

**U.S. ELECTION ASSISTANCE
COMMISSION
OFFICE OF INSPECTOR GENERAL**



**REPORT OF INVESTIGATION:
PREPARATION OF THE
VOTER FRAUD AND VOTER INTIMIDATION REPORT**

**No. I-IV-EAC-02-08
MARCH 2008**

This report contained information that has been redacted pursuant to 5 U.S.C. §§ 552(b)(2), (b)(6) and (b)(7)(c) of the Freedom of Information Act. Supporting documentation for this report may be obtained by sending a written request to the OIG.



U.S. ELECTION ASSISTANCE COMMISSION

OFFICE OF THE INSPECTOR GENERAL
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March 11, 2008

To: Rosemary E. Rodriguez
Chair

From: Curtis Crider 
Inspector General

Subject: Transmittal of Office of Inspector General Report of Investigation - "Preparation of the Voter Fraud and Voter Intimidation Report"

Attached is a copy of the subject investigative report. I asked the Department of the Interior, Office of Inspector General, to conduct the investigation because my office has no investigators.

The investigation was initiated based on a April 16, 2007 request from Ms. Donetta Davidson, Chair of the U.S. Election Assistance Commission. The investigation focused on four general issues surrounding the Voter Fraud and Voter Intimidation report: 1) the hiring of the consultants; 2) the consultants' draft report; 3) the changes to the draft report; and 4) potential external influence on the report.

The investigation found no evidence to support allegations that changes were made to the report due to improper reasons or political motivations. However, it did disclose a poorly conceived and managed project. This project was set to fail from the beginning due to an inadequate statement of work, which did not clearly define exactly what the contractors were expected to do, what the deliverables were expected to be, and how the deliverables were to be handled. The problems with the statement of work were compounded by EAC inadequate oversight of the consultants

We believe that if the EAC effectively implements the recommendations contained in the report that we issued to you on February 25, 2008, entitled "Assessment of the U.S. Election Assistance Commission's Programs and Financial Operations" the underlying issues that caused the problems with the Voter Fraud and Voter Intimidation report will be corrected.

If you have any questions about this report, please do not hesitate to contact me at (202) 566-3125.

Attachment



**United States Department of the Interior
Office of Inspector General**

REPORT OF INVESTIGATION

Case Title Election Assistance Commission—Vote Fraud Reports	Case Number [Exemption 2]
Reporting Office Herndon, VA	Report Date March 10, 2008
Report Subject Report of Investigation	

SYNOPSIS

In September 2005, the U.S. Election Assistance Commission (EAC) hired two consultants to conduct a study on voting fraud and voter intimidation. In August 2006, the consultants completed their report and provided it to the EAC for review. The EAC officials edited the report and publicly released a final version in December 2006. Subsequent to the release, it was learned that the EAC final report differed from the consultants' report causing speculation that the report had been changed due to political motivations or other improper reasons.

As a result of congressional inquiries and media articles regarding the changes and the delayed release of the report, EAC Chair Donetta Davidson requested the EAC Office of Inspector General (OIG) to conduct "a review of the circumstances surrounding the voting fraud and voter intimidation research project." Not having the investigative resources necessary for such a review, the EAC-OIG requested and received investigative support from the Department of the Interior (DOI) OIG in April 2007. The DOI-OIG investigation focused on four general issues: 1) the hiring of the consultants; 2) the consultants' draft report; 3) the changes to the draft report; and 4) potential external influence on the report.

The investigation revealed that there was confusion regarding the intended scope of the project and the intended use of the consultants' draft report. In addition, we found that the EAC officials reviewing the consultants' report believed the report was poorly written and contained unsupported conclusions and, therefore, required substantial editing. This, coupled with an initial delay of the EAC beginning the editing process, caused the final report to be released four months after receiving the consultants' draft. However, we found no evidence to support allegations that the changes were made to the report due to improper reasons or political motivations.

Reporting Official/Title Exemptions 6 & 7C/Special Agent	Signature [Exemptions 6 & 7C]
Approving Official/Title Douglas R. Hassebrock/Special Agent-in-Charge	Signature [Exemptions 6 & 7C]
Authentication Number: [Exemption 2]	

This report contained information that has been redacted pursuant to 5 U.S.C. §§ 552(b)(2), (b)(6) and (b)(7)(C) of the Freedom of Information Act. Supporting documentation for this report may be obtained by sending a written request to the OIG Freedom of Information Office.

We also made the observation that the voting fraud project and issues relating to vote fraud is a highly charged political issue and that the decision to edit the report without including the consultants for input, along with the delay of producing the final report, undoubtedly provided a catalyst for the speculations raised by opponents of the final report.

BACKGROUND

The EAC is an independent, bipartisan agency created by the Help America Vote Act of 2002 (HAVA) “to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections” and additional purposes set forth by HAVA. The EAC’s additional duties include accrediting testing laboratories, certifying voting systems, auditing the use of HAVA funds, and overseeing the national mail voter registration form.

Four commissioners, appointed by the President and confirmed by the U.S. Senate, oversee the daily operations of the EAC. Consistent with the bipartisan nature of the agency, no more than two serving commissioners may belong to the same political party.

An executive director is selected by the EAC commissioners and appointed to a four-year term. The executive director’s duties “include managing EAC operations, preparing long-term goals, developing voluntary voting system guidelines, reviewing all EAC reports and studies, and managing staff and consultants.”

Section 241 of HAVA directs the EAC to periodically conduct studies related to election administration issues and make them available to the public. This provision lists the subject matters of 19 specific areas and adds any subject that the EAC deems “appropriate.” Listed studies include “[n]ationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office,” and “[i]dentifying, deterring, and investigating methods of voter intimidation.”

U.S. Election Assistance Commission (EAC)

In September 2005, the EAC hired two consultants to conduct a study on voting fraud and voter intimidation. In August 2006, the consultants completed their report and provided it to the EAC for review. EAC officials edited the report and publicly released a final version in December 2006.

On October 11, 2006, Richard Wolf of *USA Today* reported that “a preliminary report to the U.S. Election Commission has found little evidence of...polling place fraud...” Wolf based his statement on the following lines from the draft report that had not been publicly released: “There is widespread but not unanimous agreement that there is little polling-place fraud, or at least much less than is claimed, including voter impersonation, ‘dead’ voters, non-citizen voting and felon voters.” Wolf noted that opinions of election officials who read the report differed on the findings.

On April 11, 2007, a *New York Times* (NYT) article, written after the public release, reported that the EAC had altered the conclusions reached by elections experts (consultants) who had found little evidence of voter fraud in U.S. elections. According to the article, several democrats have said that the EAC changed the consultants’ report due to political motives. The article led to speculation and

allegations from other media, public sources, and congressional members concerning the reason for the EAC's edits.

On April 12, 2007, U.S. Senators Dianne Feinstein (D-CA), Chairwoman, Committee on Rules and Administration, and Richard Durbin (D-IL), Chairman, Subcommittee on Financial Services and General Government Committee on Appropriations, sent a joint letter to EAC Chairwoman Davidson seeking a response to media allegations that the EAC's handling of the voting fraud and voter intimidation report, might have been politically-motivated. The letter cited the April 11 *NYT* article that reported that the EAC had changed the findings of "a bipartisan team of election law experts" which "found little [voter] fraud around the nation" to a conclusion "that the pervasiveness...was still open to debate."

On the same date, Congresswoman Zoe Lofgren (D-CA), Chair of the Committee on House Administration Subcommittee on Elections, sent a letter to the EAC indicating her concern with "what appears to be an emerging pattern by the EAC to hold off on publicly releasing reports as well as modifying reports that are released." Lofgren noted that the EAC's version of the report "does not accurately reflect the research in the original report" written by the consultants, causing Lofgren to question the EAC's motives and "lack of transparency." Lofgren questioned how she and other legislators can "rely on advice" from the EAC if they "are provided an inaccurate modified version [of the report] which negates clear evidence to the contrary in the original research?"

As a result of these media articles and congressional inquiries, EAC Chairwoman Donetta Davidson released a copy of the consultants' report to The Congress. She then requested, on April 16, 2007, that the EAC-OIG conduct a review of the circumstances surrounding the voting fraud and voter intimidation research project.

On April 27, 2007, the EAC-OIG requested and received investigative assistance from the DOI-OIG.

DETAILS OF INVESTIGATION

We initiated this investigation on April 27, 2007, at the request of the EAC-OIG, based on allegations that the conclusion in an EAC report on voting fraud and voter intimidation had been modified from its original findings due to political interference.

During the course of this investigation, we conducted over 25 interviews with the consultants, current and former EAC commissioners and staff members, and participants in the project's working group. We also reviewed tens of thousands of documents—those made public in accordance with the congressional production demand as well as some we requested from non-EAC employees.

We have outlined our findings in this report in the following four sections: 1) the hiring of the consultants who conducted the study, 2) the consultants' draft report, 3) substantive changes made to the consultants' draft report, and 4) the potential improper external influence over the EAC.

The Hiring of the Consultants

The hiring of the consultants for the voting fraud project was primarily overseen by four EAC employees—Research Director Karen Lynn-Dyson, General Counsel Julie Hodgkins, Election Research Specialist, and Executive Director Tom Wilkey. The group sought to hire a bipartisan team to conduct the project and ultimately identified three individuals.

Tova Wang, a Democracy Fellow at The Century Foundation, was selected as the Democratic consultant. Wilkey said he recommended Wang for the project, citing that he had known Wang for years having worked with her at various times in New York. Wilkey said Wang had performed some work on voter identification and election reform for The Century Foundation.

Job Serebrov, an Arkansas attorney, was selected as the Republican consultant. Hodgkins believed Serebrov was qualified because of his extensive knowledge in the field of voter fraud and his experience working as the Louisiana state HAVA coordinator.

A political science professor [Exemptions 6 & 7C] was selected as a neutral party. The professor initially committed to the project but later withdrew during the preliminary stages of the project for unspecified reasons.

(Agent's Note: The EAC commissioners ultimately held a vote and unanimously approved the selection of Wang and Serebrov. The commissioners at the time were Chairman Paul DeGregorio, Gracia Hillman, Ray Martinez, and Donetta Davidson.)

Lynn-Dyson said she was initially responsible for organizing the project and providing oversight to the consultants; however, she later began feeling overwhelmed and unqualified to oversee the project and contract. She explained that she had not yet completed her training to become a Contracting Officer's Technical Representative (COTR) and had to continually rely upon Hodgkins for assistance with contracting issues. Ultimately, Lynn-Dyson requested that Wilkey transfer the project oversight and COTR responsibilities to an Election Research Specialist. Wilkey agreed and the Election Research Specialist, with extensive election experience, became the COTR on the voting fraud project.

Hodgkins said the scope of the contractors' work was an early topic of discussion. Hodgkins explained that the contractors were to start small by developing a definition of voting fraud, then survey existing law and available research, and finally provide recommendations on how the EAC might conduct a more extensive research project about voting fraud. The contracts for Wang and Serebrov, including the statements of work, are appended to this report.

Hodgkins further explained that the EAC never intended to publish the consultants' report, but that the consultants' contracts clearly indicated the contractors would provide the EAC with a draft report to utilize at its discretion. Hodgkins said she had never heard the consultants express their desire for draft publication or complain about the lack of publication.

Consultant Wang said she believed the contract called for her and Serebrov to create a definition of voting fraud/voter intimidation, assess the current state of research in the area, and conduct a preliminary survey of voting fraud. Wang acknowledged that their study was intended to be a first-glance overview, not a final measure of the topic. Wang said she believed they were to produce a draft, which the commissioners would review and for which they would provide input, and she and Serebrov would then produce a final report. She thought the draft report would be published but admitted that might have been a presumption on her part. She added that the EAC's guidance on how to conduct the project consisted of the contract's statement of work as well as communication from the project's COTR.

When asked if the contract included a publication clause or additional information about what would be published, Wang said she did not know. She added that, as an attorney, she always advises her

clients to read contracts very closely. She said she was slightly embarrassed that she did not follow the same advice she tells her clients and was not as versed in her own contract's terms as she should have been.

Similarly, consultant Serebrov said the project "was a preliminary study." He said it was their job to define voting fraud in preparation for future EAC studies. Serebrov added that their findings were never meant to be a "final" report. "We had no guarantee that it would be published," Serebrov said. In fact, he said he had been told numerous times by both Hodgkins and the project's COTR that the report could and would be changed. He said the EAC's intention was "clear since day one."

Serebrov said the contracts he and Wang signed stipulated that the research would become the property of the EAC. He said Wang, however, did not like the fact that their report might not be published and wanted her work published just as she had written it. He believed Wang saw the issue of publication of her work as an issue of integrity and she became upset because she knew that people who had worked on other projects had their names published and received personal credit for their work.

Serebrov said he and Wang conducted 24 interviews of election professionals they selected from various working backgrounds to create a "spectrum" large enough to study. (*Agent's Note: The consultants' report shows that they actually interviewed 26 individuals.*) Throughout the process, Serebrov said he wrote monthly progress reports with invoices and sent them to the project's COTR, and that he and Wang reported to the EAC individually. According to Serebrov, no one at the EAC ever gave him any feedback on his progress reports. He and Wang synopsized their interviews and findings in what became a draft report. Serebrov said they checked each other's interviews and made adjustments to which they both agreed.

Commissioner Hillman believed at the project's outset that the consultants' draft report would not be made public because it was intended to be used as background information for a future study. She believed that Wang and Serebrov probably thought all along that their work would be published.

Commissioner Davidson said she was unsure of specific publication plans for the consultants' report, although she was under the impression that the EAC had always intended to publish a draft of the consultants' findings in some format. She stated that the EAC "always [has] to do something."

Commissioner Rosemary Rodriguez said she did not know if the contract contained a publication clause. She offered that reports are typically made public, and she was certain the EAC's Board of Advisors expected a public report. She did not know, however, if the EAC intended to publicly release the consultants' report or only the final report.

Former Commissioner DeGregorio said that the consultants were hired to perform research after which the EAC would ultimately issue an EAC report. He added that the law stipulates EAC, not the consultants, issues reports. Although he did not know what the consultants' expectations were, and to his knowledge the consultants never discussed publication with the EAC, he opined Wang and Serebrov would have been "irrational" to believe their work would remain intact and unedited by the EAC.

The voting fraud project contract called for the creation of a working group to assist the consultants with the project. As with the selection of the consultants, and to reflect the organization of the EAC itself, the working group was designed to be bipartisan. According to the COTR, the selection of the working group members was a collaborative effort primarily between Wang, Serebrov, and the COTR.

The working group consisted of nine members with various election backgrounds and political affiliations:

- Todd Rokita, Indiana Secretary of State, Member of the EAC's Standards Board and Executive Board of the Standards Board
- Kathy Rogers, Georgia Director of Elections; Member of the EAC's Standards Board
- J.R. Perez, Guadalupe County Elections Administrator, Texas
- Barbara Arnwine, Executive Director, Lawyers' Committee for Civil Rights Under Law, Leader of Election Protection Coalition (*Agent's Note: Arnwine was replaced by Jon Greenbaum, Attorney and Director of the Voting Rights Project, Lawyers' Committee for Civil Rights Under Law, when she could not attend the meeting.*)
- Benjamin Ginsberg, Partner – Patton Boggs, LLP; Counsel to National Republican Campaign Committees and Republican Candidates
- Robert Bauer, Chair of Political Law Practice – Perkins Coie; National Counsel for Voter Protection, Democratic National Committee
- Mark (Thor) Hearne II, Partner – Lathrop & Gage, St. Louis, MO; National Counsel to the American Center for Voting Rights
- Barry Weinberg, Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice
- Technical Advisor: Craig Donsanto, Director, Election Crimes Branch, U.S. Department of Justice

The working group met once, during a day-long collaboration in Washington, D.C., on May 18, 2006. Present at the meeting were the nine working group members, the project COTR, Wang and Serebrov. In addition, EAC officials, including Hodgkins, DeGregorio and Wilkey attended the meeting at various times throughout the day.

The Consultants' Draft Report

According to the COTR, who had coordinated most of the EAC's interaction with Wang and Serebrov, the consultants' version of the report was submitted in several pieces on or about July 15, 2006. She said another piece of the report was submitted on August 5, 2006.

Once submitted, the consultants' report went untouched by the COTR or other EAC officials for approximately two months. The COTR was responsible for taking appropriate actions after receiving the report; [Exemptions 6 & 7C.]

Hodgkins reported that sometime in September or October 2006, Commissioner DeGregorio suggested that Hodgkins take over the project from the COTR, including responsibility for the editing process.

Wilkey recalled that he was the one who transferred the responsibility from COTR. He acknowledged that he should have reassigned the project [Exemptions 6 & 7C.] Wilkey said Hodgkins had excellent writing skills and the ability to get things done and was the obvious choice to complete the editing.

(Agent's Note: Although Hodgkins was specifically given responsibility for the editing process, she did not conduct the process alone. All of the commissioners, along with Wilkey, provided editorial input before the report was made final. In addition, the COTR, Communications Director Jeannie

Layson, and Deputy General Counsel Gavin Gilmour, along with several law clerks, reviewed the consultants' report and provided their own input.)

According to Commissioner Hillman, it was inexcusable that the project went untouched by the EAC for two months after being submitted. Although she understood [Exemptions 6 & 7C] Hillman believed the COTR still had a duty to inform somebody at the EAC that the draft had been submitted and was awaiting action.

Former Commissioner Martinez acknowledged that the EAC should have done a better job ensuring the timeliness of the report's release. He offered that he and the other commissioners deserved blame over this issue. DeGregorio repeated this sentiment, acknowledging that the EAC should have reassigned the report from the COTR earlier than they had.

Because of the delay in publication, various individuals, media sources, and advocacy groups such as the Brennan Center for Justice, alleged that the EAC suppressed the release of the consultants' report due to outside influence. The April 12, 2007 letters from Senators Feinstein and Durbin and Congresswoman Lofgren also questioned the delay in publicly releasing the report.

Our investigation revealed that after Hodgkins collected and reviewed the consultants' report; she found the draft report to be poorly written and disorganized. After making her edits, she sent the report to the COTR, Gilmour, and Layson for their review and input. All three concurred with Hodgkin's assessment of the consultants' report, as did the other EAC officials discussed in the paragraphs below.

As EAC's liaison with the consultant, the COTR was exposed to the consultants' writing at various times throughout the project. The COTR agreed with Hodgkins, believing the report was not well-written and included tense shifts and typographical errors.

Gilmour agreed with Hodgkins' edits, adding that the consultants' "work product was so bad" that the EAC could not publish their report as submitted. The draft was stylistically not well-written and lacked readability, according to Gilmour.

Wilkey affirmed that he had personally read the draft and agreed with his colleagues that it needed to be edited. He recalled that the draft report had to be edited for various reasons, mostly stylistic, with one issue being a lack of cohesiveness. He said it did not seem to "flow," a criticism also leveled by Hodgkins, the COTR, and Layson. Being familiar with Wang's work, Wilkey said the report "wasn't her best work."

In addition to stylistic, grammatical, and typographic problems, several interviewees discussed what they believed to be a more important issue with the consultants' information; they believed the consultants' research and analysis was flawed.

According to Commissioner Hillman, the consultants' conclusions could not be easily corroborated by supporting data. For example, Hillman said that, in reviewing the draft report, she wanted to further examine the issue of harassment of minorities and challenger laws; however, when she looked for details in the interview summaries to support the conclusions the consultants reached, she said she discovered that only four of the interviewees had even mentioned the issue. She said only one interviewee specifically discussed the issue, referring to a case in North Dakota. In her opinion, data was limited in some areas and did not necessarily support the conclusions well.

Hillman believed that if somebody challenged the study, she and the other commissioners could not rely on research that was not arduous and complete enough to adopt as “gospel.” Even though she thought the contract’s scope was clearly understandable, she thought the COTR was too inexperienced in the matter to clearly define for the consultants what the EAC was looking for in the project. Furthermore, in practical terms, Hillman believed the study was too broad and too “massive” for analysis.

Commissioners Davidson and Caroline Hunter agreed that the consultants reached conclusions that were not supported by the documentation and the interviews. Hunter added that the research was flawed enough that she “wouldn’t even call it research.”

Hodgkins opined that the consultants exceeded the scope of their contract by attempting to make global conclusions about the voting fraud issue—something she said they were never contracted to do. She said that the manner in which the consultants worded their generalizations makes the reader believe they are making conclusive statements about voting fraud, and she emphasized that the project was never intended to determine the extent of voting fraud in U.S. elections.

Both Layson and Gilmour agreed with Hodgkins that the consultants reached conclusions they should not have made, exceeding the scope of their contracts. Layson said the conclusions based on a limited amount of interviews caused readers to interpret those conclusions as real or authoritative when they should not be considered so. She affirmed that the EAC never expected the consultants to reach conclusive findings, especially not based on such a limited study.

Gilmour believed the consultants’ report reached partisan conclusions that should not have been made. He believed the consultants wrote “unwise sentences,” not carefully considering how they would be read. Gilmour opined that one has to be cognizant of the press and how one’s words might be interpreted. He believed the final report essentially retained the consultants’ information while wording it more carefully.

Commissioners DeGregorio, Davidson, and Hillman each believed the contract was intended as a preliminary study to define voting fraud for use in a future EAC study, and each believed the consultants exceeded the scope of the project by drawing conclusions. DeGregorio believed there was “no question” the consultants exceeded the scope of their contracted objective by reaching conclusions, particularly those not supported by vigorous research of the facts and based on a limited number of interviews. He further remarked that Hodgkins’ edits did not reflect a partisan bias but, instead, tried to “bring [the report] back” to the intended scope.

Commissioner Martinez did not necessarily believe the consultants exceeded the scope of the project by reaching conclusions. His understanding was that the consultants were hired to essentially perform a literature search and a comprehensive review on how the EAC could strategically approach this issue in the future. He said the consultants’ work was intended to “bring [the EAC] up to the doorstep” but not “settle the issue.” He offered that the contract’s statement of work was the best authority on the scope of work, adding that the EAC staff members should have been monitoring the consultants’ work to make sure their work was within scope.

Several EAC employees noted that the report also contained inaccuracies. As an example of those inaccuracies, they pointed to the consultants’ interview summary of Craig Donsanto, Chief of DOJ’s Election Crimes Section in the Public Integrity Section, the technical advisor of the project’s working

group and a member of the EAC's BOA. Others pointed to the handling of Donsanto's interview summary as improper influence on the EAC by DOJ.

In their summary of Donsanto's interview, the consultants wrote that Donsanto said DOJ was shifting its prosecution strategy from the prosecution of voting fraud conspiracies to the prosecution of individuals who commit voting fraud.

According to Donsanto, as a member of the working group, he had access to the summary of his interview. He said that, after reading the summary of his interview and seeing that his words were wrongly interpreted, he called the COTR and possibly Wilkey to complain about the inaccuracies. He said the COTR, who had been present during the interview, reviewed the summary and agreed with Donsanto that the summary did not accurately reflect what the COTR had heard Donsanto say in the interview. The COTR told him the interview would not be included in the final report as written and, at a later date, told him the interview would be rewritten accurately.

When investigators questioned Donsanto about the inaccuracy, he recalled that Wang had asked him if the amount of voting fraud had increased or had stayed the same over the years. When he responded that it had stayed the same, Wang interpreted that to mean the issue was of minimal concern to Donsanto and DOJ, which he assured was neither his nor DOJ's stance. He believed Wang thought "stayed the same" was equivalent to a minimal amount; Donsanto said he simply meant that the amount had not increased or decreased from the amount that already existed. He said DOJ, at the direction of the U.S. Attorney General, *added* the prosecution of individual voter fraud to their continuing prosecution of conspiracies; they did not *replace* the latter with the former.

Donsanto believed the consultants—mostly Wang—wrote what they wanted to hear regardless of what he had told them. He said it was clear to him that Wang's politically-biased line of questioning indicated she was following her own agenda.

Donsanto told investigators that the COTR's [Exemption 6 & 7C] presence as a "witness." He said he personally makes it a point to have a witness present when providing statements on the record, adding that it is common practice at DOJ for a witness to be present during interviews such as the one he gave the consultants to ensure the accuracy of comments and to maintain the integrity of the process.

Wang said she was certain that what the consultants had written was what Donsanto had told them in his interview, adding that Serebrov heard the same thing and agreed with what was written. Wang said the COTR sided with Donsanto for various reasons. Wang opined the COTR's longstanding professional relationship with Donsanto affected the COTR's version of events. Additionally, Wang said the COTR spoke with her about the sensitivity of the prosecution issue and how DOJ might react to the consultants' version of Donsanto's interview. She believed the EAC's change to Donsanto's interview summary was evidence of DOJ's special interest in the project. Wang opined it was unethical to allow only one interviewee to see the summary of his interview while excluding the others from seeing theirs.

Serebrov stated that he could not recall the specific details of the disagreement regarding Donsanto's interview summary. He recalled only that he and Wang had heard the same thing that Donsanto said about DOJ investigations.

Serebrov had no issues with the other edits made to the draft report. He said he believed his work was fine because the EAC never provided feedback to his monthly progress reports; however, his work was for the EAC which had the right to do with it as they pleased.

In contrast to Serebrov's attitude about changes to his work, Wang was upset at the various changes and believed the report was inappropriately edited. She told investigators that, although she did not initially believe the changes made to her and Serebrov's report was "extreme," she changed her opinion after considering all the information that had been made public. She also pointed out that she was not allowed to view the EAC's final report before it was published. She said that the EAC "threw our work in the garbage" without justification.

During the interview, the COTR said the consultants insisted on no changes to Donsanto's summary even after the COTR had forwarded to them Donsanto's comments about the inaccuracy of the interview summary.

The COTR had the perception that the consultants believed they were experts and thought their work should remain unchanged, and they did not want a single word changed in the report they submitted.

Substantive Changes Made to the Consultants' Draft Report

The EAC publicly released the voting fraud final report on December 7, 2006. On April 11, 2007, the *New York Times* (NYT) article reported that the EAC had altered the conclusions reached by the consultants. According to the article, the conclusion was changed due to political motives in order to reflect that the pervasiveness of voter fraud was debatable. The articles led to speculation and allegations from other media, public sources, and congressional members concerning the reason for the change. The article captured some of the comments, which ultimately led to this investigation:

"This was the commission's own study and it agreed in advance to how it would be done, but the most important part of it got dropped from the final version," said Representative Jose E. Serrano, Democrat of New York and chairman of the House appropriations subcommittee that oversees the commission. "I don't see how you can conclude that politics were not involved." Representative Maurice D. Hinchey, another New York Democrat, who requested the draft report from Ms. Davidson during a subcommittee hearing last month, agreed. "By attempting to sweep this draft report under the rug, the E.A.C. is throwing out important work, wasting taxpayer dollars and creating a cloud of suspicion as to why it is acting this way," he said.

Investigators compared the differences between the consultants draft report and the final EAC released report and questioned key personnel regarding their interpretation of the changes. Our comparison found the most significant change to the consultants' report appeared to be in the conclusion. The consultants' report read, "there is widespread but not unanimous agreement that there is little polling place fraud." The final version of the report after editing by EAC officials concluded in its executive summary that "there is a great deal of debate on the pervasiveness of fraud."

On August 30, 2007, an article written by Tova Wang, titled "A Rigged Report on U.S. Voting?" was published in the *Washington Post* newspaper. In the article, Wang wrote: "...our preliminary research found widespread agreement among administrators, academics and election experts from all points on the political spectrum that allegations of fraud through voter impersonation at polling places were greatly exaggerated. We noted that this position was supported by existing research and an analysis of

several years of news articles. The commission chose instead to state that the issue was a matter of considerable debate. And while we found that problems of voter intimidation were still prevalent in a variety of forms, the commission excluded much of the discussion of voter intimidation.”

The phrasing of the final report’s conclusion regarding vote fraud was also examined by Ian Urbina in his April 11, 2007 *NYT* article. Urbina wrote in his article: “Though the original report said that among experts ‘there is widespread but not unanimous agreement that there is little polling place fraud,’ the final version of the report released to the public concluded in its executive summary that ‘there is a great deal of debate on the pervasiveness of fraud’” .

Urbina drew a comparison between the EAC’s revisions and Republican justifications for voter identification laws. His charge was then picked up by various sources, including election law professionals, academics, mainstream media, alternative media, and congressional members.

A majority of those who were interviewed during this investigation could not specifically articulate differences between the reports, or they said the reports were not substantially different. Those who noted differences in the reports primarily pointed to: the change in the conclusion about the “pervasiveness” of vote fraud; the title change; and the inclusion of an executive summary.

Investigators questioned both current and former EAC officials about their changes to the consultants’ conclusion. Specifically, they were asked to provide information about why the EAC changed the conclusion and what it meant for the EAC to say “there is a great deal of debate on the pervasiveness of fraud.”

Generally, EAC officials’ opinions of the changes did not differ significantly. Most officials said the two reports were not substantially different.

Commissioner Hillman said she did not believe the two reports were substantially different. She said the final report did not favor a political party or stance—it simply said a lot of work needs to be done before a conclusion can be reached about the amount of voting fraud in U.S. elections.

Hillman added that, at some point, Urbina told her that the word “pervasive” in the context of voting fraud is a “Republican word.” Hillman said she had never before heard of such a connotation and recalled no such personal view when she read the word “pervasiveness” in the final report. She offered that if the word was chosen for political reasons and added to the report tactfully to elude her notice, it had worked; however, she did not believe anybody at the EAC edited the report with political bias. She said Hodgkins was a better source regarding the reasons for the edits because Hodgkins was the primary editor.

Commissioner Davidson said readers’ impressions of both reports should be the same. She added that “there are conclusions” in the final report; however, the EAC’s final version did not make conclusions that could not be supported by the researchers’ findings.

Commissioner Hunter initially told investigators that the consultants’ report had a strong “Democratic” bent to it; however, in reconsideration, she said she did not think the report favored a particular party. She believed the report did, however, reach conclusions that were improperly drawn.

Commissioner Rodriguez opined that the consultants’ report is more aligned with the Democratic view about the lack of voting fraud in U.S. elections, although she believed its conclusions could also be

considered “reasonable.” She believed the final report simply states there is insufficient information to make a conclusive judgment—a “reasonable conclusion.” She called the final report “benign,” saying both reports’ conclusions are reasonable—the consultants’ is simply more partisan in its approach.

Commissioner DeGregorio said the consultants simply should not have reached conclusions in their report. He believed the conclusions were based on a limited number of interviews and limited research, and Hodgkins’ edits, rather than reflecting a partisan bias, tried to “bring [the report] back” to fit the intended scope. DeGregorio noted that Hodgkins’ editing process for the voting fraud project followed the EAC’s standard operating procedures, involving multiple EAC employees whose suggestions were considered for the final edit.

Layson said the consultants’ report arrived at conclusions, exceeding the scope of the contract, based on the small sample of interviews. She said the final report explains the process of the study and puts the consultants’ work in context, although it also should have made clear that the consultants’ work was not a definitive study. She believed the consultants’ conclusions should not be taken as definitive statements about voting fraud.

Hodgkins said she did not edit the report with political bias, adding that the consultants’ report does not say conclusively that voting fraud is or is not pervasive in U.S. elections—it merely recapitulates what the consultants’ interviewees told them about voting fraud. According to Hodgkins, the final report concludes there is a lot of debate about voting fraud/election crimes, although the issue requires more research—the very thing, she pointed out, that the EAC intended to do following the consultants’ preliminary study Hodgkins explained further, that neither the working group nor the board of advisors was given a copy of the final report prior to its release. The consultants also were not given the opportunity to view the edited final report. Hodgkins said the consultants were not given the opportunity to review the final report because they were hired essentially to provide the initial draft. After they had completed their work, there was no longer a relationship. Hodgkins opined that releasing the report to either of the consultants would have been equivalent to releasing the report to the public.

The COTR said the EAC’s final report indicates that, although voting fraud exists, there is insufficient evidence to make a clear conclusion about its pervasiveness. Due to the COTR’s elections experience, it is difficult to determine the extent to which voting fraud occurs because data is essentially anecdotal, with fraud seeming more prevalent in politically-charged regions of the country. The COTR emphasized that the main problem with the reports was that the consultants thought they were experts and did not want even a single word of their report changed.

One working group member said the EAC had the right to question the consultants’ report; however, the EAC should not have changed their work product. He believed EAC’s changes should have been agreed to by everybody, including the consultants. Because the final report was the product of an “absolutely ludicrous,” “sham” process, he opined it “has no credibility.”

(Agent’s Note: The final report changed the consultants’ title of “Voting Fraud and Voter Intimidation” to “Election Crimes.” Along with the change to the consultants’ original working definition, the EAC changed the title ostensibly to reflect what they believed was a more accurate reflection of the issue.)

Hodgkins said the definition of voting fraud the consultants were tasked with formulating ended up as more of a compilation of information rather than an actual definition. Their draft definition was

unworkable for the EAC and, to help limit the scope of any future EAC study of the voting fraud issue, the scope was changed to “election crimes.”

Donsanto said the change in the final report to “Election Crimes” more accurately described the issue than did the previous title. As a leading expert in the field of election crimes, Donsanto said the consultants did not understand what DOJ considered to be “criminal.”

Wang opined in her *Washington Post* article that one should consider the revised title. “Whereas the commission is mandated by law to study voter fraud *and intimidation*, this new report was titled simply “Election Crimes” and excluded a wide range of serious offenses that harm the system and suppress voting but are not currently crimes under the U.S. criminal code.”

The final report contains an executive summary that did not exist in the consultants’ draft. Hodgkins said she added the summary at the commissioners’ direction for organizational reasons. She added that, although the nature of an executive summary allows for different interpretations, there is no difference in content between the consultants’ report and the final report. She opined the final report improved the consultants’ poorly-written report and provided a more balanced view.

Potential Improper External Influence over the EAC

As previously noted, allegations were made by several sources suggesting there were political or other external pressures that influenced actions by the EAC regarding the voting fraud report.

During our investigation, information was received that suggested that Commissioner Davidson had received “outside” pressure to not release the consultants’ report. Specifically, the allegation was that an EAC attorney was aware that Commissioner Davidson had received pressure from the White House to not release the consultants’ report. Allegedly, Davidson was upset by the phone call and told Martinez about the incident, who in turn told the attorney during a private conversation.

When interviewed about this allegation, the EAC attorney said he did not personally witness the incident and knew only what Martinez had told him. According to the attorney, sometime just prior to the consultants’ submission of their report—probably around June 2006—Davidson had entered Martinez’ office and tearfully told Martinez that she was receiving political pressure to not release the consultants’ report. The attorney said he did not know either the source of the pressure or what form it took. He said the pressure could have come from somewhere other than the White House, and it could have occurred in an e-mail or even some other form.

The EAC attorney said he told another EAC employee and possibly another EAC attorney and an EAC Research Specialist, about the incident. He said he had told others not in the spirit of gossip but because he was concerned that projects such as the voting fraud project might be “hamstrung” by external pressure.

When Martinez was asked about the alleged incident, he confirmed that he was told by Davidson of being pressured to not release the report; however, he explained that the actual circumstances were different from the rumors that were circulating.

Martinez recalled that, at an April or May 2006 meeting, members of the EAC’s Standards Board and Board of Advisors were briefed about the Eagleton study (a completely different project) on provisional voting that was being finalized for publication. Martinez said the board members found

the controversial report to be poorly-written and poorly-executed, and the election officials among the members “crucified” the study. In particular, Martinez said, one of the board members “was up in arms,” saying the report was inaccurate, wrong, and should “never see the light of day.”

According to Martinez, during a staff update or briefing in June 2006 attended by him, Hillman, DeGregorio, Lynn-Dyson, and either Hodgkins or Gilmour, the Eagleton study was again discussed. Martinez said that, when Lynn-Dyson told the commissioners that the study was in the process of being edited and prepared for finalization, he “took the opportunity to lay down a marker” for his EAC colleagues regarding the upcoming voting fraud and voter intimidation report. Because he was a proponent of greater transparency at the EAC, he forcefully argued his belief that when the consultants completed their voting fraud report, the EAC should release it in its original form no matter what the EAC ultimately decided to do with it. He said he was “getting signals” of support from Hillman and DeGregorio; however, Davidson “was pushing back.”

Fewer than five minutes after the meeting adjourned, Martinez recalled, Davidson stopped by his office to talk. Martinez said Davidson came to his office “clearly distressed” and, although she was not crying, as an EAC attorney had reported, her “eyes welled up” with emotion. Martinez said Davidson told him she was receiving a lot of pressure to not release the consultants’ voting fraud report.

Martinez said he felt compassion for Davidson. In November 2005, [Exemptions 6 & 7C,] Davidson was very supportive, comforting, and compassionate—something for which Martinez said he will always be appreciative. Because Martinez felt as if he owed Davidson the same emotional support she gave to him in November 2005, he “backed off” of his push to release the consultants’ report. Martinez said, although he still personally believed the EAC should publicly release the consultants’ report upon receipt, he felt enough compassion for Davidson that he stood by his decision to support her.

Martinez said he did not know the source of the pressure on Davidson, nor did he even care to know. He was more concerned with supporting Davidson than discovering who was pressuring her. He believed the pressure came from the same constituency of election officials that Davidson, an election official, brought to the position and that criticized the Eagleton report. Martinez said that, because he understood the nature of Davidson’s constituencies, he “backed off.”

Martinez denied having direct knowledge that the impromptu conversation with Davidson took place because of a phone call from the White House to Davidson, emphasizing that he believed the incident occurred because of the conversation that occurred in the staff meeting that day. He reiterated that he had witnessed no evidence of undue influence over the voting fraud project. Martinez confirmed he told an EAC attorney and a family member wife about the incident; however, he said the motivation was not to gossip and was not “sinister.”

When asked if he told anybody else, Martinez said, regretfully, that he told the Brennan Center’s Wendy Weiser because she was part of his “kitchen cabinet” of advocates which included someone from the League of Women Voters and a person formerly with the DOJ Civil Rights division, and now with People for the American Way. Martinez said, in retrospect, that he “shouldn’t have” told either the EAC attorney or Weiser about the incident because they simply did not need to know. Further, he believed that Weiser, without understanding the context of his relationship with Davidson and without knowing that the pressure was more perceived than real, might see the incident as part of “her conspiracy theory” over the voting fraud project rather than as the innocuous event it really was.

When contacted, Weiser corroborated that she had a telephone conversation with Martinez, probably in June 2006, and was told of Davidson feeling pressured to release a report. She said she could not be certain that Martinez was referring to the voting fraud report in their conversation, although she believed he was.

Davidson's recollection of these events was different from Martinez's; in fact she did not recall ever speaking with Martinez about pressure related to the voting fraud project. She said she had no contact with anyone outside the EAC concerning the report during the voting fraud project. Rather, she said, a similar incident took place over the *voter identification* project. According to Davidson, the only report that bothered her was the voter identification report, which she opposed because it was substantively deficient and inaccurate. She said the only pressure she felt was self-imposed—a pressure to not support a report with which she did not agree.

Davidson said Martinez is a trustworthy person, and she agreed with him that she was “emotional” in their conversation and that it took place following a staff meeting; however, she reiterated that she and Martinez discussed *the voter identification report*, not the voting fraud and voter intimidation report. She added that she did not feel pressure or intimidation over the voting fraud report and, therefore, refuted the allegation that she told Martinez she felt pressure not to release the report.

Additional allegations received during the investigation suggested that the DOJ had an improper influence over the EAC. The basis for these allegations was the previous discussed changes to Donsanto's interview and certain e-mail messages of Hans von Spakovsky, EAC board member and former counsel to the Assistant Attorney General for DOJ's Civil Rights Division.

Consultant Wang told investigators that on January 13, 2006, von Spakovsky, sent an e-mail to the EAC commissioners and to The Congress expressing his desire to “kill the [voting fraud] project.” Wang said she assumed he objected to her selection as one of the consultants because he did not like her views about voter identification.

In her article, Wang repeated her allegation that von Spakovsky complained about her being hired as one of the consultants for the report. In addition, she stated: “Officials at Justice were actively involved in the report throughout the process and even exerted some degree of editorial control over the new report. And it is evident from the commission's ‘document dump’ that its Republican general counsel assumed primary control over the rewriting of the report.”

Von Spakovsky denied Wang's assertion that he wanted to halt the project, believing there was a need for a comprehensive study of voting fraud. He did believe, however, that Wang was a poor choice to conduct that study because of her inexperience as either a prosecutor of election crimes or as an election official, and because of her outspokenly-biased belief that voting fraud was a myth.

Von Spakovsky explained further that he did not attempt to influence anything about the voting fraud project other than the selection of Wang as a researcher which, he said, other EAC board members also opposed. He said he had no communication with Wang or Serebrov, and he did not discuss the consultants' work with anybody at the EAC prior to the issuance of the final report. He added that he had no idea what the EAC was planning to write in their final report, and he had no influence over the project.

According to DeGregorio, von Spakovsky was specifically concerned that Serebrov might not be an adequate Republican foil to Wang's liberalism and aggressive personality. DeGregorio and Martinez assured von Spakovsky that Wang was a proper selection.

There was also speculation and the allegation that von Spakovsky attempted to influence the EAC before the voting fraud project. A series of e-mail messages between a former congressional aide, DeGregorio, and von Spakovsky in August 2005 led to allegations that DeGregorio had been unduly influenced in his position at the EAC. The e-mails pertained to two separate voting issues over which the EAC and DOJ disagreed: a voter identification requirement in the state of Arizona, and a citizenship checkbox requirement interpreted in an EAC best practices document. (*Agent's Note: While these e-mails were not related to the voting fraud project addressed in this report, they are mentioned to explain the basis for some of the allegations.*)

In the August 29, 2005 e-mail chain between the former congressional aide, DeGregorio, and von Spakovsky, the aide indicated his belief that the EAC and DOJ had reached "a political compromise agreement" regarding the conflicting opinions regarding Arizona voter identification. He believed DOJ was correct in its interpretation of the Arizona voter identification issue.

According to von Spakovsky, DOJ and the EAC had made a deal at a meeting between the two agencies. Von Spakovsky believed that the meeting adjourned with the understanding that DOJ would modify its stance on the Arizona issue to align with the EAC's interpretation; in turn, the EAC would fix its best practices manual to reflect DOJ's interpretation about citizenship checkboxes on ballots.

On August 29, DeGregorio sent an e-mail to von Spakovsky asking if the congressional aide's e-mail was the result of von Spakovsky's actions. DeGregorio wrote, "If so, I do not appreciate it." DeGregorio noted that von Spakovsky had "indicated that the previous DOJ position on this issue was to be withdrawn," and further noted that the EAC had "given Arizona and DOJ all summer to act on this issue to correct the previous position they have taken so that there would not be conflicting interpretations of HAVA by two federal agencies."

In an August 30, 2005 e-mail, von Spakovsky refuted DeGregorio, reminding him that "...[w]e had a deal where I told you we would consider taking the position you were pushing even though we think it is too strict if you would correct the obviously wrong position on the citizenship checkbox." Von Spakovsky opined, "The fact that [Gracia Hillman] does not want to do this because she does not want to anger her friends at the league of women voters is no reason for you to be railroaded into this."

DeGregorio then responded to von Spakovsky via e-mail, "First of all, I do not agree to 'deals,' especially when it comes to an interpretation of the law." He clarified that he told von Spakovsky the EAC was already in the process of correcting its best practices position on the checkbox issue, adding that the delay did not have anything to do with Hillman. DeGregorio added that the EAC was devoted to "getting proper balance" in their contracted work, and he assured von Spakovsky that he was "not being 'railroaded' by anyone on [the] Commission...".

Von Spakovsky explained that "the law was not crystal clear" on the two issues. He said the EAC and DOJ's cooperation was a common practice amongst federal agencies and a positive attempt to resolve disparate information provided to states; therefore, characterizing the interaction as inappropriate was wrong.

Martinez did not see a problem with von Spakovsky lobbying for political purposes, asserting that political appointees are expected to lobby on behalf of their respective parties. He added that HAVA requires DOJ representation on the EAC's boards, and because von Spakovsky sat on the EAC's board of advisors, he rightfully lobbied on DOJ's behalf. Still, Martinez believed DeGregorio made decisions in the public's best interest, and he asserted that von Spakovsky and DOJ had no undue or improper influence over the EAC in the voting fraud project.

DeGregorio said the communication between he and von Spakovsky was not unusual; however, he believed that "too many of [von Spakovsky's] decisions are clouded by his partisan thinking." According to DeGregorio, von Spakovsky thought DeGregorio should use his position (on the EAC commission) to advance the Republican Party's agenda.

DeGregorio said von Spakovsky certainly "tried to influence [him]. There's no question about that." DeGregorio acknowledged that, although some individuals external to the EAC tried to influence his actions, he neither catered to those attempts nor showed favoritism in his position, ensuring that partisan politics did not impede the right of every individual to vote in a fair election.

DISPOSITION

This Report of Investigation will be forwarded to the EAC's Inspector General.

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