisional
4 ballots. By that I mean in Delaware we had 300 and some
5 odd provisional ballots that were cast between 400.000
6 people and you were saying we were doing a very good
7 job. well, actually if you would count our fail safe if
8 someone changes an address instead of sending them to a
9 different a different polling or giving them a
10 provisional ballot we made every effort to qualify them
11 and let them vote normal. So instead of having 6
12 percent rate that we counted you count the 6 or 7
13 thousand change of addresses that we did at the polling
14 place we ended up counting 95 percent of our so called
15 provisional ballots.

16 So there is a difference of what a state
17 calls a provisional ballot. You will find that it
18 varies across the country and that could effect your
19 analysis to some degree.

20 Second of all. You are very correct
21 information needs to be distributed to the election
22 officials and their friends. It also needs to go to the

□

124

1 media who consistently misrepresented what provisional
2 voting was. The media in the Philadelphia market said
3 you can vote anywhere you want to. well that wrong in
4 Pennsylvania, that was wrong in Delaware and I don't

014427

5 know about New Jersey. But people picked up information
6 from elsewhere in the country and misrepresented it to
7 their populations. So the media needs a heck of a lot
8 of education about what provisional voting is so they
9 don't misrepresent it to the voter, because we can't
10 counter what the media blitz misrepresents.

11 MR. FOLEY: Well that underscores what we
12 were saying were A this is a dynamic evolving process
13 and not static. We couldn't agree more with that point.
14 Secondly we agreed very much as Tom said that there
15 were challenges, methodological challenges in terms of
16 finding the right data, evaluating the right data, and
17 one theme in our recommendation, and you know-- besides
18 we are a snapshot or synopsis of the larger report. But
19 one theme is that a very helpful role that the EAC can
20 play is that of data collection, data consistency in
21 terms of terminology or data classification of data. So
22 we hope that through this cycle of empirical studies is

D

125

1 just the first in a series of cycles of empirical
2 studies that increase knowledge and increase
3 understanding of the mechanics of the process.

4 MR. O'NEILL: Can I respond also.

5 MS. HODGKINS: Sure.

6 MR. O'NEILL: Mr. Shall you said that there
7 are different kinds of provisional ballots in Delaware.

8 Is there more than one category of provisional ballot
9 that you report? Or are there some sorts of things that
10 provisional ballots aren't really provisional ballots
11 as we have been referring to? When you talk about
12 qualifying voters for instance to make sure that they
13 can vote a regular ballot?

14 MR. SHOLL: Howard Sholl from Delaware.

15 No, we call a provisional ballot exactly
16 what it is it is a provisional ballot. It's the last
17 chance to vote. So that's what we report, we don't
18 report fail safe, what we call fail safe voting call.
19 We update your address at the polling place, we verify
20 the registration and we let them vote it. That's not in
21 our lingo a provisional ballot. But it is in the lingo
22 of other states what a provisional ballot is.

□

126

1 So when you're looking at Delaware verses
2 Ohio verses California you're looking at apples and
3 oranges.

4 MR. O'NEILL: Thank you.

5 MR. HODGKINS: The lady in the back and then
6 we will come over here for Mr. Lomax.

7 MS. ANDERSON: Sharon Anderson from Minnesota.

8 My question is about limiting the study to 43
9 states that do not now have election day registration,

10 and I guess North Dakota doesn't have registration at.
11 I am curious about studying those EDR states in the
12 future. And the reason that I ask that is I have spent
13 my entire 27 years in the county office is riveted with
14 election day registration. And certainly on election
15 day in those EDR states is moving that whole decision
16 making process to election day. And one of the slides
17 that you were showing is training between the poll
18 workers makes a big difference, I can assure you that
19 makes a huge difference when you are a EDR state. So my
20 question is based in the thought that perhaps perhaps
21 things to be learned from EDR states that could improve
22 the provisional ballot process.

□

127

1 MS. HODGKINS: Mr. Lomax?

2 MR. LOMAX: Harvey Lomax, Clark county,
3 Nevada.

4 I guess your sources of variation you listed
5 is the experience of the state and how long a time the
6 state has given to resolve the provisional ballot. Yet
7 I would suggest kind of piggy backing on what Howard
8 said that the laws of the state-- if you take the laws
9 of California and Nevada and look at the laws of who
10 past the provisional ballot. They drive (sic) more the
11 number of provisional ballots cast, how long it takes
12 to resolve those issues and how many are going to be

13 excepted. And most of that has to do with how people
14 changes in address and if you allow changes in address
15 up to the last minute.

16 In Nevada for instance no changes in address
17 are allowed. So all we are dealing with are they
18 registered or are they not registered. That's pretty
19 much it. So it doesn't take us as long. And you're
20 going to have a much higher rejection rate.

21 Just on the side a different issue. I can
22 also speak loud and clear not all voters who show up

0

128

1 and attest that they are registered voters even begin
2 to qualify. In Nevada a high tourism state down there
3 in Las Vegas in the 2004 elections we had people from
4 all over the country insisting they had a right to vote
5 in Nevada. And we let them vote provisionally and we
6 didn't count them.

7 MR. FOLEY: And we are by no means suggesting
8 that provisional votes should be counted if in fact the
9 provisional voter was not properly registered voter.
10 And in fact one of the problems that occurred in the
11 state of Washington was the erroneous inclusion of
12 provisional voters, of some provisional ballots in the
13 final certified total that should not have been
14 included. They were included prior to the evaluation

15 process. So there are two possible errors. There is the
16 exclusion of one that should have been validated. And
17 the other kind of error is the inclusion of those that
18 should not have been validated. In a well designed
19 system we try to minimize both types of error.

20 MR. O'NEILL: Let me supplement that a little
21 bit.

22 I think what is driving our recommendation is

□

129

1 anybody that comes in and affirms that he or she is
2 registered and eligible to get a provisional ballot is
3 driven by the pressures on the poll workers on election
4 day. And we gladly not see those poll workers time
5 taken up by sort of a quasi traditional process in
6 deciding whether any particular voter really deserves a
7 provisional ballot. Everybody should get it and sort
8 out later when you have a matter of weeks rather than
9 matter of hours. That is the burden of our argument.

10 MS. HODGKINS: The gentleman in the blue
11 shirt?

12 MR. TERWILLIGER: Bob Terwilliger from the
13 state of Washington.

14 I hear categorizations of states by the way
15 the they verify (inaudible) the ballot. You talk about
16 a voters affidavit and current ID as if they exclusive.
17 In the state of Washington we actually use three. To

18 determine whether or not they get a mechanical ballot.
19 The only thing we don't have is to return with your
20 ID. If we have an affidavit on the envelope we check
21 the signature. We also verify that he or she is an
22 actual registered voter which to is three of the four

□

130

1 that you list there.

2 MR. O'NEILL: We will clarify that.

3 MR. MILLER: Paul Miller also from the state
4 of Washington.

5 And I was interested in your comments about
6 going back and checking against the actual original
7 registration card for a couple of reasons.

8 One the practical administration implications
9 of that. And two because you cited Washington state
10 specifically in regards to that. And I think that there
11 may be possibly some misunderstanding as to what came
12 out of the 2004 gubernatorial election in that regards.

13 First of all as a practical matter what I
14 understand you to say is we ought to be going back and
15 checking all of our voter registration cards to make
16 sure we didn't inadvertently miss one or more.
17 Obviously in King County where they have 1.2 million
18 registered voters, as an administrative matter that is
19 an impossibility.

20 Two, what I am understanding you to refer to
21 actually is a little more complex; but, raises some
22 additional questions I think you might want to

131

1 investigate in your survey which is what can be
2 remedied in voters registration when either the
3 provisional affidavit is incomplete or when the
4 original voter registration form is incomplete. If the
5 person, for example, didn't sign the voter registration
6 form they can't be made inactive registered voter. Can
7 that be remedied with a provisional ballot and a
8 signature verification if the address was an invalid
9 address and couldn't be precincted can we give them a
10 provisional ballot? Those are some of the kinds of
11 issues that did come out and we were forced, in
12 Washington, to clarify those kinds of questions.

13 MR. FOLEY: Those are really important
14 questions. And absolutely that's where clarify is the
15 primary value. It's much more important to have an
16 answer to that question ahead of time that it matters
17 what the answer is. So if the issue is a missing
18 address we should ahead of time what the consequences
19 of that missing address is. It either counts or it
20 won't count. But at least you know the rule ahead of
21 time So I absolutely agree with that.

22 MR. O'NEILL: And I believe the court case
Page 120

014434

1 you are referring to is the Judge ordered King County
2 to seek signatures for provisional when they hadn't
3 signed the provisional ballot. That's my understanding
4 of the decision in that case. My guess is that was the
5 court case you were referring to.

6 MR. FOLEY: Well there were multiple cases as
7 you know. And one piece of good news on this I do
8 think the HAVA requirement of statewide centralized
9 voter registration data bases will help because I think
10 a well designed data base will always archive any
11 retained historical records with respect to registered
12 voter. In the event of a purge or in the event of some
13 action on that registered voter you can go back and
14 archive the history. And that will minimize to a
15 considerable degree issues about the validity of the
16 status should they arise in the context of a
17 provisional ballot.

18 But there is still a question of the point of
19 intake question. In other words until you get that
20 registrant within the system, in the centralized data
21 base there is a gap and we have seen it. It is not just
22 in Washington. There are gaps in terms of forms

1 delivered to DMV that are not transferred timely to the
2 Board of Elections, who bears the burden of that risk?
3 Of course there is a different burden of risk if the
4 form is delivered to one of the third party groups. And
5 they make a mistake. I am not saying that all risks
6 should be borne by the state. Some risk should be borne
7 by the voters. Some risks maybe should be borne by the
8 system. But the most important issue is to clarify
9 ahead of time is who bears the risk of a missed form,
10 and under what circumstances?

11 MS. HODGKINS: The gentleman in the back and
12 then we will go to Mr. McCormack .

13 REGIS YOUNG: Regis Young from Pennsylvania.
14 You made several points about educating the
15 polls workers throughout your presentation. But nowhere
16 did you mention educating the news media. I am
17 following up on what Howard mentioned before especially
18 in Pennsylvania in 2004 the news media kind of took
19 over our election by advertising and saying it doesn't
20 matter if you're registered or not just go vote. It
21 doesn't matter where you live just go vote to your
22 nearest polling place. And I was wondering did you

1 gather any statistics on your survey in Pennsylvania?
2 we had a low percentage of counting the provisional
3 ballots because of that. It was too late for us to get
4 to the the news media to change.

5 I think it should be noted that on the
6 national level the news media should be trained right
7 down to the local newspapers.

8 MR. O'NEILL: They usually resist training .

9 MS. HODGKINS: Okay. Mr. Lindback and then
10 Secretary Markowitz.

11 MR. LINDBACK: John Lindback, I am Director
12 of Elections in Oregon.

13 You know we are one of those odd ball states
14 where we do things very differently and it effects your
15 study I am sure. One of those states that make you rip
16 your hair out.

17 One of the things we found with
18 implementation of state wide voter registration program
19 is in a primary election last week is it appears that
20 the number of provisional ballots went dramatically
21 down because of our statewide voter registration
22 system. It sort of strikes me that your research team

1 lists us as a moving target in regards to the dynamics
2 of elections changing in this country. And I sympathize
3 with. And I am wondering if you could go back for a
4 second to your slide on your quality improvement
5 program because I have a question about that.

6 MR. O'NEILL: Tell me when.

7 MR. LINDBACK: That one. As election officials
8 we get told we ought to do a lot of things. And in fact
9 I have gotten kind of used to it. Ever since 2000 we
10 have to do this and we have to do that we have to do a
11 lot of things that are very good ideas. Rarely do we
12 get a suggestion are we told how to do it. And a cost
13 effective in a efficient way. And I am looking
14 specifically for example at time required to evaluate
15 ballots by jurisdiction.

16 when we get into that level of detain and
17 data collection I need to hire a full time person to
18 collect that data at election time. I don't have the
19 budget to do that or the resources to do it and that
20 kind of thing.

21 I think we are appreciated as election
22 officials when folks from the academic world do studies

□

1 and make recommendations. We don't only need
2 recommendations on what we ought to do as to how we
3 ought to do it and how we can do it in a cost effective

4 and efficient way. I think if you folks would look at
5 that specifically with request to these four
6 suggestions because to me they look expensive and
7 overwhelming in some respects when we are trying to
8 collect the data.

9 MR. FOLEY: I hope we were sensitive to that.
10 we tried to be, maybe not sufficiently, but we wrestled
11 with the notion of trying get specific. And there are
12 downsides to getting too specific on some of these
13 issues, particularly as to what date should this be
14 done by. It also relates to a larger theme which I
15 theme which I as an academic.

16 I think requires a dialogue between people
17 who are implementing election law in practice as
18 administrators and then people who are studying it. And
19 a real genuine back and forth ongoing dynamic dialogue
20 because what would it take to build an optimal
21 provisional voting system is not an easy task just in
22 terms of identifying the values. And there are trade

□

137

1 off values, there is a trade off between accuracy and
2 finality not to mention not to mention budgets and
3 expenses. And I think it is unfair to election
4 officials that the media in particular and public
5 rhetoric demands more than is achievable. It is sort of

6 an expectation that the system is going to be perfect
7 that provisional voting is going to be that automatic
8 fail safe.

9 I think one of the education functions that
10 hopefully the EAC can play given its public profile is
11 that there needs to be more sophisticated
12 understanding that a well designed system can't promise
13 too much. And it can work without the-- cars, you know
14 well designed cars sometimes break down but we don't
15 think the car was poorly designed because you have to
16 take it to the shop every few years. And it may be that
17 a well designed election system, you know, is still
18 well designed it still functions appropriately given
19 the budget and so forth even though it has glitches
20 here and there.

21 I don't think the public is not quite at that
22 point in the conversation, and hopefully our process

□

138

1 and the EAC can help with that understanding.

2 MR. O'NEILL: We agree with the thrust of
3 your comments I believe somewhere in here we have a
4 bullet point that calls for an assessment of cost
5 effectiveness of the kinds of regulations you set up to
6 improve and evaluate provisional ballots.

7 You will find also here a specific reference
8 to the check list that has been using, Colorado to

014440

9 record the reasons provisional ballots were not
10 excepted with a simple three letter code and will allow
11 you to go back at the end of the election and process
12 and evaluate why persons are getting into the
13 provisional ballot line and why they are failing to
14 have their ballots evaluated and counted. It will give
15 you a check on the functioning of many parts of the
16 system.

17 And many of these pieces of information are
18 collected for other purposes. You know how many
19 provisional ballots are cast. You know how many are
20 counted. But they are not necessarily compiled in a way
21 that allows you to analyze the data at leisure once
22 the election is over. So in general what we are calling

0

139

1 for is using the data for two purposes; to call the
2 election and after it is all over to analyze why the
3 system worked the way it did in that particular
4 election. Your right it is a moving target and each
5 year will be a little different.

6 MS. HODGKINS; Secretary Markowitz? And Adam
7 if you wouldn't mind the gentleman on the front row
8 will be next and secretary Ruggiero will have the last
9 word.

10 MS. MARKOWITZ: Secretary of State, Deborah

11 Markowitz from Vermont.

12 I like to go back to the comments from
13 Delaware. As you continue to study this issue you look
14 at what the goal of provisional balloting is and then
15 evaluate how it is working state by state. Vermont is
16 your lowest participant in provisional voting and
17 that's because our-- we actually do something better
18 than that like Delaware where we have affidavit voting.
19 So somebody comes in-- and we have a terrible problem
20 with motor voter, and I don't know about the rest of
21 the other states, but routinely there are thousands of
22 people who never make it on the voter rolls because

0

140

1 those registration forms aren't filled out correctly
2 and don't get to us or don't get to the right place and
3 really, in most cases, through no fault of the voter.
4 So for many years and we are called an old state with
5 provisional balloting and we have resolved by allowing
6 somebody to swear or affirm that they were registered
7 and we simply add them to the check list on election
8 day and allow them to vote.

9 In Vermont provisional voting is reflected in
10 two things: One was town clerks or election officials
11 who misunderstood provisional voting and used it
12 instead of the activating list and we should have a
13 lower number than that. Or there were people from

14 Connecticut who come to Vermont and think they have a
15 right to vote in any polling place because they are
16 Americans. So we should say that we have something
17 better that allows them to have an actual ballot.

18 MR. FOLEY: Oh, absolutely. Like Tom said and
19 I will definitely repeat. A large number of provisional
20 ballots cast in a jurisdiction is by no means
21 necessarily a good thing. And a large number of
22 provisional ballots counted is not necessarily a good

□

141

1 thing because maybe those folks should have gotten an
2 actual ballot in the first place, if it was determined
3 that they were registered voters why weren't they
4 voting a regular ballot.

5 Now, again, a fire extinguisher is good. It
6 is good to have safety measures. It is good to have
7 fire extinguisher if there is a fire that you have to
8 put out. It would be nice to avoid the first in the
9 first place. And some of the academic research that we
10 drew upon was efforts to have improvements in
11 registration systems that would avoid the need for
12 provisional voting and put less stress on the on
13 provisional voting precisely because provisional voting
14 is after election day when the litigants want to gain
15 the system. In other words in a post election

16 environment there is inevitably going to be extra
17 stress if the election is close. So it would be much,
18 much better if you could reduce the number of
19 provisional ballots cast and have those be actual
20 ballots if that is a feasible thing. So that's why we
21 talk about the relationship between the provisional
22 voting system as a subsystem, with the data bases

0

142

1 another subsystem. It is an important component and it
2 is provided by HAVA and it is good to have fire
3 extinguishes. But one needs and overall assessment of
4 the totality of the states election system really to be
5 able to evaluate its component that is provisional
6 voting.

7 MR. BLEVINS: Don Blevins, Lexington,
8 Kentucky. I have got a couple of things.

9 Number one you say that everybody should get
10 a provisional ballot. And the application, if we decide
11 to put it in place, is not a good thing. We only allow
12 a provisional ballot for federal elections only. And
13 given that there is no such thing really as a federal
14 election. There is an election day in America where we
15 elect officers of a all levels of government including
16 six cities where half a dozen people get together and
17 decide they want to have a little city. So for those of
18 us who administer elections on the local level we have

19 to absorb the entire scheme of officers and issues that
20 are on the ballot. So in our state the way we put it in
21 place in a perfect situation we would never count a
22 provisional ballot. We have it orchestrated so that

□

143

1 that truly is a last resort. On the other hand we want
2 the voters to be able to vote in all election issues
3 and races that they are eligible to vote in. And when
4 they choose the provisional ballot route they have
5 opted out of that. So that is not necessarily the best
6 route to go.

7 We have a statewide data base. We have had it
8 for a long time. We have a leg up on the states that
9 don't have that. And we have a telecommunications
10 system that allows us check the registration. The size
11 of the population of the state plays a roll we have
12 four million people, two million registered voters.
13 They top that in Los Angeles county in California. So I
14 can tell you from my administration we would have to
15 look at this in a different context by virtue of sheer
16 volume.

17 The second thing I want to point out to you
18 is that I think the biggest over simplification that
19 was in HAVA was this idea that we are not training poll
20 workers well enough. Or we are not training the public

21 well enough. I don't think the federal government has
22 got enough money to train the electorate out there on

144

1 how to do this voting. So the burden of the election on
2 the county. When people talk about.

3 Educating poll workers I hear what I think
4 must be a two, three or four day training session. And
5 you're lucky if you get them in for 30, 40 minutes.
6 They have the attention span of a kindergartner. So
7 this is over glorified and under appreciated that these
8 poll workers are volunteers and get paid poorly. And
9 until there is some heat built up on the state to put
10 up more money poll workers were are we going to get
11 that?

12 Another thing that HAVA wants is we are
13 supposed to teach them a sensitivity about disabled. We
14 are supposed to teach them about provisional ballots.
15 we have to teach them about state law and all this. You
16 know, I don't know about anybody else but we get a them
17 for two hours we have performed a miracle. So this idea
18 of training being the answer to everything I think you
19 are going to find between academics and practice there
20 is a big over simplification difference.

21 MR. FOLEY: I think we are very much in the
22 arena because it is because of that complexity and

0

145

1 difficulty that out point about the practical rule of
2 thumb is to give them a provisional ballot. And I
3 stress that is when the poll workers are in a position
4 to say I am in a position were I can not give this
5 voter standing in front of me, or a would be voter, a
6 regular ballot. Something has caused me to make the
7 determination that they can't vote a regular ballot.
8 They are not on my list; they don't have the right ID
9 whatever. If at that point the voter says I don't want
10 to go home empty handed I would like to vote a
11 provisional ballot because I believe I am eligible it
12 is at that point that our recommendation is don't take
13 time to worry about that. You have too much on your
14 mind poll worker. At that point you know you're not
15 going to let them in the regular booth or regular
16 ballot give them a provisional ballot. So it is not
17 giving them a provisional ballot instead of letting
18 them vote regularly. That is not an issue.

19 MR. O'NEILL: I did not follow one part of
20 your comment, maybe you can straighten it out for me.
21 You said you don't like the issue of the provisional
22 ballot in Kentucky. And if you do the person who get it

1 doesn't get to vote in a local election. That's the
2 part I didn't understand.

3 MR. BLEVINS: We chose to make the
4 provisional ballot only for federal elections. We went
5 with HAVA in that regard that it only applied to
6 federal elections.

7 MR. O'NEILL: I understand. Thank you.

8 MR. BLEVINS: And we did that for several
9 reasons that may not make a lot sense here. Voter
10 fraud, and vote ban and those sort of things.

11 MR. O'NEILL: You're talking to someone from
12 New Jersey.

13 MS. HODGKINS: Thank you Mr. Blevins.
14 Secretary Rokita.

15 MR. ROKITA; I have a couple comments and a
16 couple of questions if you can bear with me.

17 First of all for the record I also agree that
18 there is much more relationship between this subject
19 and ERA than to your research currently. And I would
20 suggest doing a little more research in that regard.
21 For example when EAC requires that full service
22 agencies to continue to accept voter registrations it's

1 a great thing. But you're also at the same time right
2 after the election and if you would the election coming
3 up after registering it might be driving more people to
4 the polling place like NVRA requires only to have them
5 cast a provisional ballot because the registrant won't
6 let us pass. So issues like that I think might be
7 right for some of your discussions.

8 What data point did you specifically come up
9 to conclude that if someone is in the right polling
10 site, all be it not the right precinct, that their
11 ballot should count?

12 MR. FOLEY: It was a core decision, correct.

13 MR. ROKITA: I understand. Just for example a
14 photo ID, I will use that as an example, are you saying
15 that there is a causal effect between the time allowed
16 to count a provisional ballot and the rate-- are you
17 saying there is a causal effect and the rate of
18 counting that provisional ballot and voter ID are you
19 saying it causal?

20 MR. FOLEY: No. We found correlation if you
21 will, I don't have the time but I could go into this
22 more. But I don't think we are making a finding on

□

1 causation.

2 MR. ROKITA: Well, if it is not causal I
3 guess my point would be, so you can respond, what value
4 is it to be in this report?

5 MR. O'NEILL: The existence of the correlation
6 between having less time to evaluate ballots and with
7 fewer ballots being excepted it is an indication to us
8 that something is going on. We don't know exactly
9 whether it is causative or merely highly correlated.
10 But whatever it is it makes it worth while looking at
11 the time period allowed to evaluate ballots and try to
12 figure out if it is causing it. And you can do that
13 for instance by finding out are there a bunch of
14 ballots that you never got to at the end of the
15 process, the process was only three days long. It is
16 worthy of further investigation.

17 My own suspicion is that the arrow of
18 causality does flow that way but it is only a
19 suspicion.

20 MR. FOLEY: And there would be reasons to
21 look at the timing issue even if that data didn't
22 exist. I mean it maybe anecdotal but I mean I keep

1 referring to Washington but half of the Washington
2 governor's race the process for evaluating the ballots
3 shut down on the same date in 2004 as a matter of state
4 law that the federal Supreme Court in Bush vs. Gore

5 shut down the counting process in 2000, the current
6 governor would be a different incumbent. So the fact
7 that the the process took longer than the five weeks
8 that federal law allows for Presidential elections
9 shows that timing can be outcome determativ.

10 And I simply wanted to share that knowledge
11 with all of you as you determine for your own races
12 what is the appropriate time table to utilize before
13 bringing the process to conclusion.

14 MR. O'NEILL: And my recommendation for the
15 EAC is that they be very careful with this research
16 were things are not causal or currently suspicions that
17 we say that.

18 I think at the outset with some of these
19 subjects, and I am usually the first on up to bat, but
20 some of the other subjects that we are going to deal
21 with maybe the same way, maybe not. But these issue
22 these themes are not conducive to very easy data

150

1 gathering. I must have said that ten times here. And
2 maybe it has to stop right there or slow down right
3 there. Maybe there is value in just saying that, rather
4 than try to fit a square peg in a round hole where
5 these potential conclusions or these correlations that
6 you're saying could be taken by the public as

014451

7 conclusion or causality when there really is none.

8 MS. HODGKINS: Thank you. Mr. Martinez, we
9 do apologize for running this session over time but--

10 MR. MARTINEZ: That was great. We were looking
11 for the kind of discussion we had today. It's very
12 valuable to us. We are on the record and we can come
13 back and really consider the comments. We really do
14 appreciate them all and are looking for this kind of
15 discussion.

16 I am speaking for myself and not the EAC in
17 saying this I think there is strong sentiment at the
18 EAC, at least from my perspective, to evaluate in very
19 sound and deliberative manner, Mr. Secretary, the kinds
20 of reports of reports that were presented to you.

21 Keep in mind these reports are from our
22 consultants to the EAC and we are sharing them with

□

151

1 you. These were not EAC reports that we have adopted
2 and are presenting to you for final analysis.

3 There is a complete difference in those areas
4 and that's why we took these extremely important steps
5 to show you what the consultants have brought to us and
6 sharing it with you at this stage in the development so
7 we can then honor that importance to deliberate and
8 contemplate very thoroughly before we embrace whether
9 it is voluntary guidance or best practices. So we are

10 very much in that period. I encourage it for the rest
11 of the discussions we are going to discuss.

12 All right. We are going to take a quick
13 break our next topic will be Research on Poll worker
14 Recruitment.

15 Madam Chair, it is 4:20 and I am calling for
16 a 15 minutes break or so. Reassemble in 15 minutes,
17 please.

18 (Recess taken at 4:20 p.m., and reconvened at
19 4:40).

20 MR. MARTINEZ: We are starting again. We have
21 one more session left. I know it has been a long
22 afternoon full of a lot of information. We have one

0

152

1 session left for today and tomorrow we will hit you
2 again with a long session.

3 what we are going to do today is give you a
4 presentation regarding another one of our contracted
5 research projects and that is pertaining to poll worker
6 recruitment, training and retention for poll workers
7 who are generally used at the polls but targeted
8 specifically as well to college poll workers, to the
9 population of college poll workers.

10 we have a couple of consultants that we have
11 hired that have done some tremendous work and want to

12 share the results of that work.

13 what I am going to do is ask Karen Lynn Dyson
14 who we all heard before. She is our project research
15 manager at the EAC and has been with us for quite some
16 time now to stand up and give us a quick introduction
17 of our project consultants and anything else she might
18 want to say.

19 However I forgot I am supposed to recognize
20 your chair, Peggy Nighswonger who wants to give you a
21 quick piece of information, Madam Chair .

22 MS. NIGHSWONGER: Okay. I am just going to

□

153

1 tell you that 66 ballots were counted successfully. So
2 please welcome Tonni as our new Executive Director.

3 We are leaving right after this session.

4 MR. MARTINEZ: Congratulations. Karen
5 Lynn-Dyson will make the introductions and we will get
6 to the last presentation of the afternoon.

7 MS. LYNN-DYSON: Commissioner Martinez just
8 mentioned that I have been with the EAC for some time
9 and I could swear either he said or Chairman Boyer
10 said I have been here for years. He said a lifetime.

11 I am pleased to introduce two of our
12 contractors Abby Horn who is to my immediate right. And
13 Abbey is the Assistant Director for the Center for
14 Election Integrity at Cleveland State University. Abby

15 leads the Center as Acting Assistant Director and she
16 came to the Center as a democracy for the United States
17 for International Development and did a lot of work
18 all over the world, primarily in Central America related
19 to democracy and citizenship.

20 The Center for Election Integrity at
21 Cleveland State University is a partnership of the
22 Cleveland Marshall of Law and the Massey, Goodman,

154

1 Levine College of Urban Affairs. She draws upon the
2 long standing expertise from those colleges in
3 electoral and regulatory law, public education and
4 civic education the Center for Election Integrity
5 provides research, training consultation to assist
6 Ohio in becoming a national leader in transparent,
7 legal, efficient and accurate elections. It is three
8 organizations dedicated to three interconnected
9 missions: To assist Ohio in becoming the national
10 leader in elections; to help assure the citizens trust
11 that their elections are fair, lawful and accurate and
12 to undertake scholarly studies and offer
13 recommendations on election administration and legal
14 reform at the state. Local and international level.

15 Again Abby is overseeing the Cleveland
16 State's efforts related to college poll worker

17 recruitment and training and retention.
18 Jennifer Collins-Foley to Abby's right is an
19 attorney who has provided democracy development around
20 the world since 1989 working with election
21 administrators, civic organizations and politic
22 parties in the former Soviet Union, Central Asia and

□

155

1 the Middle East.
2 Jennifer has served in the Elections
3 Administration Community since 1996, spending seven
4 years as Assistant Registrar of Voters of LA County.
5 She now serves as an Election Administration
6 Consultant. And has worked in recent years with us and
7 on this project with IFES. And IFES for those of you
8 who don't know was established in 1987 as a non
9 governmental, non partisan, non profit organization.
10 IFES has provided assistance to current elections, the
11 rule of law, civil society and good government in more
12 than a hundred countries including the US.

13 IFES is headquartered in Washington with
14 offices in nearly 30 countries and it specializes in
15 technical assessments, poll worker training programs
16 technical observations, election commission management
17 reviews and election equipment and commodities
18 procurement systems.

19 IFES is the contractor for the Elections
Page 142.

014456

20 Assistance Commission is doing work on the general
21 poll worker recruitment and training and retention
22 project. So with that I am going to turn it over to

0

156

1 Jennifer who is going to make her presentation that
2 will last for about 15 minutes. And then Abby will go
3 for about 15 minutes. And then I will open it up for
4 questions. Thank you

5

6 RESEARCH ON POLL WORKER RECRUITMENT AND
7 RETENTION (INCLUDING COLLEGE POLL WORKERS)

8

9 Presenters: Jennifer Collins-Foley, IFES.
10 Abby Horn, Cleveland State University
11 Karen Lynn-Dyson, EAC.

12 MS. COLLINS-FOLEY: First off I want to say
13 it is an honor it is to work on this project because I
14 am a self proclaimed poll geek. And to be part of a
15 team that gets to look at these issues for 15 months
16 and actually get paid for it. And talk to hundreds of
17 election places across the country it's really neat.
18 And I have been having a lot of fun with it.

19 went over a little bit of where the project
20 came from, of course it stems from a Help America Vote
21 Act that is such an important program and is the heart

22 of successful elections.

□

157

1 We were awarded this project in September
2 2005 and it goes until the end of this year 2006, a
3 fifteen month applied research project.

4 We are working under IFES, International
5 Foundation Election Systems, and it has been terrific
6 working with them. It is a fantastic international
7 program offering technical systems to jurisdictions in
8 the US, and visa versa offering models from the US to
9 international partners.

10 I am President of an organization called the
11 Poll Worker Institute which is a relatively new non
12 profit focusing on poll worker issues in the US, and we
13 have a Board that is quite active. Conny McCormack is
14 on the Board; Beverly Kauffman from Harris County
15 Texas and Lynn Shadman from Washington D.C. And we
16 are also very fortunate to have the League of Women
17 Voters working on this project as well. I don't have to
18 introduce the League I guess.

19 what we have been working on these past 13
20 months is we have been partners with Cleveland State
21 University to compile 50 state laws as they apply to
22 Poll workers to compile field tested practices in poll

1 worker recruiting, training and retention. We pulled
2 together a working group to give us guidance over the
3 course of this program.

4 We conducted some focus groups with the
5 League of Women Voters project earlier this year. We
6 are developing a how to practical guide book which we
7 will talk about in a few minutes. And I hope you have
8 the job table of contents that was supposed to have
9 been distributed to you earlier today. We will be
10 conducting some pilot projects to test the guidebook.

11 I won't go too much into the compilation of
12 state laws because Abby is going to talk about that
13 more in a bit.

14 The three things we found really impacted the
15 ability to have innovative poll worker programs were
16 age requirement, obviously if you want to bring high
17 school or college students in that can sometimes be
18 an impediment. Residency requirement become an issue if
19 the poll worker can only serve in that precinct. They
20 can start more innovative programs like corporate or
21 college. And being required to be nominated by your
22 political party can also achieve programs that are a

0

159

1 little more out of the box.

2 We were very fortunate to partner with the
3 National Association of Counties. They were going to do
4 an intensive survey of counties on poll worker
5 practices. So we worked with them to have their survey
6 be as helpful to us as it could be in terms of
7 collecting practices. We also went to some fabulous
8 programs or collection of practices that had been put
9 together by NEMS, by NASED, by IACREAT, the Election
10 Center and the EAC. So we began pulling together
11 practices that we thought were bordering on
12 successful. Some of them were not so successful,
13 bordering on best practices but certainly in the
14 successful realm. Early on we started pulling together
15 our guidebook and then of course together with NECO
16 Survey we were thrilled that we got three hundred
17 responses out of three thousand counties,.

18 Before I was in this project I used to think
19 a ten percent response rate that is terrible. But that
20 is really good when you are doing research. And our
21 research people was thrilled with that. And of course
22 it has given us fabulous stuff to work from. So we are

0

1 going to be putting out some results soon. And it is
2 going to be great on who is doing what kinds of
3 practices; who doing what kind recruiting. We also
4 pulled together a great working group to guide us
5 through the projects. I should have mentioned earlier
6 IFES and the poll workers we pulled together were a
7 terrific group for consultants to work on this project.
8 All retired or current election officials who really
9 had some field tested practices to share.

10 And on our working group we had State
11 Election Directors, two local election directors from
12 large and small jurisdictions from from large and small
13 jurisdictions, Academic advisor a research advisor, an
14 adult learning advisor and a training expert form the
15 private sector. So we really were able to pull together
16 some good folks to help us look at whether these
17 programs we were compiling really are successful. We
18 also were fortunate to have advocates from the multi
19 lingual and voters with Disabilities community.

20 We have tried to call in as many (inaudible)
21 as we can in addition to the NECO survey we are really
22 trying to find out what is going on out there and

□

161

1 pulling in some practices, and our working group
2 pulling some information from them. We also pulled

014461

3 together a round table with volunteers. Not all of us
4 consider poll workers volunteers, in some places they
5 do.

6 They gave us some pretty good thoughts on
7 when you are working with volunteers apparently there
8 is a growing trend in what we call episodic volunteers
9 which means you get all your volunteering done in one
10 big chunk. So really you would think that poll workers
11 would follow that trend.

12 All you need to do is ask. And they said if
13 you don't mind us telling you, your election officials
14 don't ask the right questions if you're really going
15 coworkers as volunteers. Uncle Sam needs you they tell
16 us is a bomb. They advised us to think more about your
17 community needs you on election day to serve in this
18 place and this is what you are going to be doing. They
19 said the more specific the request the better. So
20 you're going to hear feedback from people who, like the
21 the Points of Light Foundation, people who are really
22 in the field of volunteerism.

□

162

1 we talked to and interviewed training
2 experts. A lot of you know Ray Hawkins and Robert
3 Lovejoy (sic) absolute opinion leaders in the field.
4 They gave us some terrific feedback. We had voters
5 with Disability round table talk about some practices

014462

6 on recruiting poll workers with disabilities. And also
7 some pieces that are going to go in our guidebook that
8 are really good for sensitivity training. Getting your
9 poll workers to go out there and, you know, really make
10 polls set up the best way to accommodate these folks.

11 The League of Women Voters in an amazing two
12 or three month period did 19 focus groups in 17
13 jurisdictions. Obviously they were trying to compile
14 strategies and also to underscore some potential pit
15 falls. They came back with some shocking survey
16 analysis which is that election officials do work on
17 shoe string budgets. I was amazed to know that. They
18 also said that election officials had limited staff,
19 and also that the election environment system
20 historically had little need for change. Those of you
21 or started transitioning from punch card voting back in
22 the 60's will welcome the change. I am not supposed to

□

163

1 side with the focus group results.

2 Now some current reasons for change include a
3 course of Help America Vote Act, bringing in new
4 technology that will have big impacts on poll workers.
5 The increase of public scrutiny of election
6 administrators obviously we all under the microscope
7 now. And that means our poll workers are under the

8 microscope. Razor thin margins of electoral victories
9 in recent elections. Obviously the candidates know who
10 their voters are, and if they loose it must be our
11 fault, or the poll workers fault. And finally the
12 anticipated demographic changes that have served as
13 agents for change. And this is everything from
14 increasing needs to have more bilingual poll workers
15 that kind of thing. So lots of change going on there.

16 The most common recruiting practices include
17 word of mouth, personal networks, referrals, more
18 people are paying more money. Lead poll workers in some
19 places are selecting their own team. And some other
20 very common recruiting practices, flyers, posters,
21 adds. Check boxes on voter registration forms. This is
22 traditionally you put something out there as an

□

164

1 election official and the voter, the potential poll
2 worker contacts you.

3 Some of the more innovative recruiting
4 methods are were you find the partner and the partner
5 gets you your poll workers and gets you-- instead of
6 one poll worker they get you multiple poll workers.
7 These program include what we call county poll worker
8 programs, also called governmental private sector, also
9 called corporate poll worker programs, high school
10 college student programs, civic organization programs

014488

11 and bilingual poll worker programs.

12 One thing that came out of the focus groups
13 is that it is generally more difficult to recruit poll
14 workers from lower income areas and very wealthy areas.
15 And for those of you who have read or will read our
16 guidebook you will see that the chapter that says:"Tips
17 for Recruiting Poll Workers in Low Income Areas" is
18 blank. And that's because we actually haven't found
19 very many good tips. We have spoken to literally dozens
20 of election officials in low income areas, that have to
21 recruit for low income areas including me in Los
22 Angeles, and we are drawing a blank. There really are

□

165

1 not too many successful tips. We are getting there. We
2 are talking to churches. If anybody has any ideas I am
3 listening so please do let me know. Another thing that
4 the focus group found is it is especially difficult to
5 get technological savvy poll workers in economically
6 disadvantaged areas.

7 When we put this in our guidebook we are
8 going to say: "Well, you have two choices you can kill
9 yourself trying to find tech savvy people in those
10 precincts or you shut them down" . So our guidebook we
11 are really trying to be very practical.

12 Strategies that met with mixed results

13 included recruiting a partnership of political parties.
14 Obviously there are practices out there of how many
15 have this in their state law that you have to work with
16 political parties. And the reality is that election
17 officials have told us that this is mostly a bomb. Very
18 few election officials have said: " Oh this is a
19 fabulous recruiting technique." Most people have said
20 this is the biggest pain in the neck ever. The people
21 we get we can't place them, they are dead by the time--
22 I mean no disrespect. I mean very mixed results on this

□

166

1 particular type of recruiting. Offering split shifts
2 is another thing we found. First thing a voter on the
3 street, a potential poll worker will say: "Well if I
4 was offered split shifts I would be glad to do it."
5 Then they find out that you-- that they have to find
6 their partner because Hello we are not going to find
7 their partner for them on the split shift and they
8 quit. Or they say: "Do I have to share my stipend?
9 There is no way I am doing that." So you know the
10 perception is okay if we just this practice everything
11 will be great. The reality is a little different. And
12 our guidebook goes into some of these nuances.

13 And one things that has become a kind of
14 undertone of our whole project is that there is, you
15 know, strategies that give you the balmies (sic). Like

014466

16 you know we always talk laughingly about the breathing
17 test. If they are breathing we will hire them. And
18 those strategies really go by the wayside in the time
19 when we are using new technologies and we are under the
20 microscope and there are all these tight elections. We
21 really need to be working on strategies that provide
22 the best poll poll workers not just enough poll

□

167

1 workers.

2 Some successful messages that the League came
3 back with from their focus groups are based on the
4 person you ask you need to ask is it a family; is it a
5 neighbor is it somebody calling person to person asking
6 some kind of connection. The more specific you can be
7 the better. And stress the benefit to the community.

8 Key findings on poll worker training. We
9 found that in the focus groups and also in the NECO
10 (sic) survey and also in talking to literally hundreds
11 of election workers across the country there is a trend
12 from moving away from talking head training more to
13 hands on roll playing, setting up a full poll worker
14 station, a full mock polling place and the training and
15 allowing as much hands on as possible. And one
16 interesting thing that we found in both the survey and
17 the focus groups is that paying poll workers to attend

18 training dramatically increases the people who turn out
19 for your training programs.

20 I am going to read this because I think it is
21 important: " The most important theme is--" You're
22 supposed to read from your power point." That is one

□

168

1 of the things that we learned when we were just
2 developing our conflict chapter in the manual. You're
3 not supposed to read from your manual but it is a good
4 quote you are allowed to. "The most important thing to
5 arise from the discussions of all the state holders is
6 there is no magic bullet. There is not a one size fits
7 all solutions for every jurisdiction or for reaching
8 out to every population. Election officials must
9 experiment to find the right balance for their
10 jurisdictions needs." I am sure that does not surprise
11 any of you. We all know everybody has had different
12 site jurisdictions, different demographics, different
13 support from your bosses, different size staffs. And so
14 because this is a kind of a theme of our project.

15 Our guidebook has become what we call a
16 recipe book. Let me share with you this is what I call
17 my Betty Crocker Cookbook. And in our guidebook we
18 actually do have practices that are the very basic,
19 boiling an egg. And you know the hamburger version of
20 recipe books. And in our guidebook we have some very

21 basic practices such as word of mouth, or putting up a
22 poster at the polling place. And this is the diet

□

169

1 cookbook it's an Oprah cookbook. This is an analogy
2 for the smaller jurisdictions that needed a different
3 kind of recipe because they are trying to stretch their
4 calories further sort of speak. Then you have the
5 connoisseurs cookbook. So there are pieces of the
6 guidebook that are a little bit more for a jurisdiction
7 that is really trying to be cutting edge and wants to
8 do all sorts of fancy new things, new ways of
9 recruiting, new ways of training, fancy power points.
10 All of, you know, more hands on training. They have
11 more money to pay for more in-depth training for some
12 of their poll workers, some of their trouble shooters
13 type of thing. And then we also have-- I have my
14 little New York cookbook. This is to show that we were
15 really ambitious in trying to get models from as many
16 jurisdictions of different sizes and different
17 resources as possible around the country. I promise you
18 this is the end of my little cookbook schmeel.

19 So if you look at our table of contents you
20 will see that we hope to have covered the whole realm
21 of practices that are out there. We have called our,
22 book successful practices. We didn't say they were best

0

170

1 practices and what we tried to do as we talked to
2 practitioners across the country, as we were gathering
3 their thoughts on their programs and their practices
4 and their tools we asked them okay that's great but is
5 this sustainable? Is this something you can keep doing
6 for years to come? Or is this a one time things where
7 you had a bunch of money and you have a fabulous
8 employee who can champion it? Is it measurable? Is it
9 something you can say okay this actually did have an
10 impact of getting better poll workers or having people
11 retain the training pieces better. And we also asked
12 them is it replicable ? Is it something that could only
13 happen in your county? Or is it something that really
14 can be shared with other counties, and they won't have
15 to reinvent the wheel? Then what we did is when we
16 found out, we got the responses, their nuance responses
17 about their practices, and so in our book we also
18 talk-- for each practice we have, we discuss the
19 benefits of the practice, the pitfalls and challenges
20 because we don't want other people to reinvent the
21 wheel. Some tips for in making it happen in your
22 jurisdiction. And we are also providing a methodology

1 of whether it can work long term for you.

2 That's what the guidebook is. What the
3 guidebook is not is it is not magic bullet. Obviously
4 you're not going to read this guidebook and say: "okay,
5 if I do all this good stuff I am going to have no
6 problems getting fabulous poll workers. We are going to
7 do the training and be brilliant on election day. What
8 we hope is that you will pick and choose and really
9 come out with some good stuff to chew on.

10 It is not a poll worker management program.
11 we really had to step back from doing some of the
12 management pieces because that's going to be in the EAC
13 Management Guidelines for one thing. It wasn't part of
14 our contract. Although we did cheat a little bit, we
15 couldn't help ourselves we put in a chapter on poll
16 trouble shooters because although we are not
17 technically poll workers we all know that they can be a
18 fantastic saving grace on election day.

19 What we really hope is that this is not a
20 static document. We are really hoping that all of you
21 will think about ways that once this guidebook hits the
22 streets, maybe at the end of this year, early next

□

172

1 year, that it will be, you know, disseminated as much
2 as possible. Think about maybe having it discussed at
3 lunches and conferences, on IACREAT conferences. Think
4 about maybe at your state associations summer meetings.
5 We are hoping that some of our workers can be on a
6 speaker circuit to get out there and introduce them to
7 folks that can't come to meetings like this. And if you
8 can think about that we would ask you to do that in
9 your feedback form.

10 we also have not yet, if any of you got the
11 electronic copy of this, we haven't yet put in some of
12 the models we have gotten because people are still
13 getting us electronic models. We really would like to
14 have as many models as possible. So if you can send us
15 things electronically we really appreciate it. We
16 haven't it in the book yet because then it becomes
17 difficult to share it. And it would have blown out your
18 systems, you know, if we sent it to you that way. But
19 we are looking for more models. And we are going to be
20 testing-- I am going to wrap this up because Karen just
21 stood up. That is my sign to wrap this up.

22 we are going to be testing this guidebook in

□

173

1 three pilot jurisdictions this summer. We are going to
Page 158

014472

2 be going to be going to Hamilton County, Ohio, to Santa
3 Fe New Mexico and to Milwaukee, Wisconsin. So we will
4 be seeing if this guidebook really works. As as we go
5 through changing or updating the guidebook to fit the
6 realities of the jurisdictions that we are working with
7 we definitely will be very happy to have more ideas
8 more models from you all. So please look at that
9 feedback form and provide us with, you know, some good
10 stuff to put in here.

11 MS. HORN: I am Abergail Horn with the Center
12 for Election Integrity from Cleveland State University.
13 Thank you very much for having me today. It has been a
14 real pleasure working with the EAC and an honor getting
15 to speak to you all of you today.

16 I came to this not as a poll worker junkie or
17 geek, I believe Jennifer said. But I have to admit that
18 since working on this since October I guess I have to
19 describe myself as a poll worker geek as well. But it
20 is a proud term and we had a lot of fun with it.

21 Again, the Center for Election Integrity
22 pulls expertise from the law school as well as the

174

1 Urban Affairs College that has a focus on public
2 administration so we really have a nice (inaudible)
3 going. College students are in the learning mold. They

014473

4 are tech savvy. They tend to be young and more
5 energetic. They are generally physically fit and can
6 set up heavy equipment, carry things around. They tend
7 to have more flexible schedules and this is my
8 favorite, but no proven over time, but this is a
9 hypothesis that if you hook them now you have them for
10 the future. Not necessarily as a poll worker. But if
11 you get them engaged now in a real way within the
12 democratic process , within the electoral process they
13 will see the value of it and they will become
14 physically engaged individuals throughout their
15 lifetime. So that is part of it and that's why I became
16 part of the program. But it is not a panacea, it is not
17 a solution for every jurisdiction for the entire
18 nations shortage of poll workers. There are a bunch of
19 hurdles and I am going to go into them in more detail
20 both legal hurdles as well as structural and
21 circumstantial.

22 The three main ones are students are often

□

175

1 not registered to vote in the same state or in the
2 county or sometimes were necessary in the precinct
3 where they are living and where the college is. And
4 that can be a problem. They generally do not want to
5 work, nor do they want to commit to work for more than
6 one election. " I know what my schedule is this

7 semester and I am not signing up for anything that says
8 I have to work more than this one". And indeed
9 although they are flexible classes and assignments can
10 get in the way and they can get in the way at the last
11 minute about working on a full day schedule. That is
12 why we put an emphasis in our guidebook in trying to
13 get a University wide policy of excused absences for
14 anyone who is going to be working as a poll worker. And
15 that is something to work on as they get going.

16 Our project is set up in the same way that
17 Jennifer's is in terms of having a project working
18 group and having focus groups. We have a seven person
19 team; three elections officials, three professors and
20 indeed college students who are all providing us really
21 wonderful feedback on the work as we move along.

22 we set out to collect what began from initial

0

176

1 work to be best practices but we quickly included that
2 to become effective strategies. We were really lucky.
3 we had a wonderful pool of things to start looking at
4 which was in 2004 the EAC provided grants to 15
5 different colleges and non profits to run college poll
6 worker programs. So we looked at those really
7 carefully, talked to most of them and got a really good
8 sense of what worked for them and what didn't. We went

9 on and looked at lots of different surveys and other
10 materials. In fact Jennifer was a wonderful resource
11 for us and fed us whenever she heard about college poll
12 worker programs in different shapes and forms. And we
13 have been following up in collecting lots of different
14 examples. And please if you have any send them my way.
15 My email will be at the end of this presentation. You
16 may have it in your packet already, I'm not sure it
17 already.

18 But, surprisingly, there are very few
19 structured programs. And a lot of people look to
20 colleges and universities in getting students to be
21 poll workers but they don't have ongoing relationship
22 with a particular college or university with a

□

177

1 structured program in place. Not a lot of overtime
2 programs. And that's what we really focused on in our
3 guidebook which is to develop a long term relationship
4 between the election jurisdiction and the college or
5 university.

6 we had four things for the focus groups and
7 most of them we did. One with students who had worked
8 as poll workers and one who did not. Overall their
9 findings reiterated what we had already found through
10 our research so that was great. We mainly talked to the
11 students about incentives for being a poll worker and

12 hurdles. And we pulled that all together.

13 The next part of the project was pulling
14 together the state statutes requirements. We looked at
15 the statutory law in all 50 states territories etcetera
16 related case law, anything pertaining to college poll
17 workers popped us as well as where applicable in some
18 states that we had to also look at the administrative
19 code and the state constitution and of course at times
20 they were in conflict with each other. But that is just
21 to be expected.

22 We then really-- it took a long time to

□

178

1 confirm all the data that we had. And send out to all
2 of the states their particular information trying to
3 get confirmation. We're just about there. And if you
4 happen to notice any errors in there let us know. We
5 are in an ongoing cleaning up process of the data.

6 And then there is always this issue of the
7 fact that sometimes practice at the local level is not
8 quite equal with what the policies say. And that is
9 true in many, many cases. And sometimes, quite frankly,
10 that is a good thing because the policies were pretty
11 new and if practiced exactly as they are written often
12 times it would be really hard to get college students
13 to work. And I will go into those later.

14 The state statues. We collected all the
15 information and several more but I thought these were
16 the more interesting ones so I stuck them up there.
17 Each state, we have a three or four page information
18 sheet and that all will be available on the EAC website
19 when this project is all done. You can click on the
20 page and see carious requirements for poll workers. We
21 have synthesized that into a chart that is in our
22 guidebook, and I believe you have a copy of the

□

179

1 guidebook.

2 This leads me to the actual guidebook which
3 some of you may have. I have a few color versions with
4 me so if you're really excited about college poll
5 workers and want to see the color version let me know
6 and I will give you one of those.

7 One issue that we struggled with in writing
8 is that we are writing for two different audiences. And
9 i would love feedback from any of you on that in that
10 we are writing for both elections officials who want to
11 figure out to develop a program with college students.
12 As well as for college and university representatives
13 who want to get their students more integrated. So
14 they are really two very different audiences. And at
15 times that can be challenging.

16 we have three different sort of call out
Page 164

014477

17 boxes that you will notice in the handbook. We suggest
18 handing these out prior to election day. And to
19 consider using the students they make really great
20 temporary election workers as things get hectic.

21 A how to box for example we have one on how
22 to develop a course reading, a big emphasis in the book

180

1 is incorporating poll work into a class curriculum
2 either has a service learning assignment or as extra
3 credit. Or developing a whole course around the idea of
4 citizenship. We have suggested reading that you might
5 use to build a course around.

6 Ignore at your own risk for example one of
7 the color boxes is designing equipment materials for
8 college students be careful not to inadvertently insult
9 your older veteran poll workers. You don't want to say
10 we really need young smart people.

11 And there is a table of contents for the
12 guidebook is a campus champion that is something we
13 have put emphasis on. You really need to find somebody
14 at the college or university who is going to be that
15 champion a person who is really going to get out there
16 put the word out and make it happen. At the same point
17 you also need to have a strong liaison with the
18 Election office.

19 Now I want to talk about retention and
20 sustainability in college poll worker programs. We see
21 that we are not able to retain these students. At most
22 you're going to get a student for four years. And most

181

1 likely you're not going to get the same student for
2 their four years of college. But the emphasis is really
3 on having sustainable programs. What you want to know
4 is that you have this ongoing relationship that you
5 work on and instruct with the local college or
6 university. So that you can count on having 200
7 students every year. They may be different faces and
8 have to go through the training and so on. But you
9 know that you have those bodies and that your partner
10 at the college is going to come through for you. And
11 indeed they are going to be quality poll workers.

12 There are examples of various programs that
13 we talk about in the guidebook. They really come in
14 different shapes and sizes Professor Ken built it into
15 the curriculum as a service assignment. As I explained
16 that is great. It might pull in 25 to 30 students in
17 the class that way.

18 Campus wide recruiting campaign posts a lot
19 of information. A lot of the EAC grantees followed
20 this model they might have gotten 150 students by just
21 getting the word out. Clinical science department

22 provides five extra credits. At large universities them

□

182

1 have ten political science classes each one with 200
2 students. It's a pool of 2000 potential students all
3 offered five extra credit points. They bring in 250
4 students easily to be poll workers. I just added this
5 one the university sent out a mass email. That is not
6 really a program that is an ongoing relationship but in
7 fact it can work because in Cleveland in a recent
8 primary I ended up contacting the President of
9 Cleveland State and a community college and a four year
10 college and they all sent out massive emails to their
11 students. Faculty and staff saying they needed people
12 who could come and work at the elections. And they got
13 a huge turnout despite the fact it was the week of
14 finals.

15 We are going to be running three pilot
16 projects that are basically designed to field test our
17 guide book. The criteria there is having strong
18 interest from the election official and from the
19 school. We are really excited in conducting this
20 project.

21 Some major findings just a few of them. The
22 emphasis in these programs is developing that

0

183

1 relationship. We are talking about having sustainable
2 program you want to have the time for relationships
3 building. And on the colleges side if you want to
4 incorporate it into curriculum and into classes you
5 have to get your faculty at least a semester before.
6 They are going to be tweaking their curriculum and they
7 need that time ahead to make that a reality. It is
8 really important to start early to get everyone on
9 board because if you're going to have a university wide
10 policy of excused absences on election days of poll
11 workers you better get working nine or ten months ahead
12 of time in order for it to go through the university
13 system.

14 Let's see, Jennifer mentioned you don't want
15 to see Uncle Sam needs you but with college students
16 really stressing the important in your message that
17 they play that this is not just some boring game but
18 that in fact explaining the importance of poll workers
19 which is in the democratic process students find
20 interesting and indeed motivates them. That said skip
21 down to my last point which are the two best incentives
22 which by far blew out every other incentive you could

□

1 possibly think of.

2 First one is money and the second one is
3 extra credit. So if you can work it through a college
4 or university and professors to build it into their
5 curriculum, fabulous. The students eat that up. And
6 again students are cash starved.

7 Training on campus indeed should be very
8 hands on, roll playing, lots of questions. In our focus
9 groups students complained about not being-- feeling
10 intimidated to ask questions. So lots of question and
11 answers. And emphasis on the etiquette and
12 intergenerational communication.

13 Again off year elections are not sexy, it's
14 going to be easiest to get college students engaged for
15 the Presidential elections. But that said, indeed there
16 are many examples of students working primary. And
17 other students working in between presidential
18 elections. It is not impossible but you need to
19 recognize that.

20 In getting students you will be surprised how
21 often or an assignment will pop up just a week before
22 when you thought you had everybody signed up and they

□

1 can't work on election days. So getting that commitment
2 from the University or college is really important.

3 Quickly on the legal impediments. Indeed most
4 states require poll workers to be registered voters of
5 the state, usually of the county and in fact usually a
6 resident of the precinct that they are going to be
7 working in. Now again that policy practice issue comes
8 into play there a lot. That can be a big problem for a
9 poor college student. Sometimes they don't want to
10 change their registration from their home town to where
11 they are at college. And then on the flip side some
12 states restrict college students from registering to
13 vote in their college town. That can also be a big
14 legal impediment.

15 Political affiliation: Only six states don't
16 provide require some sort of political affiliation. Now
17 at the county level they are not necessarily relying on
18 political party lists to get their poll workers. And
19 the time requirements as I mentioned students really
20 don't want to commit to more than one election so if
21 they are required to sign on the line to work for two
22 straight years every election they are going to balk.

□

1 And please sent me your ides if you know of
2 any projects out there I would love to hear about them.
Page 170

014483

3 And as you read through it any comments about format or
4 language I would be more than happy to receive them
5 any questions?

6 MR. BERNARD: Louie Bernard, Louisiana.

7 I wanted to ask Jennifer did you find
8 somewhere that a split shift program that was really
9 working. And B., was it the responsibility for the poll
10 worker to find the partner or the election official?

11 MS. COLLINS-FOLEY: Interestingly enough we
12 really tried to find a split shift program that really
13 worked and we haven't found one. We found that most
14 jurisdictions have tried it and given it up entirely. I
15 talked to five different jurisdictions in Virginia last
16 week. They said try this city or try Arlington I
17 finally gave up. And then there are some that keep it
18 just for the sake of showing that they are flexible.
19 For example in Los Angeles County we found that poll
20 workers don't want to do it. They don't want to find
21 their own partner and they don't want to split the
22 stipend. But we had to keep offering it just so we

□

187

1 could say that we do. So we have a contract, you know
2 and especially we found is that election officials are
3 very reluctant to do this because you compromise the
4 integrity of the process. What happens if the other