

1 ROUGH ASCII 8/1/2012.  
2 COMMONWEALTH COURT OF PENNSYLVANIA  
3 IN RE: VIVIETTE APPLEWHITE  
4 Case No. 330-MD-2012

5

6 P R O C E E D I N G S

7 -----

8 MR. TURNER:

9 All rise. Commonwealth Court is now in  
10 session. Honorable Robert E. Simpson presiding. You  
11 may be seated.

12 JUDGE SIMPSON:

13 Good morning. It's Wednesday, August  
14 1st. We went over the exhibits that have been  
15 received into evidence. We are lacking a copy of one  
16 of the Respondent's exhibits, Exhibit Number Two  
17 identified during Shannon Royer's testimony as a list  
18 of agencies, an organization that has been contacted  
19 approximately three weeks within the three weeks of  
20 his testimony. So we're going to need a marked copy  
21 of that somewhere. I don't need it this minute but  
22 I'm going to need it today.

23 ATTORNEY CAWLEY:

24 Yes, Your Honor.

25 JUDGE SIMPSON:

1 Anything before we get started?

2 ATTORNEY GERSCH:

3 No, Your Honor.

4 ATTORNEY SCHNEIDER:

5 No, Your Honor.

6 JUDGE SIMPSON:

7 You may call your next witness.

8 ATTORNEY SCHNEIDER:

9 Petitioner's call Olivia Thorne of the  
10 League of Women Voters.

11 MR. TURNER:

12 Would you raise your right hand.

13 -----

14 OLIVIA THORNE, HAVING BEEN FIRST DULY SWORN,  
15 TESTIFIED AS FOLLOWS:

16 -----

17 DIRECT EXAMINATION

18 BY ATTORNEY SCHNEIDER:

19 Q. Good morning, Ms. Thorne. My name is Marian  
20 Schneider, and I'm here on behalf of the Petitioner's  
21 and what would you please state your full name for  
22 the record?

23 A. Olivia Thorne.

24 Q. Where do you live?

25 A. Wallingford, which is also Nether Providence,

1 Pennsylvania.

2 Q. Are you employed?

3 A. Part time.

4 Q. And what do you do?

5 A. I'm a computer consultant.

6 Q. Are you a member of the League of Women Voters?

7 A. Yes, I am.

8 Q. How long had you been a member of the league?

9 A. Thirty-five (35), 36 years.

10 Q. What is your position with the league?

11 A. Currently I'm president of the League of Women  
12 Voters of Pennsylvania.

13 Q. How long had you been president?

14 A. I'm in my second term, so three years and a  
15 month.

16 Q. And before you were president of the League of  
17 Women Voters of Pennsylvania, did you hold any  
18 other leadership positions?

19 A. Yes, from 2000 to 2006 I was on the National  
20 Board of the League of Women Voters and I was also  
21 local president twice over once in the mid '80s and  
22 once in the late '90s. And I also was on the state  
23 board in the --- from '87 to '93.

24 Q. And did you have any other role with the state  
25 league? Were you the computer ---?

1 A. I think probably my larger claim to fame is I'm  
2 known in the national circles as the lead geek, which  
3 means I work discussion lists and I help institutes  
4 discussion lists for the National League back in the  
5 mid late '90s and help people set up websites so that  
6 they can get information out.

7 Q. Now, how is the Pennsylvania League of Women  
8 Voters organized?

9 A. The league is a grass roots organization, so the  
10 State League is --- they are to do and coordinate the  
11 bidding of the local league, so our job is to work on  
12 state issues and do things that would involve  
13 everyone in the state or state legislature.

14 Q. So are you saying that there's a state board and  
15 are there other organizations within Pennsylvania,  
16 league organizations?

17 A. Yes, there are 33 local leagues and three  
18 interleague organizations which help again with the  
19 coordinating and that the local leagues are where the  
20 work starts.

21 Q. And how many members do you have in  
22 Pennsylvania?

23 A. Approximately 1,800 right now.

24 Q. What is the mission of the League of Women  
25 Voters of Pennsylvania?

1 A. Well, the first part is the informed inactive  
2 participation of citizens and government. We want  
3 everybody to be involved in the government process  
4 and the voting process, but we also believe in  
5 educating the public and our members and then  
6 lobbying on the brief consensus on an issue then we  
7 lobby and try to get good loss of the books.

8 Q. Now, in general, what kinds of activities does  
9 the league engage?

10 A. We have two different arms in that respect. We  
11 have our road to vote or education arm, which deals  
12 with everything from voter registration to voters  
13 guide and electronic no smart voter and also a  
14 debates, but we also right now have taken a ---  
15 focusing a huge amount of time on voter ID and making  
16 sure that every one gets a voter ID that needs one.

17 Q. Do you have an education advocacy or part of  
18 your activities?

19 A. Yes, the advocacy, that's the education side of  
20 things. It's the voter service side of things and  
21 voter education, and that would include our rural  
22 education project and also the shared education  
23 project. But we also have an advocacy side, and we  
24 have probably 75 positions on different issues and  
25 his bills are introduced into the legislature at

1 state level. We review them, do we have a position  
2 on them, learn more about the bill and then advocate  
3 and educate our members of the public about what's in  
4 the bill.

5 Q. So can you explain a little bit more about the  
6 relationship between what the State Board does and  
7 the local chapters? First, what is your state board  
8 comprise of?

9 A. The State Board has nine members, a president,  
10 on issues and actions for vice-president and an  
11 administrative vice-president and a secretary,  
12 treasurer. That's four people. And then five other  
13 board members who have different specialties or  
14 interest in help us to work efficiently and  
15 effectively.

16 Q. And what role do they play in relation to this  
17 local chapters?

18 A. We're all in contact with the local chapters a  
19 fair amount of the time. We sometimes do workshops,  
20 go out and do speeches and help teach people more  
21 about an issue, but more of that's done by mailings.  
22 And what we're really doing more than anything else  
23 is watching legislation and lobbying on legislation.  
24 We have 15 office board specialists who do nothing  
25 but watch particular issues like healthcare and that

1 sort of thing.

2 Q. So then the local chapters what is their role?

3 A. There's on the ground, feet on the ground ready  
4 to do the work, and though the state league obviously  
5 does some work none of us can't do as much as 1,800  
6 of us can do. So we really count on them doing a lot  
7 of the things, especially the voters of this area,  
8 the voter registration, voter ID and all that  
9 information and all of that sort of thing.

10 Q. Well, let's a talk about Pennsylvania's voter ID  
11 law. When did you first became involved with  
12 Pennsylvania, with what was enacted as Act 18?

13 A. When it was first introduced we have an  
14 elections law specialist who immediately called and  
15 e-mailed us and said hey, this is --- this bill's  
16 just been introduced, we probably will not go on to  
17 be in support of it, you need to go and read it. So  
18 we read the Bill and started learning about it and  
19 talked with other states.

20 Q. And after the Bill was introduced, what did you  
21 do? Did you meet with legislators?

22 A. Yes. We met with legislators, and we also tried  
23 to understand better why there was a need to have  
24 this bill, what was their fear, what were they trying  
25 to address, how was it going to impact the everyday

1 program.

2 Q. And what was the response you got?

3 A. The main reason was voter fraud.

4 Q. And what was the League's position --- and it  
5 was called House Bill 934; right?

6 A. Yes.

7 Q. What was the League's position on House Bill  
8 934?

9 A. We were opposed to it.

10 Q. Why were you opposed to it?

11 A. Because we believed it put up barriers to  
12 voting, and we didn't think that we had not been able  
13 to find any incidents of reported prosecuted fraud in  
14 Pennsylvania, and we thought that the barriers in  
15 addition franchise for the voters is just the  
16 emphasis of what we believed in as a separate  
17 organization.

18 Q. Now, does the League keep track of photo ID  
19 legislation across the country?

20 A. Yes, we do.

21 Q. Is that at the national level?

22 A. It's at the national level. They convene with  
23 these groups and so we are in phone calls and e-mail  
24 contact weekly on what is happening around the  
25 country as far as voter ID legislation and laws.

1 Q. So do you have any knowledge of the photo ID law  
2 that was enacted in Georgia?

3 A. A little.

4 Q. What do you know about it?

5 A. That it was kids come in in stages and they  
6 started in 2005, but it really was 2007, but going it  
7 all and there still enhancing it this year.

8 Q. Now, after the photo ID law was passed in  
9 Pennsylvania, can you describe what activities the  
10 League has been doing in connection with photo ID?

11 A. It started out as soon as we knew that the law  
12 was in effect, we started by meeting with Secretary  
13 Aichele and Shannon Royer and several of the staff  
14 and said, you know, all right, the law's in the  
15 books, what are we going to go do can you try to help  
16 us understand what can the League do to help. We are  
17 the guys that have been doing this for 90 years, what  
18 can we do?

19 Q. And when did you meet with Secretary Aichele?

20 A. It was the end of March, the last week of March.

21 Q. And who else was there?

22 A. Roberta Winters, my Issues in Actions  
23 vice-president; Bonita Hoke, my executive director  
24 and Lora Lavin, who was the election law specialist.

25 Q. Were there other members of the Department of

1 State staff there?

2 A. Yes, there were, but I don't remember their  
3 names.

4 Q. Okay. And again, what was the purpose of the  
5 meeting?

6 A. To understand fully the ramifications of the law  
7 and what was going to be expected and what exactly  
8 was going to be entailed by --- to get people  
9 registered who did not have a driver's license.

10 Q. Okay. And generally what is the League's  
11 relationship with the Department of State?

12 A. It's been good.

13 Q. And do you consider that you and the Department  
14 of State have a mutual goals?

15 A. Yes.

16 Q. Okay. So since the filing of this lawsuit, had  
17 you had any communications with the Department of  
18 State?

19 A. We have a sent e-mails but they've not been  
20 answered.

21 Q. Okay. Now, after you had this meeting, after  
22 you had the meeting to find out about Act 18 what  
23 happened, what did the league do?

24 A. We started writing it down and collecting  
25 information from the Votes PA, which is the

1 Department of State website on the different forms  
2 and things that you might need, and we found pretty  
3 quickly that there were some gaps and holes and  
4 things that we needed to do more research on to be  
5 able to understand. And at the beginning the  
6 Department of State was helpful and then we got into  
7 the lawsuit and it stopped. But what we then did was  
8 we started writing --- collecting this and sending it  
9 to local leagues in packets so they could deal, you  
10 know, first with this new registration and then later  
11 with the provisional ballot and absentee ballot. So  
12 different things at different points along the way,  
13 but we also developed an action plan. And our action  
14 plan was really designed so we could work smart and  
15 know if one person develops a brochure, it could be  
16 used all over the state. It didn't have to be a  
17 different one and we would save time and effort, and  
18 so we did develop a brochure, and it ---.

19 Q. I don't mean to interrupt. So you were  
20 collecting information to send to your local  
21 chapters; is that right?

22 A. Right.

23 Q. And they would use the information to  
24 disseminate some voters in their education role; is  
25 that right?

1 A. Right. And then they asked us for more  
2 brochures and stuff.

3 Q. And in addition, you mentioned that you were  
4 developing a written brochure to hand out as part of  
5 your education efforts?

6 A. Yes.

7 Q. Okay. Now, has the information relating to  
8 photo ID changed since the bill was enacted?

9 A. Yes.

10 Q. And so what had been --- how have the changes  
11 affected your activities?

12 A. The hardest part for us has been is that we tend  
13 to do something once we disseminated. We put it in  
14 review, we put it in libraries, we take it to town  
15 fares, we put it all over the place. And then  
16 suddenly we find our information is inaccurate, and  
17 that is --- it's hard for us as an organization. We  
18 feel our representation has been damaged somewhat by  
19 it. But it's also the amount of time --- every time  
20 we edit our brochure it's \$50 more to edit it to make  
21 the next change.

22 Q. So what is the practical impact on the voters of  
23 these changes?

24 A. I think there's a confusion. We are being told  
25 as we go out and do voter registration drives I heard

1 this, I heard this, and then we say, no, that's not  
2 quite true. Well, what about this? Well, that's not  
3 true either. And so we are finding that they don't  
4 really understand what the law meant to them.

5 Q. Okay.

6 ATTORNEY SCHNEIDER:

7 Your Honor, Petitioner's are going to  
8 mark Exhibit 47.

9 (Petitioner's Exhibit 47 marked for  
10 identification.)

11 BY ATTORNEY SCHNEIDER:

12 Q. Ms. Thorne, I've just handed you what has been  
13 marked as Exhibit 47. What is this document?

14 A. This was our first document that we what in your  
15 wallet that dealt with what you needed to know ---  
16 what you needed to have to vote on election day, and  
17 we believed that it would be what people were  
18 carrying around ---.

19 Q. Now, this has --- this exhibit is the --- it's a  
20 two-sided document; right?

21 A. Yes.

22 Q. And I'm just holding up what is the original.  
23 Is this the original of the front and the back?

24 A. Yes.

25 Q. And there are two different versions of this

1 brochure on Exhibit 47; is that right?

2 A. That's correct.

3 Q. Turning to the first page in the exhibit which  
4 is 2,069, can you explain what that version of the  
5 exhibit is?

6 A. This was the version that was printed out in  
7 late June by the League of Women Voters of  
8 Philadelphia and they changed the name under the  
9 local said Philadelphia and they were --- this was  
10 our first attempt.

11 Q. Okay. Looking at the last page of the exhibit,  
12 was there something inaccurate on the last page of  
13 this exhibit?

14 A. Yes, we felt that it was important to say under  
15 the last bullet in the middle section of the two  
16 bullets on the right-hand side above the tickets that  
17 they needed to say as well an expiration date was  
18 required and that we didn't think saying current at  
19 the beginning or anything was equivalent. That it  
20 had to be --- that it needed to be updated.

21 Q. So did you change that?

22 A. Yes, we did.

23 Q. So on the first two pages of the exhibit, is  
24 that the revised version?

25 A. That's the revised version that was used up

1 until a week ago, and now we're a down to ---.

2 Q. Okay. We're going to talk about that, but on  
3 the second page of this exhibit, can you show where  
4 you made those revisions?

5 A. Yes, I can. If you look at the second --- on  
6 the second column on the second bullet where it says  
7 current employees with an expiration date was added,  
8 and then in the third column it says with an  
9 expiration date in the after --- in the first --- at  
10 the bottom of the first bullet, and it also has it in  
11 the middle of the second bullet down, so we added  
12 with an expiration date. That was what the change  
13 was about.

14 Q. Okay. And now what are your plans for using ---  
15 now how many fliers were printed originally in  
16 Philadelphia?

17 A. 5,000.

18 Q. And how many fliers did you print of the revised  
19 version?

20 A. 1,500.

21 Q. And some of them have been disseminated?

22 A. They were immediately disseminated to 1,000.

23 Q. The American Legion ---?

24 A. The American Legion, yes.

25 Q. So what are your plans to use with the remainder

1 of your fliers?

2 A. Some had already been given out right at that  
3 weekend, but other than that, we're going to have to  
4 take the rest of them out of circulation because they  
5 are no longer accurate, because the new Department of  
6 State ID is not included anywhere in that.

7 Q. Okay. So do you --- there was some cost  
8 involved in the design and printing of this flier?

9 A. Yes, \$500.

10 Q. \$500 for ---?

11 A. Just the design. The very first design, and  
12 then the cost was about \$300 or \$400, in that range  
13 for the first one, and then the second one was about  
14 just under \$300, or just under \$300 by the time we  
15 did the redesigning, that was the editing and  
16 changing the expiration date.

17 Q. So how much money has the League spent on  
18 exclusively on photo ID activity since the Bill  
19 passed?

20 A. Because I'm only talking about two here, and  
21 that's only Philadelphia. It's more like \$2,000 or  
22 maybe even a little more because we have leagues in  
23 other part of the state, and Pittsburgh especially  
24 has been using an ACLU brochure that they modified  
25 for the league; and it's out of date, too, so ---.

1 Q. So the \$2,000, how does that compare to the  
2 budget that the league usually spend on it's  
3 activities?

4 A. The league usually spends money only for debates  
5 when they have to get somebody to televise it or  
6 something like this. We tend to go with our --- our  
7 voter registration in hand, something you put on the  
8 table and just talk to people and help them fill it  
9 out.

10 Q. Is it more than you usually spend?

11 A. Absolutely. Significantly more.

12 Q. Now, how much time has the --- how many hours  
13 have the members of the League spent exclusively on  
14 photo ID since the passage of the bill?

15 A. We asked each local league to please try to give  
16 us an itemized list of what it's called --- how many  
17 hours they've spent. We've had reports of 600 hours.  
18 There may have been more, but I think 600 is a fair  
19 and accurate representation.

20 Q. Now, is the League seeking additional funding to  
21 support its efforts on voter ID?

22 A. We did apply to our national organization for a  
23 grant and we did receive the \$5,000 grant, but it  
24 cannot be used for printing brochures. Everything  
25 else but printing brochures.

1 Q. So there are some restrictions on how you can  
2 use the money?

3 A. Yes, there was.

4 Q. So what activities has the League not been able  
5 to do because it's been spending time and effort on  
6 photo ID?

7 A. Probably the first and saddest to me is the  
8 website. We had hired someone to redesign our  
9 website. We were all set and ready to go with it in  
10 mid April, and there are people who do some of the  
11 necessary updating of it, because we just can't ---  
12 we're so involved in trying to get the next voter ID  
13 information out and do that properly and do speeches  
14 and going different places, so that's the first  
15 thing.

16 I think the second is something that --- so I  
17 can bring a copy of which is near and dear to my  
18 heart and with a few copies left called keys to the  
19 keystone state, which was published in 1989 and  
20 tells everyone exactly how the Pennsylvania  
21 government works. And the joy of this book has been  
22 that it has been used by colleges, the political  
23 science departments for years to teach how  
24 Pennsylvania government works. And we felt this  
25 year, especially this year, with so much rhetoric

1 going on that it was important for the voter to  
2 understand who they were voting for, and so we  
3 thought this would be very helpful and it's to be  
4 launched on our new website.

5 Q. You say you were going to update that book from  
6 1989 and start publishing on our website?

7 A. Yes. And then hopefully going to publishers.

8 Q. And you haven't been able to turn to that; is  
9 that correct?

10 A. No. That's been completely tabled. And the  
11 third thing we had planned on getting a campaign that  
12 would start our own charitable gift and voting system  
13 put off.

14 Q. And did you say it was a planned giving  
15 campaign?

16 A. Yes, to fund us for the future.

17 Q. And so you haven't been able to work on that?

18 A. No we can't go out and people are working on  
19 voter ID. And the other thing may be is Marcellus  
20 Shale. We're doing a tremendous amount of education  
21 work on Marcellus Shale in compliance with  
22 regulations as well as drilling and water impact, and  
23 that's been slowed down dramatically because of this.

24 Q. Okay. Now, I want to talk about your specific  
25 outreach efforts that you've made on photo ID, so

1 what kind of outreach has the League been doing that  
2 it ordinarily does not do in connection with photo  
3 ID?

4 A. We've talked with the nursing homes and  
5 retirement centers to make sure that they understand  
6 the laws as well as colleges, universities, high  
7 schools.

8 Q. So ordinarily that's not part of the League's  
9 activities; is that right?

10 A. Generally, only by invitation, but now we're  
11 seeking them out as we're finding they don't  
12 understand the law.

13 Q. So in your --- during these efforts of reaching  
14 out to care facilities and nursing homes, had you  
15 identified any care facilities that will not print a  
16 photo ID that complies with the new photo ID law?

17 A. Well, in Montgomery County there was a Saunders  
18 House that is near Lanckenau Hospital that has said  
19 they definitely will not. And in North Hampton,  
20 there is Kirkland Village, and with the Northampton  
21 League have told us that they definitely have been  
22 told no. And then in Chester County,  
23 Kendal-Crosslands, which is a large Quaker county has  
24 said no and we're working to try to get them to  
25 change their mind.

1 Q. So you're still working on them, but as of  
2 today, they're not going to print it?

3 A. No, not at this point.

4 Q. Now, also in the outreach that you've made to  
5 colleges and universities, have you identified any  
6 colleges or universities who have said they are not  
7 going to go bring their ID into compliance?

8 A. Well, Drexel University appears to be in that  
9 category as well as Delaware County Community  
10 College. I think it's cost.

11 Q. Now, are there other schools that you're doing  
12 work with and outreach for their students? For  
13 example, technical schools?

14 A. Yes.

15 Q. Can you please describe that?

16 A. We are very concerned when you look at this law  
17 that there are some loop holes that keep coming up,  
18 and one of them is that there's a huge long list on  
19 the Department of State website giving you all the  
20 names of the approved schools that, you know --- that  
21 can have an ID, but if you go to a vo-tech school or  
22 you go to a technical school to learn how to be a  
23 nail technician or something like that, you don't  
24 have any --- your ID would not count. And so we're  
25 trying to reach out to them and explain the other

1 photo ID options, because many of them in the cities  
2 don't necessarily drive.

3 Q. They live in a city and they don't drive, so  
4 they might not have a driver's license?

5 A. Right. Or a car, so why would they need a  
6 driver's license.

7 Q. And so their school ID is not --- it won't work  
8 under the law?

9 A. It would not comply.

10 Q. Now, I'm going to talk now about PennDOT site  
11 visit. Has the League been contacted about making  
12 visits to PennDOT driver's license centers?

13 A. Yes.

14 Q. And who contacted the League?

15 A. The Pennsylvania Budget and Policy Center.

16 Q. So can you explain what the Pennsylvania Budget  
17 and Policy Center is?

18 A. Well, they're a non-profit, non-partisan much  
19 like the League in that respect, but they focus  
20 totally on the state, government, a budget and  
21 analyze and do analysis of what things are going to  
22 cost within the budget, like voter ID.

23 Q. Okay. So have they issued a report on how much  
24 the photo ID bill was going to cost?

25 A. Yes, they did.

1 Q. And are they right now planning to do a report  
2 on how much photo ID is going to cost PennDOT?

3 A. As I understand, yes.

4 Q. Okay. So does the League regularly work with  
5 the Pennsylvania Budget and Policy Center?

6 A. We do. We work with them most recently on  
7 tuition vouchers and what it is really going to cost  
8 and how much education it costs in Pennsylvania. And  
9 we also work the Marcellus Shale and ---.

10 Q. I'm going to go ask you to slow down a little  
11 bit.

12 A. I'm sorry.

13 Q. That's all right. Now, do you believe that the  
14 photo ID law affects Pennsylvania's budget?

15 A. Yes, absolutely.

16 Q. Okay. Did the League members volunteer to visit  
17 PennDOT driver's license centers?

18 A. Yes.

19 Q. Do you know how many approximately?

20 A. I'd say at least ten maybe more.

21 Q. Did you personally visit a PennDOT center?

22 A. Yes, I did.

23 Q. Which PennDOT center did you visit?

24 A. Delaware County, Media.

25 Q. And how many times did you go there?

1 A. Three times overall.

2 Q. What happened the first time when you visited  
3 there?

4 A. I went with a story of someone that I knew and I  
5 wanted to find out whether or not --- how we were  
6 going to get a photo ID, and I didn't believe that  
7 they had a driver's --- I knew they didn't have a  
8 driver's license. And I didn't know what their birth  
9 certificate standing was, and so I was greeted by a  
10 young man at the door who was very polite but really  
11 didn't have any information and handed me the form  
12 and said everything you need to know is on the form,  
13 and that was it. And at that point there were no  
14 signs, there was no publications there was nothing to  
15 deal with any information that was probably in late  
16 right before the primary.

17 Q. So you're talking about you went in April the  
18 first time?

19 A. Yeah, the first time was in April.

20 Q. Now, what happened the second time --- first of  
21 all, when did you go the second time?

22 A. It was in late June.

23 Q. And what happened the second time you went  
24 there?

25 A. I was greeted by two older African American

1 women who were very, very nice and very knowledgeable  
2 and said we really shouldn't be answering this  
3 question. We really should have you get a number and  
4 wait in line and ask the other person for the  
5 information.

6 Q. Did you do that?

7 A. I did.

8 Q. And how long did you wait?

9 A. I only had to wait about 15 minutes.

10 Q. And what happened when you asked the --- when  
11 they said the other person, do you mean the PennDOT  
12 technician who serves customers, is that who you were  
13 talking about?

14 A. Yes, it was a customer person, but I was in a  
15 different section from those who were getting regular  
16 driver's licenses.

17 Q. Okay. And so what happened when you went to  
18 discuss your friend's situation with that person?

19 A. This time they --- I had several questions to  
20 ask, and they were --- they gave me the same form and  
21 said this is what you have to do, and I said I know  
22 about the form, but I said I have another person that  
23 I know who was born in the south and didn't have ---  
24 was born at home on a farm, and she swears that there  
25 was never a birth certificate. And I said she is

1 probably 80 now, and I would guess she probably  
2 didn't when they lived in the south. And they said  
3 oh, well, it was the midwife's job. I said there  
4 wasn't a midwife in 1940, and she didn't do --- she  
5 doesn't have one. And he said well, then, it's her  
6 tough luck, she won't be able to vote.

7 Q. Okay. Now, did you go a third time?

8 A. Yes, I did.

9 Q. What happened on the third time?

10 A. I really just went by to see if there were more  
11 signs up and more things available, and what  
12 surprised me most was there was no longer a reading  
13 section, there was a great big sign that they put in  
14 front of the greeting section saying get a number,  
15 but no explanation of what numbers for what.

16 Q. So there were no signs about photo ID?

17 A. Well, there were --- there was a sign on the  
18 door about Thursday and the hours were different on  
19 Thursday, but if --- I was really confused by the  
20 signs. I'm going to guess other people were, too,  
21 since I tend to know a lot more about it. And there  
22 was nothing about the other days, and they didn't  
23 talk about Monday being a day that you could not get  
24 a non-driver's photo ID.

25 Q. Okay. So did another league member go on Monday

1 to try to get a non-driver photo ID?

2 A. One of our league members, it wasn't --- she  
3 didn't personally go, but she had a friend who's a  
4 teacher in Chester up in the school district, and she  
5 decided that before the end of the year that she was  
6 going to go get someone to donate a bus and take up  
7 her high school seniors that were 18 and made sure  
8 they had a non-driver's photo ID so they would be  
9 able to vote in the fall. And they had --- she had  
10 already given them voter registration forms.

11 Q. What happened when they went on Monday to the  
12 Delaware County driver's license center?

13 A. They were told that it was the wrong day and  
14 there was nothing they could do.

15 Q. They don't issue photo documents?

16 A. No.

17 Q. Were they issuing anything were they providing  
18 service on Monday?

19 A. Yes, they were if you want regular driver's  
20 license, yes, or renewal, or ask them a question.

21 Q. Do you know what other counties league members  
22 visited?

23 A. I know the Lancaster County league went and they  
24 found there was no signage much as the rest of us  
25 have found, and they had more an hour wait to that

1 they tested it out and the other was Lackawanna  
2 County which is up in the northeast, and they had no  
3 signage as well and they had more than a two hour  
4 wait.

5 Q. Okay. All right. Do you know of any league  
6 members who do not have photo ID?

7 A. We know of one. I have a feeling we have more,  
8 but --- you know, we know of one right now, Dr.  
9 Virginia Filardi. And I know she was supposed to be  
10 here, but she can't.

11 Q. What do you know about her? I mean, if you  
12 don't know that's fine, but do you know anything  
13 about her?

14 A. I know she's in her mid 90s, but she has voted  
15 for years. And as I understand it, she doesn't have  
16 one of the documents she would need for a non-voter  
17 ID. I would suspect at her age it's more likely her  
18 birth certificate, but it could be her marriage  
19 certificate. I don't know.

20 Q. Now, have you heard about the new Department of  
21 State ID?

22 A. Yes.

23 Q. Okay. And do you think that this ID will solve  
24 --- actually I'll withdraw this. Let me start again.

25 In your efforts that the League has been doing

1 to reach out to voters, what are the problems that  
2 you have observed throughout your activities?

3 A. I think the first and most important is  
4 confusion. They don't understand the law. They  
5 think they're somehow covered because of something  
6 that they have and then find, no, that's not one of  
7 the acceptable IDs. The other is, they don't have an  
8 ID and they have a lot of difficulty getting to the  
9 polls. And not only to the poles but to go get the  
10 original ID, and then, you know, somebody driving to  
11 the polls on election day. And they don't --- they  
12 don't have some portion of the documentation. The  
13 League is very concerned that women are being put  
14 more of a disadvantage. It's hard enough getting a  
15 birth certificate and then we have to try to go and  
16 find a marriage certificate as I double woman me more  
17 money more time and more steps in multiple states.

18 Q. But do you think that the League's efforts will  
19 reach all of the voters who need ID?

20 A. No.

21 Q. Why not?

22 A. I think --- it is unrealistic to assume that  
23 you're going to be able, in a four-month period, to  
24 reach out to this many people, and specially as it  
25 keeps changing. And now we have a whole new ID that

1 we need to try to explain, and try to explain you can  
2 only use it for voting and not for anything else.  
3 And when we said the last one, a non-driver's could  
4 be used for something else, but then they'd have to  
5 pay. So it's the payment. There just seems to be a  
6 lot of half understandings of what's really going on.

7 Q. Is there any other reason that you may not be  
8 able to reach all the voters that need a photo ID?

9 A. The limited total number of volunteers we have  
10 at this point, more league members would really be  
11 helpful in a case like this. And we don't have a  
12 league in every county.

13 Q. So now we've been talking a little bit about the  
14 new Department of State ID. Do you think that this  
15 ID will solve the problems that you've observed?

16 A. No.

17 Q. Why not?

18 A. I think the real problem comes down to any  
19 barrier you put up and keeps people from being able  
20 to vote is terrible. But on the other hand, we don't  
21 have any case of fraud. And the kinds of things that  
22 somebody voting and they have another ID, it could be  
23 a fake ID, it could be, you know, lots of other ways  
24 --- you know.

25 ATTORNEY SCHNEIDER:

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1 I have nothing further.

2 JUDGE SIMPSON:

3 You may inquire.

4 CROSS EXAMINATION

5 BY ATTORNEY CAWLEY:

6 Q. Good morning.

7 A. Good morning.

8 Q. Do the members of the League of Women Voters pay  
9 dues?

10 A. Yes, we do.

11 Q. Do you have fundraisers?

12 A. Yes.

13 Q. And you've chosen as an organization to become  
14 active on issues pertaining to Marcellus Shale;  
15 right?

16 A. Correct.

17 Q. And there are monetary resources being dedicated  
18 to that issue?

19 A. We have received several grants, and that's what  
20 we are basically using, mostly at this point right  
21 about now.

22 Q. And you're committing time?

23 A. Committing effort, absolutely.

24 Q. Traveling to meet with members of the general  
25 assembly and so forth?

1 A. Absolutely that, too. We study first --- we  
2 spent one year at studying and then I have one year  
3 statewide studying the issue so that we could be  
4 better informed and we used our study materials and  
5 published, and that is what I was referring to  
6 earlier.

7 Q. Okay. I have some questions about the groups  
8 that you are conducting outreach and education to,  
9 and I'm just referring to some of the documents that  
10 were produced by your attorneys. Are you reaching  
11 out to volunteer groups such as Rotary, Kiwanis  
12 and ---?

13 A. Yes, absolutely. And we've spoken to several  
14 that I know of personally in Montgomery County.

15 Q. And are you reaching out to churches?

16 A. Yes.

17 Q. Chambers of Commerce?

18 A. Yes.

19 Q. Are you reaching out to local political party  
20 organizations?

21 A. Less so because we don't want to appear  
22 partisan, but if they call us and ask us a question,  
23 do we have any clarification, we give them what we  
24 have. It goes that way ---.

25 Q. Sure. Are you reaching out to information desks

1 at malls?

2 A. We meet in malls. I haven't --- that's a good  
3 idea. We'll add information desks to the list.

4 Q. Okay. Have you seen the documents that were  
5 produced by your Counsel on your behalf?

6 A. Yes.

7 Q. Okay. Are you reaching out to retirement  
8 communities?

9 A. Absolutely.

10 Q. Meals on wheels?

11 A. Yes. We have several members who work for meals  
12 and wheels. They were quick to tell us that you  
13 ought to talk to them, too.

14 Q. So you're raising voter ID issues that way?

15 A. Uh-huh (yes).

16 Q. How about Armed Forces recruitment offices?

17 A. I don't think very much with that at this point.  
18 I don't really know the answer to that. I haven't  
19 heard a story yet.

20 Q. And you're reaching out to high schools?

21 A. Yes.

22 Q. Okay. And will your efforts at outreach to  
23 these community --- these points of contact in the  
24 community continue through November?

25 A. Absolutely.

1 Q. And you'll continue to discuss voter ID through  
2 that time period?

3 A. Absolutely.

4 Q. Would you agree that any steps that the  
5 Department of State can take to make it easier to get  
6 photo IDs into the hands of voters is a good thing?

7 A. I'm going to say no with a caveat.

8 Q. What's your caveat to that? Why is it not  
9 necessarily a good thing to get photo ID?

10 A. Because there are different standards for  
11 different people to get different photo ID. And the  
12 League believes they're all the same rules throughout  
13 everything and if not everybody has to have a birth  
14 certificate, not everybody has to have the same  
15 things. Why are you doing it? How are you  
16 protecting from fraud? How are you protecting from  
17 anything if you have a different set of rules of  
18 different things?

19 Q. So for example, senior groups aren't necessarily  
20 going to be helped out by the provision in the  
21 statute that allows for college and university IDs,  
22 are they?

23 A. No. That's correct. Yes. I'm agreeing with  
24 you.

25 Q. Right. And that's right in the law; isn't it?

1 A. I believe so, yes.

2 Q. That what I'm referring to is that college and  
3 university IDs can be used; right?

4 A. Only if they have expiration dates, and I have  
5 to say that --- and I've read the law. I'm one of  
6 the people that really read, and there are times that  
7 I won't see what's in the original law and what's  
8 happening today, all putting together as well. It  
9 just seems the interpretation has to change.

10 Q. Well, the language of the law hasn't changed  
11 since ---.

12 A. No, it's not. It's the interpretation, I guess,  
13 is what I'm saying.

14 Q. Okay. And as we sit here today, college and  
15 university IDs are still part of the actual law;  
16 right?

17 A. Yes, I think so.

18 Q. And that's something that doesn't apply to  
19 everybody who wants to vote in Pennsylvania; right?

20 A. Right.

21 Q. And you think that it should be uniform the same  
22 standards for all IDs across the board?

23 A. Yes, I would say that.

24 Q. Are you aware that the Department of Health and  
25 the Department of Transportation are now connected in

1 a way that saves Pennsylvania natives from having to  
2 take a separate trip to vital statistics to get a  
3 birth certificate?

4 A. Yes. Yes.

5 Q. Do you believe that that makes it easier for  
6 those Pennsylvania natives to get an ID?

7 A. Yes, I agree.

8 Q. You gave some testimony just now about a  
9 pamphlet and revisions you had to do regarding an  
10 expiration date?

11 A. Yes.

12 Q. Hasn't the expiration date been in the law since  
13 the time it was enacted?

14 A. It was. I think it's more the confusion of  
15 different --- you know, of where it needed to be said  
16 and how it should have to be done, but certainly the  
17 next revision has to do with the new --- I'm calling  
18 it --- because I don't know what to call it, the DOS  
19 ID.

20 Q. That's good way to call it.

21 A. You know, and so that one was the one that I see  
22 that really needed a revision on because we need to  
23 explain it. And I also think we have got to explain  
24 the signing on the affirmation and how that ID can be  
25 used, because there's so much confusion on whether

1 that ID can be used for voting or whether it can be  
2 used to cash a check.

3 Q. Okay. You testified about care facilities, and  
4 certain care facilities you're aware are not going to  
5 provide an acceptable photo ID under this law. Are  
6 you aware of care facilities that will provide photo  
7 IDs that will work for this law?

8 A. We have not found one yet that has said yes, but  
9 that doesn't --- we haven't reached everybody --- out  
10 to everybody yet.

11 Q. And you testified about colleges and  
12 universities that are still holding out and not  
13 providing an acceptable photo ID under this law. Are  
14 you aware of universities that will provide such IDs?

15 A. Probably the biggest one is Bryn Mawr and  
16 Temple. I know , because I'm in the Philadelphia  
17 area, so I know those two are going to provide IDs  
18 with expiration dates. And Bryn Mawr will issue a  
19 whole new ID, and I gather Temple will use ---.

20 Q. And are you aware that all of the state system  
21 universities will be providing such IDs?

22 A. I would hope they are.

23 Q. You just don't know one way or the other?

24 A. I haven't heard from State College. Senator in  
25 State College, and I haven't heard back yet.

1 Q. My question was able actually about the state  
2 system of higher education, such as Shippensburg and  
3 Slippery Rock. Are you aware of those schools  
4 providing such IDs.

5 A. I have not heard yet.

6 Q. Okay. And I think that you were anticipating  
7 Penn State. Do you know one way or the other whether  
8 Penn State will ---?

9 A. No.

10 Q. But you are aware that there is a list of the  
11 universities on the Department of State website that  
12 will be providing a photo IDs?

13 A. Yes. And I would hope that everybody's happily  
14 encouraged that they weren't doing it to change their  
15 mind.

16 Q. So you're going to continue to work with the  
17 universities?

18 A. Absolutely.

19 Q. And students at technical schools have a number  
20 of acceptable photo ID options available to them  
21 under the law; right?

22 A. Not that we've been able to interpret. And what  
23 we're finding is that they need a driver's license  
24 and the non-photo ID they could get if they've happen  
25 to have a birth certificate and they have --- you

1 know, in the case they're married, the marriage  
2 license. But the --- they can get it but it's going  
3 to cost them more money, and it seems unfair that  
4 some are being charged more than others.

5 Q. They ---.

6 A. It doesn't ---.

7 Q. And they could also use a passport; right?

8 A. Yes, if they have a passport, but this group  
9 does not seem as many passports as, you know, some  
10 others might have.

11 Q. Okay. And they can use the Department of State  
12 voter ID card when that becomes available later this  
13 month?

14 A. Yes. But they can only use it for voting  
15 purposes, correct.

16 Q. I believe that's correct?

17 A. Yes.

18 Q. And you're going to continue to reach out to  
19 these technical students?

20 A. Yes.

21 ATTORNEY CAWLEY:

22 Those are all the questions I have,  
23 thank you.

24 ATTORNEY SCHNEIDER:

25 We have no further questions, Your

1 Honor.

2 JUDGE SIMPSON:

3 Thank you. You may step down. You may  
4 call your next witness.

5 ATTORNEY SCHNEIDER:

6 Your Honor, Petitioner's call Jorge  
7 Santana, and he's being retrieved from sequestration.

8 ATTORNEY CLARKE:

9 Good morning, Your Honor. Have we  
10 already indicated that Petitioners are calling Jorge  
11 Santana?

12 JUDGE SIMPSON:

13 Yes. Thank you.

14 ATTORNEY CLARKE:

15 Yes.

16 JUDGE SIMPSON:

17 Please remain standing raise your right  
18 hand.

19 MR. TURNER:

20 Raise your right hand.

21 -----

22 JORGE SANTANA, HAVING BEEN FIRST DULY SWORN,

23 TESTIFIED AS FOLLOWS:

24 -----

25 DIRECT EXAMINATION

1 BY ATTORNEY CLARKE:

2 Q. Good morning, Mr. Santana. Would you please  
3 state your name for the record and also spell your  
4 first name?

5 A. Sure. My name is Jorge Santana. It's actually  
6 Jorge, but I actually go by Jorge (changes  
7 pronunciation). It's J-O-R-G-E.

8 Q. And what's your title, Mr. Santana?

9 A. My title is I'm a deputy Commissioner, and I  
10 work in the City Commission of Philadelphia directly  
11 for Commissioner Singer as her communications and  
12 government relations person.

13 Q. Now, could you explain for the record and for  
14 the Court what the Philadelphia City Commission is?

15 A. Sure. The City Commission is unique in  
16 Pennsylvania. It's an elected body of three  
17 commissioners that oversee the County Board of  
18 Elections, and it also oversees voter registration  
19 and the election division within that office.

20 Q. And what is --- how many people are on the  
21 commission?

22 A. There are three elected commissioners. There  
23 are two majority party elected and there are just one  
24 position for a minority party.

25 Q. And then you said that the City Commission

1 overseas the County Board of Elections?

2 A. Yes.

3 Q. And what are the functions of the City  
4 Commission as opposed to the --- and also the County  
5 Board of Elections?

6 A. Sure. My understanding is how other counties  
7 are operated, they really just have a voter  
8 registration director that works directly for the  
9 county. And Philadelphia, the city commissioners act  
10 as a policy and administrative body above the Voter  
11 Registration Office. So they work with the Voter  
12 Registration Office and make sure that the Voter  
13 Registration Office, the election division, the  
14 County Board of Elections are all coordinating and  
15 working together and making sure that information is  
16 still accurately between them.

17 JUDGE SIMPSON:

18 Would you pull that microphone closer  
19 to you, please?

20 A. Sure. Is that better?

21 BY ATTORNEY CLARKE:

22 Q. Maybe slow down just a little bit.

23 A. Sure.

24 Q. So the County Board of Elections --- so if you  
25 could explain what the County Board of Elections does

1 as opposed to the city commissioners?

2 A. Sure. The County Board of Elections is the body  
3 that oversees the election board, the election board  
4 is comprised of in Philadelphia over 8,000 election  
5 board workers including judges election, majority  
6 inspection, minority inspectors, clerks and machine  
7 inspectors. So the county board official function to  
8 help oversee and manage the election board.

9 Q. Okay. Now, what are your responsibilities  
10 specifically?

11 A. Specifically, my responsibilities are directly  
12 for Commissioner Singer, I coordinate communication  
13 for her. I work on legislation --- some government  
14 relations, but really more legislation and policy.  
15 She's a new commissioner, so we've --- primarily I've  
16 been tasked with seeing how we can identify things we  
17 want to work on in the future, improvements to  
18 management of elections in Philadelphia, and working  
19 with legislative bodies to see if we can move those  
20 forms forward.

21 Q. And who is Commissioner Singer?

22 A. Commissioner Singer is the elected chair of the  
23 City Commission.

24 Q. So just to make sure that I have this straight,  
25 we've got the Philadelphia City Commission, which is

1 overall responsible for elections in Philadelphia; is  
2 that right?

3 A. The City Commission has overall responsibility.

4 Q. And then ---.

5 A. The commissioners as a body, they elect a chair  
6 so really for east of practice so for coordinating  
7 with the state the chair is the top person that  
8 actually coordinates with the state on most issues,  
9 including ---.

10 Q. So you got the commission that's overall  
11 responsible, and then we have the County Board of  
12 Elections and then we have the registration division?

13 A. That's correct.

14 Q. And those two divisions, ---

15 A. They answer to the Commission.

16 Q. --- they report to the Commission?

17 A. They report to the Commission, correct.

18 Q. Now, could you just --- I want to give the Court  
19 an overview of elections in Philadelphia. How many  
20 registered voters are in Philadelphia?

21 A. There are 1.02 million registered voters in the  
22 City of Philadelphia at this time.

23 Q. And how many polling places are there in  
24 Philadelphia?

25 A. There are 1,687 polling places in the City of

1 Philadelphia.

2 Q. Okay. And could you describe the nature of the  
3 polling places in Philadelphia?

4 A. Sure. Well, it's a very large county with a  
5 large number of polling places. Historically we try  
6 to have polling places in the most convenient  
7 location within an election division. So we have had  
8 them in schools, churches, but we have also had them  
9 in storefronts at times, sometimes garages. I  
10 personally vote out of a garage in North  
11 Philadelphia. Really wherever we can find the proper  
12 location that is going to best meet the need of the  
13 voters in an election division.

14 Q. Okay. And when --- how many poll workers are  
15 there in Philadelphia?

16 A. Sure. We have over 8,000 poll workers. There  
17 are --- for each polling place division we have as  
18 --- we have between five and seven. Officially poll  
19 workers we have the election boards, probably the  
20 Judge, the majority, the minority, the clerk and also  
21 machine inspectors. But in addition to that, we have  
22 an agreement to have bilingual interpreters who are  
23 not formally part of the election board, but  
24 bilingual interpreters are also --- they have the  
25 ability to be inside the polling places to assist

1 voters.

2 Q. Let me slow you down.

3 A. Sure. Sorry.

4 JUDGE SIMPSON:

5 Yes, I was actually going to say  
6 something. In order to make sure that we get  
7 everything you say accurately recorded, it will help  
8 if you just sort of take a deep breath and slow down  
9 a little. I'm having difficulty hearing as fast as  
10 you're speaking.

11 A. Okay.

12 JUDGE SIMPSON:

13 And I want to make sure that the court  
14 reporter gets it down right. So take your time.  
15 We'll be here as long as we need to be here to hear  
16 what you have to say.

17 BY ATTORNEY CLARKE:

18 Q. So what I want to do is go back through the  
19 people in a typical polling place in Philadelphia.  
20 So could you go through each one and describe what  
21 that person's role is?

22 A. Sure. In each polling place you have a full  
23 election board. You have a judge of elections, you  
24 have a majority inspector, you have a minority  
25 inspector, you have a clerk, and then you have a

1 machine inspector. That's the election board  
2 formally. The judge of elections is the main arbiter  
3 and manager of the election division. They manage  
4 what we call in Philadelphia the election box of  
5 materials which includes everything they will need  
6 for managing the poll that day. They are ultimately  
7 responsible for the counts, and they are really the  
8 point two person for communication with the Voter  
9 Registration Office and the election division on  
10 election day.

11 Q. And let me just stop you for a minute. Is a  
12 judge of elections an elected position?

13 A. Judges of elections are elected positions.

14 Q. Okay. And then now we've got the minority and  
15 the majority inspectors. What are their roles?

16 A. Majority inspectors and minority inspectors are  
17 also elected positions. The majority inspector's  
18 role is to help the judge of elections manage the  
19 polling place. They primarily are there to manage  
20 the poll book on election day. That's the  
21 traditional role, although ultimately judges set the  
22 table for how --- who's going to be doing what on  
23 election day. Minority inspectors are elected from  
24 the minority --- from a minority party within an  
25 election division.

1           So in Philadelphia predominantly a Democratic  
2 city, so we have often a Republican or independents  
3 working as minority inspectors. And then the clerk  
4 is actually appointed by the minority inspector, the  
5 elected minority inspector.

6   Q.   Okay. And then we also have the machine  
7 inspector?

8   A.   That's correct.

9   Q.   And the machine inspector, inspects the  
10 machines?

11   A.   The machine inspector actually manages the  
12 machine. They inspect the machines when they first  
13 come in. And they're brought in by the machine  
14 section of our office on election day or the night  
15 before. The machine inspector is ultimately  
16 responsible for opening the machine, making sure that  
17 it's working. They run a test on the machine, and  
18 then during --- on election day, during a primary,  
19 their main goal is to switch between the parties,  
20 because the machine has a button that machine  
21 inspectors have to switch depending on the party of  
22 the person coming into the poll. They are told by  
23 the judge of election, you know, Republican or  
24 Democrat or independent or other, and then the  
25 machine inspector operates the machine that way.

1           During a general election there is no --- that  
2 function goes away. General election you don't have  
3 to press any button in the machine, they're just  
4 there to make sure the machine is operating. And  
5 they're also a primary point of contact for voters.  
6 Once the voter is at the machine --- the machine  
7 inspector always stays away from the poll at that  
8 point, or from the voter at that point, but they're  
9 in earshot --- within earshot in case the voter has  
10 a question about --- say a voter sees lights going  
11 off, array or something like that. The machine  
12 inspector would be responsible.

13 Q. So we're here today to talk about Act 18, which  
14 is the voter ID law. Are you aware of that law?

15 A. I am.

16 Q. Now, when the law was first passed, did  
17 Commissioner Singer try to get information from the  
18 Department of State about the number of registered  
19 voters in Philadelphia who did not have a PennDOT ID?

20 A. Yes.

21 Q. And when did she try to get that information?

22 A. Starting in late April and --- late April into  
23 May. There were a series of requests.

24 Q. And why did she ask to get that information?

25 A. Commissioner Singer is someone who really values

1 data sets. She actually has a background in working  
2 with data sets, and so she --- initially she knew  
3 from the SURE record that there are voters that have  
4 a designation that tells you where the person was  
5 registered. And so we knew that there were a series  
6 of motor voters, folks that were registered at  
7 PennDOT. So our assumption was --- our working  
8 theory was if someone had registered through PennDOT,  
9 they would have had some form of the PennDOT ID that  
10 is the most reliable form of ID that the law calls  
11 for.

12 Q. And why did she seek to get the information  
13 about people who didn't have PennDOT IDs?

14 A. Our effort in Philadelphia --- our goal was to  
15 administer this election to make sure that voters  
16 know about the election, that they're informed about  
17 the election, that they had everything they need to  
18 make --- to go to the polls and have a free and fair  
19 election.

20 Q. Did she want a list of people ---?

21 A. She wanted a list. She wanted the list of  
22 voters that she could actually --- we could start an  
23 outreach effort within our office but also within  
24 coordination of community partners who have  
25 suppressed concern that people are not hearing enough

1 about the law.

2 Q. So when she first asked for the list in April  
3 what happened?

4 A. Well, she was told that the list wasn't ready.

5 Q. Okay. And did she continue to request a list?

6 A. Yeah, we continued --- the Commissioner  
7 continued to make a request really through the moment  
8 that the information was finally delivered.

9 Q. And when was the information finally delivered?

10 A. Late June.

11 Q. And what was your understanding of what the list  
12 was?

13 A. Well, the first list we received was a list of  
14 non --- what we now refer to as non-PennDOT voters or  
15 non-PennDOT registered voters. This would be a list  
16 of the people in the voter registration file that did  
17 not have a PennDOT issued ID.

18 Q. And how many of those people who did not have a  
19 PennDOT ID --- registered voters who did not have a  
20 PennDOT ID were in Philadelphia?

21 A. About 185.

22 Q. 185?

23 A. Thousand.

24 Q. 185,000?

25 A. I'm sorry, 185,000.

1 Q. Okay. And the list that was sent to  
2 Philadelphia with 185,000 registered voters on it  
3 without PennDOT ID, was that list accompanied by a  
4 press release by the Secretary of State?

5 A. I don't recall. I don't recall.

6 Q. Okay. Then did the commissioners receive a  
7 second list of voters?

8 A. Yes. So we had been asking for --- once we  
9 received the list we started looking through to ---  
10 wanted to see what the list actually told us. And we  
11 did receive a second list based on some inquire that  
12 the Commissioner had made. The second list was he  
13 wanted to talk about ---.

14 Q. Why don't you tell me what the second list  
15 contained?

16 A. We received a second list, that was actually a  
17 statewide list of 575,000 voters of which about  
18 170,000, 170,000 voters were from Philadelphia. Of  
19 people who did have a PennDOT ID, but the PennDOT ID  
20 would be expiring one year beyond what would be  
21 eligible for election day.

22 Q. So the fact that their voters --- their IDs were  
23 expired meant that they couldn't use those documents  
24 to vote; is that right?

25 A. That's correct.

1 Q. And so they could take them to PennDOT and get  
2 something to vote, but with those IDs, they couldn't  
3 vote; is that right?

4 A. Yeah, with an expired PennDOT ID, they would  
5 have to get a new PennDOT ID with an accurate  
6 expiration date.

7 Q. And that was about 170,000 people?

8 A. About 170,000. It was over 170.

9 Q. So when you --- did you add up at the  
10 Commission's office the number of people on the no  
11 match list and the expired ID list?

12 A. Sure.

13 Q. And what was that total in Philadelphia?

14 A. 180 plus 170.

15 Q. Okay. So about 280,000 people when you took the  
16 sum of both lists?

17 A. Right. That's correct.

18 Q. And did you do the percentage of what percentage  
19 of people?

20 A. Well, I don't have the rough percentage, but it  
21 is over 20 percent I think it was 36 percent, the  
22 number.

23 JUDGE SIMPSON:

24 Thirty-six (36) percent of what?

25 A. Thirty-six (36) percent of the voters. But are

1 you asking for all the registered voters or the  
2 active voters?

3 BY ATTORNEY CLARKE:

4 Q. What is the percentage of registered voters?

5 A. The percentage of the registered voters would be  
6 --- it was around 35 percent, I believe.

7 Q. Now, I want to talk about education of voters.

8 Does the commission have a budget for educating  
9 voters?

10 A. We do not.

11 Q. But is the Commission nonetheless trying to  
12 educate voters about the photo ID law?

13 A. Yes, we are.

14 Q. And is that one of your responsibilities  
15 personally?

16 A. Yes, it is my responsibility as well as one  
17 other person in our office who's we call an outreach  
18 coordinator who is helping engage with communities  
19 about this issue.

20 Q. And we've heard testimony in this trial that the  
21 Department of State has sent a multitude of e-mails  
22 and memos to the County Commissioners about how to  
23 implement this voter ID law. Have you seen a  
24 multitude of e-mails and communications?

25 A. There had been a lot of communication not

1 necessarily about implementing, but as a response to  
2 questions that we have asked. We had asked for more  
3 specificity of regarding the language of the types of  
4 IDs that were required. There are a lot of questions  
5 about the language used in some of these. For  
6 example around university IDs, what would be  
7 acceptable as a date, an expiration date on a  
8 university, college ID, what type of colleges are  
9 acceptable or ---. Beauty schools, for instance, are  
10 not included, technical schools are. So we have a  
11 lot of correspondence that mostly do --- Commissioner  
12 Singer has had direct correspondence with mostly John  
13 Marks.

14 Q. Now, you have been out --- the Commission has  
15 been out in the community trying to educate voters;  
16 isn't that right?

17 A. That's correct.

18 Q. And the Department of State witnesses in this  
19 case have testified that they have made large efforts  
20 to be in the community educating voters. Have you  
21 seen those efforts?

22 A. No.

23 Q. Had you seen any Department of State people in  
24 the communities trying to educate voters in  
25 Philadelphia?

1 A. No. I've seen --- Secretary Aichele has made  
2 several appearances in Philadelphia, not in the  
3 context of educating voters but in the context of I  
4 saw one debate at Fels Institute at the University of  
5 Pennsylvania that was held. And there are a couple  
6 of those types of appearances but nothing in the form  
7 of a forum or a space for voters who actually ask  
8 questions.

9 Q. Now, in your role as trying to help educate  
10 people in Philadelphia, are you serving calls from  
11 people about the voter ID law?

12 A. Yes, we are.

13 Q. And can you describe generally what types of  
14 calls they are?

15 A. There's a lot of confusion about the law because  
16 we get a lot of calls that are specifically asking us  
17 well what is this law about, and it always start with  
18 a general question what is this law? I've heard  
19 there's a new voter ID law requirement, what does  
20 that mean for me? And usually we walk through with  
21 the voter what the law is, what the new requirement  
22 is, and then we ask them if they have one of the IDs  
23 that are listed in the law. That's primarily most of  
24 the contact that we have had. Our office has never  
25 historically had a constituent services operation.

1 So for the most part, that is what we've been  
2 focusing on, just being able to deliver the  
3 information the state has provided. And then to a  
4 certain extent we have also been dealing with more  
5 complicated walk-ins. People that come into our  
6 office that --- with the same question, the same  
7 starting question, but often have more complicating  
8 answers.

9 For example, they need more documentation, they  
10 need birth certificates and they need help  
11 identifying how they get to the vital records office  
12 and what that process is, or they may need help with  
13 the Social Security Administration and don't really  
14 know how to navigate that office because they need  
15 those types of documents to go to PennDOT. They  
16 need a Social Security card and a birth certificate  
17 to go to PennDOT to ask for an ID.

18 Q. When you have gone into the community to educate  
19 people, can you just describe in very general terms  
20 what kind of effort the Commission has made to go  
21 into the community to educate people?

22 A. Sure. So we have --- the first thing we did is  
23 we participate in the Pennsylvania voter ID  
24 coalition, a non-partisan coalition that's led by a  
25 committee of 70 in Philadelphia and has a number of

1 partners that represent different areas of the city.  
2 A large number of non-profits that are actually  
3 participating and through that coalition we have  
4 helped inform the coalition of what we believe are  
5 the requirements, what election day may look like,  
6 what voters really need to know to be prepared, so  
7 that's one thing we have done. The second ---.

8 Q. Let me just stop you with that.

9 A. Sure.

10 Q. There have been some changes to the  
11 implementation. Up until today there have been  
12 changes. Has that affected your ability to provide  
13 accurate information to the coalition?

14 A. Yes, it does. So there's --- every time there's  
15 a change we have to update --- we immediately update  
16 the coalition and also other community partners that  
17 may not be part of this coalition that we are also  
18 speaking to, mainly mostly schools --- actually a lot  
19 of high schools, concerned seniors, and we update ---  
20 we let people know what the new changes are and the  
21 new changes often just generate a lot more confusion  
22 and more questions about what the requirements are.  
23 So the answer is yes.

24 Q. Other than working with the coalition, can you  
25 describe in just general terms what types of

1 activities you have engaged in to try to educate the  
2 public in Philadelphia?

3 A. Sure. The Commissioner herself or myself on her  
4 behalf or another deputy commissioner within her  
5 office, together we have attended many events at  
6 different high schools. So we've done a lot of high  
7 school events focusing on senior population.  
8 Seniors, we see seniors as being a category that are  
9 going to be mostly at a disadvantage regarding this  
10 law, because they're not necessarily reading the  
11 Inquirer to get this information about the new  
12 requirement.

13 We've gone to --- we have reached out to every  
14 community organization individually as part of the  
15 Pennsylvania voter ID coalition to let them know  
16 that we are available as a resource, and through  
17 that we have participated in birth certificate  
18 workshops at several large non-profits in the city,  
19 we have gone to churches to speak to congregants  
20 about this new problem. We've actually gone to ---  
21 we've participated in some public speaking  
22 engagements. Commissioner Singer himself had been  
23 on MSNBC on the radio regarding letters to the  
24 editor. We're doing everything we can on the media  
25 side to get things out that way as well. And

1 usually that generates more questions as well. It  
2 also generates more invitations to participate in  
3 more community events.

4 Q. So again, with all of these activities in the  
5 community, you have not seen any activity by the  
6 Department of State in voter education in  
7 Philadelphia?

8 A. No.

9 Q. Now, you're going to continue to do this until  
10 the election; is that right?

11 A. Yes. Yes, we have to.

12 Q. And are you confident that with all of these  
13 activities you will be able to reach every registered  
14 voter and get an ID in there hand?

15 A. No. Philadelphia is a very large place, a very  
16 large population. There's no --- I don't have  
17 confident that we can reach every voter. One of the  
18 main functions --- or one of my main goals as a  
19 communications person for the office is to try to  
20 help the Commissioner get the word out about the new  
21 law and its requirements in media outlets. The  
22 reason we focus on that, because we feel the more we  
23 do that the more people will know about it.

24 But if you understand Philadelphia's  
25 demographics there are a lot of people in

1 Philadelphia that don't necessarily read newspapers,  
2 so there's a gap there in how we can actually reach  
3 the --- let's just say the less fortunate in north  
4 Philadelphia, specially south Philadelphia areas of  
5 major population that are harder to reach. Even  
6 when partnering with community organizations that  
7 serve those populations, you don't really get to  
8 every one.

9 Q. Let me just talk to you now about a different  
10 subject. I want to talk about training of poll  
11 workers. And do the Philadelphia City Commissioners  
12 have responsibility for training poll workers in  
13 Philadelphia?

14 A. Yes. Again, training of poll workers ---.

15 Q. Do they have ---?

16 A. Yes, yes.

17 Q. And again, they're about 8,000 poll workers in  
18 Philadelphia?

19 A. Over 8,000.

20 Q. And are the Commissioners preparing the training  
21 now as we speak?

22 A. Yes.

23 Q. And is it mandatory for poll workers in  
24 Philadelphia to attend training?

25 A. No, they're not compelled.

1 Q. And typically in a typical year, what percentage  
2 of poll workers in Philadelphia attend training?

3 A. At best 20 percent.

4 Q. 20 percent?

5 A. 20 percent of the poll workers. So you're  
6 looking at between 1,500 and 2,000 poll workers will  
7 attend training.

8 Q. And why so few people attend training?

9 A. There are several reasons. One main reason is  
10 that they're not compelled to attend training,  
11 another reason there are --- for many divisions there  
12 are poll workers who have been working on election  
13 boards for a very long many years ago they've been  
14 doing it for long time and feel confident that they  
15 know everything they need to know about managing an  
16 election.

17 Q. Now, does this fact that people don't have to  
18 come to training cause concern ---

19 A. Yes.

20 Q. --- at the Commission?

21 A. It certainly does, yes.

22 Q. And why is that?

23 A. Well, specially when there's a major seat change  
24 in the way elections will be operating in  
25 Philadelphia due to this law, we need to make sure

1 that every judge of elections, and, in fact, the  
2 majority inspectors and minority inspectors, and  
3 really everyone, machinists --- everyone on the  
4 election board understand what the requirements are  
5 so that they know how to address the problems that  
6 may arise on election day.

7 Q. And you have a concern if people don't come to  
8 training and don't learn those facts; right?

9 A. If they don't learn the facts, they're not going  
10 to --- there's really no way for them to --- unless  
11 they've learned it somewhere else, there's no way for  
12 them to know how to answer questions for voters and  
13 it will lead to confusion at the polls.

14 Q. And what kind of questions are you concerned  
15 might arise as a result of the photo ID law?

16 A. Most of the questions will result based on the  
17 types of IDs that people may bring to the polls. For  
18 example, we have student IDs, what type of student ID  
19 is acceptable versus which one is not. The guidance  
20 we've gotten so far through the state give us a range  
21 and training a range is much more difficult than  
22 training something more specifically.

23 Q. And when you say a range, what do you mean?

24 A. So for instance you --- we have some guidance  
25 from the state that a certain number of --- certain

1 variation of listing of expiration dates will be  
2 acceptable including even just having the number 12  
3 or the number 13, which is supposed to represent, I  
4 guess, the year of an expiration on a student card.  
5 It's very different than some other universities.  
6 All the colleges are doing --- there's no uniformity  
7 of how they're doing their student IDs. There are a  
8 lot of instances.

9 Q. I'm sorry. Go ahead, finish.

10 A. Sure. For a lot of reasons. I mean, student  
11 IDs are actually for universities are not just a way  
12 of identifying students with a picture. I mean, many  
13 of them don't have pictures on there IDs.

14 Q. Can I just take you to some other issues that  
15 you are concerned may cause confusion at the polling  
16 place, particularly if poll workers aren't trained?

17 A. Mostly the problems really are about the lack of  
18 knowledge of how to respond to questions is one major  
19 issue. Confusion that will arise from voters and  
20 judges negotiating what their understanding of what  
21 the new requirement is, judges of elections who have  
22 long --- who have been serving for a very long time  
23 knowing and recognizing voters not wanting to  
24 actually implement the law, which is something that  
25 we're combating now and asking judges to understand

1 that they have a requirement to do that. These kind  
2 of tensions actually lead to disruptions of the  
3 polls.

4 Q. So let's a just go to the polling place and try  
5 to envision a polling place in Philadelphia. In a  
6 year before this year before the voter ID law was  
7 implemented or was passed, describe the typical setup  
8 of a polling place, a person walks up and wants to  
9 vote, what happens?

10 A. A voter walks up to usually a table. The table  
11 is where the judge of elections will have set up the  
12 polling book, the poll book and is open, you know,  
13 usually on this table. The judge sits behind the  
14 poll book, the majority inspector sits next to the  
15 majority, and the clerk sits there as well. The  
16 voter walks up to the judge and says my name is Jorge  
17 Santana, the voter says --- the judge looks in the  
18 poll book for Jorge Santana. You know, how is your  
19 name spelled, maybe I'm missing it? They find me.  
20 Once the judge finds my name in the polling place ---  
21 in the poll book they call out the address. And this  
22 is often how it happens.

23 They call out the address. They'll say 2317  
24 Cedar Street and the majority inspector and minority  
25 inspector take note of my name in what is called the

1 number two and the number four book. They're called  
2 registers. It's really a way of double checking and  
3 triple checking the accuracy of a poll book later on  
4 after we do the vote count. So once they identify  
5 me as --- this is the voter, he's right there.  
6 Usually there's a signature in the poll book comes  
7 preprinted with a signature that's on record from  
8 the voter file. I will then, the voter will then  
9 sign next to their signature. The signature  
10 affirmation. And once I do that, the machine  
11 inspector get notified that the vote is prepared,  
12 the voter is prepared to vote, they direct me to the  
13 curtain and then I'm actually registering my vote  
14 that's traditionally what happens.

15 Q. And then let's a just introduce the provisional  
16 ballot ---

17 A. Sure.

18 Q. --- for photo ID. How did the provisional  
19 ballot work? If I'm a voter I walk in, how did that  
20 get processed?

21 A. Sure. The original ballots were very rare.

22 Q. And how many in Philadelphia in the past?

23 A. So for example, in 2008 the last Presidential  
24 there were 8,300 --- slightly over 8,300 provisions  
25 that were counted. Now, there are slightly more than

1 that that are cast but --- that were counted. So  
2 just to give you a sense, that's for the entire City  
3 of Philadelphia.

4 Q. Okay. So we had 8,000 in 2008. Now, how did  
5 those get processed before this year?

6 A. So if a voter comes in and they are not ---  
7 there are a couple of ways that this actually gets  
8 done in Philadelphia. If a voter comes into the  
9 polling place and they are in the wrong location,  
10 we'll tell them, you're in the wrong location you  
11 have to go vote somewhere else. There have been  
12 circumstances will a voter will do a provisional  
13 ballot. If they're in the wrong division because  
14 there's been a change, usually this only happens  
15 around the district. Change in the division and they  
16 just don't know where they're supposed to vote,  
17 that's extremely, extremely rare. Primarily it's  
18 when the person is not in the poll book, the judge  
19 will call the Voter Registration Office to verify  
20 that the person is a registered voter, and then they  
21 will do a provisional ballot at that time after the  
22 confirmation has been made.

23 Q. And when the judge is taking the time to call to  
24 see if the person's registered, and then let's say  
25 that the person has to cast a provisional ballot.

1 What happens to that regular process that you just  
2 described to us?

3 A. Sure. The provisional ballots get collected  
4 throughout the day.

5 Q. Well, does somebody have to take the voter aside  
6 and fill it out?

7 A. Sure. The voter or the judge or the majority  
8 inspector if it's very busy, often the judge will  
9 sign the majority inspector or a clerk or someone  
10 else who's available to take the voter aside and show  
11 them how --- show them what they have to do with the  
12 provisional ballot, show them how to fill out the  
13 provisional ballot. The provisional ballots is a  
14 legal size paper. Often they are --- they may have a  
15 clipboard or something, but often there's a room on  
16 the table and a small turnout election --- there's  
17 often room for the table for someone to fill out  
18 provisional and then hand the provisional back to the  
19 judge, the judge puts it in a green envelope, sets it  
20 aside and then they get counted later.

21 Q. When the judge is off helping the person with  
22 the provisional ballot before this year, what happens  
23 to the rest of the people in line and what happens to  
24 the ---

25 A. Sure.

1 Q. --- who's doing the functions that the judge is  
2 supposed to be doing?

3 A. Sure. Whenever you have a provisional being  
4 done, it's time consuming, so whoever the number two  
5 person is at the poll, the majority inspector, the  
6 minority inspector, they take over the poll book and  
7 the judge will take the voter aside to work with them  
8 while the rest of the line continuous with the poll  
9 book. And so that's actually --- that's usually ---  
10 an off year election is when it's a low turnout  
11 that's an okay process, that's manageable. During  
12 Presidentials that's already a source of delay even  
13 with 8,000 that we talked about. One of the reasons  
14 that we have longer lines, longer wait times at  
15 Presidential election years is because you have a lot  
16 more people showing up. And many people show up to  
17 vote at the same times between seven and nine o'clock  
18 in the morning in between 5:00 and the close of polls  
19 at eight o'clock in the evening, and so you have  
20 these crunch times. The more provisional you have at  
21 this time, the more time the judge has set aside. So  
22 you may end up having longer lines, longer wait  
23 times. Not everyone on election board understands  
24 how to work the provisionals so the judge doesn't  
25 always have someone they can turn to, to say please

1 work with this person on provisional.

2       There's also a matter of skill level that's  
3 lacking associated with even managing the poll book  
4 correctly. So it's very important that the judge be  
5 the final arbiter actually there managing the poll  
6 book and overseeing the election.

7 Q. So in those instances the judge is off helping  
8 the person with the professional ballot, and then  
9 everybody has to wait until the judge comes back  
10 to ---?

11 A. Not in every instance. Again, it depends on  
12 whether or not --- it depends on whether or not the  
13 majority inspector, minority inspector, clerk are  
14 capable, you know, of managing the rest of the  
15 election. But often it is the judge that's  
16 scrambling to basically take care of everything, and  
17 that's usually where the concerns are. Keep in mind,  
18 the judge is also the person who is on the phone with  
19 the Voter Registration Office and the election office  
20 to --- if there's a problem that happens with the  
21 machine, the machine inspector has to report back to  
22 the judge of elections. The machine inspector is not  
23 calling the election board directly, so the judge of  
24 elections is ultimately responsible for all those  
25 aspects of what's happening on election day.

1 Q. So if the judge is busy doing other things that  
2 creates delays?

3 A. It does, because if a judge is working on, say,  
4 opening up the poll, making sure the polls are open  
5 or saying the machine is done, the judge is the one  
6 on the phone dealing with that problem. Now the  
7 majority inspector is the person that is working with  
8 the people coming to vote. And if the majority  
9 inspector is working with provisional ballot, you  
10 just start going down the line of competency.

11 Q. Okay. Now, before we get to a polling place  
12 with photo ID, I just want to ask if there are any  
13 other things in a regular election before this year  
14 that cause delays at the polling place, any other  
15 abnormalities that cause delays at the polling  
16 places?

17 A. Yes. I mean, there are a lot of --- again, this  
18 goes back to Philadelphia being a very large place, a  
19 very difficult place to operate elections. 1,687  
20 divisions. So there are often --- there are  
21 instances where a polling place location has not been  
22 opened on time and we have to make a decision whether  
23 or not we're going to break open a door to actually  
24 open --- run our election. Those calls dramatic  
25 delays. That actually has happened.

1 Q. Do new voters --- when new voters come in cause  
2 delays?

3 A. Yes, when the new voter --- in the past prior to  
4 this law being past every time a new voter came to  
5 the polls they had to present a form of ID. The law  
6 prior to this actually stated a new voter had to  
7 present a form of ID at the polls, and that does  
8 cause a delay. Judges of elections are unfamiliar  
9 with the voter, they'll try to find them in the poll  
10 book, if they do find them in the poll book they  
11 still have to look at the ID, the voter may not know  
12 this is a requirement, you know. They're not  
13 necessarily aware they have to actually have a form  
14 of ID with them. So in the past this has already  
15 caused some confusion.

16 Q. So let's now talk about the polling place with  
17 the voter ID law. First of all, is Philadelphia  
18 anticipating an increase in the number of provisional  
19 ballots?

20 A. Yes.

21 Q. And what is the number of increased --- what is  
22 the number of provisional ballots that Philadelphia  
23 is anticipating?

24 A. That's a difficult question to answer. We are  
25 looking at the range of voters that potentially may

1 need one. That's the only way to answer that.

2 Q. Had you actually planned to print additional  
3 provisional address?

4 A. So we have already started the internal  
5 conversation about how many we'll need. The  
6 commissioners as a whole have not yet voted on the  
7 final number of how many provisionals. Internally  
8 we're looking at now having 125 --- at least 125  
9 provisional ballots on hand in each division.

10 Q. So the total is 125 times 1,687?

11 A. That's correct.

12 Q. And the total ---?

13 A. I cannot --- I'm sorry, I don't have the number  
14 with me.

15 Q. It's about 200,000 provisional ballots?

16 A. That's correct.

17 Q. That's what you're planning for. And why do you  
18 anticipate more provisional ballots?

19 A. Well, the law requires --- the law is very clear  
20 that if you do not have the accurate ID or a form of  
21 ID that you can use that's listed by the state's  
22 requirements, then you can actually vote  
23 provisionally and within six days you can present the  
24 form of ID. One of the forms of IDs that are in the  
25 list to the Voter Registration Office, there are

1 several ways that voters can actually do that so  
2 voters would have six days to show an ID. So instead  
3 of turning a voter away --- instead of turning a  
4 voter away judges of election will be asking voters  
5 for, number one, can you come back? You know, if you  
6 have it at home, can you come back in a couple of  
7 minutes and just vote with the ID, but if not here's  
8 a provisional ballot. So this is going to be a new  
9 experience for a lot of voters that have never really  
10 dealt with provisions.

11 Q. But why are you planning for so many more?

12 A. Well, we have seen the numbers. The numbers  
13 show us that not many people --- a lot of people are  
14 not going to have the IDs --- the type of ID that  
15 they need to vote.

16 Q. Now, what will the --- let's go back to the  
17 polling place. What do you anticipate the effect  
18 will be of the combination of the new rules and what  
19 you are contemplating as an increase in provisional  
20 ballots from 8,000 in 2008 to 2010 thousand this  
21 year?

22 A. Well, I think --- I'm anticipating a mess on  
23 election day, if I can be frank. The election --- on  
24 election day we already anticipated. We were going  
25 to anticipate long lines because of the Presidential

1 election --- and during Presidential elections  
2 historically we have seen long lines at polling  
3 places in Philadelphia. Over the course of the last  
4 several years we have been moving certain polling  
5 places to accommodate for handicap accessibility, so  
6 we have many, many polling place divisions that are  
7 in a single location. So we will have, say, for  
8 instance I have one school in mind that has four  
9 polling place divisions within that one school in one  
10 auditorium, so you can already imagine that eight  
11 tables potentially, that's eight machines and a lot  
12 of voters trying to get to the right location within  
13 that auditorium to vote.

14 Now, you add to that chaotic environment many  
15 people with --- clipboards is one suggestion I've  
16 heard or trying to find a surface to actually write  
17 to fill out the provisional ballot and you have kind  
18 of have a messy environment where you have people  
19 from multiple divisions next to each other over each  
20 others shoulders basically filling out provisional  
21 ballots. So I anticipate a lot of problems, a lot  
22 of tension, a lot of stress on the voters and  
23 whenever we have those elements you have increased  
24 delays because you will have potentially  
25 altercations. You will have potentially a lot of

1 calls coming in to our office for assistance from  
2 the DA's office from the police from our office to  
3 come and help manage a difficult environment. And  
4 we have many places across the city that kind of fit  
5 that description with limited resources to deal with  
6 that type of impact.

7 Q. And you've been really addressing the impact of  
8 the increase in provisional ballots, do you also see  
9 an impact from the fact that there will be questions  
10 about the form of ID ---

11 A. Sure.

12 Q. --- how to interpret the forms, do you see an  
13 impact from that?

14 A. Yes. And in fact the --- during what was called  
15 the soft role out which I can explain. During the  
16 soft role out in the primary we actually already saw  
17 a series of the types of problems that we are going  
18 to anticipate. The soft role out was what we termed  
19 the first part of the law. When the voter ID law  
20 passed it passed in March and it was in the law  
21 itself it called for having the primary be not quite  
22 a test run but be an opportunity to educate voters  
23 about the requirement.

24 Q. And what were the problems that you saw?

25 A. So during --- there were a lot of questions.

1 What the soft role out entailed was the judges of  
2 elections were given a handout of the state's  
3 requirement and they were supposed to ask --- they're  
4 not supposed to, they had to, ask voters if they had  
5 a photo ID and if a voter said yes or no it didn't  
6 matter, they still could vote, but they were handed  
7 this form.

8 Q. And what were the problems that you saw?

9 A. And some of the problems were related to  
10 questions --- there were some delays that happened  
11 already at the polling places related to --- there's  
12 a lot of questions that were generated by voters  
13 about why they actually --- about the new law, about  
14 why they needed to have an ID and there is confusion  
15 among poll workers themselves, election boards  
16 themselves, as to what there actual requirement was  
17 and what the law actually meant and that was just for  
18 the soft role out.

19 Q. Now, I just want to go to a specific type of  
20 provisional ballot and that is the provisional ballot  
21 for people who are indigent. Has the Commission  
22 received a guidance on what it means to be indigent  
23 and who can fill out those kinds of ballots?

24 A. I have not. I have not seen that. I have not  
25 seen that. Commissioner Singer, you know,

1 Commissioner Singer is actually out on vacation, so  
2 I'm not sure if something has been sent to her. But  
3 as of July 20th we have not received any.

4 Q. So as of July 20th, at least, the Commission  
5 hadn't received any guidance what it meant to be  
6 indigent?

7 A. That's correct, what the criteria is for  
8 indigent.

9 Q. So do you have an idea or a plan as to how the  
10 poll workers --- or how it will be decided who's  
11 indigent?

12 A. We cannot have a plan unless we have guidance  
13 from the state on what they actually mean by  
14 indigent. So no, unfortunately, not. I mean, I have  
15 ideas, but until we have the actual language --- we  
16 need to resolve that because if we train judges on a  
17 definition that is not going to meet the threshold of  
18 the state then we are just wasting our time. So we  
19 need that formal guidance to be able to do that.

20 Q. Now the law says that a person can sign one of  
21 --- can get a provisional ballot and sign an  
22 affidavit, but they've to say that they are indigent,  
23 but they also can't get an ID without paying a fee,  
24 you understand that?

25 A. Sure.

1 Q. And the ID is free so --- the ID is free?

2 A. Right.

3 Q. And especially if you live in Pennsylvania  
4 you're supposed to be able to go to PennDOT and  
5 they're supposed to check your birth certificate, so  
6 there are going to be people who may be indigent, but  
7 --- especially people who are born in Pennsylvania  
8 they may be indigent, but they won't have to pay a  
9 fee. So are they going to be able to sign that  
10 affidavit?

11 ATTORNEY SCHMIDT:

12 Your Honor, I'm going to object to the  
13 form of the question.

14 JUDGE SIMPSON:

15 I don't understand the question, so  
16 whether or not he answers won't help me.

17 ATTORNEY CLARKE:

18 Okay. I'll try to ask a better  
19 question.

20 BY ATTORNEY CLARKE:

21 Q. You're aware that the statute says that in order  
22 to sign the affidavit that says you are indigent and  
23 therefore you can vote, you have to say not only that  
24 you are indigent, but also that you were unable to  
25 get an ID without paying a fee, you understand that

1 to be the law?

2 A. Uh-huh (yes).

3 Q. And what I am asking you is, there will be some  
4 people since the PennDOT ID is free and some people  
5 won't --- who have no birth certificate, but PennDOT  
6 will be able to check the people who are born in  
7 Pennsylvania, PennDOT will be able to check, they  
8 won't have to pay a fee so ---.

9 ATTORNEY SCHMIDT:

10 Your Honor, I'll object to the  
11 question.

12 JUDGE SIMPSON:

13 Sustain as to form.

14 BY ATTORNEY CLARKE:

15 Q. Sitting here today do you have an understanding  
16 as to how the poll workers in Philadelphia are going  
17 on administer the indigent affidavit?

18 A. No.

19 Q. Now, one suggestion that was made in state  
20 testimony is that, that will be resolved by political  
21 parties and lawyers who will challenge the affidavit.  
22 How do you see that solution playing out?

23 A. We've never been in this environment so it's  
24 very difficult to see how we play --- how that plays  
25 out. But going to increase --- it's certainly going

1 to increase the time --- the time it takes to  
2 actually review provisionals can certainly lead to  
3 delays if there are challenges and the county is  
4 simply not prepared to deal with that right now. I  
5 mean, I'm not really clear on how to answer that  
6 question right now because we have, again, not seen  
7 this type of environment before, including what  
8 resources it might take to set up an office, set up a  
9 space within the election division to manage these  
10 types of challenges. We've only seen a very small  
11 version of this type of thing before on a minor  
12 basis. Not in terms of this, but regarding when two  
13 parties are challenging each other on petitions or  
14 some other things and even that requires a lot of  
15 space for what may be a small state house race. So  
16 in the environment of presidential election, in light  
17 of our efforts to be fully transparent where the  
18 press can be involved and just --- I really don't  
19 have a good answer for it. I mean, I just envision a  
20 chaotic environment with a lot of potential problems.

21 Q. I have two more topics I want to cover with you?

22 A. Sure.

23 Q. We've heard in this Court testimony about a new  
24 form of ID that the State Department plans to issue  
25 at the end of August. Has the Department of State

1 provided any information about this new form of ID to  
2 the Commission?

3 A. Again, as of July 20th at least, no.

4 Q. And July 20th was when Commissioner Singer ---?

5 A. Commissioner Singer left on vacation, yes.

6 Q. Now do you independently have information about  
7 what the requirements for the new form of ID will be?

8 A. Only what I have read in the press release of  
9 the State Department.

10 Q. And do you have information about what it's  
11 going to look like?

12 A. No.

13 Q. And does this affect the Commission's ability to  
14 prepare the training for poll workers?

15 A. Absolutely.

16 Q. Now, I wanted you to imagine two different  
17 scenarios. If this court were to decide that the law  
18 was unconstitutional, but then the Supreme Court  
19 decided that the law was constitutional what --- how  
20 will the Commission proceed with preparing for  
21 elections?

22 ATTORNEY SCHMIDT:

23 Your Honor, I'll object to the  
24 question. It calls for speculation on the part of  
25 the witness.

1 JUDGE SIMPSON:

2 Actually this is a useful category. I  
3 don't think the question was phrased in a useful  
4 manner. Do you understand the question?

5 A. Yes, I do.

6 JUDGE SIMPSON:

7 What she is asking is ---?

8 A. Will it change the way we administer the  
9 election.

10 JUDGE SIMPSON:

11 You know what, I forget the question  
12 now.

13 ATTORNEY CLARKE:

14 I'll ask a better question.

15 BY ATTORNEY CLARKE:

16 Q. Does the Commission have a plan about preparing  
17 for the photo ID law regardless of what happens in  
18 this Court?

19 A. We are --- it's our obligation to run this  
20 election. No matter what happens we're going to run  
21 an election. We are operating under the assumption  
22 that it will not get overturned because we have to,  
23 because we have to, that includes trying to figure  
24 out what to do with all these problems that we've  
25 identified. Provisional ballots expansion and

1 challenges of the parties and so on. So we are doing  
2 everything we can to just get our election boards,  
3 the information that they need and to get voters in  
4 Philadelphia --- over a million voters in  
5 Philadelphia the information they need to understand  
6 what this means for them. So for our purposes we  
7 don't have some kind of plan B where we're looking at  
8 what happens if it gets thrown out. It's easier to  
9 take something away --- as administration actually  
10 running an election, training, getting people  
11 information, planning for the mess is easier than ---  
12 is harder to do, but is essential and it's actually  
13 to remove some of the difficulties if the law  
14 actually did get overturned. If the law did get  
15 overturned, it would definitely relieve a lot of  
16 pressure and could help alleviate a lot of these  
17 major concerns that we may have. But we still have  
18 to prepare for the worse. I'm not sure if that  
19 answers your question.

20 ATTORNEY CLARKE:

21 Thank you. I have no further  
22 questions.

23 JUDGE SIMPSON:

24 You have to stay there because the  
25 other lawyer might have some questions.

1 A. Yes, I know.

2 JUDGE SIMPSON:

3 I thought you were getting ready to  
4 leave.

5 ATTORNEY SCHMIDT:

6 Thank you, Your Honor.

7 JUDGE SIMPSON:

8 You may proceed.

9 CROSS EXAMINATION

10 BY ATTORNEY SCHMIDT:

11 Q. Good morning, Mr. Santana. My name's Kevin  
12 Schmidt. I represent the Respondents in this action.  
13 I just have a few follow-up questions. Now, a lot of  
14 your testimony you talked about these alleged  
15 problems that you're concerned about, but wouldn't  
16 you agree with me that at this point you're really  
17 just speculating about what's going to occur; is that  
18 correct?

19 A. No.

20 Q. No?

21 A. That's not correct. We have a basis of  
22 experience from prior elections and we have evidence  
23 of concern from judges of elections and participants  
24 in the election currently, questions that are being  
25 raised now, many of the questions are being raised by

1 election groups.

2 Q. But wasn't it your testimony that this is a  
3 completely new experience for Pennsylvania voters?

4 A. It is.

5 Q. Okay. So you're saying that this is a new  
6 experience, but you're also basing this speculation  
7 on prior experience; is that correct?

8 A. No. I'm actually basing my testimony not on  
9 speculation but on the concerns that have already  
10 been raised, based on the soft role out and based on  
11 the information that we're receiving now from the  
12 public about the law.

13 Q. Okay. And with that information your office and  
14 Commissioner Singer have decided to put forth a major  
15 educational effort to the public; is that correct?

16 A. We are currently engaged in trying to educate  
17 the public to the best extent we can without the  
18 resources to do so.

19 Q. And you're doing that with the PA Voter ID  
20 Coalition; is that correct?

21 A. The PA Voter ID Coalition is an independent  
22 group that we are helping with information they ask  
23 us --- usually the Committee 70 actually --- the  
24 Committee of 70 asks us to verify a question about  
25 what this section of the law or that section of the

1 law means we've provided -- we've been that partner  
2 and we've actually communicated back to the state and  
3 provided feedback to the coalition that way.

4 Q. And Commissioner Singer has also been  
5 communicating with Jonathan Marks at the Department  
6 of State; is that correct?

7 A. Yes.

8 Q. Now you're aware that PA Voter ID Coalition  
9 contains a League of Women Voters?

10 A. More.

11 Q. Are you aware that it also contains the NAACP?

12 A. Yes.

13 Q. And are you aware that they are both Petitioners  
14 in this lawsuit?

15 A. Yes.

16 Q. And you testified that you are going to continue  
17 to assist this large outreach because the law is in  
18 place; is that correct?

19 A. That's correct.

20 Q. Okay. Now, you stated earlier that in your  
21 calculation only about 20 percent of poll workers  
22 attend training; is that correct?

23 A. That's correct.

24 Q. Okay. In your experiences when there have been  
25 changes such as redistricting, do poll workers --- is

1 there an increase in poll worker attendance at  
2 training?

3 A. I can't answer that. Actually I started at the  
4 Commission --- Commissioner Singer started her term  
5 in January of this year. So we haven't experienced  
6 enough of these types of changes to answer that  
7 question.

8 Q. Well, would you agree with me that because this  
9 is a new law there is a potential for more poll  
10 workers to attend training so they can be properly  
11 prepared come November 6th?

12 A. Potential, yes.

13 Q. Now, you were talking when you testified earlier  
14 about provisional ballots before the voter ID law was  
15 enacted and I think you said in 2008 about 8,300  
16 provisional ballots were counted but you said more  
17 were cast than counted; is that correct?

18 A. That's correct.

19 Q. Do you know how many were cast?

20 A. I don't have that number, I'm sorry.

21 Q. Do you know why those that were cast were not  
22 counted?

23 A. With provisional ballots, since 2002, it is my  
24 recollection --- I'm not the expert on provisional  
25 ballots, on this particular history, right, but the

1 provisional ballots when they're cast there may be a  
2 problem of how they're actually filed out. If  
3 they're not filed out correctly. There's actually a  
4 green envelope that the ballot has to go into and if  
5 that envelope does not have identifying information  
6 it's the election division's role and responsibility  
7 to try to get in touch with the voter to make sure  
8 --- there are times, instances where that may not be  
9 possible. So for that reason you will have drop  
10 offs.

11 Q. So there are other reasons that provisional  
12 ballots may not be counted other than confusion for  
13 the voter ID law; is that correct?

14 A. Yes.

15 Q. Now, I just want to step back and speak to you a  
16 little bit again about the poll worker training. Are  
17 you aware that the Department of State is sending out  
18 a manual to each poll worker in the state about the  
19 election on November 6?

20 A. I had not heard that.

21 Q. And do you think that this manual, which will  
22 instruct them about the voter ID law and its  
23 implementation on election day will be helpful to  
24 ease what you allege is confusion at the polls?

25 A. I can't answer that without actually seeing what

1 the manual is.

2 Q. Did your office --- are you aware of any input  
3 into this manual?

4 A. We --- the Commissioner has --- no.

5 Q. Now, you also you testified earlier that again  
6 this is a new experience that people are going to  
7 have to show identification to vote at the polls; is  
8 that correct?

9 A. That's correct, yes.

10 Q. Do you believe in today's world showing  
11 identification is a new experience for people?

12 A. I don't --- that's a strange question. So  
13 Philadelphia may have a voter who has been voting for  
14 20, 30, 40 years. We have a lot of those actually.  
15 It's an old city with a lot of people. And for a lot  
16 of those people, yes, that may be a problem.

17 Q. Would you agree with me that in every day life  
18 people all across Philadelphia have to show  
19 identification to get medicine, to ride a bus?

20 A. They don't necessarily have to show photo  
21 identification.

22 Q. Would you agree with me that in some forms of  
23 their life they have to and it's a normal process of  
24 what they do on a daily basis?

25 A. I don't know how to answer that question. Not

1 necessarily. It doesn't have to be photo  
2 identification, including Social Security benefits  
3 cards, which no longer have a photo on them, which is  
4 for a lot of people in Philadelphia the number one  
5 form of identification. So voter registration cards  
6 don't have a photo on them. A lot of people in  
7 Philadelphia use those as a proof of residency when  
8 they go to benefit's office, for example. So for a  
9 large extent --- to a large extent if you talk about  
10 Philadelphia that's not necessarily true, but I'm not  
11 going to speak to a number because I don't have that  
12 date in front of me. But I just know from the  
13 experience that we have had and the types of calls  
14 that we are getting into our office, that, no, it  
15 doesn't really apply.

16 Q. Mr. Santana, is it fair to say you're here  
17 testifying today because you're opposed to the voter  
18 ID law?

19 A. I'm here testifying on behalf of the City of  
20 Philadelphia.

21 Q. And you're doing that because why?

22 A. Because we're very concerned that the speed with  
23 which this is being enacted is not allowing us to be  
24 adequately prepared to ensure that voters are going  
25 to have the right information that they need, and

1 that we're going to have increased difficulty  
2 managing this election.

3 Q. Are you in favor of the voter ID law?

4 A. I don't like it.

5 Q. So you're opposed to it?

6 A. The law itself?

7 ATTORNEY CLARKE:

8 Objection, Your Honor, it's irrelevant.

9 Mr. Santana has testified he's here on behalf of the  
10 City of Philadelphia and his personal views, although  
11 he's already stated his personal views, are  
12 irrelevant.

13 JUDGE SIMPSON:

14 Overruled.

15 A. Yes.

16 ATTORNEY SCHMIDT:

17 I have nothing further. Thank you,

18 Your Honor.

19 ATTORNEY CLARKE:

20 Your Honor, just one clarifying

21 question.

22 REDIRECT EXAMINATION

23 BY ATTORNEY CLARKE:

24 Q. There's a reason that I'm a lawyer and not a  
25 numbers person. It was pointed out to me that I did

1 the math wrong on the number of people on the  
2 combined lists. And so I just want to ask you again  
3 about the number of people who are on --- the  
4 Philadelphia registered voters who are on the list of  
5 no PennDOT ID was about 186,000?

6 A. That's correct.

7 Q. And the people on the second list --- the Court  
8 has already caught this. The people on the second  
9 list of people with expired PennDOT ID was about  
10 175,000?

11 A. That's correct.

12 Q. So the total number of Philadelphia registered  
13 voters who on these lists don't have the ID that they  
14 need to vote, is about 361,000; is that right?

15 A. That's correct.

16 ATTORNEY CLARKE:

17 Okay. Thank you. I have no further  
18 questions.

19 JUDGE SIMPSON:

20 Anything else for this witness?

21 ATTORNEY SCHMIDT:

22 Your Honor, I just have one follow-up.

23 JUDGE SIMPSON:

24 Go ahead.

25 RECROSS EXAMINATION

1 BY ATTORNEY SCHMIDT:

2 Q. Mr. Santana, of those 186,000 non-photo ID  
3 holding registered voters, are you aware that the  
4 Department of State has sent each of those a letter  
5 about the upcoming election?

6 A. I saw the release about that, yes.

7 ATTORNEY SCHMIDT:

8 No further questions.

9 ATTORNEY CLARKE:

10 No further questions, Your Honor.

11 JUDGE SIMPSON:

12 Thanks for coming, you can go back to  
13 Philadelphia.

14 A. Thanks.

15 JUDGE SIMPSON:

16 Now would probably be a good time for a  
17 break unless there is some special request.

18 ATTORNEY CLARKE:

19 No, Your Honor.

20 JUDGE SIMPSON:

21 There is one more witness?

22 ATTORNEY GERSCH:

23 Yes, Your Honor.

24 JUDGE SIMPSON:

25 All right. It's about five 'til 11:00

1 we'll take a 30 minute break.

2 MR. TURNER:

3 Commonwealth Court is now in recess.

4 SHORT BREAK TAKEN

5 MR. TURNER:

6 Commonwealth Court is now in session.

7 You may be seated.

8 JUDGE SIMPSON:

9 You may call your next witness.

10 ATTORNEY GERSCH:

11 Before we call our next witness we  
12 would just like to offer into evidence, during Mr.  
13 Marks' testimony I had asked him if there was a list  
14 --- a written list of the exceptions. Mr. Marks  
15 indicated it was on the reverse side of Exhibit 30  
16 which I had shown him. I made a request in open  
17 court for the reverse side. The Commonwealth has  
18 just provided that to us and we would like to offer  
19 that as Exhibit 48.

20 JUDGE SIMPSON:

21 So this is going to be a separate  
22 Exhibit?

23 ATTORNEY GERSCH:

24 It will be a separate Exhibit. It's  
25 Exhibit 48 and that is the reverse side of Exhibit

1 30.

2 JUDGE SIMPSON:

3 So you are offering that?

4 ATTORNEY GERSCH:

5 Yes, Your Honor.

6 JUDGE SIMPSON:

7 Any objection?

8 ATTORNEY CAWLEY:

9 No objection, Your Honor.

10 JUDGE SIMPSON:

11 It's received.

12 (Respondent's Exhibit 48 marked for  
13 identification.)

14 JUDGE SIMPSON:

15 There was also Exhibit 47 was  
16 identified during Ms. Thorne's testimony.

17 ATTORNEY SCHNEIDER:

18 Yes, Your Honor, we would like to move  
19 that into evidence.

20 ATTORNEY CAWLEY:

21 No objection.

22 JUDGE SIMPSON:

23 It is received.

24 ATTORNEY CLARKE:

25 The Petitioners call Doctor Lorraine C.

1 Minnite.

2 MR. TURNER:

3 Please raise your right hand.

4 -----

5 LORRAINE MINNITE, PH.D., HAVING FIRST BEEN DULY

6 SWORN, TESTIFIED AS FOLLOWS:

7 -----

8 EXAMINATION ON QUALIFICATIONS

9 BY ATTORNEY CLARKE:

10 Q. Good morning, Doctor Minnite?

11 A. Good morning.

12 Q. Would you please state your full name for the  
13 record?

14 A. My name is Lorraine Carol Minnite.

15 Q. And what is your title?

16 A. I'm an associate professor in the Department of  
17 Public Policy at Rutgers Camden. I'm also the  
18 director of undergraduate urban studies program  
19 there.

20 ATTORNEY CLARKE:

21 I would like to mark as Exhibit 49  
22 Doctor Minnite's CV.

23 (Respondent's Exhibit 49 marked for  
24 identification.)

25 BY ATTORNEY CLARKE:

1 Q. Doctor Minnite, I'm showing you what we marked  
2 as Exhibit 49. Can you identify it?

3 A. Yes, this is my current CV.

4 Q. Now, I want to just take you through your  
5 experience, you received a Ph.D.?

6 A. Yes.

7 Q. And what was the Ph.D. in?

8 A. Political science.

9 Q. And where did receive it from?

10 A. The City University of New York.

11 Q. And what was the dissertation topic that you  
12 pursued?

13 A. My dissertation title is there on the CV and the  
14 topic was about political representation and  
15 specifically case study of redistricting in New York  
16 City.

17 Q. Now, have you, since you received your Ph.D.,  
18 had a particular research focus?

19 A. Yes.

20 Q. And what is that research focus?

21 A. That research focus is American elections, but  
22 specifically the incidence of voter fraud in American  
23 elections.

24 Q. Okay. And have you had some publications on the  
25 topic of voter fraud in American elections?

1 A. Yes.

2 Q. And if we could go to page five of your CV. I  
3 want to draw your attention to the last publication  
4 before the word Journalism, Securing the Vote, An  
5 Analysis of Election Fraud. Can you describe that  
6 publication, what was the research question?

7 A. The research question was looking at what the  
8 actual incidence of voter fraud was in American  
9 elections.

10 Q. And in doing that research --- well strike that.  
11 And then I wanted to draw your attention to the point  
12 it talks about it being updated in 2007, what was  
13 that research?

14 A. Well, the update there was because when that  
15 report was written the Help America Vote Act was  
16 actually being debated and had just passed. So the  
17 update was to take account of the fact that the Help  
18 America Vote Act of 2002's federal law gave great  
19 incentives to the states to computerize their voter  
20 registration lists. And that actually had been one  
21 of the recommendations in the report. So updated the  
22 report to reflect the changes in the law.

23 Q. Now, I'm going to come back and ask you in more  
24 detail about your findings. Right now I'm going to  
25 just walk throughout research that you have done. If

1 you just go to the next publication up from the  
2 Securing the Vote, the Politics of Voter Fraud. What  
3 was the research question in that publication?

4 A. The question there was, if voter fraud was so  
5 rare as I had found in the first report, what  
6 explained the power of voter fraud allegations with  
7 respect to election reforms aimed at widening access  
8 to the ballot. And so that report sort of turned to  
9 more of an analysis of what was the nature of the  
10 allegations, how to classify them, tracing the way in  
11 which allegations, in fact, were --- you know, did  
12 not actually --- were not the same thing as actual  
13 voter fraud. So that's what that report focused on.

14 Q. Okay. Again we'll get to the substance of that  
15 once we talk through your qualifications. The next  
16 publication up, Election Day Registration, A Study of  
17 Voter Fraud Allegations and Findings on Voter Role  
18 Security. What was the research question in that  
19 publication?

20 A. The research question there was again a focused  
21 examination of data on what the incidence of voter  
22 fraud was at the time the six states that had  
23 election day registration.

24 Q. Okay. And then I would like to go back to page  
25 three of this CV, under journal articles, the second

1 item, Modeling Problems in the Voter ID Voter Turnout  
2 Debate. What was the research question in that  
3 publication?

4 A. At that time there had been no peer-reviewed  
5 published research, statistical research, that  
6 attempted to measure an impact of voter laws on  
7 turnout and so that article noted that the findings  
8 of unpublished research were --- appeared to be very  
9 sensitive to statistical design. So the research  
10 question there was, are there problems with the  
11 statistical research designs of the research that  
12 existed at that time. So that was the kind of a  
13 technical paper about research design that was being  
14 used to try to detect an impact of voter ID laws on  
15 turnout.

16 Q. And since we're not going to go come back to  
17 this particular one, what were the conclusions in  
18 that report?

19 A. The basic conclusions were that the statistical  
20 tools and the data that we have, we as meaning  
21 political scientists that we have, that we use to  
22 study things like the impact of rules on behavior on  
23 turnout, that they were not --- at point they were  
24 not really sufficient to detect something that might  
25 be considered a marginal impact. So marginal meaning

1 one, two, three percent, say suppressive effect of  
2 one particular rule, that the data that we typically  
3 use, and the tools, were not kind of up to the job at  
4 that point and that we recommended instead that what  
5 researchers should look at at this point were survey  
6 data on --- that attempted to measure how many people  
7 don't have the ID. That that would be more useful to  
8 policymakers than the kind of statistical studies  
9 that were just beginning to be done, given the  
10 newness of these laws and the problems with the kind  
11 of data that we use, which in this case it referred  
12 to the current population survey data.

13 Q. Then I would like you to go to the first item  
14 under books, The Myths of Voter Fraud. Can you  
15 describe to us that book?

16 A. Yes, that book is I guess you would say the  
17 culmination of the research that I had done beginning  
18 after the 2000 presidential election. So it  
19 reflected almost ten years of research and  
20 incorporated the findings and the work from the other  
21 studies you've asked me about. And that book  
22 therefore looks at, again, the question of the  
23 incidence of voter fraud. There're really sort of  
24 two parts, the incidence of voter fraud and the  
25 measurement of that, and then an explanation of the

1 uses of voter fraud allegations and why those  
2 allegations have merit, not merit, but why they have  
3 influence in the public policy debate on election  
4 reform.

5 Q. Now, the book was published by the Cornell  
6 University press. Is there something significant  
7 about the fact that it was published by Cornell  
8 University?

9 A. Well, as academics we strive to publish in  
10 university presses because there's a peer-review  
11 process involved. So a book is peer-reviewed before  
12 it's accepted for publication. And there's also in  
13 this case Cornell has an internal peer-review board  
14 that also reviewed the peer-reviews that came in. So  
15 it's a mark of quality of the book in the academic  
16 community when it is published by university press.

17 Q. Because it's been peer-reviewed?

18 A. Exactly.

19 Q. Now have you also provided testimony on the  
20 issue of voter fraud?

21 A. Yes.

22 Q. And if we could look in your --- one of the ---  
23 I'm now looking at your report and one of the cases  
24 that you have referred to is Jones versus Denninger  
25 (phonetic). Can you describe describe for the court

1 what your involvement with the case Jones --- well,  
2 what the case is and what your involvement is?

3 JUDGE SIMPSON:

4 What page are you looking at?

5 ATTORNEY CLARKE:

6 Your Honor, I'm looking at the report  
7 which I can mark right now.

8 (Respondent's Exhibit 50 marked for  
9 identification.)

10 JUDGE SIMPSON:

11 And what page are we looking at?

12 ATTORNEY CLARKE:

13 One page one of your report --- so for  
14 the record we have just marked as Exhibit 50 an  
15 expert report prepared by Doctor Minnite.

16 BY ATTORNEY CLARKE:

17 Q. On page one of your report, Doctor Minnite, you  
18 refer to testimony that you've provided --- or that  
19 you provided in the case Jones versus Denninger, do  
20 you see that?

21 A. Yes.

22 Q. And what was the issue in Jones versus  
23 Denninger?

24 A. That case involves a challenge under the Voting  
25 Rights Act to Wisconsin's new voter ID law.

1 Q. And you provided an expert report in that case?

2 A. Yes.

3 Q. And why is that not on your CV?

4 A. I didn't put it there because I haven't actually  
5 testified at the hearing. I provided the expert  
6 report and there was a little bit of confusion on my  
7 part about whether I should put it on or not. And so  
8 being aware of all of the kinds of inflated things  
9 people sometimes put on there CV I want to be very  
10 caution. So I didn't actually list it because I  
11 haven't testified in person but I have provided the  
12 expert report.

13 Q. And what was in general the subject of the  
14 expert report that you provided in that case?

15 A. It was a question again about the incidence of  
16 voter fraud.

17 Q. In a particular area?

18 A. Well, it incorporated the findings from my book,  
19 as much of this report does, and it also highlighted  
20 one of the case studies in the book where I did, I  
21 guess you would say, extra research on voter fraud in  
22 Milwaukee and Wisconsin. So it was talking about  
23 Wisconsin specifically that way.

24 Q. Now, had you also been qualified --- you were  
25 qualified as an expert in a case, the Democratic

1 National Committee versus the Republican National  
2 Committee?

3 A. Yes.

4 Q. And I'll just point you to page one of your  
5 report, paragraph one. What was the issue in that  
6 case?

7 A. The issue in that case was a consent agreement  
8 between the democratic party and the republican party  
9 here, an that is overseen by federal court in New  
10 Jersey. And the republican party went into court to  
11 ask to be released of that consent decree, so that  
12 was the litigation.

13 Q. What was the nature of your testimony in that  
14 case?

15 A. Well one of the claims that was being made by  
16 the republican party was that they needed to have  
17 poll watchers at the poles to observe for fraud. So  
18 the question to me was, is that a reasonable concern,  
19 what does your research on voter fraud say about the  
20 incidence of voter fraud.

21 Q. And for that testimony did you do additional  
22 research or did you draw on the research that you had  
23 already done?

24 A. It was all drawn on the research that I had  
25 already done.

1 Q. And then you also testified in a case called  
2 ACORN versus Bysiewicz?

3 A. Bysiewicz (corrects pronunciation).

4 Q. Bysiewicz. And that again is testimony that is  
5 referred to on page one of your report. What was the  
6 issue in that case?

7 A. The issue in that case was that Plaintiffs were  
8 suing the State of Connecticut over their voter  
9 registration deadline cutoff, which when the trial  
10 began was 15 days. And they were arguing violations  
11 of equal protection with that deadline. And so the  
12 case --- the question to me again was around the  
13 incidence of voter fraud, because the argument was  
14 that the deadline was necessary so that election  
15 workers could check all the records and so forth and  
16 they had to prevent fraud. They needed the deadline  
17 to prevent fraud, so again the question was what does  
18 the research say about the incidence of voter fraud.

19 Q. Now, have you also testified before Congress?

20 A. Yes.

21 Q. And if you would take a look at --- and if you  
22 would take a look at page eight of your CV, you see  
23 where four items up from the research grants.

24 JUDGE SIMPSON:

25 Are we on the CV now?

1 ATTORNEY CLARKE:

2 Yes.

3 JUDGE SIMPSON:

4 I'm sorry. I was still on the report.

5 ATTORNEY CLARKE:

6 Sorry, Your Honor. We are on page

7 eight. If you could keep scrolling down. Okay.

8 BY ATTORNEY CLARKE:

9 Q. This must be printed out differently than mine.

10 But anyway at the top of page nine we have a

11 reference to U.S. Senate Committee on rules and

12 administration?

13 A. Yes.

14 Q. What was the nature of the testimony that you

15 gave before the Senate?

16 A. Well, that item there refers to written

17 testimony. So in that case I submitted only written

18 testimony, I didn't appear before the Senate

19 Committee. And the nature, again, was the question

20 of voter fraud and the uses of voter fraud

21 allegations to suppress voting.

22 Q. And did you do additional research to prepare

23 that testimony?

24 A. No. I mean, it was all based on again the

25 research I was doing and continuing to do that

1 resulted in the publication of my book.

2 Q. And immediately under the reference to the  
3 Senate testimony there is a reference to House  
4 testimony --- testimony before a committee of the  
5 House of Representatives. What was the nature of  
6 that testimony?

7 A. That testimony was very similar to the testimony  
8 before the Senate committee, so it was on the same  
9 question, same subject and drawing on the same  
10 materials. In that case I did testify in person in  
11 front of that subcommittee.

12 Q. Now in addition to your writing, Doctor Minnite,  
13 you also teach courses?

14 A. Yes.

15 Q. And are there any courses that you teach that  
16 incorporate the subject matter of the research that  
17 you've done on voter fraud?

18 A. Yes, for a number of years I taught a senior  
19 thesis writing seminar, which was a two semester  
20 seminar for seniors in political science and I used  
21 the academic debates on voter fraud in the 19th  
22 century to try to teach the students about what an  
23 academic debate is because it's particularly useful  
24 in the way that it unfolded in the journals and in  
25 the materials that academics produced back and forth

1 about the question of voter fraud. So we use that  
2 and they read a lot of --- a lot --- they read a  
3 number of articles and excerpts from books about that  
4 debate.

5 Q. I would like to ask you about one more item on  
6 your CV, which is page ten, under consultantships.  
7 There's a reference to the New York City Charter  
8 Commission Revision Commission. Now were you invited  
9 to testify before the Charter Revision Commission?

10 A. Yes.

11 Q. And could you explain what that was?

12 A. Yes, Mayor Bloomberg convened that commission to  
13 look at features of the city charter. Some of them  
14 dealt with elections, and the commission asked me to  
15 prepare a white paper report on how to think about  
16 voter participation and how to think about the  
17 connection between the rules that organize and  
18 regulate elections and voter participation.

19 Q. And just so I understand, were there any ---  
20 what was the connection between the rules and voter  
21 participation in general?

22 A. In general they bear very much on voter  
23 participation. So we could summarize the history of  
24 struggles for the right to vote in terms of changing  
25 the rules that make it easier to provide wide access

1 to the ballot.

2 Q. And when you were providing information to the  
3 commission were there types of rules that prevented  
4 people from voting?

5 A. Well, Mayor Bloomberg had a particular interest  
6 in non-partisan elections so some of what I discussed  
7 in that paper dealt with that. So non-partisan  
8 elections really again --- you could think of a set  
9 of rules that organize how candidates are presented  
10 to voters, what kinds of choices they have, what  
11 kinds of mobilizing vehicles might be involved in  
12 organizing voters into the electorate under  
13 non-partisan elections versus partisan elections.

14 Q. And did you reach any general conclusions in  
15 that paper about the nature of administrative hurdles  
16 and the affect of administrative hurdles on people's  
17 participation in the election?

18 A. Yes, the framework that is accepted I think is  
19 probably a consensus among scholars, for looking at  
20 the impact of rules on turnout reflects a kind of  
21 cross benefit approach. And so when you say hurdles  
22 we would think of them in terms of cost to voters,  
23 things that voters have to do in order to participate  
24 in elections and given that generally qualifications  
25 are simple, to be a citizen you have to reside where

1 you say you reside, you have to be 18 years old and  
2 so forth. The rules then, the bureaucratic rules for  
3 administering elections to get in the way of people  
4 being able to exercise their vote. So that's the  
5 framework that I have in all of my work and it was  
6 also in this paper. Although this paper for the  
7 charter revision commission wasn't specifically about  
8 voter fraud, but it was but electoral rules and how  
9 to think about how rules actually channel voting.

10 Q. And just so I understanding, if there is --- was  
11 it your framework that the more administrative  
12 hurdles you have the more voter participation is  
13 going to be reduced?

14 A. Yes, but I also talk about a kind of sensitivity  
15 to what a hurdle is for each voter, and we don't all  
16 see the hurdles the same way. So part of the paper  
17 was talking about being sensitive to the different  
18 resources people have that they bring to the process  
19 and what might seem like an easy thing for some of us  
20 to do might be not so easy for someone else. So that  
21 was part of the thrust of the paper, was drawing  
22 attention to diversity of resources that people have  
23 and that they can bring to participate in the  
24 electoral process.

25 ATTORNEY CLARKE:

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1                   Your Honor, at this point I move to  
2 qualify Doctor Minnite as an expert in the incidence  
3 and affect of voter fraud in American elections.

4                   JUDGE SIMPSON:

5                   Do you have any questions on voir dire?

6                   ATTORNEY CAWLEY:

7                   I have no questions as to the expertise  
8 of the witness.

9                   JUDGE SIMPSON:

10                  You may express an opinion.

11                  ATTORNEY CAWLEY:

12                  I do have an objection to the  
13 testimony, however, based on the stipulation that is  
14 before the court that the existence of voter fraud in  
15 Pennsylvania is not a factual matter in dispute and  
16 is, therefore, irrelevant.

17                  JUDGE SIMPSON:

18                  Your objection --- your relevance  
19 objection is overruled. Please proceed.

20                  DIRECT EXAMINATION

21                  BY ATTORNEY CLARKE:

22                  Q. Doctor Minnite, what prompted you to begin to do  
23 the research into the question of the incidence of  
24 voter fraud?

25                  A. Well I can distinctly remember what prompted me.

1 I was teaching Introduction to American Government to  
2 my students, my college students, when the 2000  
3 election occurred and that was an opportunity to look  
4 at what some people might call the sausage making  
5 process of election administration. And we were just  
6 simply fascinated by what was revealed about election  
7 administration and about also the court treatments  
8 and proceedings of that case and after that case, of  
9 course, there was a move in Congress to do something  
10 about the problems that we had seen in Florida and I  
11 followed that very closely and watched how it turned  
12 away from what seemed to be the problems of election  
13 administration. And so I began the research on why  
14 reforms that would make it easier to vote have been  
15 knocked down with allegations about voter fraud. And  
16 so I assumed there was research on voter fraud and  
17 the more that I looked into it the more that I  
18 discovered, in fact, there were no academic  
19 treatments of the question of voter fraud in American  
20 elections today, contemporary elections. I mentioned  
21 the 19th century research but there was nothing. So  
22 it became a subject of great interest to me for that  
23 reason. I didn't understand why no one had looked at  
24 it and yet why it had so much salience in these  
25 debates over election reform.

1 Q. And when you say that in 2000 instead of  
2 focusing on administration of elections people turned  
3 away from that, what do you mean? What was it about  
4 the fact that people turned away from election  
5 administrations that peaked your interest?

6 A. Well, I don't --- let me not overstate that  
7 because the Help America Vote Act addresses some  
8 issues of voter registration. For example, the  
9 incentives to states as I mentioned to computerize  
10 their election lists and also introduce electronic  
11 voting equipment and so forth. But the Justice  
12 Department, at the time, many people were talking  
13 about voter suppression in Florida and the U.S. Civil  
14 Rights Commission hearings about voters not being  
15 able to cast the ballots and I started to think  
16 about, you know, all of the ways in which ballots  
17 aren't counted. People go to the polls and they  
18 can't get their vote counted. Cal Tech and MIT came  
19 together and they did a study of this and they  
20 estimated somewhere between three and five million  
21 votes in federal election basically evaporated  
22 because of administrative issues and problems. And I  
23 thought well that seems like the problem for election  
24 integrity because if you don't have access and you  
25 don't count all the valid ballots you don't have

1 integrity. But instead the Justice Department began  
2 an initiative to look at voter fraud and they said  
3 voter intimidation, and so that is what I meant. The  
4 sort of follow-up on the law enforcement side was the  
5 question of voter fraud which had not been raised in  
6 the Florida election. Nobody said there was voter  
7 fraud in the Florida election. Instead we had  
8 problems with balloting machines and with reading the  
9 ballots and so forth, those were the big problems in  
10 American elections and yet we had the Justice  
11 Department initiative that was going to rule out  
12 voter fraud.

13 Q. Okay. So let's now talk about your research.  
14 What was your research methodology?

15 A. So my methodology I would characterize as a  
16 mixed method research approach, which is very common  
17 in the social sciences, and in layman's terms it  
18 simply means you look at everything. You look at  
19 everything you can look at. But it would include  
20 quantitative data if it exists, if you can create it  
21 and it would include qualitative data such as  
22 interviews and archival research into court records  
23 and so forth. So a kind of mixed methods approach.  
24 We would distinguish that, for example, from survey  
25 research, that's a different methodology.

1 Q. And let's talk about the data sources that you  
2 used. And we're going to kind of walk through this  
3 chronologically because your publications added more  
4 and more research as you went along culminating in  
5 your book. So what I would like to do is start with  
6 the data sources that you used for your initial  
7 publications in 2003?

8 A. Well, I'm trying to be good academic. As I said  
9 I reviewed all of the academic literature I could  
10 find on this. And finding nothing really useful for  
11 my research question I then began to look into data  
12 sets and I have some facility of the quantitative  
13 data. I know a lot about census data, for example,  
14 and court data and so forth. And I couldn't find any  
15 data sets, criminal justice data sets that I would be  
16 familiar with that had records of cases of voter  
17 fraud. So, you know, not finding anything, and not  
18 finding anything, in that respect. So I began with  
19 reviews of news report and there's an approach in the  
20 social sciences called event analysis or event  
21 history analysis which is primarily based on news  
22 reports of an event and we do that when we don't have  
23 kind of other data that we might think would be  
24 better and where we think that the event would be  
25 newsworthy. In other words there is a reason to

1 believe it would be in the press so it makes sense to  
2 look there. And since voter fraud I think is very  
3 newsworthy, and it was ten years ago when I started  
4 this work, I began with that kind of approach. And I  
5 did all kind of searches of news databases,  
6 LexisNexis databases. For example, I used very  
7 different broad search terms to dig in deeply. I  
8 reviewed thousands and thousands of news reports to  
9 begin to get a sense of whether there was a problem  
10 that was being reflected in the media.

11 Q. And when you did the review of news reports, did  
12 you do it in every state?

13 A. Well for the Securing the Vote report, which is  
14 really the first report I did, there I did it in 12  
15 states. I selected 12 states that represented all  
16 the regions of the United States including  
17 Pennsylvania was one of those states. And I searched  
18 from the period 1992 to 2002 and I surfaced, I think  
19 it was --- I don't remember because for six states it  
20 was --- I remember it was 4,000 articles that I  
21 looked at, but this was bigger. So I looked at  
22 those, you know, the news reports for those states.  
23 But I did do other kinds of searches on national news  
24 databases. I also searched the LexisNexis databases  
25 for the court records, for federal court, appeals

1 court, for state courts in those 12 states, that I  
2 looked at a little more closely for that report as  
3 well.

4 Q. And in addition to looking at these news  
5 databases, did you also look in more detail at  
6 certain situations?

7 A. Yes. You mean for that report?

8 Q. Yes, for the first report that you did.

9 A. Yes, so the news reports would point to some  
10 cases that seemed to be salient that would --- you  
11 know, they look like bigger cases and for that report  
12 I selected what I thought were the biggest, worst  
13 cases of election fraud. And I should point out and  
14 I think probably will talk about this later, but in  
15 this report I hadn't fully worked out my definition  
16 of voter fraud. I was looking more broadly at what I  
17 would call election fraud. So in that case I looked  
18 at several cases of what I think from that review of  
19 that time period were the worst cases of kind of  
20 election fraud and that included a 1997 primary in  
21 Miami for a mayor's race. It included the 2000  
22 presidential election in Saint Louis. It included a  
23 congressional race in Orange County in California in  
24 1996. So those were ones where --- that really stood  
25 out as cases that --- when I first looked at them I

1 didn't know what they were, but I followed what  
2 happened in them and traced that out and reported  
3 that in that report.

4 Q. Now, what were some other --- what were the  
5 other data sets that you have reviewed throughout  
6 your work culminating in the book?

7 A. As I mentioned there really --- there weren't  
8 the kind of databases that classified voter fraud in  
9 the way that I do. There is one database that is  
10 produced by the administrative office of U.S. Court's  
11 on an annual basis and it's made available to  
12 scholars through the ICPSR at the University of  
13 Michigan. And this database purports to be a  
14 complete and total record of all indictments brought  
15 in the federal court system on an annual basis. And  
16 I looked at that data for the period of 1995 to 2005  
17 and produced sort of annual numbers from that. It  
18 was very difficult to work with because the  
19 administrative office of U.S. Court's didn't classify  
20 voter fraud specifically, they classified something  
21 they called, I think it was election crimes or  
22 election fraud, and that included in some cases  
23 campaign finance crimes. So I did my best with that  
24 data set. And then I also had --- I looked at ---  
25 it's not database, maybe I'll wait until you ask me

1 more about the other sources.

2 Q. Okay.

3 A. That was the primary quantitative database.

4 Q. Okay. And let me make sure I have the right  
5 analysis. Would you take a look at page 13 of your  
6 report? Is that the correct --- is this the analysis  
7 that you just described or is it the one on page 17?

8 A. It's the one on page 17.

9 Q. Let's go to page 17 of your report. And is the  
10 chart on page 17 of your report the results of the  
11 analysis that you just described?

12 A. Well, this is a table reporting just one year,  
13 fiscal --- federal fiscal year 2005. So in my book I  
14 report a trend line actually, but this one is just  
15 capturing what was the most recent year I had at the  
16 time when I was doing this work, federal fiscal year  
17 2005.

18 Q. So am I right that in federal fiscal year 2005  
19 you found that of all of the --- in the whole United  
20 States there were 60 --- these are indictments?

21 A. Yes.

22 Q. That related to election fraud?

23 A. Yes.

24 Q. And let's go for a minute now to your definition  
25 of election fraud. Why did you think it was

1 important to distinguish voter fraud from other kinds  
2 of election fraud?

3 A. Well as I said this idea or this insight  
4 developed as I did my work and I developed it that  
5 way because I thought about the way that people could  
6 corrupt the voting process and how the voting process  
7 itself is a mix of different kind of players and  
8 people with different power and different access. So  
9 for example, we have election officials who control  
10 the mailing out of ballots, you know, what do voters  
11 do in the voting process? And I thought it was  
12 important to identify what voters could possibly  
13 corrupt because again my overriding interest is kind  
14 of a public policy interest and if --- for good  
15 public policy you want to make sure you're diagnosing  
16 the problem correctly. So I thought it was important  
17 to distinguish the different ways that different  
18 actors in the electoral process could corrupt the  
19 process with the idea that you can only corrupt the  
20 part of the process that you have access to. So I  
21 refined that definition to focus on voters, what  
22 could voters do, as opposed to what maybe part of it  
23 politicians have access to or election officials or  
24 party or campaign workers and distinguished all of  
25 those actors and think about what part of the process

1 they could corrupt.

2 Q. And so the concern is when you talk about  
3 electoral fraud you're talking about fraud that lots  
4 of different actors in the election process could  
5 have access to?

6 A. Right. I mean, this was something that I  
7 thought quite a lot about and tried to be careful  
8 about it. There is also, you know, in social science  
9 as I say in this report, it's important that we  
10 define concepts in ways that we can measure the  
11 empirical phenomenon we're talking about. So it was  
12 important to kind of really focus on who the actors  
13 are and what it is they can or cannot do given the  
14 kind of access they have to the process.

15 Q. So could you give us some examples of the kinds  
16 of actors in the process and the kinds of access they  
17 had to affect the process?

18 A. Yes, so for example, voters can't corrupt the  
19 count, because they don't count the ballots. So, you  
20 know, election officials or whichever parties are  
21 responsible for counting the ballots have access to  
22 those ballots and certainly there are cases in  
23 history in which ballots have been destroyed or  
24 manipulated in some other way. So the familiar  
25 ballot box stuffing is about adding ballots to the

1 count. Other issues might be ---.

2 Q. And again that's a kind of fraud that a voter  
3 really can't have access to, can't do?

4 A. That's right. So a lot of people are concerned  
5 about the security of electronic voting machines.  
6 Voters generally can't do anything about that. The  
7 concern might be whether election officials can use  
8 cards in those machines that add ballots to the  
9 count, or whether the systems can be hacked by  
10 hackers and so forth. The voters in the process of  
11 voting can't do that. So that is another kind of  
12 concern that I don't treat in my book. I don't  
13 analyze electronic voting machines for that purpose.

14 Q. So what you tried to do is come up with a  
15 definition of fraud that only focus on what the voter  
16 could do?

17 A. Right.

18 Q. And what was your definition of voter fraud?

19 A. So my definition of voter fraud is the  
20 intentional, intentional corruption of the voting  
21 process by voters.

22 Q. And going back to the chart which is on page 17,  
23 is this the number of election fraud violations an  
24 example of why it's important to distinguish between  
25 fraud by voters and --- where voters have access as

1 compared to fraud where other participants in the  
2 process have access?

3 A. Well here actually in this case I was not --- I  
4 was able to exclude campaign finance violations from  
5 what the administrative office of U.S. Courts was  
6 calling election fraud violations. But I wasn't able  
7 to further distinguish in this example who, you know,  
8 who was committing the case. So actually that number  
9 of 60 indictments for federal fiscal year 2005. As I  
10 say here it's probably over inclusive. Other data  
11 that I have, the other chart you started to look at,  
12 is an example of where I'm able to distinguish voters  
13 from other actors in that process.

14 Q. We won't put it up yet, but that chart was  
15 created from an initiative launched by the Attorney  
16 General; is that right?

17 A. The U.S. Attorney General, yes.

18 Q. And could you describe the initiative launched  
19 by the U.S. Attorney General?

20 A. Yes. As I mentioned I believe it was in March  
21 of 2001 the U.S. Attorney General announced in a  
22 press conference that the Justice Department was  
23 going to create what's called the ballot access in  
24 voting integrity initiative at the Justice  
25 Department. And that initiative is designed to bring

1 the attorneys from the criminal division and  
2 specifically the public integrity section who are  
3 charged with investigating election crimes together  
4 with the attorneys from the civil division in the  
5 voting rights section who oversee the voting rights  
6 --- violations of the Voting Rights Act, so civil  
7 issues. Bring those attorneys together in a training  
8 program, an annual training program and also bring in  
9 every U.S. attorney from every district in the United  
10 States to these training programs to --- or training  
11 seminars to help them understand better how to  
12 recognize, investigate, prosecute voter fraud and  
13 voter intimidation. So that program, I believe their  
14 first seminar wasn't held until 2002.

15 Q. Okay. And then as a result of the D.O.J.'s  
16 ballot access in voter integrity initiative, were  
17 there reports then issued about how many instances I  
18 of voter fraud they actually found after the  
19 training?

20 A. They would periodically put out press releases  
21 of how many investigations maybe they had opened or  
22 how many indictments they brought, but they did not  
23 distinguish between voters being charged versus party  
24 officials or candidates being charged. So that  
25 distinction --- they don't make that distinction in

1 their press releases. So I submitted a Freedom of  
2 Information Act request to the Justice Department ---  
3 actually to four different divisions in the Justice  
4 Department for that information. It was very  
5 difficult to obtain that information.

6 Q. But you ultimately obtained it?

7 A. I obtained it because they --- in a  
8 Congressional hearing a document was submitted, I  
9 guess, as evidence in the hearing that was on a  
10 website for the hearing. And that document was  
11 produced by the Justice Department under the ballot  
12 access in voting and integrity initiative and it  
13 listed --- it said it was a list of all of the  
14 indictments brought under that initiative for the  
15 first three years of that program.

16 Q. And let's look at the chart on page 13 of your  
17 report. And is this a chart that you compiled from  
18 the data that you received from this intensive  
19 activity by the Justice Department?

20 A. Yes, this is a summary of those indictments that  
21 appear on that case list produced by the Justice  
22 Department. So there were a total of 95 people  
23 indicted as listed on that document.

24 Q. And of those 95 people who were indicted, how  
25 many of those were voters?

1 A. Actually what you're looking at there in column  
2 one under voters, those are voters who were convicted  
3 or pleaded guilty. There were 40 voters, they're  
4 sort of folded at the second to last column there  
5 under acquitted or case dismissed. So there were 40  
6 --- 40 of the 95 voters were indicted and of that 40,  
7 26 were convicted or pleaded guilty to one of the  
8 various types of fraud or election crime that are  
9 listed there in the first column.

10 Q. And before we get to what those convictions  
11 were, what period of time was this over?

12 A. This was for federal fiscal year 2002 to 2005.

13 Q. And how many votes were cast during that period  
14 of time?

15 A. Well just in federal --- of the two federal  
16 elections of 2002 and 2004, there were about 197  
17 million votes cast.

18 Q. So of the 197 million votes cast there were 26  
19 convictions of some sort of fraud by the voter; is  
20 that right?

21 A. That's right.

22 Q. Now did you go and investigate the 26 examples  
23 of --- or 26 incidents where the voters were actually  
24 convicted of fraud? The 26 out of the 197 million?

25 A. Well I actually investigated all 95 of those

1 indictments. I looked at all of the court records  
2 that I could access throughout PACER system and I  
3 also did additional research on those cases in terms  
4 of the news reports, news analysis of those cases and  
5 that was actually how I was able to make these  
6 distinctions with respect to the voters. Yes, in one  
7 of the case studies --- I had four case studies in  
8 the book, and one of themselves of Milwaukee and  
9 Milwaukee was identified in this Justice Department  
10 program as one of the three places where they were  
11 going to run pilot programs to see, as they put it,  
12 what works with juries in charging individual voters  
13 because that was not the pattern that the Justice  
14 Department practiced before this initiative.

15 Q. Okay. So you actually went out and investigated  
16 each one of the 26 situations where voters had been  
17 convicted of fraud, election fraud?

18 A. Yes.

19 Q. And let's start with the largest category,  
20 voting by ineligible. What did you find when you  
21 actually went and looked at each one of those cases?

22 A. And I just want to point out that those headings  
23 come from the document the Justice Department  
24 produced, that's their classification of the type of  
25 case.

1 Q. Okay.

2 A. So voting by ineligibles, there two types of  
3 people. There were people who had felony convictions  
4 and who were prohibited under state law from voting  
5 while there were on parole or probation, but had cast  
6 a ballot. And the other were noncitizens.

7 Q. Okay. And so can you divide that up, break that  
8 up of the 20, how many would have each?

9 A. I can't remember offhand. The division might  
10 have been a little bit more of the felons than the  
11 noncitizens, but I don't exactly remember the precise  
12 numbers of the 20.

13 Q. So the felons --- so let's just take the felons  
14 first. The people who were not allowed under the  
15 state law to vote, they were registered to vote?

16 A. Yes. They were registered but some --- because  
17 this project was largely run in Milwaukee, Wisconsin  
18 has election day registrations, so some of them  
19 registered on election day, but this did register,  
20 they registered in their real name and they cast  
21 ballots. The thing that they did wrong was that they  
22 cast --- they registered and cast ballots when the  
23 state law said if you're still under state  
24 supervision, meaning parole or probation you can't do  
25 that.

1 Q. So of the universe of 197 million voters during  
2 the period that you looked at, roughly half of the  
3 people were people who voted because they were ---  
4 they were felons and they weren't supposed to vote?

5 A. That's right.

6 Q. But those people voted in their own name?

7 A. Yes.

8 Q. And they presented themselves at the polls as  
9 themselves?

10 A. Yes.

11 Q. So would a voter ID law have helped that  
12 situation?

13 A. No. I tell a story in the book about one of the  
14 voters in that category who was actually acquitted so  
15 he's showing up in the acquitted side. And in his  
16 case he had just come off a state felony charge for  
17 drug charge and he went to vote, he had voted in  
18 every presidential election before. He went to vote  
19 and he didn't drive. He was a poor person and he  
20 didn't have any other kind of ID and he brought his  
21 prison ID and the poll worker actually registered him  
22 and wrote on the registration it was his prison ID  
23 number and registered him and allowed him to cast the  
24 the ballot. He also brought a letter from his parole  
25 officer that was addressed to him at his address. So

1 he brought those documents thinking he was showing  
2 who he was and the poll worker didn't understand the  
3 law and thought she was following the law. So I  
4 mean, in that case he brought a photo ID, but he was  
5 actually allowed to cast the the ballot. And because  
6 there was no intent shown there and because of the  
7 election administration mistakes that case was  
8 dropped the day before it was supposed to go to  
9 trial.

10 Q. Okay. And then I want to get to the other  
11 people in the 20. The people who were noncitizens,  
12 they registered to vote though?

13 A. Yes.

14 Q. And they used their own names?

15 A. Yes.

16 Q. And then they went to vote and they voted as  
17 themselves?

18 A. Yes.

19 Q. So again a photo ID law would not have helped or  
20 stopped that situation?

21 A. No, and in fact one of those people was an  
22 elected official in Florida.

23 Q. And then just taking the last six of the --- we  
24 got 26 people out of 197 million, we talked about 20  
25 of them. The multiple voting situations can you ---

1 were those situations where people --- well, can you  
2 describe those situations?

3 A. Well, those were situations in basically I  
4 believe it was three states that had compared their  
5 registration list together and that's how they found  
6 these cases. And I know in one case there was a man,  
7 and I can't remember if he lived in Kansas and worked  
8 in Missouri or worked in Missouri and lived in  
9 Kansas, but he voted in both places because he  
10 thought he had a right to. And he told the  
11 prosecutors that he owned property in the other state  
12 that he didn't live in, he owned a bar, and that he  
13 had a right to participate in, you know, in the  
14 process there. So that is either, you know, voter  
15 confusion, voter obstinance, I don't know what, but  
16 it wasn't what I would call a kind of fraud where  
17 there was an intent to deceive. He voted in his own  
18 name and he registered in his own name in both  
19 places.

20 Q. So in either --- in that situation a photo ID  
21 law wouldn't have helped?

22 A. No.

23 Q. And then the registration fraud situation, what  
24 did that involve?

25 A. You know, I can't actually remember the details

1 of that case. I should've looked at it before I  
2 came.

3 Q. Okay. So at the end of the day were any of  
4 these 26 situations, did any of them involve in  
5 person voter impersonation?

6 A. No. None of these cases involved voter  
7 impersonation.

8 Q. Now in addition to this research that you did  
9 based on the results of the Department of Justice's  
10 ballot access and voter integrity initiatives, can  
11 you just go through for us the other data sets that  
12 you used to write your book and led you to the  
13 conclusions that we are going to talk about in a  
14 minute?

15 A. Well, I sent public records requests to every  
16 Attorney General in the United States. I sent public  
17 records requests to every Secretary of State. I sent  
18 public records request to every county DA in the  
19 United States, and I asked for information with  
20 respect to with the Attorney General --- attorneys  
21 general and the Secretaries of State, violations of  
22 specific parts of their election codes under their  
23 public records request --- public records laws I made  
24 those requests. With the district attorneys I asked  
25 them for anything on investigations, arrests,

1 convictions, anything related to registration fraud,  
2 illegal voting, and absentee ballot fraud. In some  
3 of that I received some data sets from some states  
4 who are willing to share information with me. For  
5 example, I got data from the California Secretary of  
6 State's office. They have a voter fraud  
7 investigations unit. And they actually take all the  
8 complaints that come to them, any allegations, and  
9 they track them and they, you know, they note whether  
10 they turned it over to a county DA and what happened,  
11 what was the disposition of the case. That was a  
12 very useful data set that I talk about in the book.  
13 I got data from Minnesota. I got data from Oregon,  
14 where they vote by mail there. I did many  
15 interviews. I interviewed as many kinds of people  
16 that I could. And where I did my case studies I  
17 visited places, so I went to Milwaukee.

18 Q. Let me stop you for a moment. Can you just  
19 describe the case studies?

20 A. Yes. So one of the case studies was in  
21 Milwaukee in 2004.

22 Q. Before I even get there. As part of your  
23 research you did in depth case studies of particular  
24 situations?

25 A. Yes, where there was --- have been public

1 allegations about voter fraud it was very much in the  
2 news. There had been elections where there were  
3 problems and so I went to these places and talked to  
4 as many people as I could and so that included  
5 Milwaukee looking at the 2004 election. It included  
6 Seattle, Washington State where there was a contested  
7 doing that gubernatorial election in 2004 and  
8 allegations of voter fraud had been made. It  
9 included the 2000 presidential election in Saint  
10 Louis. I went to Saint Louis and I interviewed the  
11 U.S. attorney in Wisconsin. I interviewed many  
12 lawyers who represented voters. I represented two  
13 voters in Milwaukee. I interviewed Congressmen. I  
14 interviewed advocates who were working on voter  
15 registration drives. I interviewed lawyers, I think  
16 I mentioned. So that was another source of data and  
17 information. I also had interviewed the head --- the  
18 executive director of the Milwaukee Board of  
19 Elections for a very long time because that was a  
20 very problematic election with respect to election  
21 administration and I wanted to understand how these  
22 what you might call irregularities happened. What  
23 happened? How did it happen? And so that was very  
24 useful to get that perspective as well.

25 Q. And in general what were the irregularities,

1 what did you determine were the cause of the  
2 irregularities that you discussed in Milwaukee?

3 A. What I discovered was confirmed in my interview  
4 with the U.S. Attorney there, which was election  
5 administration errors. They had a very low  
6 conviction rate in their pilot project to prosecute  
7 felon voters, he said, because there were too many  
8 problems with election administration and juries just  
9 won't believe that these problems couldn't be  
10 explained by the evidence of election administration  
11 foul-ups, if you will, or problems.

12 Wisconsin had become a kind of swing state and  
13 Wisconsin has had election day registration since  
14 the 1970s. And what people told me was they were  
15 not used to all of this attention on the state and  
16 bringing in of outside groups to run voter  
17 registration drives, because you can register on  
18 election day. So they didn't have that kind of  
19 activity before. And in Milwaukee, they were very  
20 just overwhelmed with the turnout, and they had a  
21 problem staffing the election. They have a  
22 bipartisan requirement. They didn't have --- they  
23 couldn't find enough people, and they were just  
24 completely overwhelmed by that election.

25 And so some of the irregularities would be

1 things like it looked like more people voted than  
2 had signed in, so the numbers didn't match, because  
3 there looking at poll books in one hand and number  
4 of votes cast. That would be a kind of the  
5 irregularity. Or the example of the man who  
6 registered with his prison ID. You know, why were  
7 felons allowed to vote in that election? And it  
8 turned out that actually at that time in Wisconsin,  
9 it was not on the registration card that you  
10 couldn't vote if you were on parole or probation.  
11 It wasn't on there. They didn't know it. The  
12 elections officials didn't know it. It wasn't ---  
13 evidence was brought in some of the cases to show  
14 that when people were being discharged from prison,  
15 they weren't told they couldn't do it.

16 So all of these things sort of combined to  
17 create what looked --- what would look like --- it  
18 looks like a little bit of a mess in the  
19 administration of this election. And that kind of  
20 data would be picked up by the media and people  
21 would say it's got to be fraud, people are sneaking  
22 in and voting. But it was clear to me that this was  
23 a problem of the election administration and that was  
24 actually confirmed to me in the interview with the  
25 U.S. Attorney.

1 Q. Now, have we exhausted all of the types of  
2 research that you did in writing your book and  
3 reaching your conclusions about the prevalence of  
4 voter fraud in American elections?

5 A. I think so.

6 Q. Okay. And do you have a conclusion about the  
7 prevalence of voter fraud in American elections?

8 A. Yes, I conclude in this book that the incidence  
9 of voter fraud is, I think I used the term,  
10 exceedingly rare.

11 Q. Now, you also --- have you also in the course of  
12 your book and your research, looked at the  
13 justifications that have been advanced for voter ID  
14 laws?

15 A. Yes.

16 Q. And what have you seen in terms of the  
17 justifications that have been advanced for photo ID  
18 laws?

19 A. Well, the most prevalent claim is that voter ID  
20 laws are needed to address voter fraud.

21 Q. And notwithstanding your conclusion --- well,  
22 let me just strike that.

23 Now when it's been demonstrated that there isn't  
24 voter ID fraud in a particular area, have you seen  
25 in your research other justifications that have been

1 advanced?

2 A. Yes. I mean, the arguments tend to change in  
3 the following way. Some people will argue that the  
4 record or nonrecord, if you will, of voter fraud  
5 doesn't capture it all, and that really what we just  
6 --- what we're doing here is we're just concerned  
7 about the possibility, the potential that it could  
8 happen. So they discount the record and say we're  
9 still just worried that it could happen. That's kind  
10 of one shift. And another shift is to say that it's  
11 actually irrelevant. I mean, it's not just that we  
12 might have some problems with the way you're  
13 measuring it. It's actually irrelevant because,  
14 again, legislatures can pass these sorts of laws if  
15 they're concerned.

16 Q. Okay. So one of the arguments that you've seen  
17 made is that there is voter fraud. There really is  
18 voter fraud, but it can't be detected?

19 A. That's correct.

20 Q. And do you have an opinion about whether there  
21 is voter fraud, but that it can't be detected?

22 A. Well, I never anywhere say that it absolutely  
23 never happens, it's never happened and it will never  
24 happen. I don't make those kinds of extremist  
25 statements. But I do find it quite puzzling to

1 discount a way of looking at crime that we accept for  
2 other kinds of crime. That is to say that the law  
3 enforcement effort against it that, in a sense,  
4 produces the data of non-fraud, not --- you know,  
5 fraud not happening, is somehow discounted because  
6 it's claimed voter fraud is some kind of special  
7 crime that is meant to be concealed as if all crime  
8 isn't meant to be concealed. All crime is meant to  
9 be concealed, but we find it, we investigate it, we  
10 prosecute it, and we use data on crime rates to get a  
11 sense of the magnitude of the problem. So every way  
12 I looked at this --- and I do have a kind of  
13 legalistic definition of voter fraud, because I  
14 include that issue of intent. And that is consistent  
15 with the way fraud as a concept is dealt with in  
16 American law. Every way I looked at it, I just  
17 couldn't find the kind of evidence of it that said to  
18 me this is a problem that we should be legislating  
19 against, especially --- and it was my hope that there  
20 would be some, you know, rational treatment of the  
21 kind of problems we have with election  
22 administration, and that the focus would be on the  
23 right problems and not on this one.

24 Q. So let me just see if I understand the  
25 conclusions that you reached about whether there is

1 undetected or the likelihood that there is undetected  
2 voter fraud. And I think I heard you say that one  
3 argument or one piece of your analysis is that all  
4 crime is meant not to be detected and why should  
5 voter fraud be any different. Is that fair, a fair  
6 statement of your analysis?

7 A. Yes. I think you have to accept, though, that  
8 it is not the same as making a mistake. It's not the  
9 same as voting when you're not allowed to vote  
10 because you didn't understand the rules. There is a  
11 difference between that and an intent to deceive.  
12 And I can give you the one case of voter  
13 impersonation that I know of in the research that I  
14 did for the book. And this was a case that involved  
15 a young man, a 17-year old, in New Hampshire, who his  
16 class --- the town area, they voted in his school.  
17 And the teacher took his class to the polling place  
18 in the school and said it's --- you know, learn your  
19 civic duty, you need to do this when you turn 18.  
20 And he then voted in his father's name because he has  
21 the same name as his father. And he went to the poll  
22 there, and he said I'm, you know, Mark Lacasse, and I  
23 want to cast a vote. And it was a Republican  
24 Presidential primary. And then he bragged about it.  
25 The teacher overheard it. He was reprimand. And he

1 was dealt with, in that he had to do some community  
2 service. He had to give a speech to his class about  
3 what he did. Now, that was a case where he new he  
4 wasn't allowed to do that and he attempted to  
5 impersonate his father. So I would call that a case  
6 of voter fraud for that reason.

7 With respect to your question about undetected,  
8 I'm just not persuaded that there are massive  
9 amounts of voter fraud being committed out there  
10 that aren't detected.

11 Q. That's what I'm trying to get at, as your reason  
12 for that conclusion. And I think one of the things  
13 that you said is that we use crime statistics for  
14 every other kind of fraud to decide how much of that  
15 crime is occurring. Is that part of your analysis?

16 A. Yes.

17 Q. And did you try to look at that in a  
18 quantitative way, look at that issue in a  
19 quantitative way?

20 A. Yes. I used, again, the database from the  
21 administrative office of U.S. Courts ---

22 Q. Okay. And that is on ---

23 A. --- to look at other forms.

24 Q. --- page 17 ---

25 A. Yes.

1 Q. --- of your report?

2 A. Uh-huh (yes).

3 Q. And what use --- if you can explain what it is  
4 you concluded from looking at the database from the  
5 U.S. Office of Administrative Courts?

6 A. Well, I collected the numbers here for the types  
7 of fraud that could be similar to the kind of fraud  
8 you would engage in if you were trying to commit  
9 voter fraud. So for example, citizenship fraud, you  
10 claim you're case a citizen when you're not. That  
11 would be something you would do if you're trying to  
12 commit voter fraud. Social Security fraud, you know,  
13 obtaining a fake number. That could have a bearing  
14 on voter --- on committing voter fraud. False claims  
15 and statements, of course, is claiming you're  
16 somebody you're not. The same with counterfeiting.  
17 Postal internet wire fraud, which would be used ---  
18 actually, laws against that are used to prosecute  
19 people for absentee ballot fraud. Tax evasion, you  
20 know, you know saying you live somewhere --- you  
21 don't live somewhere where you actually do and so  
22 forth. So I looked at the kinds of --- I guess we  
23 might call in a way sort of white collar fraud that  
24 involved committing an act that you might commit if  
25 you were trying to commit voter fraud to show that we

1 actually prosecute quite a few people for that kind  
2 --- for those various kinds of fraud, so we can  
3 detect that fraud. And we were able to prosecute.

4 Q. And do you see any reason to think that voter  
5 impersonation would be any different than these other  
6 types of fraud?

7 A. That's right, I don't see any major difference.

8 Q. And the point of your chart is to show that we  
9 can detect and prosecute fraud?

10 A. That's right.

11 Q. And so do you --- what conclusions do you reach  
12 about whether there is this large --- whether there  
13 is undetected voter fraud?

14 A. Well, again, I'm just not persuaded in the  
15 absence of evidence that it exists. And I look at  
16 --- what I'm trying to look at here is where would  
17 you see an imprint if voter fraud were being  
18 committed. And I do rely on law enforcement efforts  
19 against it, but we have a --- maybe a special case  
20 with respect to the Justice Department initiative,  
21 which the director of the Election Crimes Branch said  
22 was essentially second in priority for the Justice  
23 Department at that time to chart terrorism cases. So  
24 we have to believe that there was a major effort on  
25 the part of the U.S. Justice Department to find it.

1 So some people say, well, law enforcement statistics  
2 should be discounted because prosecutors don't try to  
3 find it, they don't look for it, they don't prosecute  
4 it, they don't go after it. And of course, that  
5 could be the case in some cases.

6 Q. And the Justice Department initiative that  
7 you're referring to is the Ballot Access Initiative,  
8 where they found 26 voters out of 197 million?

9 A. Exactly, yes.

10 Q. Okay. Now, I want to turn to another question.  
11 And that is, you have concluded that voter  
12 impersonation is extremely rare. Why is it rare, in  
13 your opinion?

14 A. Well, I think about it in the way that I am  
15 trained to think about it, which as a political  
16 scientist, I'm very influenced by a rational choice  
17 models that try to explain the voting decision. So  
18 this approach to voting behavior is a major subfield.  
19 And to simplify it, as I stated before, rational  
20 choice approach means that we look at what might be  
21 called cost to the voters and benefits, and we  
22 explain the voting decision based on how that  
23 balances out. And political scientists like to  
24 develop quantitative models to do this. But I think  
25 it's a good way of thinking about why it may be that

1 voters are not doing this. And that is both that  
2 there are greater costs to voting illegally than to  
3 voting legally. So you're increasing the costs to  
4 voters because every state, although there is isn't  
5 usually a specific statute that says you can't commit  
6 voter fraud, but every state makes it illegal to do  
7 things that we call voter fraud, for example,  
8 falsifying your identity to register to vote, voting  
9 more than once. Every state has these laws on the  
10 books and they carry, usually carry, various kind of  
11 penalties and fines. So to commit the crime and to  
12 do it intentionally, you have to assume that people  
13 realize that because it's a crime, they may be  
14 punished if they get caught. So that increases on  
15 the cost side.

16 On the benefit side, it's just hard to  
17 understand in the absence of being a part of a much  
18 larger conspiracy that your one extra vote is going  
19 to determine the outcome of an election. So to  
20 actually commit the fraud by, say, voting more than  
21 once or trying to run around at different precincts  
22 and cast more ballots, you know, than you're allowed  
23 to do, what's the calculation there of costs and  
24 benefits. What's the benefit? You would assume  
25 that someone who is motivated to break the law, to

1 vote illegally, might be very motivated to try to  
2 get their preferred candidate elected. I assume  
3 that is what would be the benefit. And yet the  
4 mechanism for doing that by trying to vote more than  
5 once or falsifying who you are is very, very  
6 unlikely to result in changing the outcome of the  
7 election as an individual, you know on the part of  
8 the individual act.

9 Q. I want to turn now to a subject and that is I  
10 want to focus on the voter ID laws specifically. We  
11 alluded to this earlier. But what part of the  
12 election process does the voter ID law affect?

13 A. Well, the voter ID law affects the process of  
14 qualifying a voter who shows up at the polls to cast  
15 a ballot and to allow them to cast that ballot.

16 Q. And what crime would the voter ID law prevent?

17 A. The only thing it would prevent is  
18 impersonation.

19 Q. And that's the very same voter fraud that you  
20 have been discussing today?

21 A. Well, I do discuss it in --- yes, in my  
22 research.

23 Q. So ---.

24 A. It's a form of what you might call individual  
25 fraud versus, say, organized fraud involving

1 conspiracies of election officials and so forth.

2 Q. And this is the same voter fraud that you have  
3 opined today is extremely or exceedingly rare?

4 A. Yes.

5 Q. Let's a talk about the role of disinformation  
6 and confusion. I think you said that the uses that  
7 allegations of voter fraud are put to is one of the  
8 subjects in the book; is that right?

9 A. Yes.

10 Q. How do you see allegations of fraud being used  
11 or misused in public discourse?

12 A. I see them being used to create the impression  
13 that this is a major problem that requires a public  
14 policy response, and one that has the potential to  
15 affect voting rights of individual citizens.

16 Q. And what are the nature of the information that  
17 is put out about voter fraud?

18 A. Well, allegations could be made that simply are  
19 not true. And I can give you an example from my  
20 book, and it's an example from a book called Stealing  
21 Elections written by John Fund that was released just  
22 before the 2004 election. And in that book, he  
23 states that at least eight of the 9/11 hijackers  
24 could have been registered to vote. And this is a  
25 person who was, at the time, a columnist for The Wall

1 Street Journal and wrote a lot about voter fraud and  
2 helped to create the impression that it was a big,  
3 big problem.

4 He repeated this allegation on the Lou Dobbs  
5 Show on CNN. This allegation showed up in four  
6 debates on terrorism bills. It was stated by  
7 Congress people that were, in a sense, citing him.  
8 It created a general concern that these people who  
9 had attacked the United States and killed Americans  
10 were actually registered to vote, and it simply was  
11 not true.

12 And I spent --- not only me --- Spencer Overton,  
13 who wrote a book about this, is a law professor. He  
14 tried to get the data or the evidence from John Fund  
15 about this that would corroborate this allegation.  
16 I tried. I spent a whole summer with a student  
17 trying to run this down. We had --- the Florida  
18 Broward County Voter Registrar was able to access  
19 the entire voter registration list in Florida going  
20 back to 1992. He ran every name of the terrorists  
21 and all of their aliases through that database. He  
22 couldn't find any of them registered to vote because  
23 John Fund had said they were registered in either  
24 Virginia or Florida. We contacted the state  
25 elections people in Virginia. They couldn't confirm

1 it either.

2 So there was no --- and he did not produce any  
3 data. And I have to say when he reissued the book  
4 in the second edition, just before the 2008  
5 election, he took that out.

6 Q. So in addition to things that just aren't true,  
7 are there other kinds of disinformation that are out  
8 there about voter fraud?

9 A. Yes. I mean, in terms of the incidence of it,  
10 the rate of it or ---?

11 Q. Well, I'm actually just thinking of --- you've  
12 given one example of a particular problem, which is  
13 that there are allegations that aren't true. Are  
14 there also just allegations that are never followed  
15 up on?

16 A. Oh, yes. That's the nature of the beast,  
17 because to make an allegation gets the attention of  
18 the media. To sit down and try to investigate it, I  
19 can tell you, is very tedious. It's very difficult.  
20 It takes a long time to find out exactly what  
21 happened. And when the answer is, well, the election  
22 workers, you know, screwed up, they made a mistake.  
23 That does not make it in to the media, so you're left  
24 hanging with these allegations where there's no ---  
25 you know, there's no follow-up. And that's, I think,

1 just the nature of the way these stories sort of  
2 play, have played, in the press. It's why I could do  
3 the original analysis I did of my event history  
4 analysis by looking for mentions of voter fraud.  
5 It's much harder to take these cases and track them.  
6 I did that again. It's in the book with a report  
7 that was put out by something called the American  
8 Center for Voting Rights that claimed to be this  
9 complete record of all this voter fraud in the 2004  
10 election. And again, it took many months, many calls  
11 to election officials, a lot of research looking into  
12 court cases and, you know, talking to lawyers and so  
13 forth to actually run down every single allegation.

14       So the pattern is to compile all these  
15 allegations that actually aren't evidence of voter  
16 fraud to create the impression that we have a  
17 problem. And in the book I related --- I mean, the  
18 reason I call it the myth of voter fraud is because  
19 I take about the way in which we have --- many  
20 people have a kind of cynicism about politics and  
21 politicians being corrupt. And this plays into a  
22 kind of cynicism, a general vague cynicism about  
23 political corruption. When you say, you know,  
24 there's election cheating, election fraud and people  
25 kind of shake their head and --- you know. But they

1 don't actually look at the data or they're not able  
2 to do the kind of work that I, in my craziness, did.

3 Q. Now, the last kind of problem that you see, I  
4 just want to talk about the problems that you see in  
5 creating this disinformation is another kind of  
6 problem that people talk about election fraud but  
7 they're talking about not voters, they're talking  
8 about things that the poll watchers do or the  
9 politicians do?

10 A. Right. Yes, a lot of it does come down to in  
11 cases of corrupt politicians who mishandle absentee  
12 ballots and get campaign workers to coerce voters and  
13 do things they don't want to do. So a lot of it,  
14 when you dig in to it, it turns out it's those other  
15 actors who might be participating in some kind of  
16 corrupting scheme.

17 Q. Okay. So now I want to start talking about  
18 Pennsylvania. In this case, were you asked to look  
19 at the incidence of voter fraud in Pennsylvania?

20 A. Yes.

21 Q. And what facts did you consider important in  
22 Pennsylvania?

23 A. Well, I was given documents related to this  
24 litigation. For example, the stipulation by the  
25 state regarding that they don't know of any cases of

1 voter fraud and so forth.

2 ATTORNEY CLARKE:

3 What was the exhibit number, the trial  
4 exhibit number?

5 COURT REPORTER:

6 Fifteen (15).

7 ATTORNEY CLARKE:

8 Would you put 15 up?

9 BY ATTORNEY CLARKE:

10 Q. Is Exhibit 15 the stipulation that you are  
11 referring to?

12 A. Yes.

13 Q. And the fact that there was --- what was  
14 important about this stipulation to you?

15 A. What was important was that when I did my public  
16 records request to attorneys general and secretaries  
17 of state, I often got back letters that said  
18 something like this that --- where they said we have  
19 no investigation, there's no prosecutions. And these  
20 were the chief law enforcement officers of the state  
21 or the chief elections officials of the state saying  
22 this. And I took that at its face value, that they  
23 were in a position to know and that they were putting  
24 in writing that they didn't have any cases of voter  
25 fraud. So that was significant to me for that

1 reason.

2 Q. Okay. And in addition to the concessions in  
3 this stipulation, were there other pieces of  
4 information that you felt were important in  
5 considering whether there is in-person voter fraud in  
6 Pennsylvania?

7 A. Yes. I also reviewed a statement, I believe it  
8 is on the website of the County Commissioner's  
9 Association of Pennsylvania.

10 Q. Could you just stop for one second?

11 A. Sure.

12 ATTORNEY CLARKE:

13 I'm marking as Exhibit 51, a document  
14 from the County Commissioners Association of  
15 Pennsylvania.

16 (Petitioners' Exhibit 51 marked for  
17 identification.)

18 BY ATTORNEY CLARKE:

19 Q. Is Exhibit 51 the document that you were just  
20 beginning to testify about?

21 A. Yes.

22 Q. And what was it about the document, Exhibit 51,  
23 that you felt was significant?

24 A. I was drawn to paragraph four.

25 Q. Okay. That's the one that begins administration

1 of elections generally?

2 A. Yes.

3 Q. And what was it about that paragraph that you  
4 felt was significant?

5 A. Well, this, again, was an authoritative  
6 statement to me by someone who I believe should know  
7 that, where he says but we find no evidence  
8 substantiated by a search of case records and  
9 anecdotal information from the counties, that it is  
10 an issue referring to fraudulent voting.

11 Q. Okay. And who is the author of this document?  
12 I mean, what organization was this author?

13 A. This is from Douglas E. Hill, Executive  
14 Director, County Commissioners Association of  
15 Pennsylvania.

16 Q. And you felt that the fact he was from the  
17 County Commissioners Association was important?

18 A. Yes.

19 Q. And what do you understand the County  
20 Commissioners Association to be?

21 A. That these are the people who essentially  
22 administer elections at the local level.

23 Q. Okay. And in reaching your conclusions about  
24 Pennsylvania, which we'll get to, are there any other  
25 pieces of information that you considered?

1 A. Yes. You shared with me the result of your  
2 subpoenaed records of each county District Attorney  
3 in Pennsylvania. And as I understand it, those  
4 requests that you made to those District Attorneys  
5 were modeled on the letter that I sent because I gave  
6 that to you, the letter that I sent when I did my  
7 mailing to every county District Attorney. And so  
8 you shared the results of --- of the responses to  
9 your request for information about violations of  
10 various elections laws related to voting fraud in  
11 Pennsylvania from the county DAs.

12 Q. And so you relied --- we sent subpoenas to all  
13 of the county DAs which, using your language, asked  
14 for all records of election fraud of different types?

15 A. Right. Citing the statutes, violations of  
16 various statutes.

17 Q. And the results of that were --- what were the  
18 result of that?

19 A. The results of that were at the time when I  
20 wrote this report, I believe you had 37 or 38  
21 responses, and none of them were reporting cases of  
22 voting fraud.

23 Q. Now, was there any other information from  
24 Pennsylvania that you relied to reach your  
25 conclusions about the incidence of the voter fraud in

1 Pennsylvania?

2 A. Not for this report. As I mentioned, I had  
3 included Pennsylvania in my 2003 report when I did  
4 the news analysis.

5 Q. And as a result of the research that you've done  
6 for your book and then also the research specifically  
7 for this case, have you reached an opinion about the  
8 prevalence of in-person voter fraud in Pennsylvania?

9 A. Well, I feel pretty confident that this --- that  
10 I would --- it would be consistent with my findings  
11 that it's exceeding rare in Pennsylvania.

12 Q. And do you hold that opinion with a reasonable  
13 degree of certainty?

14 A. Yes.

15 Q. And I'm sorry. The opinion is again?

16 A. That voter fraud is exceedingly rare in  
17 Pennsylvania.

18 Q. Now, I asked you earlier about ways in which  
19 that supporters of voter ID laws articulate or  
20 justify the law, and you described for us a process.  
21 Have you seen a similar process in Pennsylvania about  
22 the justifications for photo ID laws?

23 A. Well, I see that in the --- I infer that from  
24 the stipulation that because there is no evidence of  
25 voter fraud in Pennsylvania, and officials agreed to

1 that, that the purpose of the law is more of a  
2 general election integrity measure.

3 Q. Okay. And as we said before, where a --- well,  
4 strike that.

5 Now, we also talked about sort of this use of  
6 misinformation, disinformation, lack of information  
7 as away to justify voter fraud. And what I'd like  
8 to do is show you an exhibit that was marked  
9 yesterday. That was Exhibit 46.

10 ATTORNEY CLARKE:

11 Your Honor, would you like another  
12 copy?

13 JUDGE SIMPSON:

14 No. I have it here. I'll take a  
15 minute to find it.

16 ATTORNEY CLARKE:

17 Okay.

18 JUDGE SIMPSON:

19 Go ahead.

20 BY ATTORNEY CLARKE:

21 Q. Doctor Minnite, had you seen Exhibit 46 before?

22 A. Yes.

23 Q. And Exhibit 46 is an Interrogatory answer, that  
24 is an answer to a question that we posed to the  
25 Respondents. And the question was what is the

1 justification for the photo ID law. And what I want  
2 to do is ask you to go through the specific averments  
3 in the answer to Interrogatory One, and ask you to  
4 show us what --- we'll ask you specific questions.  
5 So when we get to the actual answer, it begins with  
6 Respondents answering that requiring a photo ID  
7 improves the security and integrity of elections in  
8 Pennsylvania. Do you see that?

9 A. Yes.

10 Q. And is that consistent with other places you've  
11 seen that in the absence of fraud, there is a  
12 justification advanced about the security and  
13 integrity of elections?

14 A. Yes.

15 Q. And does that --- what have you observed when  
16 that argument is made?

17 A. Well, people like to talk about how you need an  
18 ID to buy a beer and you need an ID to get on a plane  
19 and so forth, as if those things are the same as  
20 voting rights. So I found that a very misleading  
21 argument for the public to understand that. In other  
22 words, we have to degrade voting rights to the point  
23 of buying a beer in order to justify a voter ID  
24 requirement.

25 Q. I really have a question more about your

1 research and that is where you thought --- when  
2 you're making arguments about security and integrity,  
3 does this follow a pattern that you've seen about  
4 talking about voter fraud in a different way?

5 A. Yes. I think there's a move away from the  
6 specific issue of voter fraud and the lack of  
7 empirical evidence of it to a more general  
8 discussion.

9 Q. And is this another way of talking about voter  
10 fraud?

11 A. Yes, because ultimately, a voter ID only  
12 prevents voter impersonation. So it's --- what I say  
13 in the report, it's kind a veiled anti-voter fraud  
14 argument to simply say we're concerned about election  
15 integrity and, therefore, we need a voter ID. It's a  
16 little bit of a slight of hand, because all --- if  
17 we're concerned about election integrity, for  
18 example, I would argue we should be spending a lot of  
19 time and money figuring out why people's votes don't  
20 get counted when there are administrative rules,  
21 because that's bigger problem that impacts the  
22 integrity of elections. You can't have integrity ---  
23 in a democracy, you can't have integrity of elections  
24 if everybody who wants to vote doesn't get their vote  
25 counted.

1 Q. Okay. If you go to the next sentence,  
2 Respondents are aware of the report indicating that  
3 lists of registered voters contain the names of  
4 persons who are deceased, no longer residents of  
5 Pennsylvania or no longer residents of the location  
6 at what their names --- at which their names appear  
7 on list of registered voters. Is this justification  
8 for the law consistent with the pattern that you've  
9 seen?

10 A. Yes. To point to what may be errors in voter  
11 registration lists, that actually may have little to  
12 no bearing on actual commission of voter frauds is  
13 then to create the impression that people are going  
14 to take advantage of some of these problems and  
15 commit voter fraud.

16 Q. So when you talk about lists of registration  
17 lists, it doesn't have anything to do with voter  
18 fraud? I'm overstating it.

19 A. Yeah. I mean, we want accurate voter  
20 registration lists, so I'm completely in favor of  
21 totally accurate voter registration lists. But there  
22 are a lot of reason why there could be names on voter  
23 registration lists of people who recently are  
24 deceased, for example, or who recently moved because  
25 we don't have live computer systems and, you know, we

1 don't have tracking of individuals that requires them  
2 to report to authorities when they move in to a new  
3 place or, you know, their family has to notify  
4 election officials within 24 hours of their death to  
5 get them off the list. So there are reasons why  
6 there could be some inaccuracies on voter  
7 registration lists. And in fact, federal law, the  
8 National Voter Registration Act controls when you can  
9 purge names from the list. So the simple fact that  
10 there are some names on the voter registration lists  
11 of people who may have been recently deceased and  
12 they have yet to be removed to me is not a surprising  
13 thing and it really doesn't, again, bear so much on  
14 the question of whether people are going to be  
15 motivated to commit voter fraud that way.

16 Q. Okay. And then I have another --- the next  
17 sentence is Respondents are aware of reports  
18 indicating that votes have been cast in the name of  
19 registered electors who are deceased, no longer  
20 residing in Pennsylvania or who no longer reside in  
21 the jurisdiction where the vote is cast. Do you see  
22 that?

23 A. Yes.

24 Q. And is that kind of allegation of report  
25 consistent with the kind of justifications that

1 you've seen?

2 A. Yes.

3 Q. And does it tell you that there is in-person  
4 voter fraud?

5 A. No.

6 Q. And does it tell you whether or not --- well,  
7 would a photo ID law solve the problem that is raised  
8 in that sentence?

9 A. Well, this refers to --- the reason I answer ---  
10 I could answer so quickly is because I've seen this  
11 so many times. And each time the explanation is  
12 essentially human error has created this impression  
13 that somebody who died cast a ballot. There is a  
14 misrecording of the vote, there is a clerical error.  
15 There have been a few cases, and I can cite to a few  
16 cases, in Washington in which a few elderly, I think  
17 it was four, elderly voters turned in the absentee  
18 --- or the mail-in ballots, the absentee ballots, of  
19 their very recently deceased partners of 50 years.  
20 And you know, with the statement it was very  
21 important to my wife that, you know, she cast her  
22 ballot. And technically, of course, you can't do  
23 that. You certainly can't send in the ballot for  
24 someone else. But also the person had just died, so  
25 in the records it would look like they died and then

1 they voted. So there are better explanations, much  
2 better explanations, for this kind of allegation.  
3 But here it is presented to create the impression  
4 that that kind of problem, in fact, is voter fraud,  
5 and it's very rare that it actually is. The much  
6 better explanation, if you do the research on these  
7 cases, is that it's a form of clerical error. And I  
8 think here even in this case in the deposition that I  
9 read of Mr. Harlow, there had been an investigation  
10 of a handful of voters in Pennsylvania that looked  
11 like this type of problem, a date of death and a date  
12 of voting, it didn't match up right. And that upon  
13 investigation by the counties, all of that was found  
14 to be clerical error. So that is more the typical  
15 outcome when you investigate this kind of problem.  
16 That's the better explanation than dead people are  
17 voting or that people are voting in the names of dead  
18 people.

19 Q. You raised the issue of absentee ballots in ---  
20 as your last example, and that's the last point I  
21 want to get to you to you --- to with you. Have you  
22 looked at the level of fraud in absentee ballots?

23 A. Across all of the research I've done, I have  
24 certainly investigated cases of absentee ballot  
25 fraud. I would say that I haven't had the same laser

1 focus on absentee ballot fraud as I have with what we  
2 might be calling voter impersonation fraud, in terms  
3 of the counting things up, how many cases are there  
4 in the same way. You would note, of course, that in  
5 the data you showed before from the Ballot Access and  
6 Voting Integrity Initiative, none of them, none of  
7 those cases of voters being convicted or pleading  
8 guilty to fraud involved an absentee ballot. But in  
9 all of this research, I have looked at cases of  
10 absentee ballot fraud.

11 Q. And so you've actually found cases of absentee  
12 ballot fraud?

13 A. Yes.

14 Q. And can you give us an example of absent ---  
15 have there been absentee ballot fraud here in  
16 Pennsylvania?

17 A. Well, I think there's a well-known case here in  
18 Pennsylvania that resulted in litigation. And the  
19 case is called Marks v. Stinson. And that was a case  
20 of absentee ballot fraud scheme in Philadelphia. And  
21 I believe it was a special senate election in  
22 Philadelphia.

23 Q. And do you know what happened in that case?

24 A. Well, I read the court records, I'd also looked  
25 at news reports and I've read a few journal articles,

1 law journal articles, about it.

2 Q. And what happened in that case?

3 A. And in that --- that was essentially a case  
4 which voters were coerced into voting a certain way  
5 through the mishandling, misuse and abuse of absentee  
6 ballot laws by a candidate and his campaign workers,  
7 who obtained these ballots in ways, I believe,  
8 violated the law, who then coerced voters to vote a  
9 particular way, who told voters don't date them and  
10 so forth and turn them in. And there appeared to be  
11 some collusion between, what I would call, election  
12 officials in Philadelphia and the campaign. I don't  
13 believe anyone was criminally prosecuted among the  
14 election officials. But working together to,  
15 essentially, abuse the absentee ballot rules and  
16 coerce voters to turn their ballots over in favor of  
17 this particular candidate.

18 Q. So this example of real fraud, would that have  
19 been captured by the photo ID law in this case?

20 A. I don't believe it would.

21 ATTORNEY CLARKE:

22 I have no further questions.

23 JUDGE SIMPSON:

24 Who will cross examine?

25 ATTORNEY CAWLEY:

1 I will, Your Honor.

2 JUDGE SIMPSON:

3 Do you want to proceed or do you want  
4 to break for lunch?

5 ATTORNEY CAWLEY:

6 I actually won't be that long.

7 JUDGE SIMPSON:

8 Okay. I notice people are sort of  
9 nodding off in the courtroom.

10 ATTORNEY CAWLEY:

11 I'm more concerned about you, Your  
12 Honor, if you would like to take a break.

13 A. As a college professor, I'm used to that, so  
14 ---.

15 JUDGE SIMPSON:

16 When I see them nodding off, that makes  
17 me feel drowsy. But let me just say in the  
18 courtroom, don't do that. Stay alert. You know  
19 what, let's a stand up for a second. Okay. Back to  
20 work.

21 CROSS EXAMINATION

22 BY ATTORNEY CAWLEY:

23 Q. Hello.

24 A. Hello.

25 Q. You state in your report that there are certain

1 types of election-related fraud that has occurred  
2 through out the history of the country; right?

3 A. Yes.

4 Q. So you talk about politicians and, perhaps,  
5 police packing in fraudulently-registered voters  
6 where there's a hotly-contested election; right?

7 A. Yes. And I cite to two examples. And the most  
8 recent of that one that I could find was Richard  
9 Hatch's election in Gary, Indian in 1966.

10 Q. Okay. And you cite on page 58 of your report to  
11 buying votes and recycling voters; right?

12 A. Yes.

13 Q. And when you say recycling voters, do I  
14 understand that correctly to mean that voters are  
15 voting more than once?

16 A. In the 19th century, they were called repeaters.

17 Q. Okay. So basically shopped around to different  
18 polling stations?

19 A. Yes. Well, that's the allegation. And I would  
20 go back to my discussion before about the 19 --- the  
21 literature on the 19th century. I'm willing to  
22 believe that some scholars are still sort of debating  
23 the extent of that kind of fraud even in the 19th  
24 century, which I think we think of as, you know, many  
25 corrupt elections at that time.

1 Q. Sure. And just to add one example, I believe  
2 from the same time period, paying opponents to stay  
3 home from the polls.

4 A. Yes.

5 Q. Does that fall under that category?

6 A. Yes.

7 Q. Okay.

8 A. There was some research on that from the early  
9 20th century, an article by Gary Cox and Morgan  
10 Krause in New York State.

11 Q. I understand your testimony is that those are  
12 types of election-related conduct that a photo ID law  
13 wouldn't apply to; right?

14 A. Well, I don't --- I mean, those are forms of  
15 fraud that we don't see very much at all. But I  
16 mean, in terms of the terminology, again I talk about  
17 election fraud, I would include those sorts of ---  
18 those types of fraud as election fraud because they  
19 often involve the involvement of officials, whether  
20 they were elected officials, politicians and so  
21 forth. So people who had the power to create  
22 conspiracies to organize people to do that.

23 Q. Right. Well, certainly, since you brought up  
24 that point, somebody who's being taken around to a  
25 number of polling places knows that they're doing

1 something illegally; right?

2 A. It may not always be the case.

3 Q. And somebody who accepts money not to vote, can  
4 we assume that they're participating and they know  
5 individually that that's improper?

6 A. Well, actually maybe it's a bit of an academic  
7 issue. But the question of giving money to people to  
8 vote or not vote raises some questions about whether  
9 it's fraud at all, because people may have voted in a  
10 particular way anyway or they may have stayed home  
11 anyway, so to give them money to do something, we may  
12 not actually be coercing them. So it's a little bit  
13 hard to figure out what the voters role is in that  
14 situation.

15 Q. Well, with regard to the types of  
16 election-related conduct that I just went over, you  
17 don't dispute, do you, that a state has a legitimate  
18 or an important interest in making sure that doesn't  
19 happen?

20 A. No, I don't dispute that.

21 Q. Okay. I'd like to focus just on your background  
22 for a moment. Your formal education, if I read your  
23 CV correctly, does not include specific training in  
24 election administration, does it?

25 A. I don't know what you mean by training.

1 Q. Well, did you get any degree or take courses  
2 that were specifically geared toward election  
3 administration?

4 A. I mean, actually, there are no degrees in  
5 election administration.

6 Q. Okay.

7 A. And it's actually very interesting now that I'm  
8 in a public policy department versus political  
9 science department that that whole field of public  
10 administration excludes election administration. And  
11 I would also say that this interest in election  
12 administration was stimulated by the election in  
13 Florida in 2000 and it's kind of an emerging field  
14 now, there are many more people, particularly in law  
15 schools, who are finding a lot of interest in their  
16 courses on election law and administration.

17 Q. I'll switch from the education aspect to your  
18 employment history. Were you ever employed in an  
19 election administration?

20 A. No.

21 Q. Did you ever work as a poll worker?

22 A. No.

23 Q. Okay. So when we talk about just in-person  
24 voter fraud meaning impersonating another voter, is  
25 it fair to say that not all scholars agree with your

1 conclusions that voter IDs are unnecessary because  
2 there's no voter fraud or very little voter fraud?

3 A. I don't know, you know, if I would say that  
4 there's nobody who agrees with that full statement  
5 about --- you know, each part of that statement, that  
6 there is no voter fraud and, therefore, we don't need  
7 IDs.

8 Q. Maybe I can break down the question then.

9 A. Okay.

10 Q. Are you aware of scholars who believe that  
11 whatever the prevalence of voter fraud, that photo ID  
12 requirements are a good idea?

13 A. I've never had someone debate me on that issue.  
14 I wouldn't doubt that there are some scholars who  
15 might feel that way, but not based on their own work.  
16 Because I haven't seen any academic work that would  
17 support that argument.

18 Q. Are you familiar with Professor Robert Pastor of  
19 American University?

20 A. Yes.

21 Q. And he's with the --- he's the director of  
22 Center for Democracy and Election Management at  
23 American University?

24 A. Yes. Or he was.

25 Q. Are you familiar with his work on the

1 Carter-Baker Commission?

2 A. Yes.

3 Q. Have you read the Carter-Baker report, the  
4 report of that commission?

5 A. Yes.

6 Q. Is it safe to say that that's among the  
7 literature that's sort of required reading in the  
8 field of voter fraud?

9 A. No.

10 Q. No? Will you take seriously somebody who  
11 engaged in the debate with you on voter fraud who had  
12 not read the Carter-Baker report?

13 A. Yes.

14 Q. Okay. And why do you say that?

15 A. That was a blue ribbon commission with a lot of  
16 well-known people on it, and the scholarly work on it  
17 was not in the depth that I put in to my  
18 investigation so ---.

19 Q. So you're saying it included people who had not  
20 done extensive research of the kind that you  
21 described today?

22 A. They hadn't done really their own research.  
23 They were reporting on some of the literature so  
24 bibliographies were produced of some literature, but  
25 it wasn't always certainly focused on election fraud

1 because that really wasn't a major part of that  
2 report. It was included, but, sorry, the commission  
3 was looking more broadly of problems with elections.

4 Q. Why don't I show you so that in case you  
5 disagree with me on some aspect of this, you can  
6 point it out?

7 ATTORNEY CAWLEY:

8 And we'll just mark this as  
9 Respondents' Five.

10 (Respondents' Exhibit Five marked for  
11 identification.)

12 BY ATTORNEY CAWLEY:

13 Q. So take a moment. I know it's a big exhibit.  
14 But if you've seen it before, you can use it to  
15 refresh your memory.

16 A. Okay.

17 WITNESS REVIEWS EXHIBIT

18 BY ATTORNEY CAWLEY:

19 Q. Have you had a moment to look it over?

20 A. Yes. Do you want me to look at something  
21 specific or ---?

22 Q. I wanted to wait until you had a ---

23 A. Okay.

24 Q. --- chance to look at it. So what you were  
25 saying there, just the last thing you said was that

1 it contains different sections and not all of them  
2 pertain to voter fraud; right?

3 A. Yes.

4 Q. Okay. So I would refer you specifically to page  
5 18. And do you see where in the second paragraph on  
6 the page it says, there is no evidence of extensive  
7 fraud in U.S. elections or multiple voting but both  
8 occur and it could affect the outcome of a close  
9 election?

10 A. Yes.

11 Q. Do you disagree with that statement?

12 A. No, I don't. I don't disagree, but it's a very  
13 hypothetical statement.

14 Q. Okay. And then I believe sort of switching the  
15 focus, the next sentence says the electoral system  
16 cannot inspire public confidence if no safeguards  
17 exist to deter or detect fraud or to confirm the  
18 identity of voters. Do you take issue with that  
19 statement?

20 A. No.

21 Q. And finally in that same paragraph, photo IDs  
22 currently are needed to board a plane, enter federal  
23 buildings and cash a check. Voting is equally  
24 important. Now I would have a question about that  
25 statement and how you feel about that, because you

1 just referred in your testimony to degrading voting  
2 rights to the level of buying a beer. But so do you  
3 take issue with this statement by the Carter-Baker  
4 Commission?

5 A. Yes. I think it is what I was saying before, I  
6 think it has kind of created a misunderstanding, a  
7 public misunderstanding about voting rights and at  
8 what point government can interfere with voting  
9 rights. So we don't have a right to buy a beer. So  
10 we think that we can regulate alcohol because it has  
11 social impact, personal impact and so forth, but we  
12 treat voting right a little differently than that.

13 Q. But don't you read that statement possibly to  
14 say that they're not degrading voting rights to the  
15 level of beer, they're simply saying that if beer  
16 requires a certain barrier to entry then voting  
17 should have at least that barrier as well?

18 A. No, I think it's the other way around. So I  
19 realize I'm working against kind of public  
20 understanding of this which is to make people think  
21 it's the same thing. But it's not the same thing, so  
22 if you keep saying --- you know, in public you keep  
23 saying voting is the same thing as buying a beer,  
24 people start to think about it that way. But in  
25 fact, when the question is where do you draw the line

1 for government regulation of a right, you have a  
2 different set of questions and interests at play. So  
3 we're not debating, you know, whether you can buy a  
4 beer or not buy a beer with or without an ID. We've  
5 already said, in a sense, the bar is low for  
6 government here. Government can make you show an ID  
7 to buy a beer. But when we're talking about voting  
8 rights, the bar actually should be higher and we  
9 should --- we have to take more in to consideration  
10 about how that regulation is actually going to affect  
11 the exercise of that right. So I've always been  
12 puzzled about that. I understand why it seems to  
13 make sense, but I think if you think about it, it  
14 actually isn't correct to make that analogy.

15 Q. On page two of your report, you indicate a  
16 number of things that you reviewed in the course of  
17 reaching your conclusions, and you include the  
18 transcript of the Pennsylvania House State Government  
19 Committee from March 21st, 2011; correct?

20 A. I'm just looking here.

21 Q. I believe it's the first item listed?

22 A. Oh, yes.

23 Q. So you reviewed the transcript of the  
24 proceedings from that day?

25 A. Yes.

1 Q. So did you review the testimony of Hans Von  
2 Spakovsky?

3 A. Yes.

4 ATTORNEY CAWLEY:

5 And I realize that's a mouth full, so I  
6 will provide the spelling of that name to our court  
7 reporter at the conclusion today.

8 BY ATTORNEY CAWLEY:

9 Q. So Mr. Von Spakovsky reaches a different  
10 conclusion than you do, not only about the necessity  
11 of voter ID, but also the prevalence of fraud?

12 A. Yes.

13 Q. Okay. And I judge from the look on your face  
14 that you are familiar with Mr. Von Spakovsky and his  
15 work?

16 A. Yes. I certainly don't know him personally, but  
17 I've read --- I think I've probably read everything  
18 he's written regarding voter fraud.

19 Q. Okay. And you're aware that he is a former  
20 Commissioner on the Federal Election Commission?

21 A. Not on the Federal Election Commission, I don't  
22 think.

23 Q. Okay.

24 A. He's --- let me see. He was appointed, I  
25 believe; right? But I don't remember whether his

1 appointment was actually --- his nomination was  
2 actually confirmed. I don't recall.

3 Q. Okay. Do you recall what his testimony was that  
4 day?

5 A. I recall that thinking that it was exactly what  
6 he's been saying in other places. I don't know if I  
7 could remember the details of his testimony here  
8 without looking at it.

9 ATTORNEY CAWLEY:

10 I'll hand you what we can mark as  
11 Respondents' Six.

12 (Respondent's Exhibit Six marked for  
13 identification.)

14 BY ATTORNEY CAWLEY:

15 Q. Now, I'll refer you to the top of this second  
16 page. The first page is a cover sheet, and the top  
17 of the second page.

18 A. Uh-huh (yes).

19 Q. And do you see where he indicates that he was a  
20 Commissioner for two years on the Federal Election  
21 Commission?

22 A. Okay. Thank you for correcting that. I  
23 couldn't remember which thing he was nominated to  
24 that he didn't actually receive.

25 Q. And were you aware that he, as he indicates in

1 that same paragraph, that he worked in elections  
2 administrations in Atlanta and in Virginia?

3 A. I believe he was on the board there. I don't  
4 think he was an election administrator.

5 Q. So are you familiar with the testimony that he  
6 gave that day about incidents of voter fraud?

7 A. Well, as I said, I did read it. I mean, I did  
8 read the transcript, and I didn't see anything that I  
9 hadn't seen before in his writings.

10 Q. And you explained your disagreement with his  
11 testimony before that House Committee in the same way  
12 that you answered questions for Counsel today that  
13 ---?

14 A. Which is ---.

15 ATTORNEY CLARKE:

16 Objection.

17 JUDGE SIMPSON:

18 I'll sustain as to form. I don't  
19 understand the question.

20 ATTORNEY CAWLEY:

21 Okay.

22 BY ATTORNEY CAWLEY:

23 Q. So the reasons why you disagree with his  
24 description of the incidents in here is because there  
25 are other explanations for them, other than in-person

1 voter fraud?

2 A. Well, I would --- you know, I wouldn't --- I  
3 would want to go through each --- we could go through  
4 each one, if you want, and I could talk about what I  
5 would object to. But in general, he has made claims  
6 about voter fraud that upon investigation are not  
7 correct. And in fact, I've written a rebuttal to one  
8 claim that he's made a lot about voter fraud in  
9 Brooklyn in 1982 in a particular case that he tends  
10 to cite a lot. So I did a lot of research to  
11 investigate it and wrote kind of a rebuttal, not  
12 published but on widely-read election list. So I  
13 don't want to give you a ---.

14 Q. That's okay.

15 A. Okay.

16 Q. I won't ask you about --- I'm not actually --- I  
17 didn't intend to go through his testimony. I just  
18 wanted to point out that he is someone in the field  
19 who believes there is voter --- in-person voter  
20 fraud; right?

21 A. No. He's not an academic.

22 Q. Okay. Do you ---?

23 A. And he doesn't do the kind of research that he  
24 should do before making these sorts of claims. He's  
25 not an academic, he's a lawyer. And he is employed

1 by the Heritage Foundation, so he works for a  
2 foundation and he produces analyses for them. But he  
3 has no standing as an academic. He's never produced  
4 any academic research.

5 Q. Okay. I'll switch the focus of my questions,  
6 rather than going through the particulars of his  
7 report. I wanted to talk about some of the points  
8 you made during your Direct Examination. First, you  
9 relied in part on the stipulation of the parties in  
10 this case; right?

11 A. Yes.

12 Q. And do you understand that this case is all  
13 about an act of the General Assembly; right?

14 A. Yes.

15 Q. So legislative creation?

16 A. Yes.

17 Q. And do you realize that none of the parties are  
18 in the legislature?

19 A. Yes.

20 Q. And none of the parties without stipulation  
21 could speak for the people in the legislature; do you  
22 under that?

23 ATTORNEY CLARKE:

24 Objection. The stipulation says what  
25 it says, including the fact that there is no ---

1 well, it says what it says.

2 ATTORNEY CAWLEY:

3 And the witness was asked on Direct

4 ---.

5 JUDGE SIMPSON:

6 The objection to the form or relevance,

7 those objections are overruled. So you may answer

8 the question.

9 A. Could you restate that question?

10 BY ATTORNEY CAWLEY:

11 Q. Sure. The last question was, do you understand

12 that the parties to this litigation and to this

13 stipulation are not speaking for members of the

14 legislature?

15 A. I don't know. I mean, if you're telling me

16 that, I believe you.

17 Q. I'll represent that.

18 A. I don't know exactly what the relationship is.

19 Q. Because we need your --- I need your

20 understanding of this. Okay. But you understand

21 that the people named as the parties, the Respondents

22 in this case, are not legislators?

23 A. Well, I thought the parties where the

24 Commonwealth of Pennsylvania, the Governor and the

25 Secretary of the Commonwealth.

1 Q. And did you assume in reaching your conclusions  
2 based on the stipulation that that included the  
3 legislature?

4 A. Well, it's the state government. I don't know  
5 if I thought about whether the legislature was not a  
6 part of the state government.

7 Q. Okay. And with regard to your analysis of the  
8 Interrogatory responses, you don't know for sure that  
9 when we have votes cast by, quote/unquote, deceased  
10 voters that some or even many of them were not  
11 attributable to voter impersonation, do you?

12 A. Well, I reported on what Mr. Harlow said about  
13 the office's investigation of a list of names of  
14 people who had been produced through a search for  
15 potentially --- for those sorts of cases, people who  
16 were deceased prior to a vote being cast in their  
17 name. So I understood that to say that when those  
18 things were investigated, that particular set of  
19 names that were produced in this case, that they were  
20 clerical errors. That's, I believe, what he said.  
21 They were attributable.

22 Q. Okay. And you're referring specifically to the  
23 instances identified by Mr. Harlow; right?

24 A. Yes.

25 Q. Okay. And you were, but what you said about the

1 Interrogatory responses are that they're cast a  
2 certain way when there's a more likely explanation?

3 A. Oh, I see. Yes.

4 Q. And that is what I'm asking you about.

5 A. Okay.

6 Q. And I'm not even saying that it's likely that  
7 deceased voters are always attributable to voter  
8 impersonation. But do we know for sure whether that  
9 occurs or doesn't occur, that votes are cast on  
10 behalf of somebody who's no longer with us?

11 A. No. We have a few cases of that, which I did  
12 mention. Cases from the 2004 gubernatorial election  
13 in Washington, for example. Which has to be the most  
14 extensively studied election in history. There was a  
15 whole room of documents on that. And there were ---  
16 I believe, the Court found there four --- I think it  
17 was four individuals, who essentially had turned in  
18 the absentee ballot for their deceased spouse. So  
19 that's a case of a person sending in a ballot for  
20 someone who was deceased. So I recognize that there  
21 could be some number. But the way that I do my work,  
22 I mean inferences and reasonable --- try to draw  
23 reasonable conclusions from the actual evidence that  
24 I see. And I have seen many, many cases of an  
25 allegation being made and then an investigation

1 looking and saying, oh, we realize. And if you think  
2 about it, it's not unreasonable to expect there to be  
3 some amount of human error in election  
4 administration, because we have human error in  
5 everything that we do. All administrative records  
6 have --- reflect some kind of human manner. For  
7 example, in the --- which I cite in my report, errors  
8 in the U.S. Postal Service database, errors in the  
9 Social Security Death Index, which were actually  
10 startling to me when I read the concern about the  
11 number of people on average --- on an average basis,  
12 who are entered into the death index who are not  
13 dead.

14 Q. That is startling.

15 A. So I don't mean to cast dispersions on very  
16 hardworking government officials, but we're human and  
17 we make --- and we all make these kinds of mistakes  
18 and they're bound to be reflected in all  
19 administrative records, including election records.  
20 We want them not to have any, but they're likely to  
21 have some. And that's kind of a suspicion about  
22 voter fraud, that very often turns out to be clerical  
23 error.

24 Q. And you are sort of --- that's a good lead into  
25 another topic that I wanted to ask you about. Which

1 is just simply the limit of a database, such as the  
2 voter registration database in Pennsylvania. Would  
3 you agree or do you understand that in Pennsylvania,  
4 there's no way to tell from the state's database  
5 whether there are Pennsylvania voters who are  
6 registering in other states?

7 A. I haven't explicitly investigated the mechanisms  
8 as of this state's voter registration database, so I  
9 don't want to present myself as an expert on the  
10 state database in Pennsylvania. I don't know. I  
11 haven't done that. That might have been something if  
12 there had been more time, I have been able to  
13 investigate a little bit better.

14 Q. Okay. You do say in your report at page 11,  
15 paragraph 23 --- first of all, the heading is voter  
16 fraud is rare.

17 A. Let me see. Did you say 23?

18 Q. It's page 11, paragraph 23.

19 A. Okay. Yes.

20 Q. And I think you have made this point clear, but  
21 in case it was only clear in my mind, you're not  
22 saying in-person voter fraud never ever happens,  
23 you're saying it's rare; right?

24 A. Yes, that's correct.

25 Q. And in this paragraph, you talk about how

1 there's no officially compiled national or statewide  
2 statistics that are reliably reporting incidents of  
3 voter fraud?

4 A. That's correct.

5 Q. And that's sort of what I was getting in to, is  
6 that a state, such as Pennsylvania, doesn't  
7 necessarily know which Pennsylvanians are also  
8 registered in a state. Are you saying that's  
9 something that you haven't encountered in your  
10 research either here or in other states?

11 A. Well, for the most part right now, we still  
12 have, in a sense, 50 electoral systems reflecting the  
13 50 states. So we have sort of 50 administrative  
14 systems, as well. That's a big improvement over  
15 where it ways ten years ago. And I think, in fact,  
16 Pennsylvania is a state that had a kind of  
17 decentralized election administration. If you look  
18 at all the states and you kind of put them on a  
19 range, Pennsylvania would be on the side of sort of  
20 decentralized election administration. So it's an  
21 improvement to have the state databases pulled  
22 together, you know, with the help of tax dollars.

23 But what you're asking me is it wouldn't  
24 necessarily raise a concern about voter fraud to  
25 know that a person was showing up on two state

1 databases. And I can give you one example, which is  
2 I moved recently from New York to New Jersey, and  
3 being a good citizen, I sent in a cancellation to my  
4 voter registration in New York City. I think I'm  
5 still registered there. I attempted to register in  
6 New Jersey when I changed my driver's license. And  
7 you know, three, four weeks later, I'm still not  
8 registered here. That's little concerning to me.  
9 But nevertheless, there could be a point in time in  
10 which I'm showing up on both states' voter  
11 registration databases because one side hasn't  
12 cancelled it yet and the other side has added me in.  
13 So simply having that doesn't necessarily raise a  
14 concern that all of that means that's going to turn  
15 in to voter fraud.

16 Q. Right. If you look at the Carter-Baker report  
17 at the top of page 12?

18 A. Okay.

19 Q. And doesn't it talk about that, this phenomena,  
20 where there's nine million people who moved to  
21 another state or abroad each year?

22 A. Yes.

23 Q. And what it goes onto say is that there's --- I  
24 believe the heading is Interoperability Among States.  
25 So there's a disconnect between one state's registry

1 database and another state's; right?

2 A. There very likely is because of these high rates  
3 of mobility of Americans.

4 Q. And it cites --- the commission cites to news  
5 reports about 140,000 voters in Florida who were  
6 apparently registered in four other states. So isn't  
7 this the kind of thing that can happen when you have  
8 that decentralized election administration?

9 A. Well, I think the general point that you can  
10 have people registered in two states at some point in  
11 time, I agree with you. I want to look at that  
12 particular report because I want to look at the  
13 footnote. Because this is the kind of thing I would  
14 investigate and often find that it was the result of  
15 some mismatching of data, not to say that there  
16 aren't --- again, not to say that there aren't some  
17 number of people who are very likely showing up on  
18 two states because they moved, and election  
19 administration can't capture the move fast enough.

20 Q. Right. And so you would --- you know, depending  
21 on what that footnote says, you might look in to that  
22 to see if it's even true, because it cites to news  
23 reports. But I don't think we have a dispute here,  
24 and I'll move on from it. But with decentralized  
25 registries of registered voters, there's not always

1 communication between the various states and you can  
2 have people registered in more than one state?

3 A. Yes.

4 Q. Okay. And I am with you when you say that that  
5 doesn't necessarily indicate anything about in-person  
6 voter fraud. But doesn't it present the opportunity?

7 A. Well, if you raise the question of opportunity,  
8 then you have to go back to the argument about  
9 motive.

10 Q. Sure. And I'm getting there.

11 A. Okay.

12 Q. So isn't there --- just having --- I'll back up.  
13 When I go in, in Pennsylvania, to vote, all I have to  
14 do is tell them my name. They find my name in the  
15 poll book, and I sign my signature. So are you  
16 familiar --- is that the process you understand?

17 A. Yes.

18 Q. Okay. So if my name is in a poll book in more  
19 than one place, the opportunity is at least there.  
20 We'll get in to whether I have the motivation.

21 A. Or the means.

22 Q. Or the means. But we're going to assume that my  
23 --- you know, because of these things that the  
24 Carter-Baker Commission and you have talked about,  
25 I'm in more than one place. That's an opportunity?

1 A. Well, it's an opportunity, I suppose, but it  
2 makes no sense.

3 Q. Okay. Well, I'm getting to that. I just want  
4 to establish that having my name in more than one  
5 registry is at least an opportunity for me to vote in  
6 more than one place?

7 A. Yes.

8 Q. Okay. And also conversely, even if it's --- I'm  
9 not the one doing it, if my name is in more than one  
10 place, there's nothing to stop other people from  
11 saying I don't think that person's showing up, I'm  
12 going to go ahead and write their vote in. It's that  
13 opportunity as well, isn't it?

14 A. Well, I guess I object to presenting opportunity  
15 as if there's no context whatsoever. It's like, you  
16 know, martians landing on earth. I mean, maybe that  
17 could happen, I don't know. But the context seems to  
18 me, to be very important.

19 Q. Sure.

20 A. And the context includes both a motivation and  
21 the understanding of what the penalties are, if you  
22 break that rule. And those things seem to really  
23 work against people even seeing this as an  
24 opportunity. So to even see it. I mean, it would  
25 not occur to me to try to go vote in New York City

1 after voting here. It wouldn't occur to me. Not  
2 because I am a law-abiding citizen, but I wouldn't  
3 even think about the fact that they hadn't cancelled  
4 my registration. We assume these systems do what we  
5 expect them to do.

6 Q. And it wouldn't occur to you, personally, to  
7 sign the name for somebody else whose signature you  
8 see there?

9 A. Right.

10 Q. Okay. But it occurred to that high school  
11 student you talked about, didn't it?

12 A. Yes.

13 Q. And all I'm saying is when all you have to do is  
14 sign the signature --- and you're saying it depends  
15 on the context. We'll talk about the motivations.  
16 But on page 16 and 17 of your report, and 17 includes  
17 one of the tables that was discussed, you talk about  
18 the motivations by comparing in-person voter fraud to  
19 Social Security fraud, false claims, counterfeiting,  
20 postal internet and wire fraud and tax evasion;  
21 right?

22 A. Right.

23 Q. Don't several of these have a monetary incentive  
24 to do them in the first place?

25 A. Yes.

1 Q. So tax evasion, I might stand to gain monetarily  
2 by engaging in tax evasion; right?

3 A. Yeah, I would think so.

4 Q. And I think postal, internet and wire fraud, I  
5 mean, there we're talking about scams conducted  
6 through various communications; right?

7 A. Yes.

8 Q. And I don't know how many, but I would assume  
9 that a lot of those involve stealing from another  
10 person, scamming them out of money?

11 A. Could be.

12 Q. And there's no money involved in casting a vote.  
13 You don't have any monetary incentive to do that;  
14 right?

15 A. Not usually.

16 Q. And by the same rationale, the enforcement by  
17 criminal justice agencies is going to go a lot more  
18 to where a lot of money is being taken away from  
19 people than where there's no money changing hands;  
20 right?

21 A. Well, I don't know. You know, I wouldn't make a  
22 judgment about what the priorities are for law  
23 enforcement. I know that the claim that it's not a  
24 priority is never backed up with any evidence of  
25 that. And in fact, one of the things I cite in this

1 report is a state law in Minnesota that requires  
2 District Attorneys to follow up. And yet, there is  
3 no voter fraud there either, relatively speaking.  
4 You know, there's no evidence. So I don't want to  
5 assume that law enforcement doesn't take it seriously  
6 without some evidence that they're --- you know, it's  
7 usurping their duties.

8 Q. Do you understand that in Pennsylvania  
9 prosecutors have, whether it's the DA or the Attorney  
10 General, have discretion on which crimes to  
11 prosecute?

12 A. Certainly, all prosecutors have discretion.

13 ATTORNEY CAWLEY:

14 Those are all the questions I have.

15 Thank you.

16 A. You're welcome.

17 JUDGE SIMPSON:

18 Any Redirect?

19 ATTORNEY CLARKE:

20 Just a few questions, Your Honor.

21 JUDGE SIMPSON:

22 I'll hold you to that now.

23 ATTORNEY CLARKE:

24 I promise.

25 REDIRECT EXAMINATION

1 BY ATTORNEY CLARKE:

2 Q. Doctor Minnite, we spent a bit of time in Mr.  
3 Cawley's examination talking about the fact that  
4 people might be registered in more than one state.  
5 Now a voter ID --- a photo ID law wouldn't help that  
6 situation, would it?

7 A. No.

8 Q. Now, we talked about whether there is an  
9 incentive to prosecute and whether or not there's an  
10 incentive to prosecute, particularly, voter fraud.  
11 And in fact, we had evidence that you described  
12 earlier that at one time the Department of Justice  
13 made it a top priority to prosecute voter fraud?

14 A. Yes.

15 Q. And that was a situation where after 197 million  
16 votes were cast, they were able to find --- there  
17 were 26 indictments?

18 A. Yes.

19 Q. So in fact, we have not only --- do we not have  
20 any evidence that there is not incentive to  
21 prosecute, but we have evidence that there is  
22 incentive to prosecute?

23 A. Yes.

24 Q. We talked about the Carter-Baker report.

25 A. Yes.

1 Q. And I want to get you to page 18. There were a  
2 couple of other things about this report that I  
3 wanted to see if you were aware of. One is in the  
4 middle of the paragraph of page 18, the one that  
5 starts the voter identification requirements. You  
6 see that in the recommendation, the Carter-Baker  
7 report says states are encouraged to allow an  
8 expansive list of acceptable IDs, including those  
9 without a photograph, such as utility bills or  
10 government checks. Do you see that?

11 A. Yes.

12 Q. And do you recall that that was an important  
13 part of the recommendations and conclusions of that  
14 report?

15 A. Yes.

16 Q. I want to go down a little bit to the next  
17 paragraph that starts our commission.

18 A. Yes.

19 Q. And you see it says our commission is concerned  
20 that the different approaches to identification cards  
21 might prove to be a serious impediment to voting. Do  
22 you see that?

23 A. Yes.

24 Q. And do you recall that that was one of the very  
25 serious issues addressed by the Carter-Baker report?

1 A. Yes.

2 Q. If you go to the next page, page 19?

3 A. Uh-huh (yes).

4 Q. And the paragraph at the bottom of the page, do  
5 you recall that there was a recommendation by the  
6 Carter-Baker report that an ID requirement be phased  
7 in over several election periods?

8 A. Yes.

9 Q. On the next page, page 20, really getting to an  
10 issue that we just talked about, you see in the first  
11 full paragraph where the author's write, the  
12 introduction of voter ID requirements has raised  
13 concerns that they may present a barrier to voting,  
14 particularly by traditionally marginalized groups,  
15 such as the poor and minorities, some of who may lack  
16 a government-issued photo ID. They may also create  
17 obstacles for highly-mobile groups of citizens. Do  
18 you see that?

19 A. Yes.

20 Q. And do you recall that that was one of the  
21 concerns that was addressed and raised in the  
22 Carter-Baker report?

23 A. Yes. And I think I would just add that it's  
24 important in reading this report to read a rebuttal,  
25 if you will, by one of the commissioners, Spencer

1 Overton, who took issue with a number of even these  
2 kinds of recommendations regarding photo ID. So  
3 there wasn't complete agreement even on the  
4 commission about what their final report said.

5 Q. And then you see with the report, itself, the  
6 last point on this report, the last line of the first  
7 paragraph, I'm going to read the sentence, as  
8 explained in section 4.1, the commission recommends  
9 that states play an affirmative role in reaching out  
10 with mobile offices to individuals who do not have a  
11 driver's license or other government-issued photo ID,  
12 to help them to register to vote and obtain an ID.  
13 Do you remember that the recommendation that the  
14 states, any state, have mobile offices to go out and  
15 help people get IDs was a part of the consideration  
16 in this report?

17 A. Yes.

18 Q. Now, you --- finally, you just talked --- you  
19 were asked about the general allegations in  
20 Interrogatory One, which was Exhibit 46. And you  
21 talked about some --- you talked about the fact that  
22 Mr. Harlow had investigated the reports of dead  
23 people voting and found that they were all election  
24 --- I mean, that they were all administrative errors.

25 A. Well, he actually stated in his deposition not

1 that he so much investigated it, but that another  
2 person there in the office had sent the information  
3 out to the counties and had them investigate it, and  
4 report back.

5 Q. Okay. And Mr. Harlow is an employee of the  
6 Department of State; is that right?

7 A. That's my understanding.

8 ATTORNEY CLARKE:

9 Okay. I have no further questions.

10 ATTORNEY CAWLEY:

11 I have nothing further, Your Honor.

12 JUDGE SIMPSON:

13 You may step down. Thank you. Thank  
14 you for your time.

15 ATTORNEY CLARKE:

16 Your Honor, we move for the admission  
17 of the exhibits that we just marked.

18 JUDGE SIMPSON:

19 You have Exhibits 49, which is the CV,  
20 50 which is the report, 51 which is the County  
21 Commissioner's Association Statement.

22 ATTORNEY CLARKE:

23 Thank you, Your Honor.

24 JUDGE SIMPSON:

25 In the absence of objection, they're

1 received.

2 ATTORNEY CLARKE:

3 Thank you.

4 JUDGE SIMPSON:

5 Are you going to be calling another  
6 witness?

7 ATTORNEY CLARKE:

8 No, Your Honor.

9 JUDGE SIMPSON:

10 Are you going to be calling another  
11 witness?

12 ATTORNEY CAWLEY:

13 No, your Honor.

14 JUDGE SIMPSON:

15 I think we have some housekeeping  
16 matters to deal with. But folks, you're are not  
17 going to hear anything --- I don't think you're going  
18 to hear any more evidence, at least in the sense of a  
19 live witness. You are welcome to stay and watch what  
20 we do. It will be real boring but, you know, you're  
21 welcome to stay. We work in public. But I don't  
22 think there will be anything interesting for you  
23 here.

24 I need to hand these, your two  
25 exhibits, the Respondents' exhibits down. I have

1 like little Post-Its on here, but they don't have  
2 exhibit tags on here, and I need them. I'm also  
3 going to need --- if you want it in evidence, I'm  
4 going to need Respondents' Two ---

5 ATTORNEY CAWLEY:

6 Yes.

7 JUDGE SIMPSON:

8 --- which is that list. He read, you  
9 know, some of the contents ---

10 ATTORNEY CAWLEY:

11 Yes.

12 JUDGE SIMPSON:

13 --- so I mean, if you want it, fine.  
14 If you don't want it, that's your call.

15 ATTORNEY CAWLEY:

16 I do, Your Honor. On that point, I may  
17 have it with me. In the event that I cannot locate  
18 it right now, may I provide it this afternoon or  
19 tomorrow morning to the Court?

20 JUDGE SIMPSON:

21 Tomorrow morning is fine.

22 ATTORNEY CAWLEY:

23 Okay.

24 JUDGE SIMPSON:

25 So you're not calling a witness either?

1 ATTORNEY CAWLEY:

2 That's correct.

3 JUDGE SIMPSON:

4 Do you rest?

5 ATTORNEY GERSCH:

6 We do.

7 JUDGE SIMPSON:

8 And you're moving Five and Six?

9 ATTORNEY CAWLEY:

10 I'm moving --- yes, Your Honor.

11 JUDGE SIMPSON:

12 Any objection?

13 ATTORNEY CLARKE:

14 Your Honor, we object to the

15 legislative testimony given by Hans von Spakovsky.

16 JUDGE SIMPSON:

17 Why?

18 ATTORNEY CLARKE:

19 It's hearsay.

20 ATTORNEY CAWLEY:

21 It's the same ---.

22 JUDGE SIMPSON:

23 But your witness read it and relied

24 upon it and reported her opinions. So, quite

25 frankly, just about anything she listed will come

1 into evidence.

2 ATTORNEY CLARKE:

3 It was ---.

4 JUDGE SIMPSON:

5 I mean, in fact, shouldn't it have been  
6 offered into evidence?

7 ATTORNEY CAWLEY:

8 It's also the same basis as the County  
9 Commissioner reports that Petitioners have just  
10 offered.

11 ATTORNEY CLARKE:

12 This came in as --- this was used as  
13 impeachment of the witness.

14 JUDGE SIMPSON:

15 Yeah.

16 ATTORNEY CLARKE:

17 But it wasn't --- the witness said she  
18 had read it, but she didn't rely on this exhibit. It  
19 wasn't part of her --- it wasn't part of her  
20 testimony.

21 JUDGE SIMPSON:

22 It's listed in her report. Wasn't that  
23 part of the testimony I just heard, that it's ---?

24 ATTORNEY CAWLEY:

25 She indicated in her testimony that she

1 reviewed --- and in her report that she reviewed that  
2 testimony as part of drafting her report.

3 JUDGE SIMPSON:

4 Yeah, it's on page two.

5 ATTORNEY CLARKE:

6 Okay.

7 JUDGE SIMPSON:

8 So you know, the objection is  
9 overruled. So it's received over your objection.

10 ATTORNEY CLARKE:

11 Okay. Thank you, Your Honor.

12 JUDGE SIMPSON:

13 Is there anything else that is hanging  
14 out there that I need to address?

15 ATTORNEY WALCZAK:

16 Just a question about what time you  
17 would like us to start tomorrow?

18 JUDGE SIMPSON:

19 What time would you like?

20 ATTORNEY WALCZAK:

21 My preference would be ten o'clock.

22 JUDGE SIMPSON:

23 Do you want to do 10:00? Is that all  
24 right?

25 ATTORNEY CAWLEY:

1                   That sound great.

2                   JUDGE SIMPSON:

3                   Okay. 10:00 it is. Okay. Then we ---  
4 if there's nothing else that you need from me, then  
5 we will adjourn until ten o'clock tomorrow morning.

6                   MR. TURNER:

7                   Commonwealth Court is now adjourned.

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9                   HEARING CONCLUDED AT 1:56 P.M.

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