

5 person doesn't show up? That is the key thing for
6 elections officials is that integrity issue. And we
7 found that even the jurisdictions that had tried it and
8 given it up would never allow the lead poll worker to
9 split a shift. That was one thing that was constant.
10 So we had in our guidebook that was a big chapter and
11 we moved it into a one pager. It is out there and
12 people do it with limited success. We kept it in there
13 and there is a whole big section of the pitfalls and
14 challenges so that nobody had any doubt that it was not
15 the most successful practice.

16 MS. MARKOWITZ: Deborah Markowitz, Vermont .

17 In Vermont we only use split shifts. The
18 chief election official is there all day. And one of
19 the things we recommend is that the people who count
20 the votes, we hand count, except in eighty precincts
21 and we recommend that the people who count are never
22 the same people who sat there all day because it is

□

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1 hard to be precise at the end of the day. And we
2 recommend for that late shift starting at three or four
3 in the afternoon to school teachers. And that maybe
4 useful for you for LA of some of these hard to places.
5 Or they are people who work as bank tellers. They are
6 very good at counting and are very precise. It is
7 interesting although our chief election official in

8 every polling place stays the same because you need
9 continuity. But that is the only person that we
10 recommend be there all day.

11 MS. FOLEY: I will definitely look into that
12 be cause we are about to do a case study on your
13 program.

14 MS. MARKOWITZ: You should also look at the
15 fact that our polls open up at five in the morning. So
16 it is a long day.

17 MS. JOHNSON: Carol Johnson, New Hampshire.

18 we also do split shifts in our community in
19 Manchester. And we do it quite successfully as well. We
20 also have an interesting problem with people showing up
21 for training sessions. We do a two hour training
22 session before every single election. We have had as

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1 many eight elections in an 18 month period. what we
2 found was as an incentive showing up we changed the
3 ordinance that provides payment. So if they show up at
4 the training session they get more money than if they
5 don't show up at the training.

6 MS. FOLEY: I definitely will come up there
7 as well. One of the things that is going to be in our
8 guidebook is a discussion of the money and how there is
9 this trend for add on's people had their base

10 stipends . And then you can have all these little add
11 on's seem to be a trend . And we are hoping this could
12 be used by election officials in their budgeting
13 process. They have to go to their bosses and say hey we
14 are at the low end of the spectrum we need to give our
15 poll workers a raise for picking up supplies extra.

16 MS. BOWERS: Marilyn Bowers, South Caroling.

17 We were almost successful this year in
18 getting legislation past to allow registered voters
19 within the state to expand to the use of college
20 students but got it knocked down. We will try again.

21 I don't know if anyone has thought about
22 doing online training for poll workers I got the idea

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1 because I had do a course because I was with the EAC
2 during activation. And we did online training. we went
3 through the training chapter by chapter, took the test
4 and received notice that you were certified.

5 when I checked into some programs that were
6 out there they are very expensive initial cost plus
7 yearly cost and the logistics of training large numbers
8 prior to every election which our law requires it takes
9 a lot of classes to do all those elections. You could
10 reach a larger number of people by certifying them
11 through a computer course.

12 MS. FOLEY: In the guidebook we have a whole
Page 174

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13 chapter on online training. And we are adding models of
14 training that is bringing in a vender. And also we are
15 doing home grown versions. We are also doing-- in the
16 jurisdictions that are doing their normal training
17 classes and using the online training as a refresher.
18 And we are also focusing on jurisdictions that are
19 doing their entire training on line with some heavy
20 emphasis on evaluating, whether this is effective or
21 not. Are they getting their teenage sons go through and
22 answer the questions. There is some good stuff in

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1 there. And again if anybody has models we are looking
2 for them. But we have some good stuff already.

3 MS. KIFFMEYER: Mary Kiffmyer from Minnesota.

4 First of all I just wanted to mention that
5 National Associations of Secretary's of State
6 regularly send out surveys. Our national association
7 can reach immediately into many states and within the
8 states. This is something t hat may make it a little
9 easier to find out where some of this things are. It
10 could be a good resource for you. Only because even in
11 Minnesota we have election training program and video
12 brochures. I have not see the references here but I
13 just wanted to suggest that maybe before you add on's
14 or something to use our national association. We could

15 be a resource to help you gather some information and
16 data. Maybe make some of those contacts you will be
17 hearing about.

18 MS. FOLEY: Thank you.

19 MS. BARTHOLOMEW: Tonni Bartholomew, State of
20 Michigan.

21 we as well pay the part time workers. We
22 choose to pay them a high rate. And we find that by

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1 doing that we can not only get housewives but we can
2 get high school students. We use a lot of high school
3 students that come in at 3 o'clock. We also do the add
4 on pay for cell phone usage.

5 MS. LYNN-DYSON: One of the things I have not
6 circled, Jennifer is you gave folks your contact
7 information.

8 MS. FOLEY: One contact that you can use is I
9 am at [REDACTED] more importantly IFES
10 has set up an email address that is: Guidebook-feedback
11 @ IFES. Org .

12 And it is also on your feedback form at the
13 table of contents that was a hand out.

14 MS. LYNN-DYSON: I think as the Election
15 Assistance Commission moves forward through the summer
16 on these pilot projects it will be-- and we actually
17 get to the Fall get to the point with these manuals and

18 the college and the general poll worker manuals and
19 also with our materials that you have heard about this
20 afternoon with our ballot design and polling place
21 signage it will be extremely helpful to our agency and
22 to me to have feedback on marketing and distribution

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1 of these materials.

2 We are very proud of them. We are pleased
3 that we have them. They also represent a good deal of
4 investment on the part of our agency and your federal
5 government. So these documents will do no one no good
6 if they are just sitting on our website and we are not
7 getting-- and people are not downloading them. Even in
8 terms of actual production the old fashioned way and
9 sitting on peoples book shelves collecting dust. So it
10 would be very helpful to me to hear from you all about
11 marketing and distribution of these products.

12 My email address is: Klynndyson@EAC.com so
13 let me hear from you about our venues, setting, Mary
14 mentioned mass. We certainly anticipate this summer
15 through IACREAT and NASED and NEC meetings getting the
16 word out. But I'd like to hear if you have any other
17 ideas for us.

18 MR. MARTINEZ: Thank you very much for a very
19 successful session. We are done for the afternoon. I

20 am going to turn the mic over to MS. Nighswonger and
21 let her any final remarks. Tomorrow we have a
22 continental breakfast that starts at 8 a.m., I am told

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1 they should be set up at 7:35. We will start our first
2 session promptly at 8:30. Tomorrow's topics are very
3 important. We start with a presentation on management
4 guidelines and we go throughout the morning until 4:30
5 on important subjects that we are doing research on.
6 And I can't think of any other announcements to end our
7 day. Madam Chair?

8 MR. NIGHSWONGER: All right. I just want to
9 thank all off the staff for their help, the
10 interpreters we appreciate their long day. And also our
11 court reporter. And I think if there are no objections
12 we will adjourn for the evening.

13 (Thereupon, the above meeting was adjourned
14 for the evening at approximately 5:35 o'clock,
15 p.m.)

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CERTIFICATE OF COURT REPORTER

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

Pauline Jansen

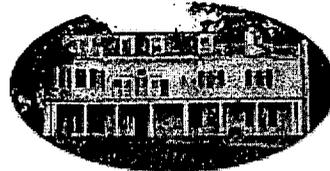
**Briefing for
U. S. Election Assistance Commission
Standards Board**

May 23 , 2006



Provisional Voting

and Immediate



EAGLETON INSTITUTE OF POLITICS

Rutgers, The State University of New Jersey

MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY

014495

Project Management Team

Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics

Board of Governors Professor of Politics

Principal Investigator and Chair of the Project Management Team

Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law

The Moritz College of Law

Director of Election Law @ Moritz

Ingrid Reed. Director of the New Jersey Project

The Eagleton Institute of Politics

Daniel P. Tokaji, Assistant Professor of Law

The Moritz College of Law

John Weingart, Associate Director

The Eagleton Institute of Politics

Thomas M. O'Neill, Consultant

The Eagleton Institute of Politics

Project Director

QUESTIONS RAISED BY THE EAC

- 1. How did states prepare for HAVA's provisional voting requirements?**
- 2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
- 6. Did local election officials have a clear understanding of how to implement provisional voting?**

TO ANSWER THOSE QUESTIONS

- Surveyed 400 local election officials
- Reviewed the EAC's Election Day Survey
- Analyzed states' experience with provisional voting:
 - use of statewide registration database
 - treatment of out-of-precinct ballots
 - use of different approaches to voter ID
 - consistency
 - time period allowed for ballot evaluation
- Collected provisional voting statutes and regulations
- Analyzed litigation

Variation among the states

- In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million, or just over 63%, were counted.
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

Some sources of variation among states

Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

Administrative Arrangements

Time to evaluate ballots

- States that provided less than one week counted an average of 35.4% of their ballots.
- States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- States without databases counted 44%.]

Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied.

--The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

--Small, rural jurisdictions and large, urban jurisdictions reported higher rates of an inadequate number of poll workers.

--Jurisdictions in poor areas reported more inactive voter registrations and more provisional ballots cast.

--Richer areas had more poll workers per polling place and reported lower rates of staffing problems per precinct.

1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- **Only about 1 in 10 made available to poll workers a voter registration database.**

- **Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

Local election officials in the “old” states felt more confident.

18 states were new to provisional voting; 25 others had experience.

“New” state officials felt:

-- Voters did not receive enough information about where to cast a provisional ballot in order to be counted.

-- More funding was needed to educate voters about their rights to cast a provisional ballot.

Provisional ballots in “old states” : more than 2% of the total vote, 4 times the proportion in “new” states.

Counting provisional ballots in the final vote, the “old” states averaged 58% nearly double the average (33%) in “new” states.

Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

4. How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the “new” states.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the state's Voter ID requirements the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In-precinct versus out-of-precinct states had different outcomes.

States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

In "old" states, this difference was greater.

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

14 states permitted less than 1 week : 35.4%
15 states permitted 1 – 2 weeks: 47.1%
14 states permitted more than 2 week: 60.8%

Effect felt most strongly in states where more than 1% of the overall turnout was of provisional ballots.

Less than 1 week: 58.6%
1 – 2 weeks: 65.0%
More than 2 weeks: 73.8%.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Conclusions

States have latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.

Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

Objectively, how well did the process appear to be managed?

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

RECOMMENDATIONS TO THE EAC

BEST PRACTICES

The importance of clarity

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

Lessons of litigation for achieving clarity

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

EAC should recommend to the states that they:

Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

EAC should recommend quality improvement

Begin a systematic quality improvement program by collecting data on the provisional voting process. Data collected should include:

- Specific reasons why provisional ballots were not counted
- Measures of variance among jurisdiction
- Time required to evaluate ballots by jurisdiction
- Provisional votes cast and counted by jurisdiction

Assess each stage of the provisional voting process

Before the election

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

At the polling place

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

Evaluating provisional ballots

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.

Assess each stage of the provisional voting process

Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

Briefing for
U. S. Election Assistance Commission
Advisory and Standards Board

DISCUSSION AND QUESTIONS

May 2006

Raymundo
Martinez/EAC/GOV
07/12/2005 05:24 PM

To Thomas R. Wilkey/EAC/GOV, Karen Lynn-Dyson/EAC/GOV
cc
bcc
Subject Fw: Follow-up

Tom/Karen:

Here is an email from Dan Lowenstein (presenter in LaJolla and co-editor of Election Law Journal) who made some suggestions on names for the voter fraud work we are trying to do. Perhaps a call to Bruce Cain at Berkeley would be appropriate.

Karen, what do you think?

RAY MARTINEZ III
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— Forwarded by Raymundo Martinez/EAC/GOV on 07/12/2005 05:19 PM —



"Lowenstein, Daniel"
<lowenstein@law.ucla.edu>
06/21/2005 03:28 PM

To "Rick Hasen" <Rick.Hasen@lls.edu>, rmartinez@eac.gov
cc "Lowenstein, Daniel" <lowenstein@law.ucla.edu>
Subject RE: Follow-up

Ray,

Before I read Rick's message, Steve Ansolabehere was the first name that came to my mind. This assumes you are looking for part-time, not full-time consultants. I would categorize Steve as very moderate left. I am not certain he is Democrat but would be very surprised to learn he is not. But the main thing about him is that he calls things as he sees them. So if you found a Republican with the same characteristics, that would be ideal. Charles Bullock of the University of Georgia would be a possibility. (Actually, I'm not sure of his party either, but I think he may be a Republican.)

I would also suggest you talk to Bruce Cain in the Institute of Governmental Studies at Berkeley. He is very savvy and knows more political scientists than Rick and I do.

014519
Deliberative Process
Privilege

When I have questions about the political science profession, he's usually the person I go to. His phone number is 510-642-1739. He is also going to be running a UC office in Washington, so he will be more or less living there for the indefinite future. He is someone you ought to get to know.

Best,

Daniel Lowenstein
UCLA Law School
405 Hilgard
Los Angeles, California 90095-1476
310-825-5148

-----Original Message-----

From: Rick Hasen [mailto:Rick.Hasen@lls.edu]
Sent: Tuesday, June 21, 2005 11:56 AM
To: rmartinez@eac.gov
Cc: Lowenstein, Daniel
Subject: Re: Follow-up

We are now editing articles for our next issue, which is due out in October. We need to get everything to the printer for this issue in mid-July. So we'd need something from you by early July if it were to make it into that issue. Our deadlines after that are about three months later for each issue.

As far as researchers, I give my highest recommendation to Steve Ansolabehere of MIT, who has already done a bit of research on this issue. He is truly one of the top political scientists in the country working in this field, and he is careful and very fair (I don't know whether I'd count him as "left" or "right").

Dan may have other ideas.

Rick

rmartinez@eac.gov wrote:

Rick / Dan:

Thanks for the follow-up. As I mentioned to Dan in La Jolla, I do want to commit to doing a paper for ELJ. Aside from my own interest in election law and election administration, I think it is important for your readers to gain a better understanding of the role of the EAC and all that we are doing, particularly in the area of voting system standards and certification. Please tell me what the new deadline is and I will make sure to get you an outline of my intended submission, and of course, a timely draft for your consideration. Thanks again to both of you for the continued

014520

opportunity.

On a related note, in Section 241 of HAVA, Congress gives the EAC a laundry list of possible research topics related to improving the process of election administration. Among the suggested topics are the following:

"(6) Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office;

(7) Identifying, deterring, and investigating methods of voter intimidation."

In order to get this research project started, the EAC would like to engage two research consultants who could bring some level of knowledge and expertise to the table and help the commissioners to come to an agreement on the framework and/or scope of such a research project. Rather than sending something out on the listserve, I thought I would directly solicit your opinions about any names in the academic field that you think we ought to consider. The reason we are looking to employ two consultants is because we would like to achieve a political balance -- one from the left, and one from the right, so to speak. Any thoughts you have on this would be greatly appreciated.

Regards,

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014521



Paul DeGregorio /EAC/GOV
08/19/2005 11:06 AM

To Gracia Hillman/EAC/GOV, Raymundo Martinez/EAC/GOV,
ddavidson@eac.gov, twilkey@nycap.rr.com, Juliet E.
Thompson/EAC/GOV, Karen Lynn-Dyson/EAC/GOV, Carol
cc
bcc
Subject Eagleton

History

This message has been forwarded

In his note regarding the Eagleton contract, Hans has raised some of the same concerns I raised from the beginning of any discussions I had regarding this contract with our staff, and at our first formal meeting with Eagleton. In reviewing their work product from time to time, I continue to have concerns about a lack of balanced input and have repeatedly voiced them with staff and with Eagleton. I did this when the initial peer review group was proposed and again during their presentation at our meeting in Pasadena (the outreach slide in their public presentation showed outreach to seven groups, of which only one could be considered conservative-leaning). Now, as I have just had the opportunity to read their July progress report, it appears that Eagleton seems to be going into a larger analysis of the voter fraud issue than was authorized in the contract. My suspicion is that Dan Tokaji is injecting his views into this to dismiss or diminish the concerns some people may have about voter fraud. I could be wrong, but his previous writings lead me to believe otherwise.

I only found one mention of voter fraud in the contract with Eagleton. It is in Section 3.5 regarding provisional voting, where it discusses "minimizing opportunity for voter fraud." Yet, on page 4 of the July progress report from Eagleton, in describing their work plan for the next month it states: "we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms." This clearly seems to be going beyond the mandate we gave them as I thought they were going to be looking at voter fraud relating to provisional voting (as the contract calls for), not voter fraud as it relates to election reforms. While voter fraud was never mentioned in the contract regarding the voter ID issue, page 5 of their July report indicates that their narratives "will include an appraisal of the prevalence and nature of vote fraud." In addition to this, page 6 describes a look into the "relationship between voter ID regime and vote fraud."

Voter fraud is clearly an issue that is perceived differently from the Right and from the Left. I have struggled with determining what a clear definition of voter fraud is myself, and therefore want to obtain various perspectives and good analysis on this issue before I formulate a solid conclusion in my mind. It has been my understanding all along that the whole voter fraud/voter intimidation issue is going to be studied by the EAC using a balanced group of consultants--not Eagleton and Moritz, who are likely to focus on just on the number of prosecutions of voter fraud, rather than the complaints made or the fact that many election officials are frustrated that some prosecutors don't take their complaints about voter fraud seriously. I am not convinced at this point that we will get a balanced and objective study from Eagleton/Moritz on voter fraud. I am puzzled on why they seem to be expending a significant portion of their time on this and would want to know if we somehow authorized them to do more research into the voter fraud issue.

On page 7 of their July report Eagleton indicates that communications with the EAC on the Peer Review Group "were not clear or timely." I would like to know what this refers to. Also, I may have missed it, but I do not recall seeing the final list of who is serving as the Peer Review group.

The August 15th copy of the July report that I received from Karen did not include the attachment of the financial report of expenses incurred. I would like to see that attachment.

Outside of our NIST work, this contract represents our largest single outside expenditure of our operational funds. Any single expenditure of \$500,000+ needs to be closely monitored. I, for one, am not going to sign off on any report that appears to have been written from a biased viewpoint, especially one that doesn't appear to be interested in hearing from conservative organizations or right-leaning researchers, or seems to minimize any input from them. I've already had questions from congressional

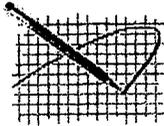
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staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against Republicans. I assured the critics that we have insisted all along on an objective study from Eagleton. An unbalanced or biased study from them will not only hurt my credibility, but also that of the EAC. I'm not suggesting that we stop their work, but I do want Tom and Julie to inform them in no uncertain terms that we will not accept a report that does not seriously consider all viewpoints on provisional voting and the voter ID issue, and that any study or interpretations they present to us reflect a diversity of opinions on these subjects. We also need for staff to determine whether their considerable work into the voter fraud area is authorized in the contract. We should not be paying for and receiving work we did not authorize.

The contract clearly calls for "alternative approaches" on voter ID requirements and "alternatives" on provisional voting. I agreed to support this contract to Eagleton because I was assured that we would receive a variety of approaches from their work, and not just those from a liberal perspective.

Paul DeGregorio
Vice Chairman
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pdegregorio@eac.gov
www.eac.gov

014523



Raymundo
Martinez/EAC/GOV
08/19/2005 02:37 PM

To Paul DeGregorio/EAC/GOV@EAC
cc Gracia Hillman/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC

bcc

Subject Eagleton

Paul:

I am directing this email only to the commissioners, because I don't think we should air our disagreements among staff until we have at least had a chance to discuss controversial issues with each other in person. It appears from Gracia's email that we will have a chance do so next week in Denver.

In the meantime, I feel compelled to respond to your email regarding Eagleton.

(1) As I stated last night in my email to Hans, we have an on-going responsibility to monitor the expenditure of all our federal funds, including to government contractors who are contractually obligated to deliver unbiased research. However, I will remind you that we did not contract with Eagleton merely to provide a compilation of state laws and procedures. Rather, we contracted with Eagleton (and indirectly with Moritz through Eagleton) to provide both research AND analysis of provisional voting and voter ID. Invariably, the analysis portion of their final product will be from a professional (and institutional) perspective, and will NOT represent any one researcher's personal point of view. If it does, then Eagleton and Moritz risk damaging their credibility not just with the EAC, but with other federal government agencies which undoubtedly contract with their respective institutions on other projects. I doubt seriously that either institution would risk such damage and allow one team member to inject bias into the work. Moreover, the peer review group that is (or has) been assembled by Eagleton is designed to cure any lingering concerns about potential insitutional or personal bias...Eagleton has been responsive to your feedback on this issue, to the point where they have removed all perspective representatives of the advocacy community on the peer review group (because they felt they could not achieve political "balance" from the advocacy groups). If there is some person (or persons) which you would like to see Eagleton include in the review group, it is my understanding that such inclusion is but a mere phone call away.

(2) You will recall that at our meeting last week, I raised the exact same concern about the Eagleton progress report, and asked for clarification from staff regarding the details of this particular work (i.e., fraud) on the part of Eagleton. I expect staff (or us directly) to ask questions of Eagleton (as we would any contractor) and determine if their work in this area is within the scope of work (and contract) we all agreed to. If it isn't then we re-direct them, just as we have done, for example with Kim Brace and EDS.

(3) Finally, I must express my disappointment, Paul, regarding your comments on Professor Tokagi that you chose to include in your email. While I may disagree with Hans on his particular analysis of the perceived personal bias of this contract, at least his allegations regarding Professor Tokagi's potential bias are grounded in fact (and he recited them as such in his email). You, on the other hand, have chosen to accuse Professor Tokagi of manipulating the work on this project based on your "suspicion." With all due respect, that unfortunate accusation borders, in my view, on a breach of professional decorum and I cannot let it go without response.

We clearly have some political issues that are increasingly being injected into nearly every discussion at the EAC table. I have stated both to you and Gracia individually that I believe this trend in part represents a "maturation" of the EAC and I am not uncomfortable with it. However, if we are going to bring accusations of subjectivity and bias to the table, then I will expect that such a filter will be applied across the board to ALL projects undertaken by the EAC, and that such a filter will be based solidly on fact, and not on innuendo, personal hunches or suspicions.

014524

I send this email, as always, with the highest degree of respect and friendship toward you. And yet, my disappointment is evident in your comments regarding an esteemed and respected member of the legal academic community (and someone whom I regard as a personal friend.)

I look forward to our continued discussion on this matter. And as for the substance of Hans' concern regarding Moritz, I stand by my email which I sent to everyone last night.

Regards,

RAY MARTINEZ III
Commissioner
U.S. Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, D.C. 20005

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014525

Raymundo
Martinez/EAC/GOV
08/30/2005 11:34 AM

To Gracia Hillman/EAC/GOV
cc
bcc
Subject Consultants

Since we are about to hire Tova Wang (and two others) to be our consultants/researchers on the voter fraud study, I thought I would give you a heads-up about a well-written commentary that Tova just published. It is attached below. Paul's newfound political "fervor" still has me riled-up, needless to say. Hope your travels are going well.

ID and Voting Rights

Laws requiring voters to present very specific forms of ID are becoming the voting rights barrier of the 21st Century.

Tova Andrea Wang
August 29 , 2005

Laws requiring all voters to present very specific forms of identification before exercising their right to vote are rapidly becoming the voting rights barrier of the 21st Century. Last Friday, the Department of Justice approved a new Georgia law requiring every voter to show a government-issued photo ID. The Department of Justice was required to review the measure and "preclear" it because that state is covered by Section 5 of the Voting Rights Act. Although many legal scholars and voting rights advocates had argued the Department should deny its implementation because it would lead to disenfranchisement of minority voters, the Department evidently did not agree. Indiana passed similar legislation this year, and several groups have sued the state on the grounds that it violates the Voting Rights Act.

Next up is Arizona. Last week, after months of resisting, the governor of Arizona signed off on a plan for implementing Proposition 200, which required identification from all voters. Arizona's new rule is that all voters must show government issued photo identification or a tribal identification to vote. Alternatively, the voter may present two current pieces of identification from a narrow list of potential documents that show the voter's name and current address, such as a utility and phone bills.

The most problematic provision is this: if the voter is not able to present a government issued photo ID or these two documents to the satisfaction of the poll worker, that voter is simply disenfranchised, asked to leave the polling place without casting a ballot. The voter may not even cast a provisional ballot. For example, if the voter brings a gas bill and a water bill, but the poll worker decides the water bill is not "dated within ninety days of the election," that person will be absolutely denied the right to vote. In addition to being a violation of the Help America Vote Act's mandate that any voter who shows up at the polls and believes he or she is registered and eligible to vote must be given a provisional ballot, this raises serious voting rights issues.

014526

As a group of preeminent voting rights scholars have argued in Georgia, under Section 5 of the Voting Rights Act, a covered jurisdiction may not implement a change in its election laws or practices *unless the jurisdiction demonstrates* the change will be free of any racially discriminatory purpose or effect. The objective of Section 5 “has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”

As in Georgia, Arizona—especially given the possibility of a complete denial of the vote—has not met that burden of proof. It is up to the state to demonstrate that the ID requirement, which contemplates complete disenfranchisement of certain voters, will not have a discriminatory impact. So, for example, has the state examined whether most voters have or have easy access to the necessary documents? Have state officials investigated what groups are likely to lack the kinds of identification required? Since the law puts the burden on the state, the state must undertake these types of inquiries before it is permitted to go forward with this scheme—for there is a great deal of evidence indicating that it is indeed minorities who lack even one form let alone two forms of the types of identification contemplated.

The difficulty is that the poor and minorities are least likely to own motor vehicles and possess a driver’s license—the most commonly accepted form of identification. Indeed, in 1994, the U.S. Department of Justice found that African-Americans in Louisiana were 4 to 5 times less likely to have government-sanctioned photo ID than white residents. As a result, the Department denied pre-clearance for that state’s proposed photo ID requirement because it “would lead to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”

The evidence continues to mount. A June 2005 study by the University of Wisconsin found that less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults outside Milwaukee. One Arizona county reported in February that it was forced to reject nearly 75 percent of new voter registration forms for failure to provide adequate proof of citizenship.

Furthermore, for those who do not have the kinds of up-to-date non-photo ID necessary—and many minority and urban voters, for example those who live in multiple family dwellings simply will not—getting identification from the government will present costs and burdens for voters who simply want to exercise their constitutional right to vote. A certified copy of a birth certificate costs from \$10.00 to \$45.00, depending on the state; a passport costs \$85.00; and certified naturalization papers cost \$19.95. It may not be so very easy for people who work more than one job or have small children to take the time during business hours, drive to a Department of Drivers Services, and wait on line to get necessary identification. Indeed, most of the state’s offices are open 8:00 a.m. to 5:00 p.m. Monday through Friday. Has the state researched the potential disparate impacts on getting non-photo ID? If not, it has not met its burden under the Act.

There has been a great deal of controversial discussion over the Voting Rights Act recently because some sections—including Section 5—are due to expire. The Act was passed in order to eliminate procedures aimed at the disenfranchisement of particular groups. That it is still necessary is being demonstrated today in Arizona and Georgia

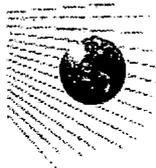
Tova Andrea Wang is a senior program officer and Democracy Fellow at The Century Foundation, where this article first appeared.

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014528



Paul DeGregorio /EAC/GOV

11/09/2005 11:28 AM

To Gracia Hillman/EAC/GOV, ddauidson@eac.gov, Raymundo
Martinez/EAC/GOV, Juliet E. Thompson/EAC/GOV, Thomas
R. Wilkey/EAC/GOV

cc Karen Lynn-Dyson/EAC/GOV

bcc

Subject Call from Paul Vinovich

I took a telephone call this morning from Paul Vinovich. He had attempted to reach Gracia, but since she was not here, he asked Sheila if I was in the office so he spoke to me.

Paul was very upset with comments that Tova Wang had made at yesterday's AEI's meeting in which she basically indicated that voter fraud did not exist in the USA. He asked how a person who believes that voter fraud does not exist--or not seem at least willing to listen to both sides--can be hired by the EAC to do a study on voter fraud/voter intimidation. I explained to Paul (as I have now had to explain to many others) that Tova was "balanced" on the study with Job Severbrov. He did not know Job but was well-aware of Tova's positions and was concerned that her public comments indicate that she will not be fair in looking at this issue. I explained to Paul that we were monitoring the work of our consultants on this study and no report would be issued publicly without the support of at least three commissioners. I sent him some background information on Job. I think this study will need close monitoring.

Paul DeGregorio
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014529



Gracia Hillman/EAC/GOV

11/09/2005 12:40 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV, Raymundo Martinez/EAC/GOV, Juliet E. Thompson/EAC/GOV, Thomas R. Wilkey/EAC/GOV
cc Karen Lynn-Dyson/EAC/GOV

bcc

Subject Re: Call from Paul Vinovich

What Paul V said is NOT at all an accurate statement of what Tova said. I was there. This is very disappointing to read. I may call Mr. V myself.

I watched and heard what was said and by whom. I will be glad to brief you tomorrow morning.

Sent from my BlackBerry Wireless Handheld
Paul DeGregorio

From: Paul DeGregorio
Sent: 11/09/2005 11:28 AM
To: Gracia Hillman; Donetta Davidson; Raymundo Martinez; Juliet Thompson; Thomas Wilkey
Cc: Karen Lynn-Dyson
Subject: Call from Paul Vinovich

I took a telephone call this morning from Paul Vinovich. He had attempted to reach Gracia, but since she was not here, he asked Sheila if I was in the office so he spoke to me.

Paul was very upset with comments that Tova Wang had made at yesterday's AEI's meeting in which she basically indicated that voter fraud did not exist in the USA. He asked how a person who believes that voter fraud does not exist--or not seem at least willing to listen to both sides--can be hired by the EAC to do a study on voter fraud/voter intimidation. I explained to Paul (as I have now had to explain to many others) that Tova was "balanced" on the study with Job Severbrov. He did not know Job but was well-aware of Tova's positions and was concerned that her public comments indicate that she will not be fair in looking at this issue. I explained to Paul that we were monitoring the work of our consultants on this study and no report would be issued publicly without the support of at least three commissioners. I sent him some background information on Job. I think this study will need close monitoring.

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014530



Gracia Hillman /EAC/GOV

11/21/2005 05:04 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,
Ddavidson@eac.gov
cc asherrill@eac.gov, aambrogi@eac.gov, Elieen L.
Collver/EAC/GOV, sbanks@eac.gov
bcc

Subject 9:30 Discussion on Tuesday

I am suggesting that we have our 9:30 discussion tomorrow to cover a couple of things:

1. The four of us need to spend some "quality" time together. Tomorrow will be a good time to pin down the earliest date when we will all be in DC and can devote a 1/2 day or so to discuss election of officers, etc. Perhaps on tomorrow we can develop an agenda for those discussions.
2. Defining balance for the make-up of the Working Group for our Voter Fraud/Intimidation project.

014531



Gracia Hillman /EAC/GOV

11/30/2005 04:17 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,
Ddavidson@eac.gov

cc

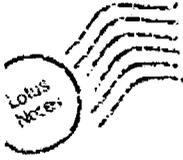
bcc

Subject Thursday Comm Discussion

For our private time discussions, I propose that we add the composition of the Voter Fraud/Voter Intimidation Working Group to our list of topics to discuss.

As you will recall, we did not complete the discussion because Paul was not able to participate.

014532



Gracia Hillman /EAC/GOV

12/01/2005 12:47 PM

To Margaret Sims/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov,
rmartinez@eac.gov, Ddavidson@eac.gov,
klynn-dyson@eac.gov

bcc

Subject Working Group for Voter Fraud/Intimidation Project

Peg:

Following is the guidance that the commissioners are providing with respect to the composition of the working group for the Voter Fraud/Voter Intimidation project and the selection process.

8 Member Working Group

Participants to be chosen by the two consultants in consultation with you. There are two slots that will require consensus. If consensus can't be reached, then you should make the decision. If there is real disagreement among the three of you, then the commissioners will make the selection.

The participation process prescribed below provides for political balance. As always, we ask that the group be diverse with respect to participation of men, women and minorities.

4 people from the Academic , Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job. We support your recommendation that there be at least one academic in the working group to help advise and comment on the construct of the database and you should provide that guidance to Tova and Job.

2 State Level Election Officials - 1 selected by Tova and 1 selected by Job

1 Nonpartisan local election official (selected by you or by consensus among the 3 of you)

1 Representative from DOJ - you had recommended a man who was retired from the Voting Section or perhaps someone else with similar credentials to be selected by you or by consensus among the three of you. We assume that Craig Dosantos (?sp) will participate in this project as an "advisor" and therefore would not take up a slot on the working group.

I will be on travel on Friday (tomorrow), however please feel free to call me on my cell should you have questions or need additional clarification.

Many thanks for your terrific work.

Gracia M. Hillman
Chair
U.S. Election Assistance Commission
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014534

Raymundo
Martinez/EAC/GOV
04/05/2006 04:12 PM

To Paul DeGregorio/EAC/GOV
cc Amie J. Sherrill/EAC/GOV@EAC, Adam
Ambrogi/EAC/GOV@EAC
bcc
Subject Draft Agenda for Standards Board

Paul:

I've taken a shot at a draft agenda, but we have much work to do on this item. As you will see, my current vision, at least with regard to the Standards Board, is to have a series of presentations regarding all of our research projects, particularly those in which written draft reports will be ready for consideration, such as the provisional voting study and the voter ID study. However, there are too many research projects on the plate right now, and not enough time in a day and a half to be able to present all of them to both the Standards Board and BOA (not to mention "fatigue factor" if we overload these folks during this meeting). So, I've had to prioritize.

Anyway, attached is what I have come up with, and at the very bottom of the draft agenda, you will see the research projects that I left off the list. Next steps are for you to develop a similar draft agenda for the BOA, and I would suggest that you do something similar for the BOA, such that we will have concurrent session going on (Standards Board in one room, BOA in another)...for example, when the briefing for provisional voting is taking place for the SB members, you can be having a concurrent session for the BOA in another room on voter ID. Then we switch. (Same type of format for Day 2). This will allow us to have concurrent sessions going on simultaneously but we'll have to coordinate the schedule of these sessions. In the current draft agenda, I have the two boards coming together in the afternoon of the second day, but we may want them to start with a joint plenary session and end with a joint plenary session (though that is tough because they each have group-specific business to conduct when they first arrive -- at least the Standards Board does, such as adoption of permanent bylaws).

Anyway, this is still VERY MUCH a work in progress, so I welcome your feedback. Also, I think we need to get Tom and Karen involved in this discussion very soon, and then kick it over to the other commissioners for their input once you and I have agreement on a rough draft. After that, I will then want to send it to Peggy Nighswonger so that she can share it with the Executive Board to get their input before it goes final.

I'll wait to hear back from you.



DRAFT AGENDA (Standards Board) 2006.doc

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014535

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014536



MEMORANDUM

TO: MEMBERS OF EAC STANDARDS BOARD
FROM: PEGGY NIGHSWONGER, CHAIR, EXECUTIVE BOARD
RAY MARTINEZ, EAC COMMISSIONER
DATE: APRIL 10, 2006
SUBJECT: UPCOMING MEETING OF STANDARDS BOARD, MAY 23-24, 2006

The next meeting of the EAC Standards Board (to be held jointly with the EAC Board of Advisors) will be held in Washington, D.C. on Tuesday, May 23 and Wednesday, May 24, 2006 at the Hamilton Crown Plaza hotel. We hope you will be able to attend this important meeting, which will focus on consideration and discussion of a number of ongoing election administration research projects currently underway by the EAC. Additionally, there will also be a discussion regarding recent work conducted by the National Institute of Standards and Technology (NIST) regarding voter verifiable audit trail. (Please see the draft agenda attached for additional information.)

As was the case with our previous meetings of the EAC Standards Board, the EAC will pay the cost of travel, hotel and a Federal per diem for any member of the Standards Board wishing to attend the May 2006 meeting. Upon receipt of this memorandum, please contact the EAC's travel agent, Adventure Travel, at (877) 472-6718 to make your travel arrangements. Additionally, if you have any questions or need assistance in making your travel plans, please call _____ (email address is _____).

Thank you in advance for your willingness to join us in Washington, D.C. We look forward to seeing you soon.



**U.S. ELECTION ASSISTANCE COMMISSION
Standards Board Meeting Agenda
Washington, D.C.
May 23 – 24, 2006**

Tuesday, May 23, 2006

1:00 – 2:30 a.m.

PLENARY SESSION

Session Chaired by Peggy Nighswonger
Chair, Executive Board

Appointment of Parliamentarian

Adoption of Agenda

Review of Meeting Book Materials

Presentation of Proposed Permanent Bylaws

Juliet Thompson, EAC General Counsel

Kevin Kennedy, Executive Director, State Elections Board,
Wisconsin

Joanne Armbruster, Atlantic County Superintendent of
Elections, New Jersey

William Campbell, City Clerk, City of Woburn, MA.

2:30 – 2:45 a.m.

BREAK

2:45 – 4:00 p.m.

**PRESENTATION AND CONSIDERATION OF DRAFT
REPORT ON PROVISIONAL VOTING**

Presentors:

Thomas O’Neil: Project Manager, EAC Provisional Voting

Ingrid Reed: Director, Eagleton Institute New Jersey Project

Dan Tokaji: Associate Director, Election Law@Moritz

Resource Person: Juliet Thompson, EAC General Counsel

4:00 – 4:15 p.m.

BREAK

4:15 – 5:30 p.m.

**PRESENTATION AND CONSIDERATION OF DRAFT
REPORT ON VOTER IDENTIFICATION**

2014538

Presentors:

Thomas O'Neil: Project Manager, EAC Provisional Voting

Ingrid Reed: Director, Eagleton New Jersey Project

Dan Tokaji: Associate Director, Election Law@Moritz

Resource Person: Juliet Thompson, EAC General Counsel

NOTE: Attendees on their own for dinner.

Wednesday, May 24, 2006

8:00 a.m. CONTINENTAL BREAKFAST

**8:30 – 9:30 a.m. PRESENTATION AND CONSIDERATION OF DRAFT
REPORT ON POLL WORKER RECRUITMENT, TRAINING
AND RETENTION (INCLUDING COLLEGE POLL
WORKERS)**

Presentors:

Tracy Warren, Poll Worker Institute

Jeannette Senecal, League of Women Voters

Dora Rose, Center for Election Integrity, Cleveland State University

Resource Person: Karen Lynn-Dyson, EAC Research Manager

**9:30 – 10:30 a.m. PRESENTATION AND CONSIDERATION OF DRAFT
REPORT ON VOTE COUNT/RECOUNT**

Presentors:

Dr. Thad Hall, Assistant Professor of Political Science, University of Utah

Dr. Michael Alvarez, Professor of Political Science, California Institute of
Technology

Resource Person: Juliet Thompson, EAC General Counsel

10:30 – 10:45 a.m. BREAK

**10:45 – 11:30 a.m. PRESENTATION AND CONSIDERATION OF DRAFT
REPORT ON IMPROVING DATA COLLECTION**

Presentors:

Karen Lynn-Dyson, Research Director, Election Assistance Commission

Laiza Otero, Research Associate, Election Assistance Commission

Resource Person: Brian Hancock, Research Associate

**11:30 – 12:15 p.m. PRESENTATION AND CONSIDERATION OF DRAFT
REPORT ON VOTER FRAUD/VOTER INTIMIDATION**

Presentors:

014539

Job Serebrov, Associate, The Nixon Law Firm
Tova Wang, Democracy Fellow, The Century Foundation
Resource Person: Juliet Thompson, EAC General Counsel

12: 15- 1:30 p.m. LUNCH

**PRESENTATION REGARDING PROPOSED MODULE FOR VOTER
VERIFIABLE PAPER AUDIT TRAIL (VVPAT) OF THE VOLUNTARY VOTING
SYSTEM GUIDELINES (VVSG)**

Presentors:

Mark Skall, NIST

John Wack, NIST

1:30 – 3:15 p.m. JOINT PLENARY SESSION
Session Jointly Chaired by Peggy Nighswonger, Chair, Executive
Board and Beverly Kaufman, Chair, Board of Advisors

Discussion and deliberation.

3:15– 3:30 p.m. BREAK

3:30 – 5:00 p.m. JOINT PLENARY SESSION (CONTINUED)
Session Jointly Chaired by Peggy Nighswonger, Chair, Executive
Board and Beverly Kaufman, Chair, Board of Advisors

Discussion and deliberation.

5:00 p.m. ADJOURN

* Not included in the current list of projects briefed:

- ◆ Design for Democracy updates and improvements to ballot design and polling-place signage.
- ◆ Public Access Portal research.
- ◆ Katrina Voting Assistance Relief research.
- ◆ Legal Online clearinghouse of election law materials.



Gracia Hillman/EAC/GOV

09/17/2005 09:09 AM

To Carol A. Paquette/EAC/GOV@EAC, Karen
Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Thompson/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, Raymundo
bcc

Subject Plz Respond, Tally Vote Questions

I see only 2 consultants on the Tally Vote for the Voter Fraud/Voter Intimidation project. What happened to the third consultant?

Remind me how it is that EAC can sole source a contract to NASED? I don't have an objection; I am merely seeking information.

Thank you,

Gracia M. Hillman

Chair

U.S. Election Assistance Commission

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014541



"Tova Wang" <wang@tcf.org>

12/14/2005 11:16 AM

To DRomig@eac.gov

cc "Job Serebrov" <[REDACTED]@eac.gov

bcc

Subject checking in

Hi Devon,

I just wanted to check in and see how the nexis searching and sorting is going. Have you made any progress? Any questions come up? Let us know. Thanks.

Tova

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

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

[Click here](#) to receive our weekly e-mail updates.

014542

Margaret Sims /EAC/GOV
11/30/2005 11:00 AM

To Devon E. Romig/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Nexis Search Terms

Devon:

In preparation for this afternoon's teleconference, you may want to review the attached list of Nexis search terms. If you have any questions, we can discuss them before the teleconference or, if I can't provide answers, we can ask our consultants who prepared the list. --- Peggy



nexis word search 1128.doc

014543

Nexis Word Search Terms

November 28, 2005

The following are the terms that should be entered to search for news articles from 2000 to the present. The list assumes the intern has little experience with Nexis – there are ways to do the searches with far fewer terms than those below. We can train the intern if that is a better way to go.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Voter and racial profiling
Vote and racial profiling
Voter and racial
Vote and racial

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Voter and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
Vote and deny and Latino
Voter and Hispanic and challenge
Voter and Latino and challenge
Vote and Hispanic and challenge
Vote and Latino and challenge
Election and Hispanic and challenge
Election and Latino and challenge
Voter and deny and Native American
Vote and deny and Native American
Voter and Native American and challenge
Vote and Native American and challenge
Election and Native American and challenge
Voter and deny and Asian American
Vote and deny and Asian American
Voter and Asian American and challenge
Vote and Asian American and challenge
Voter and Asian American and challenge
Election and Asian American and challenge
Voter and deny and Indian
Vote and deny and Indian
Voter and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject

Absentee ballot and challenge
Vote and challenge
Voter and challenge
Election and challenge
Vote and police
Voter and police
Poll and police
Vote and law enforcement
Voter and law enforcement
Poll and law enforcement
Vote and deceptive practices
Voter and deceptive practices
Election and deceptive practices
Voter and deceive
Voter and false information
Dirty tricks
Vote and felon
Vote and ex-felon
Disenfranchisement
Disenfranchise
Law and election and manipulation
Vote and purging
Vote and purge
Registration and removal
Registration and purging
Registration and purge
Vote buying
Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
Identification and selective
Election and misinformation
Registration and restrictions
Election and administrator and fraud
Election and official and fraud
Provisional ballot and deny
Provisional ballot and denial
Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction
Voter and deter
Vote and deterrence
Voter and deterrence
Ballot integrity

Ballot security
Ballot security and minority
Ballot security and black
Ballot security and African American
Ballot security and Latino
Ballot security and Hispanic
Ballot security and Native American
Ballot security and Indian
Vote and suppression
Minority and vote and suppression
Black and vote and suppression
African American and vote and suppression
Latino and vote and suppression
Hispanic and vote and suppression
Native American and vote and suppression
Vote and suppress
Minority and vote and suppress
African American and vote and suppress
Latino and vote and suppress
Native American and vote and suppress
Vote and depress
Jim Crow
Literacy test
Voter and harass
Voter and harassment
Vote and mail and fraud
Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line

Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
Poll worker and threatening
Poll worker and abusive
Election official and challenge
Election official and intimidate
Election official and intimidation
Election official and intimidating
Election official and threatening
Election official and abusive

Poll watcher and challenge
Poll watcher and intimidate
Poll watcher and intimidating
Poll watcher and intimidation
Poll watcher and abusive
Poll watcher and threatening
Poll inspector and challenge
Poll inspector and intimidate
Poll inspector and intimidating
Poll inspector and intimidation
Poll inspector and abusive
Poll inspector and threatening
Poll judge and challenge
Poll judge and intimidate
Poll judge and intimidating
Poll judge and intimidation
Poll judge and abusive
Poll judge and threatening
Poll monitor and challenge
Poll monitor and intimidate
Poll monitor and intimidating
Poll monitor and intimidation
Poll monitor and abusive
Poll monitor and threatening
Election judge and challenge
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Election judge and intimidating
Election judge and intimidation
Election judge and abusive
Election judge and threatening
Election monitor and challenge
Election monitor and intimidate
Election monitor and intimidating
Election monitor and intimidation
Election monitor and abusive
Election monitor and threatening
Election observer and challenge
Election observer and intimidate
Election observer and intimidating
Election observer and intimidation
Election observer and abusive
Election observer and threatening

Margaret Sims /EAC/GOV
11/30/2005 10:58 AM

To Tamar Nedzar/EAC/GOV@EAC
cc Devon E. Romig/CONTRACTOR/EAC/GOV@EAC
bcc
Subject Re: Fw: Updated Word Search List 

Tamar:

Don't worry about responding to this email , as I know you have to pay attention in class .

I questioned the length of the search term list and also thought that there would be ways to combine some of the search terms. It has been awhile since I have done a Westlaw search, however, which is why I need your input during the teleconference. Yes, I recognize that going through the list of search terms and printing off or saving the resulting references will take time. I'll need you to provide that feedback to our consultants so that we all are on the same page.

Devon has not done a Nexis search before; but, if EAC has access to that database, she is willing to conduct that search. The work would go along with other help she is providing. She will be sorting through my huge files of press clippings on voting fraud, will PDF the sorted clippings, and drop the PDF files onto CDs for our consultants' review.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)
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014549

Margaret Sims /EAC/GOV
11/30/2005 04:41 PM

To: Tamar Nedzar/EAC/GOV@EAC, Devon E.
Romig/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject: Tova and Job Contact Information

Tamar and Devon:

The phone numbers and email addresses for Tova and Job follow. I would appreciate it if you would cc: me on any emails you send to them and summarize any phone calls with them. That way, I can be kept in the loop without serving as a roadblock or go-between. Thanks! --- Peggy

Tova Wang (New York)
Phone: 212-452-7704
Email: wang@tcf.org

Job Serebrov (Arkansas - one hour earlier time zone)
Phone: [REDACTED]
Email: [REDACTED]



"Tova Wang" <wang@tcf.org>

12/14/2005 11:16 AM

To DRomig@eac.gov

cc "Job Serebrov" [REDACTED]@sims@eac.gov

bcc

Subject checking in

Hi Devon,

I just wanted to check in and see how the nexis searching and sorting is going. Have you made any progress? Any questions come up? Let us know. Thanks.

Tova

Tova Andrea Wang
Senior Program Officer and Democracy Fellow
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014551



"Tova Wang"
<wang@tcf.org>
05/10/2006 11:45 AM

To psims@eac.gov
cc [REDACTED] dromig@eac.gov
bcc [REDACTED]
Subject Material I may not have included

Peg,

Correct me if I'm wrong, but I think I omitted sending you these specific summaries that are based on complex cases that could not be adequately described within the confines of the nexis article excel spreadsheets. If we can, these should be included, probably on the disc. Sorry.

Tova Andrea Wang
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Summary of Wisconsin Voting Irregularities November 2004

Instances of Illegal Voting, Milwaukee:

A probe led by U.S. Attorney Steve Biskupic and Milwaukee County District Attorney Michael McCann found about 200 cases of illegal felon voting and at least 100 cases of other forms of illegal voting in the city of Milwaukee. Of these, 14 were prosecuted:

10 were instances of felons voting while on probation or parole:

5 are awaiting trial. (one of them is DeShawn Brooks)¹

1 has been acquitted²

1 has been found guilty in trial (Kimberly Prude)²

3 have reached plea agreements (Milo Ocasio³)

[names: Ethel M. Anderson, Correan F. Edwards, Jiyto L. Cox, Joseph J. Gooden⁴]

4 were instances of double voting:

1 produced a hung jury (Enrique Sanders)²

1 was found incompetent to stand trial and his case was dismissed

1 initially pleaded guilty but now wants a trial.⁵

1 is awaiting trial.

Two of those accused of double voting were driven to multiple polling places in a van, but the identity of the driver of the vehicle is not known, and the DA does not suspect conspiracy.⁶

In addition to these, four people were charged with felonies in the Milwaukee County Circuit Court; two cases were filed against people accused of sending in false registration cards under the auspices of the Association of Community Organizations for Reform Now; the other two were felons who voted illegally.⁷

Instances of Illegal Voting, Statewide:

The Legislative Audit Bureau, a nonpartisan research agency, released its analysis of state-wide 2004 election results in September 2005. The agency reviewed the names, addresses, and birthdates of over 348,000 individuals credited with having voted in November 2004, from the electronic voter registration records of 6 cooperating municipalities, and compared them to lists from the Department of Corrections of felons serving sentences on election day, and to lists from the municipalities (to check up on

¹ Barton, Gina. "Man acquitted in voter fraud trial; Felon had been under supervision at time." *Milwaukee Journal-Sentinel*. October 6, 2005.

² Schultze, Steve. "No vote fraud plot found. Inquiry leads to isolated cases, Biskupic says." *Milwaukee Journal-Sentinel*. December 5, 2005.

³ "Felon says he voted illegally." *Milwaukee Journal-Sentinel*. September 17, 2005.

⁴ Barton, Gina. "4 charged with voting illegally in November." *Milwaukee Journal-Sentinel*. August 17, 2005.

⁵ Milwaukee J-S. December 5, 2005.

⁶ Milwaukee J-S. December 5, 2005.

⁷ Milwaukee J-S. December 5, 2005.

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double-voting) and to lists from the US Social Security Administration. LAB's search revealed 105 "questionable" votes:

- 98 ballots cast by ineligible felons, 57 of which were in Madison, 2 in Waukesha, 15 in Eau Claire, 16 in Appleton, 1 in the Village of Ashwaubenon
- 2 instances of double-voting (one in Madison, one in Waukesha).
- 4 votes counted despite the voter's having died two weeks or less before the election.
- 1 case in which a 17-year-old voted in Madison.⁸

The LAB referred the names of these people to the appropriate District Attorney for prosecution, and several cases are awaiting trial.

It should be noted that this study is not a complete survey of election returns state-wide in Wisconsin; the LAB's analysis is based on the voting records of the six municipalities that provided the LAB with sufficient information to conduct this study.

It should also be noted that the LAB discovered significant error in the data provided them by these municipalities, including:

- 91 records in which the individual's birthdate was incorrectly recorded as later than November 2, 1986
- 97 cases in which a person was mistakenly recorded as having voted twice
- More than 15,000 records were missing birthdates, making it more difficult to determine voter eligibility by comparing these records to lists of felons and deceased persons.⁹

General Findings

Both reports (the Legislative Audit Bureau's and the report of the Joint Task Force on Election Reform convened in Milwaukee) that did in-depth studies of the Wisconsin election returns in 2004 found that there was no evidence of systematic, wide-spread fraud.¹⁰ As the above statistics indicate, there are very few cases in which an individual intentionally voted illegally, and the majority of the discovered instances of fraudulent voting involved felons who were unaware that they were committing a crime. Certainly the number of fraudulent votes, intentional and unintentional, is dwarfed by the amount of administrative error – and the amount of potential there was for fraud.

Registration Irregularities

⁸ Borowski, Greg J. "State audit digs up wider vote problems; Thousands of voters on rolls more than once." *Milwaukee Journal-Sentinel*. September 17, 2005

⁹ "An Evaluation: Voter Registration." *Legislative Audit Bureau*. Madison, Wisconsin. September 2005. Pg. 50-52.

¹⁰ Brinkman, Phil. "Voting fraud in November not a problem in Madison; Nearly all suspect voters turn out to be people who moved or made innocent mistakes." *Wisconsin State Journal*. May 11, 2005.

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Duplicate Registrations: In the data from the six participating municipalities, LAB found 3116 records for individuals who appear to be registered more than once in the same municipality (0.9% of the records they reviewed). These duplications were primarily the result of name changes, in which the registrar neglected to remove the old name from the registration list, previous addresses that were not deleted, and misspellings and other typographical errors.

Deceased Voters: the LAB study found 783 persons who were deceased, but whose records had not been eliminated from the registration lists. Most of the municipalities participating in the survey rely on obituaries and notifications from family members to purge their voter registration lists of deceased voters.

Felons: Comparing a list of felons from the Department of Corrections to their voter registration data lists, LAB found 453 felons who were registered to vote. This is largely because, although municipal clerks are informed of federal felony convictions, they have no way of obtaining records on state felony convictions. ¹¹

¹¹ Legislative Audit Bureau Report: pg 43-47.

Summary of South Dakota Election Irregularities in 2002 and 2004

2002

In fall 2002, one of South Dakota's Senators, Democrat Tim Johnson, was up for re-election, and was engaged in a very close race with his Republican challenger, John Thune. Both parties were engaged in a massive voter registration effort, and registered over 24,000 new voters in the five months between the June primary and the November election, increasing the number of registered voters in the state from around 452,000 to 476,000.¹

A month before the election, several counties reported irregularities in some of the voter registration documents they'd received. In response to these reports, South Dakota Attorney General, Mark Barnett, with the state US Attorney and the FBI, launched an investigation.² Because of the importance of the race in determining the partisan balance of power in the Senate, the voter registration discrepancies got a good deal of national press, including a number of editorials accusing American Indians of stuffing ballot boxes.³ The following allegations were also picked up by out-of-state newssources, including Fox News and the Wall Street Journal:

- Supporters of Thune, who lost the election by 524 votes, collected 47 affidavits from poll watchers claiming voting irregularities.
- Allegations were made that three individuals were offered money by Johnson supporters to vote.

Barnett, who was alerted to the affidavits when he read an early media report that referred to them, stated that these allegations were either false or didn't warrant concern. "Most of the stuff that's in those other 47 affidavits are the kind of problems that we see in every election. People parking too close to the polling place with a sign in their window, people shooting their mouths off at the polling place. The kind of things that local election officials generally do a pretty good job of policing."⁴ The allegations of voter bribery were false.

Though most of the allegations of fraud that were filed turned out to be false, Attorney General Barnett's investigation did uncover two cases of voter registration fraud:

- The most high-profile case was that of Becky Red Earth-Villeda. Ms. Red Earth-Villeda was hired by the state Democratic party to register voters on the American Indian reservations. She was charged with 19 counts of forgery. No fraudulent voting was associated with Ms. Red Earth-Villeda, nor was there any evidence

¹ Kafka, Joe. "More people registered to vote." *Associated Press State and Local Wire*. October 29, 2002.

² Kafka, Joe. "Voter registration fraud being investigated." *Associated Press State and Local Wire*. October 11, 2002.

³ "Barnett: No evidence that fraud affected vote." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. November 21, 2002.

⁴ Kafka, Joe. "Woman charged in voter-fraud case, other claims false." *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

that fraudulent voting occurred in the state.⁵ All charges were dropped in January 2004, when, in court, it was determined by the state handwriting specialist that Ms. Red Earth-Villeda had not forged the signatures.⁶

- Lyle Nichols. Mr. Nichols was arrested for submitting five forged voter registration cards to his county office. He was working for an organization called the Native American Voter Registration Project, and was paid \$3 for each registration. The five charges were dropped after Mr. Nichols pleaded guilty to possession of a forgery, and was sentenced with 54 days in jail, which is how much time he'd already spent there because of the charges.⁷

2004

In October 2004, just before the general election, eight people working for a campus GOP Get-out-the-Vote organization resigned their positions after they were accused of submitting absentee ballot requests that had not been notarized properly. Because many of these ballot requests had already been processed and the ballots themselves had been cast, county auditors decided not to pursue the issue.⁸

Besides this incident, there were no reports of voter registration or voting irregularities in the run-up to the November 2004 election, as there were in 2002.⁹ However, as with the primary and special elections in June 2004, there were complaints about voter intimidation from American Indians attempting to vote, as well as difficulties with the adoption of the state's new photo identification regulations (after the 2002 election, the state legislature passed more stringent requirements about the kind of identification voters would need to provide at the polls.)

Incidents:

Voter Intimidation: The Four Directions Committee, an organization dedicated to helping American Indians register to vote and get to the polls, got a temporary restraining order on several Republican supporters who, they alleged, had been setting up video equipment outside of polling places on American Indian reservations and following around American Indians who voted early and recording their license plates.¹⁰

Vote Buying: A Republican election monitor from Virginia, Paul Brenner, claimed that Senator Tom Daschle's campaign was paying people to vote. Local county auditors

⁵ Kafka, Joe. "Woman charged in voter-fraud case, other claims false." *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

⁶ Walker, Carson. "Charges dropped against woman accused of voter fraud." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. January 28, 2004.

⁷ "Rapid City man arrested for voter fraud." *Associated Press State and Local Wire*. Rapid City, South Dakota. October 18, 2002.

⁸ Melmer, David. "Voting problems resurface in South Dakota." *Indian Country Today*. October 27, 2004.

⁹ Melmer, David. "Election Day goes smoothly on Pine Ridge, S.D., reservation." *Indian Country Today*. November 10, 2004.

¹⁰ Walker, Carson. "Observer alleges vote buying; worker says he never went to Pine Ridge." *Associated Press State and Local Wire*. October 31, 2004.

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believe Brenner started the rumor himself. As there was no evidence for either side, the claims were not taken seriously.¹¹

¹¹ Walker, Carson. "Some problems and oddities reported on Election Day." *Associated Press State and Local Wire*. November 2, 2004.

Summary of Election Irregularities in Washington State 2004

The 2004 Washington state gubernatorial election was decided by one of the narrowest margins in American electoral history; 261 votes – less than a millionth of the 2.8 million votes cast statewide - separated the leading candidate, Republican Dino Rossi, from his competitor, Democrat Christine Gregoire. The state law-mandated recount that followed brought the margin down to 42 votes, and the subsequent hand recount ordered by the state Democratic Party gave Gregoire the lead, with 129 more votes than Rossi.

The race was so close that the parties decided to go to court to dispute the tally – the Republicans wanted the election results set aside and to have a revote; the Democrats sought a court-legitimated win. Each side set out into the field to find a way to swing the election in their favor. The trial and accompanying investigation, which lasted through the spring of 2005, revealed a litany of problems with the state's election system:

- The process by which absentee ballots are matched to the voters who requested them led to discrepancies between the number of absentee ballots received and the number of votes counted.¹
- After the final certification of the election results, King County discovered 96 uncounted absentee ballots, Pierce county found 64, and Spokane County found eight; all had been misplaced following the election, but there was no mechanism for reconciling the number of absentee ballots received with the number counted.²
- Hundreds of felons who were ineligible to vote were able to cast ballots because they were not aware that they needed to apply to have their voting rights reinstated.³
- The system for verifying the eligibility of voters who had cast provisional ballots was found to be questionable.⁴
- Due to poll worker error, about 100 provisional ballots were improperly cast, and a hundred more were counted, though they were not verified as having been cast by eligible voters.⁵

The trial also revealed that most of these problems were the result of understaffing and human error.⁶ In total, 1,678 ballots were proven to have been cast illegally, but none of these votes was subtracted from the candidates' totals because no evidence was produced in court as to how each individual voted.⁷ Further, despite the scrutiny that the election

¹ Ervin, Keith. "County elections official demoted; 2004 balloting fallout – Chief predicts 'series of changes'." *The Seattle Times*. June 15, 2005. See also Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

² Ervin, Keith. "Voters irked by uncounted ballots." *The Seattle Times*. June 17, 2005.

³ Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

⁴ Roberts, Gregory. "GOP contrasts elections offices; Chelan County's work better than King's, judge in gubernatorial case told." *The Seattle Post-Intelligencer*. May 25, 2005.

⁵ Ervin, Keith. "Prosecutors to challenge 110 voters; They are said to be felons – 2 counties discover uncounted ballots." *The Seattle Times*. April 29, 2005.

⁶ Ervin, Keith. "King County ballot numbers don't add up; 4000 discrepancies – Review of records finds flaws at each stage of the election; voting, processing, counting." *The Seattle Times*. May 25, 2005.

⁷ *Borders v. King County*. Court's Oral Decision. 6. June. 2005.

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returns revealed, and the extensive discussion of voter fraud throughout the investigation, just eight cases of voter fraud were discovered:

- 4 people were accused of casting absentee ballots for their deceased spouses.⁸
- A mother and daughter were charged with the absentee ballot of the mother's husband who had died earlier in the year
- 1 man cast the ballot of the deceased prior resident of his home.
- A homeless resident of Seattle cast two ballots, one in the name of Dustin Ocoilain.⁹

⁸ Johnson, Gene. "Two plead guilty to voting twice in 2004 general election." *Associated Press*. June 2, 2005.

⁹ Ervin, Keith. "6 accused of casting multiple votes; King County voters face criminal charges - Jail time, fines possible." *Seattle Times*. June 22, 2005.



"Tova Wang"
<wang@tcf.org>
05/10/2006 12:16 PM

To psims@eac.gov, dromig@eac.gov
cc [REDACTED]
bcc
Subject another one

Plus, I found a few typos on the nexis analysis. Sorry about this.

Tova Andrea Wang
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votebuyingsummary.doc



Nexis Analysis.doc

014561

Major Vote Buying Cases Summary

Between 2001 and 2006, allegations and convictions for vote buying and conspiracies to buy votes were concentrated in three states: Illinois, West Virginia and Kentucky.

Deleted: of

Deleted: which have resulted in convictions on these charges a

In East St. Louis, Illinois, nine individuals, including a former city council member and the head of the local Democratic Party, Charles Powell, Jr., were convicted or pled guilty to vote buying and conspiracy to commit election fraud during the 2004 general election. The government's conspiracy case was almost entirely based on taped conversations in which the defendants discussed buying votes for \$5 and whether this would be adequate. Federal prosecutors alleged that the vote buying was financed with \$79,000 transferred from the County Democratic Party shortly before the election, although county officials have not been charged. Four defendants were convicted of purchasing or offering to purchase at least one vote directly, while Democratic Party chairman was only convicted of conspiracy.¹ Earlier, three precinct officials and one precinct worker pled guilty to buying votes for \$5 or \$10 in that same election.²

Eastern Kentucky has witnessed a series of vote buying cases over the last several years. The most recent revolved around Ross Harris, a Pike County political fundraiser and coal executive, and his associate Loren Glenn Turner. Harris and Turner were convicted in September 2004 of vote buying, mail fraud, and several other counts.³ Prosecutors alleged Harris and Turner conspired to buy votes and provided the necessary funds in an unsuccessful 2002 bid for Pike County district judge by former State Senator Doug Hays. Harris supplied nearly \$40,000, Turner laundered the money through straw contributors, and the cash was then disbursed in the form of \$50 checks ostensibly for 'vote hauling', the legal practice of paying campaign workers to get voters to the polls which is notorious as a cover for buying votes.⁴ Harris attempted to influence the race on behalf of Hays in order to get revenge on Hays' opponent for a personal matter.⁵

A grand jury initially indicted 10 individuals in connection with the Harris and Turner case, including Hays and his wife, and six campaign workers. Of the remaining defendants, only one, Tom Varney, also a witness in the Hays case, pled guilty. The others were either acquitted of vote buying charges or had vote buying charges dropped.⁶ Prosecutors have announced that their investigation continues into others tied to Harris and may produce further indictments.

The Harris case follows a series of trials related to the 1998 Knott County Democratic primary. Between 2003 and 2004, 10 individuals were indicted on vote buying charges, including a winning candidate in those primaries, Knott County judge-executive Donnie Newsome, who was reelected in 2002. In 2004 Newsome and a supporter were sent to jail and fined. Five other

¹ "Five convicted in federal vote-fraud trial" Associated Press, June 30, 2005; "Powell gets 21 months" Belleville News-Democrat, March 1, 2006.

² "Four Plead Guilty To Vote-Buying Cash Was Allegedly Supplied By St. Clair Democratic Machine" Belleville News-Democrat, March 23, 2005.

³ "2 found guilty in pike county vote-fraud case; Two-year sentences possible," Lexington Herald Leader, September 17, 2004.

⁴ "Jury weighing vote-fraud case," Lexington Herald Leader, September 16, 2004.

⁵ "Pike Election Trial Goes To Jury" Lexington Herald Leader, January 1, 2006.

⁶ "Former state senator acquitted of vote buying," Lexington Herald Leader, November 2, 2004.

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defendants pled guilty to vote buying charges, and three were acquitted. The primary means of vote buying entailed purchasing absentee votes from elderly, infirm, illiterate or poor voters, usually for between \$50 and \$100. This resulted in an abnormally high number of absentee ballots in the primary.⁷ Indictments relating to that same 1998 primary were also brought in 1999, when 6 individuals were indicted for buying the votes of students at a small local college. Five of those indicted were convicted or pled guilty.⁸

Absentee vote buying was also an issue in 2002, when federal prosecutors opened an investigation in Kentucky's Clay County after an abnormal number of absentee ballots were filed in the primary and the sheriff halted absentee voting twice over concerns.⁹ Officials received hundreds of complaints of vote-buying during the 2002 primary, and state investigators performed follow up investigations in a number of counties, including Knott, Bell, Floyd, Pike, and Maginoff.¹⁰ No indictments have been produced so far.

So far, relatively few incidents of vote-buying have been substantially identified or investigated in the 2004 election. Two instances of vote buying in local 2004 elections have been brought before a grand jury. In one, a Casey County man was indicted for purchasing votes in a local school board race with cash and whiskey.¹¹ In the second, the grand jury chose not to indict an individual accused of offering to purchase a teenager's vote on a local proposal with beer.¹²

An extensive vote buying conspiracy has also been uncovered in southern **West Virginia**. The federal probe, which handed down its first indictment in 2003, has yielded more than a dozen guilty pleas to charges of vote buying and conspiracy in elections since the late 1980s. As this area is almost exclusively dominated by the Democratic Party, vote-buying occurred largely during primary contests.

The first phase of the probe focused on Logan County residents, where vote buying charges were brought in relation to elections in 1996, 2000, 2002 and 2004. In an extraordinary tactic, the FBI planted the former mayor of Logan City, Tom Esposito, as a candidate in a state legislative race. Esposito's cooperation led to guilty pleas from the Logan County Clerk, who pled guilty to selling his vote to Esposito in 1996,¹³ and another man who took money from Esposito for the purpose of vote buying in 2004.¹⁴

Guilty pleas were also obtained in connection with former county sheriff Johnny Mendez, who pled guilty to buying votes in two primary elections in order to elect candidates including

⁷ "Knott County, KY., Judge Executive sentenced on vote-buying conspiracy charges," Department of Justice, March 16, 2004.

⁸ "6 men accused of vote fraud in '98 Knott primary; Charges include vote buying and lying to FBI"

⁹ "Election 2002: ABSENTEE BALLOTING; State attorney general's office investigates voting records in some counties" The Courier-Journal, November 7, 2002.

¹⁰ "Election 2002: Kentucky; VOTE FRAUD; Investigators monitor 17 counties across state" The Courier-Journal, November 6, 2002.

¹¹ "Jury finds man guilty on vote-buying charges" Associated Press, November 11, 2005.

¹² "Man in beer vote case files suit" The Cincinnati Enquirer, March 17, 2005.

¹³ "Two plead to vote fraud; Logan clerk sold vote; politician tried to buy votes" Charleston Gazette, December 14, 2005.

¹⁴ "Logan man gets probation in vote-fraud scandal" Charleston Gazette, March 1, 2006.

himself. In 2000, with a large amount of funding from a prominent local lawyer seeking to influence a state delegate election for his wife, Mendez distributed around \$10,000 in payments to voters of \$10 to \$100. Then, in the 2004 primary, Mendez distributed around \$2,000 before his arrest.¹⁵ A deputy of Mendez', the former Logan police chief, also pled guilty to a count of vote buying in 2002.¹⁶

Prosecutors focusing on neighboring Lincoln County have alleged a long-standing vote-buying conspiracy extending back to the late 1980s. The probe identified Lincoln County Circuit Clerk Greg Stowers as head of a Democratic Party faction which routinely bought votes in order to maintain office. Stowers pled guilty in December 2005 to distributing around \$7,000 to buy votes in the 2004 primary. The Lincoln County Assessor, and Stowers' longtime political ally, Jerry Allen Weaver, also pled guilty to conspiracy to buy votes.¹⁷ These were accompanied by four other guilty pleas from party workers for vote buying in primaries. While most specific charges focused on vote buying in the 2004 primary, defendants also admitted buying votes as far back as the 1988, 1990, and 1992 primaries.

The leading conspirators would give party workers candidate slates and cash, which workers would then take to the polling place and use to purchase votes for amounts between \$10 and \$40 and in one instance, for liquor. Voters would be handed the slate of chosen candidates, and would then be paid upon exiting the polling place. In other cases, the elected officials in question purchased votes in exchange for non-cash rewards, including patronage positions, fixed tickets, favorable tax assessments, and home improvements.¹⁸

The West Virginia probe is ongoing, as prosecutors are scrutinizing others implicated during the proceedings so far, including a sitting state delegate, who may be under scrutiny for vote buying in a 1990 election, and one of the Lincoln county defendants who previously had vote buying charges against him dropped.¹⁹

¹⁵ "Mendez confined to home for year Ex-Logan sheriff was convicted of buying votes" Charleston Gazette, January 22, 2005.

¹⁶ "Ex-Logan police sentenced for buying votes" Associated Press, February 15, 2005.

¹⁷ "Clerk says he engaged in vote buying" Charleston Gazette, December 30, 2005.

¹⁸ "Lincoln clerk, two others plead guilty to election fraud" Charleston Daily Mail, December 30, 2005.

¹⁹ "Next phase pondered in federal vote-buying probe" Associated Press, January 1, 2006.

Nexis Search Articles Analysis

Note: The search terms used were ones agreed upon by both Job Serebrov and Tova Wang and are available upon request. A more systematic, numerical analysis of the data contained in the Nexis charts is currently being undertaken. What follows is an overview.

Recommendation: In phase 2, consultants should conduct a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

Overview of the Articles

Absentee Ballots

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

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

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

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

Voter Registration Fraud

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

1. Registering in the name of dead people
2. Fake names and other information on voter registration forms
3. Illegitimate addresses used on voter registration forms
4. Voters being tricked into registering for a particular party under false pretenses

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Privilege**

5. Destruction of voter registration forms depending on the party the voter registered with

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

Voter Intimidation and Suppression

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

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

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

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

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

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

"Dead Voters and Multiple Voting"

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations

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

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

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

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

Vote Buying

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

Deceptive Practices

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction

of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

Non-citizen Voting

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

Felon Voting

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

Election Official Fraud

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.



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Subject list of interviewees

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List of Experts Interviewed.doc

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List of Experts Interviewed

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

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

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

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

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

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobehere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

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Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of
Clerks, Records, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas



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Subject research summaries

I have the feeling we didn't include these in the original batch I sent you. Could you double check and if not, would you please include them in the existing research materials? Sorry and thanks. I'm kind of doing all of this on my own in case you couldn't tell. List is coming...

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Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General

By The Brennan Center for Justice at NYU School of Law and Dr. Michael McDonald of George Mason University

General

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. For the present Analysis of the Report, the lists of voters submitted to the New Jersey Attorney General, as well as a copy of the New Jersey county voter registration files were obtained, and an initial investigation of the report's claims was conducted. The analysis shows that the lists submitted are substantially flawed.

The Analysis is based on methodology only: its authors did not gain access to original documents related to registration or original pollbook records; only recently were copies of the counties' original registration data files acquired and compiled, which contain some notable gaps; and the lists submitted to the Attorney General contain significant errors and little documentation, which complicated the analysis. Nonetheless, the analysts say that information collected is sufficient for generally assessing the quality of evidence presented to support the September 15 report. Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.

These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. Entries that supposedly "matched" other entries were apparently deemed to represent the same individual, voting twice. This methodology was similar to the method used in compiling the notoriously inaccurate Florida "purge lists" of suspected ineligible felons in 2000 and 2004. As Florida's experience shows, matching names and birth dates in the voter registration context can easily lead to false conclusions – as was almost certainly the case here.

This Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value. For example, the data used in the Report from one county appears to be particularly suspect and anomalous, and may have substantially skewed the overall results. In addition, middle initials were ignored throughout all counties, so that "J _____ A. Smith" was presumed to be the same person as "J _____ G. Smith." Suffixes were also ignored, so that fathers and sons – like "B _____ Johnson" and "B _____ Johnson, Jr." – were said to be the same person.

Underlying many of the entries on these lists, and similar lists compiled in Florida and elsewhere, is a presumption that two records with the same name and date of birth must

represent the same person. As *explained* in this analysis, this presumption is not consistent with basic statistical principles. Even when votes appear to have been cast in two different cities under the same name and birth date, statistics show that voter fraud is not necessarily to blame. With 3.6 million persons who voted in the 2004 election in New Jersey, the chance that some have the same name and birth date is not far-fetched.

Analysis of the Claim of Double Voting by 4,497 Individuals

Attempts to match data on one list to data on another list will often yield “false positives:” two records that at first appear to be a match but do not actually represent the same person. The natural incidence of “false positives” for a matching exercise of this scale – especially when, as here, conducted with relatively little attention to detail – readily explains the ostensible number of double votes.

1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files. These records reflect two registration entries by the same person from the same address, with a notation next to each that the individual has voted. For example, 55-year-old W_____ A. Connors, living at 253 B_____ Ave. in a New York commuter suburb, is listed on the data files with an (erroneous) first registration date in 1901 and a second registration date in 1993; Mr. Connors is thus represented twice on the data files submitted. Each of these entries also indicates that W_____ A. Connors at 253 B_____ Ave voted in 2004. There is no credible indication, however, that Mr. Connors actually voted twice; indeed, given the clearly erroneous registration date on the files, it is far more likely that data error is to blame for the doubly logged vote as well.

More plausibly, the bulk of these 1,803 records may be traced to irregularities in the data processing and compilation process for one single county: the Middlesex County registration file accounts for only 10% of registered voters in the state but 78% of these alleged double votes. The suspect lists themselves contain an acknowledgment that the problem in Middlesex is probably not fraud: 99% of these Middlesex voters are labeled on the lists submitted to the Attorney General with a notation that the record is “less likely” to indicate an illegal double vote.

Another 1,257 entries of the 4,397 records probably represent similar data errors – also largely driven by a likely glitch in the Middlesex County file, which is also vastly over represented in this category. These records show ever-so-slight variations in records listed with the same date of birth at the same address: for example, the same first and last names, but different middle initials or suffixes (e.g., J_____ T. Kearns, Sr., and J_____ T. Kearns, Jr., both born the same day and living at the same address; or J_____ E. Allen and J_____ P. Allen, born the same day and living at the same address).

Approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes. For example, W_____ S. Smith, living in a northern New Jersey town, and W_____ C. Smith, living in another town two hours away, share the same date of birth but are not the same person. Nor are

T_____ Brown, living in a New York commuter suburb, and T_____ H. Brown, Jr., living in a small town over an hour west, despite the fact that they also share the same birth date. About three-quarters of the entries in this category reveal data that affirmatively conflict – for example, a middle initial (“W_____ S.”) in one case, and a different middle initial (“W_____ C.”) in another, listed at different addresses. There is absolutely no good reason to conclude that these individuals are in fact the same, when the available evidence indicates the contrary.

For approximately 200 of the entries in this category, however, less information is available. These entries show a middle initial (“J_____ W. Davis”) in one case, and no middle initial (“J_____ Davis”) in another – again, at different addresses. The lack of the middle initial is ambiguous: it could mean that one of the J_____ Davis in question has no middle name, or it could mean that the middle initial was simply omitted in a particular registration entry. Although these entries involve less conclusive affirmative evidence of a false match than the entries noted above, there is still no good reason to believe that “J_____ W. Davis” and “J_____ Davis,” at different addresses, represent the same person.

Of the individuals remaining, there are serious concerns with the accuracy of the dates of birth. Seven voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information. For 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people.

That leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P_____ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P_____ S. Rosens, born on the same date in 1948 – and such coincidences are surprisingly common. For any one person, the odds of someone else having the same name and birth date is small. But because there are so many voters in New Jersey, a sizable number will have the same name and birth date simply by chance. In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

The September 15 Report makes much of the raw potential for foul play based on the unsurprising fact that there are voters who appear on the New Jersey registration rolls more than once. As noted above, many of the names identified reflect two different individuals and not simply duplicate entries. But there is no doubt that there are duplicate entries on New Jersey’s registration rolls. It is well known that voter registration rolls contain “deadwood” – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America

Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.

The Federal Crime of Election Fraud

By Craig Donsanto

In The Federal Crime of Election Fraud, Donsanto addresses the role of the United States Department of Justice in matters of election fraud. Specifically, it answers the most frequently asked questions concerning the federal law enforcement role in election matters. Particularly, what sort of election-related conduct is potentially actionable as a federal crime, what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism, procedural, and policy considerations impact on the federalization of this type of case, and how Assistant United States Attorneys should respond to this type of complaint.

Donsanto indicates that as a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Finally, Donsanto points out that mistakes and other gaffs that inevitably occur are not included as voter fraud. Where mistakes occur on a significant enough level to potentially affect the outcome of an election, the appropriate remedy is an election contest brought by the loser seeking civil judicial redress through the appropriate state election contest process.

Along with the limits discussed above, prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

Donsanto lists four types of election fraud: schemes to purposely and corruptly register voters who either do not exist, or who are known by the putative defendant to be ineligible to vote under applicable state law; schemes to cast, record or fraudulently tabulate votes for voters who do not participate in the voting act at all; schemes to corrupt the voting act of voters who do participate in the voting act to a limited extent; and, schemes to knowingly prevent voters qualified voters from voting.

Donsanto lists four situations where federal prosecution is appropriate: Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office; Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statutes such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.; Where federalization is required in order to redress longstanding patterns of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and, Where

there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense.

Donsanto lists four advantages to federal prosecution: voter fraud investigations are labor intensive. Local law enforcement agencies often lack the manpower and the financial resources to take these cases on; voter fraud matters are always politically sensitive and very high profile endeavors at the local level. Local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed. Many states lack the broad grand jury process that exists in the federal system; and, the defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed. These include: schemes by polling officers to violate their duty under state law to safeguard the integrity of the election process by purposefully allowing void ballots to be cast (stuffing the ballot box), or by intentionally rendering fraudulent vote tallies which can be prosecuted as civil rights violations under 18 U.S.C. sections 241 or 242; schemes to stimulate or reward voter registration by offering or giving voters things having monetary value violate the "payment for registering" clause of 42 U.S.C. section 19731(c); schemes to register voters fraudulently through providing election officials materially false information about the voter's eligibility for the franchise; and, schemes to obtain and cast ballots that are materially defective in nonfederal elections can still be prosecuted under 18 U.S.C. section 1341. There are also some other federal statutes involved in election fraud cases such as 18 U.S.C. section 597 that prohibits making expenditures for the specific purpose of stimulating voters to cast ballots for candidates seeking the federal offices of Senator, Congressman or President and 42 U.S.C. section 1973i (e) that prohibits voting more than once in elections where federal candidates are on the ballot.

Donsanto lists four questions used by prosecutors in evaluating the credibility of election complaints: does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime; is the complaint sufficiently fact-specific that it provides leads for investigators to pursue; is there a federal statute that can be used to federalize the criminal activity at issue; and, is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

Finally, Donsanto indicates that election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.



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Subject RE: research summaries

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-----Original Message-----

From: Tova Wang

Sent: Thursday, May 11, 2006 12:31 PM

To: psims@eac.gov; dromig@eac.gov

Subject: research summaries

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Reports

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

The New Poll Tax, Laughlin McDonald

Wisconsin Audit Report, Voter Registration Elections Board

Preliminary Findings, Milwaukee Joint Task Force Investigating Possible Election Fraud

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

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

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

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

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

America's Modern Poll Tax, The Advancement Project

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

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

Department of Justice Public Integrity Reports 2002, 2003, 2004

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

Election Protection 2004, Election Protection Coalition

The Federal Crime of Election Fraud, Craig Donsanto

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

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

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

Books

Stealing Elections, John Fund

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

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

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

Foiled Again, Mark Crispin Miller

Legal

Indiana Democratic Party vs. Rokita

Common Cause of Georgia vs. Billup

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



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Subject I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

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