

Dr. Lorraine Minnite

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<p>IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN</p> <p>-----</p> <p>ONE WISCONSIN : CIVIL ACTION INSTITUTE, INC., et : al., : Plaintiffs, : VS. : GERALD C. NICHOL, et : NO. 15-C-324 al., : Defendants.</p> <p>-----</p> <p>Oral Deposition of Dr. Lorraine Minnite, taken pursuant to notice, held at 111 S. Independence Mall East, 21 S. 5th St., 10th Floor Conference Room, Philadelphia, PA 19106 on April 13, 2016, beginning at 9:15 a.m., before Kathleen Jastrzembki, Court Reporter-Notary Public, there being present.</p> <p>-----</p>	<p>1 INDEX</p> <p>---</p> <p>2 Witness</p> <p>3 Dr. Lorraine Minnite</p> <p>4 EXAMINATION BY: Page</p> <p>5 Mr. Johnson-Karp 5</p> <p>6 Ms. Wilson 139</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 ---</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Minnite-1 Expert report 11</p> <p>12 Minnite-2 Rebuttal Report 50</p> <p>13 Minnite-3 Expert report 74</p> <p>14 Minnite-4 Crawford decision 81</p> <p>15 Minnite-5 Article 117</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 STATE OF WISCONSIN DEPARTMENT OF JUSTICE</p> <p>4 BY: GABE JOHNSON-KARP, ESQUIRE 17 W. Main Street 5 P.O. Box 7875 Madison, WI 53707 6 Phone: 608-267-8904 Johnsonkarp@doj.state.wi.us</p> <p>7</p> <p>8 PERKINS COIE BY: BOBBIE J. WILSON, ESQUIRE</p> <p>9 505 Howard Street, Suite 1000 San Francisco, CA 94105 10 Phone: 415-344-7000 Bwilson@perkincoie.com</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 LITIGATION SUPPORT INDEX</p> <p>2 Direction to Witness Not to Answer</p> <p>3 Page Line Page Line</p> <p>4 None</p> <p>5 Request for Production of Documents</p> <p>6 Page Line Page Line</p> <p>7 None</p> <p>8 Stipulations</p> <p>9 Page Line Page Line</p> <p>10 None</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 ---  
 2 THE COURT REPORTER: Any  
 3 stipulations?  
 4 ALL COUNSEL: No.  
 5 ---  
 6 ---  
 7 DR. LORRAINE MINNITE, after  
 8 having been first duly sworn, was examined  
 9 and testified as follows:  
 10 ---  
 11 EXAMINATION  
 12 ---  
 13 BY MR. JOHNSON-KARP:  
 14 **Q. Good morning, Professor Minnite.**  
 15 A. Good morning.  
 16 **Q. My name is Gabe Johnson-Karp and**  
 17 **I represent the defendants in this case.**  
 18 **I understand you have been**  
 19 **deposed in the past; is that correct?**  
 20 A. That's correct.  
 21 **Q. And you understand kind of the**  
 22 **general ground rules of a deposition?**  
 23 A. Yes.  
 24 **Q. You need to answer audibly, no**  
 25 **head nods or shakes, and you understand**

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1 **that you've been sworn to tell the truth?**  
 2 A. Yes.  
 3 **Q. And if you don't understand a**  
 4 **question, I would just ask if you would**  
 5 **tell me that you don't understand. If you**  
 6 **do answer, I'll assume that you understood**  
 7 **the question; is that fair?**  
 8 A. That's fair.  
 9 **Q. Thank you.**  
 10 **What did you do to prepare for**  
 11 **today?**  
 12 A. I re-read my initial expert  
 13 report, and I re-read my rebuttal report  
 14 and that's about it.  
 15 **Q. Did you read any of the other**  
 16 **experts' reports?**  
 17 A. Not to prepare for the  
 18 deposition.  
 19 **Q. But you are familiar with other**  
 20 **experts' reports in this case?**  
 21 A. I don't think so.  
 22 **Q. Did you read Professor Hood's**  
 23 **report?**  
 24 A. Oh, yes. I'm sorry. That I  
 25 provided a rebuttal report to?

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1 **Q. Yes.**  
 2 A. Yes. I thought you meant there  
 3 were new reports.  
 4 **Q. No.**  
 5 A. Okay.  
 6 **Q. And who did you talk to, to**  
 7 **prepare for today?**  
 8 A. Attorneys for the plaintiffs.  
 9 **Q. And did you bring any documents**  
 10 **with you today?**  
 11 A. No.  
 12 **Q. How were you first contacted**  
 13 **regarding your work on this case?**  
 14 A. I think it was an email.  
 15 **Q. And who was that from?**  
 16 A. Josh Kaul.  
 17 **Q. Do you know when that was?**  
 18 A. I believe it was December of  
 19 2014, I think. Something like that.  
 20 **Q. So about --**  
 21 A. I'm not sure. It a while ago.  
 22 **Q. About a year and a half?**  
 23 A. I think so.  
 24 **Q. And what did you understand to be**  
 25 **the scope of the assignment, the work in**

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1 **this case?**  
 2 A. I was asked to provide an expert  
 3 opinion on the incidents of voter fraud in  
 4 Wisconsin in recent elections.  
 5 **Q. And speaking more generally then,**  
 6 **what is your understanding of what this**  
 7 **case is about?**  
 8 A. My understanding is that the case  
 9 is a challenge to various election laws  
 10 that have been passed recently in  
 11 Wisconsin.  
 12 **Q. In the initial contact in**  
 13 **preparing you to work on this case, were**  
 14 **you shown any materials?**  
 15 A. Not initially.  
 16 MS. WILSON: Hold on. I'm going  
 17 to let you keep going, but... He's allowed  
 18 to ask certain questions, but not any that  
 19 implicate the privilege, to the extent that  
 20 he can't ask information about expert.  
 21 That's protected under rule 26.  
 22 So go ahead. You're getting  
 23 close.  
 24 BY MR. JOHNSON-KARP:  
 25 **Q. And you said you were not shown**

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<p>1 <b>any materials?</b></p> <p>2 A. I don't recall being shown any</p> <p>3 materials.</p> <p>4 <b>Q. And what information, generally</b></p> <p>5 <b>speaking, did you rely on in forming your</b></p> <p>6 <b>report in this case?</b></p> <p>7 A. I relied on about, at this point,</p> <p>8 15 years of research on the issue,</p> <p>9 generally, of voter fraud that I published</p> <p>10 in a book in 2010, and then I have updated</p> <p>11 my research on voter fraud since then.</p> <p>12 <b>Q. And that's The Myth of Voter</b></p> <p>13 <b>Fraud?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. And the materials you relied on</b></p> <p>16 <b>in preparing that book form the foundation</b></p> <p>17 <b>for your opinion in this case; is that</b></p> <p>18 <b>correct?</b></p> <p>19 A. Well, they form the foundation,</p> <p>20 but I've also done more research on</p> <p>21 Wisconsin. I was an expert witness in --</p> <p>22 at the time the case was called Jones v.</p> <p>23 Deininger case and prepared an expert</p> <p>24 report in that case, which was around 2012,</p> <p>25 2013. And then in preparing the expert</p>	<p>1 remember exactly, because sometimes the</p> <p>2 details start to merge into the time</p> <p>3 periods.</p> <p>4 <b>Q. Sure.</b></p> <p>5 ---</p> <p>6 <b>(Whereupon the court reporter</b></p> <p>7 <b>marked Minnite-1 for purposes of</b></p> <p>8 <b>identification.)</b></p> <p>9 ---</p> <p>10 <b>BY MR. JOHNSON-KARP:</b></p> <p>11 <b>Q. Updates between Jones and this</b></p> <p>12 <b>case, I think you were saying there were</b></p> <p>13 <b>some prosecutions between Jones and this</b></p> <p>14 <b>case?</b></p> <p>15 A. Yes. I have on Page 32 three</p> <p>16 cases of illegal or alleged illegal voting</p> <p>17 that occurred, the prosecutions or the</p> <p>18 investigations occurred, I think, after</p> <p>19 Deininger. But, again, I have a little bit</p> <p>20 of trouble kind of remembering the breaking</p> <p>21 points between the cases, and my testimony</p> <p>22 was in 2013, I think. So I guess what I'm</p> <p>23 looking at here is anything that happened</p> <p>24 after 2013.</p> <p>25 <b>Q. And you are being paid for your</b></p>
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<p>1 report for this case, I again updated my</p> <p>2 research on voter fraud in Wisconsin.</p> <p>3 <b>Q. What did you do to update your</b></p> <p>4 <b>research between Jones and this case?</b></p> <p>5 A. I reviewed -- I did my systematic</p> <p>6 review of news articles. I looked at</p> <p>7 whatever I could look at on the Government</p> <p>8 Accountability Board's website. I looked</p> <p>9 at press releases by the Wisconsin Justice</p> <p>10 Department. I tried to look broadly at the</p> <p>11 same sources that I had looked at before to</p> <p>12 see if anything had changed.</p> <p>13 <b>Q. And did you find any changes?</b></p> <p>14 A. I found that the -- what I</p> <p>15 reported on involved a little bit of an</p> <p>16 update on some of the cases that had come</p> <p>17 out of a joint task force that the Attorney</p> <p>18 General in Wisconsin had created back in, I</p> <p>19 think, 2008 to look for incidents of</p> <p>20 corruption and voter fraud in Wisconsin.</p> <p>21 <b>Q. So there were prosecutions under</b></p> <p>22 <b>that task force that changed between Jones</b></p> <p>23 <b>and this case?</b></p> <p>24 A. I'm trying to remember. I guess</p> <p>25 if I could look at my report, I could</p>	<p>1 <b>work in this case; is that correct?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. How much?</b></p> <p>4 A. One hundred dollars an hour.</p> <p>5 <b>Q. And how does this compare to your</b></p> <p>6 <b>other work, relatively speaking?</b></p> <p>7 A. What do you mean?</p> <p>8 MS. WILSON: Objection, vague.</p> <p>9 BY MR. JOHNSON-KARP:</p> <p>10 <b>Q. As a per hour payment, how does</b></p> <p>11 <b>this compare to your salary as a professor?</b></p> <p>12 A. My salary --</p> <p>13 MS. WILSON: Objection,</p> <p>14 relevance.</p> <p>15 THE WITNESS: -- as a professor?</p> <p>16 Yeah, I don't even know what my hourly wage</p> <p>17 is as a professor.</p> <p>18 BY MR. JOHNSON-KARP:</p> <p>19 <b>Q. What's your yearly salary?</b></p> <p>20 A. My --</p> <p>21 MS. WILSON: Hold on, hold on.</p> <p>22 What's the relevance of her</p> <p>23 yearly salary as a professor?</p> <p>24 MR. JOHNSON-KARP: I think it</p> <p>25 goes to bias and interest.</p>

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<p>1 MS. WILSON: What she makes as 2 professor? 3 MR. JOHNSON-KARP: Her interest 4 in working on this case. Counsel, I think 5 this is something that there's currently 6 exchanges about, and I'm willing to -- we 7 can take this up off the record. 8 MS. WILSON: We haven't done this 9 with any of the experts, and this is some 10 territory I'm not sure your side would want 11 to go down, either. And I know that 12 there's been some discussions with Mike and 13 Josh about this, so let's -- why don't we 14 skip this for now. Even though she's an 15 expert, she still has a right of privacy 16 and so getting into what her salary is as a 17 professor is -- I don't know. It goes 18 beyond the new amendments to the rules even 19 about what's relevant. 20 MR. JOHNSON-KARP: And I'm fine. 21 We can take it up off the record. 22 MS. WILSON: Okay. 23 BY MR. JOHNSON-KARP: 24 <b>Q. How many hours have you worked on</b> 25 <b>this case?</b></p>	<p>1 A. Yes. 2 <b>Q. Are there any cases, other than</b> 3 <b>of which you've listed in your report, in</b> 4 <b>which you testified or provided an expert</b> 5 <b>report?</b> 6 A. I think there's one more case now 7 that -- where I testified that I hadn't 8 testified when I wrote this report in 9 December. One? Yeah, one more case. And 10 it's Lee vs. Virginia State Board of 11 Elections. 12 <b>Q. And when did you testify in that?</b> 13 A. This year. 14 <b>Q. Early 2016?</b> 15 A. No, I think it was -- it must 16 have been February. 17 <b>Q. Okay.</b> 18 A. I can't remember exactly when it 19 was. Or March even. 20 <b>Q. And that's in federal court?</b> 21 A. Yes. 22 <b>Q. Have you ever testified in a case</b> 23 <b>in which you were not qualified as an</b> 24 <b>expert?</b> 25 A. I testified in a case as a fact</p>
<p>Page 14</p> <p>1 A. I think I've billed 30. 2 <b>Q. Have you been paid yet?</b> 3 A. I think so. I don't actually 4 remember, because it was a -- I requested 5 an electronic transfer into my checking 6 account. I hope I've been paid. 7 <b>Q. You're not going hungry, though.</b> 8 A. Well, I wouldn't go hungry 9 anyway. I mean... 10 <b>Q. I'd like to just get into your</b> 11 <b>background a little bit. If you could</b> 12 <b>describe your education and your field of</b> 13 <b>expertise, please.</b> 14 A. I have a bachelor's degree in 15 history from Boston University. I have two 16 master's degrees and a Ph.D. from the City 17 University of New York in Political Science 18 and my expertise is, generally, American 19 politics, but also urban politics, 20 electoral politics and specifically the 21 incidents of voter fraud in American 22 Elections, probably what I've written the 23 most about. 24 <b>Q. And you have testified previously</b> 25 <b>on voter fraud; is that correct?</b></p>	<p>Page 16</p> <p>1 witness. 2 <b>Q. Was that this most resent case?</b> 3 A. No. 4 <b>Q. What case was that?</b> 5 A. That was a case from 2005 called 6 ACORN v. Bysiewicz. 7 <b>Q. And what did you testify to in</b> 8 <b>this case?</b> 9 A. I explained a table that I had 10 made that summarized news reports on 11 illegal voting in five or six states that 12 had election day registration. 13 <b>Q. In your expert testimony in these</b> 14 <b>other cases, have you ever offered an</b> 15 <b>opinion that voter ID law was not -- did</b> 16 <b>not have a suppressive purpose?</b> 17 A. A voter ID law did not have a 18 suppressive purpose? I'm not sure I 19 understand. 20 <b>Q. Well, correct me if I'm wrong,</b> 21 <b>but I understand one of your conclusions in</b> 22 <b>this case is that voter ID laws are</b> 23 <b>intended to suppress votes; is that</b> 24 <b>correct?</b> 25 MS. WILSON: Objection,</p>

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<p>1 mischaracterizes her report.                  2 But you can answer it.                  3 THE WITNESS: What I have mostly,                  4 almost exclusively, focused on is this                  5 empirical question about whether there's                  6 voter fraud, and then I have said, because                  7 I've been asked, that if voter fraud is the                  8 rationale offered for photo ID laws that it                  9 is not a good rationale, because the record                  10 shows that the incidents of voter fraud is                  11 rare and that there must be other reasons                  12 for these laws. That's been my opinion.                  13 BY MR. JOHNSON-KARP:                  14 <b>Q. And is it also your opinion that</b>                  15 <b>one of -- or the primary purpose of the law</b>                  16 <b>is voter suppression?</b>                  17 A. I think that's part of it, yes.                  18 <b>Q. And are you opining on that in</b>                  19 <b>this case, that the Wisconsin voter ID law</b>                  20 <b>has an intended or is intended to have a</b>                  21 <b>suppressive effect?</b>                  22 A. Well, I say African-Americans                  23 appear to have been singled out as the                  24 targets of voter demobilization efforts,                  25 including the passage of voter</p>	<p>1 with that. I don't think there's evidence                  2 to show any connection at all between photo                  3 ID laws and increased confidence in                  4 elections. I think that also is not                  5 justified by the evidence.                  6 <b>Q. Why not?</b>                  7 A. Well, there's no evidence to show                  8 that voters connect the presence of a photo                  9 ID law with feeling better about elections                  10 and having more confidence in elections.                  11 The way that political scientists have tend                  12 to study that question has nothing to do                  13 with voter ID laws. It goes to issues of                  14 trust in government and not photo ID laws                  15 specifically. And so I think if I look --                  16 I don't recall if I address it in this                  17 report, but I have addressed it in other                  18 expert reports in more detail, looking at                  19 what empirical evidence exists.                  20 <b>Q. And just to be clear, you</b>                  21 <b>conclude that there is not empirical</b>                  22 <b>evidence for the claim that voters are more</b>                  23 <b>confident if there exists a voter ID law?</b>                  24 A. That is correct.                  25 <b>Q. Just getting back to the nuts and</b></p>
Page 18	Page 20
<p>1 identification and other restrictive voting                  2 rules in the investigation and prosecution                  3 of alleged voter fraud cases.                  4 <b>Q. So you do conclude that Act 23</b>                  5 <b>has a suppressive purpose?</b>                  6 A. Well, I say that -- I also say                  7 that allegations of voter fraud are                  8 motivated by political interest and                  9 designed to make voting harder for certain                  10 populations. I'm speaking about voter                  11 fraud allegations as a justification for                  12 photo ID laws. So they're connected.                  13 <b>Q. And when you talk about the lack</b>                  14 <b>of empirical evidence, do you rule out</b>                  15 <b>other valid state interests in enacting the</b>                  16 <b>voter ID law?</b>                  17 A. Such as what?                  18 <b>Q. Promotion of voter confidence,</b>                  19 <b>primarily.</b>                  20 A. I think I addressed that in here.                  21 I can't remember. Again, everything starts                  22 to merge together. But I have addressed                  23 the issue of or the claim that photo ID                  24 laws, the purpose behind them is to                  25 increase voter confidence and I don't agree</p>	<p>1 <b>bolts of your report, what was your process</b>                  2 <b>for creating, preparing and creating your</b>                  3 <b>report in this case?</b>                  4 A. What do you mean by my process?                  5 <b>Q. Research, drafting, updating,</b>                  6 <b>editing?</b>                  7 A. Well, I did all those things.                  8 That would be the normal way to do the                  9 report.                  10 <b>Q. Could you go into each step? How</b>                  11 <b>did you conduct your research for this</b>                  12 <b>report?</b>                  13 A. I probably started with the                  14 expert report that I did in the previous                  15 case in Wisconsin and reviewed that and                  16 then began to look for what had happened                  17 since that report, like I explained                  18 earlier.                  19 <b>Q. And then drafting, did you work</b>                  20 <b>with research assistants or did you draft</b>                  21 <b>the report yourself or draw from other</b>                  22 <b>reports?</b>                  23 A. No, I didn't work with a research                  24 assistant, no.                  25 <b>Q. So you drafted the entire report?</b></p>

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<p>1 A. Yes.</p> <p>2 <b>Q. And editing, was anybody involved</b></p> <p>3 <b>in editing the report besides you?</b></p> <p>4 A. No one was editing or changing</p> <p>5 things in my report.</p> <p>6 <b>Q. And correct me if I'm wrong, I</b></p> <p>7 <b>think you said that your data was up to</b></p> <p>8 <b>date as of about December of 2015?</b></p> <p>9 A. Yes, as of December 10, 2015.</p> <p>10 <b>Q. Are you aware that there was a</b></p> <p>11 <b>primary in Wisconsin last week?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Have you heard anything about</b></p> <p>14 <b>that primary?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Are you aware of any impact that</b></p> <p>17 <b>particular primary results might have on</b></p> <p>18 <b>your conclusion?</b></p> <p>19 A. No. I haven't studied that</p> <p>20 primary.</p> <p>21 <b>Q. As a general matter, though,</b></p> <p>22 <b>would one election impact your conclusion</b></p> <p>23 <b>in any way?</b></p> <p>24 A. It depends on what happened.</p> <p>25 <b>Q. What might impact your</b></p>	<p>1 A. No.</p> <p>2 <b>Q. Do you expect to broaden your</b></p> <p>3 <b>expert report in this case to include the</b></p> <p>4 <b>February primary?</b></p> <p>5 A. I don't expect to. I haven't</p> <p>6 been asked.</p> <p>7 <b>Q. When did you first reach the</b></p> <p>8 <b>conclusions that you present in this case?</b></p> <p>9 A. It would have been sometime</p> <p>10 before December 10, 2015.</p> <p>11 <b>Q. And I think we discussed this a</b></p> <p>12 <b>little bit, but my understanding is that</b></p> <p>13 <b>there are two broad conclusions to your</b></p> <p>14 <b>report, and I'll ask you to correct me if</b></p> <p>15 <b>I'm wrong. First you conclude that voter</b></p> <p>16 <b>impersonation is extremely rare and does</b></p> <p>17 <b>justify the implementation of the voter ID</b></p> <p>18 <b>law; is that correct?</b></p> <p>19 A. That's correct.</p> <p>20 <b>Q. And, given that first conclusion,</b></p> <p>21 <b>that voter ID laws serve as a form of voter</b></p> <p>22 <b>suppression?</b></p> <p>23 A. I don't know that I use the term</p> <p>24 voter suppression. I talk about</p> <p>25 demobilization, because I co-authored a</p>
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<p>1 <b>conclusion?</b></p> <p>2 MS. WILSON: Objection, vague,</p> <p>3 incomplete hypothetical.</p> <p>4 THE WITNESS: You know, I would</p> <p>5 have to study it and see what happens.</p> <p>6 Usually, I wouldn't make a judgment based</p> <p>7 on news reporting of an election right at</p> <p>8 the time of the election, because elections</p> <p>9 and campaigns leading into elections</p> <p>10 generate lots and lots and lots of</p> <p>11 allegations that later often turn out to be</p> <p>12 completely wrong. So I would -- I would</p> <p>13 not probably be able to say anything, even</p> <p>14 if I had been asked to study that election</p> <p>15 at this point of, you know, a week or two</p> <p>16 away from it.</p> <p>17 BY MR. JOHNSON-KARP:</p> <p>18 <b>Q. Do you know -- will you be</b></p> <p>19 <b>opining in this case on any impacts from</b></p> <p>20 <b>the February primary?</b></p> <p>21 MS. WILSON: Do you mean has she</p> <p>22 been asked to opine? Otherwise, it's</p> <p>23 speculative.</p> <p>24 BY MR. JOHNSON-KARP:</p> <p>25 <b>Q. Have you been asked?</b></p>	<p>1 book about demobilization. So I use that</p> <p>2 term.</p> <p>3 <b>Q. Could you explain what you mean</b></p> <p>4 <b>by demobilization then?</b></p> <p>5 A. Well, it's a little bit broader</p> <p>6 than saying a particular law has a very</p> <p>7 specific effect, the way you've just framed</p> <p>8 it, and it goes more to a broader sense of</p> <p>9 the way the electoral rules serve to</p> <p>10 exclude certain populations from</p> <p>11 participation.</p> <p>12 <b>Q. Would --</b></p> <p>13 A. And I should say that I say it's</p> <p>14 politically motivated.</p> <p>15 <b>Q. Politically motivated by the</b></p> <p>16 <b>Republican Party; is that --</b></p> <p>17 A. In this case it may be, but the</p> <p>18 book I co-authored, called Keeping Down The</p> <p>19 Black Vote, took a longer view of history</p> <p>20 and included the Democratic Party as well.</p> <p>21 So it's really about party competition in</p> <p>22 the American two-party system.</p> <p>23 <b>Q. It would be fair to say, then,</b></p> <p>24 <b>rather than suppression, that voter ID laws</b></p> <p>25 <b>intended effect is voter demobilization</b></p>

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<p>1 then?</p> <p>2 A. Yes. That would be how I would</p> <p>3 phrase it.</p> <p>4 <b>Q. Since drafting your report in</b></p> <p>5 <b>this case, have you come across any</b></p> <p>6 <b>research or data sets that would impact</b></p> <p>7 <b>your conclusion in any way?</b></p> <p>8 A. No.</p> <p>9 <b>Q. Has your analysis in this case</b></p> <p>10 <b>changed in any way from your analysis of</b></p> <p>11 <b>voter ID laws in earlier cases?</b></p> <p>12 MS. WILSON: May I hear that</p> <p>13 question, please.</p> <p>14 ---</p> <p>15 (Whereupon the court reporter</p> <p>16 read back the requested testimony.)</p> <p>17 ---</p> <p>18 THE WITNESS: Well, I haven't</p> <p>19 really analyzed voter ID laws. I analyze</p> <p>20 the incidents of voter fraud.</p> <p>21 BY MR. JOHNSON-KARP:</p> <p>22 <b>Q. Has your analysis of the</b></p> <p>23 <b>incidents of voter fraud changed since</b></p> <p>24 <b>earlier cases?</b></p> <p>25 A. Well, my analysis is based on the</p>	<p>1 registration and their own voting, so they</p> <p>2 can corrupt their own registration and they</p> <p>3 can corrupt their own voting and,</p> <p>4 specifically, that would be to say</p> <p>5 misrepresent who they are, their</p> <p>6 eligibility when they register to vote and</p> <p>7 same when they go to vote or they may try</p> <p>8 to vote more than once. But that's</p> <p>9 basically -- it's contained by the process</p> <p>10 itself, the kinds of activities they can</p> <p>11 engage is.</p> <p>12 <b>Q. And I think you distinguish from</b></p> <p>13 <b>broader election fraud; is that correct?</b></p> <p>14 A. That's correct.</p> <p>15 <b>Q. And what would you say falls</b></p> <p>16 <b>within the broader election fraud label?</b></p> <p>17 A. Well, almost any other kind of</p> <p>18 activity that corrupts the electoral</p> <p>19 process by any other actor in the process.</p> <p>20 So that could include politicians,</p> <p>21 candidates, campaigns, campaign workers,</p> <p>22 election officials. All these different</p> <p>23 people have different roles and different</p> <p>24 access to the process. So anything that</p> <p>25 anybody who is not a voter could do to</p>
Page 26	Page 28
<p>1 evidence and the evidence hasn't really</p> <p>2 changed.</p> <p>3 <b>Q. That's the evidence that --</b></p> <p>4 A. My conclusions, you know, based</p> <p>5 on the -- my analysis of the evidence have</p> <p>6 not changed.</p> <p>7 <b>Q. And the evidence is primarily</b></p> <p>8 <b>what you relied on in your book, plus the</b></p> <p>9 <b>updates that you noted, news sources,</b></p> <p>10 <b>governmental sources; is that correct?</b></p> <p>11 A. That's correct.</p> <p>12 <b>Q. Now, you define voter fraud very</b></p> <p>13 <b>specifically. You define it as the</b></p> <p>14 <b>intentional corruption of the voting</b></p> <p>15 <b>process by voters; is that correct?</b></p> <p>16 A. That's correct.</p> <p>17 <b>Q. What types of activity fall</b></p> <p>18 <b>within that definition?</b></p> <p>19 A. Well, I explain here and in more</p> <p>20 detail in my book my reasoning for this</p> <p>21 definition, and the kinds of activities are</p> <p>22 basically what voters can do, and what they</p> <p>23 can do is govern by what part of the</p> <p>24 electoral process they actually have access</p> <p>25 to. So they have access to their own</p>	<p>1 corrupt the process would be election</p> <p>2 fraud.</p> <p>3 <b>Q. And the broader election fraud</b></p> <p>4 <b>you conclude does not support voter ID</b></p> <p>5 <b>laws; is that correct?</b></p> <p>6 A. No. I don't say anything about</p> <p>7 the broader election fraud.</p> <p>8 <b>Q. You don't have any opinion as to</b></p> <p>9 <b>whether election fraud, separate from voter</b></p> <p>10 <b>fraud, supports any voter ID laws; is that</b></p> <p>11 <b>--</b></p> <p>12 MS. WILSON: Objection. Are you</p> <p>13 asking her with respect to this, her expert</p> <p>14 report, or more generally?</p> <p>15 MR. JOHNSON-KARP: More</p> <p>16 generally, and I will ask specifically in</p> <p>17 this case.</p> <p>18 THE WITNESS: So voter ID laws</p> <p>19 place a burden on voters. Voter ID laws</p> <p>20 require voters to carry specific kinds of</p> <p>21 ID and to produce it at the poles. So as</p> <p>22 public policy, they target voters. So the</p> <p>23 question of broader election fraud is</p> <p>24 somewhat irrelevant, because this is about</p> <p>25 whether voters are corrupting the process</p>

<p style="text-align: right;">Page 29</p> <p>1 or not. That's what the ID law does. The  2 ID law doesn't, you know, put money into  3 re-training election officials, for  4 example, or put cameras in polling places  5 to watch what's going on. It targets --  6 very specifically, it targets voters. So  7 your question is not really relevant to the  8 issue of what the photo ID law does.  9 BY MR. JOHNSON-KARP:  10 <b>Q. I'm looking at Page 8. You talk</b>  11 <b>about the mixed methods research approach.</b>  12 <b>Could you explain that a little further,</b>  13 <b>please.</b>  14 A. Sure. As I say here, it utilizes  15 qualitative, quantitative and archival  16 research, and the idea is that you would  17 make the assumption that no one source of  18 data would be enough to confirm your  19 hypothesis and that each type of a data you  20 might be able to collect would be  21 incomplete, and if you collect all  22 different kinds of data that are all  23 incomplete and you, in a sense, triangulate  24 them, you increase the validity of your  25 findings, because you're looking for</p>	<p style="text-align: right;">Page 31</p> <p>1 other kind of data that I looked at. So  2 allegations, if we just were to take  3 allegations of voter fraud at face value,  4 there were many, many, many more  5 allegations than there were actual cases,  6 and that was what drove me into doing more  7 work and thinking about trying to figure  8 out what was going on. Why were there so  9 many allegations of voter fraud without  10 there being any record? It took me a long  11 time to figure out that there was no  12 record. It wasn't obvious at the  13 beginning.  14 <b>Q. And how did you reconcile those</b>  15 <b>contradictions?</b>  16 A. Well, it led to several, you  17 know, more years of thinking and work that  18 resulted in both books, the co-authored  19 book and the final book, and the  20 reconciliation was to understand the  21 political motivations behind the  22 allegations. The allegations could shape  23 public opinion and public opinion could  24 become more supportive for certain kinds of  25 rules that politicians were seeking to</p>
<p style="text-align: right;">Page 30</p> <p>1 contradictions in one source.  2 So you look, you know, for  3 example, if I were to look at the news  4 reporting and I didn't see anything but  5 then I interviewed people who are closer to  6 the issue and they said, oh, no, it's a big  7 problem, then I would want to know, you  8 know, I had a contradiction. I had one  9 source that led me to one conclusion,  10 another source that was leading me to a  11 different conclusion. So I have to do more  12 research to bring those two types of  13 conclusions together. That's the idea of  14 mixed methods, which now I would argue is  15 probably the leading most important  16 methodology in empirical social sciences  17 right now.  18 <b>Q. In your research for this case,</b>  19 <b>and I guess for your work more generally,</b>  20 <b>did you encounter contradictions,</b>  21 <b>contradictory reports about the existence</b>  22 <b>of voter fraud?</b>  23 A. Well, in a sense, there was a  24 contradiction between allegations that were  25 made in news reports and just about every</p>	<p style="text-align: right;">Page 32</p> <p>1 shape the electorate in their favor. So I  2 understood the allegations as what I called  3 in my book political work, the political  4 work of voter fraud allegations.  5 <b>Q. What's your understanding of</b>  6 <b>public support for voter ID laws?</b>  7 A. I think most of the survey  8 research that was simply ask people do you  9 support it. You know, should voters have  10 to bring some kind of ID to the poles, most  11 of those kinds of surveys show pretty high  12 levels of support for photo ID. But that's  13 to be expected, because most people have  14 drivers' licenses. So people tend to  15 answer survey questions based on their own  16 personal knowledge of something and they  17 think, hey, what's the big deal? I have a  18 driver's license. So it actually aligns  19 very well with the percentage of the  20 population that has a driver's license.  21 <b>Q. Is it your position then that</b>  22 <b>public support for voter ID laws are not</b>  23 <b>driven by a desire to instill confidence in</b>  24 <b>the electoral process?</b>  25 A. Oh, no. I say public opinion is</p>



<p style="text-align: right;">Page 33</p> <p>1 very much shaped by the media coverage, and  2 like I was just saying, the allegations  3 that make it into the press shape what sort  4 of ordinary people would think about it,  5 because they're not election officials,  6 they may or may not vote. If you vote,  7 maybe you vote once a year, maybe twice a  8 year. It's not an activity that is really  9 part of your daily life. So most people  10 don't know anything about election  11 administration, and they don't think about  12 it at all. They just have some general  13 ideas, it's right to vote, we should vote  14 or not vote, whatever the opinions are.  15 But that opinion about voter fraud is  16 simply based on the false stories that have  17 been reported in the press over and over  18 and over and over again.  19 So to the extent that I think  20 people think there is voter fraud, it's  21 almost never going to be based on any  22 personal experience they have. It's based  23 on the media coverage. And that's what  24 I've just been explaining, that the media  25 coverage, in a sense -- I wouldn't call it</p>	<p style="text-align: right;">Page 35</p> <p>1 Integrity Initiative.  2 <b>Q. Right.</b>  3 A. That occurred -- in 2001 was the  4 first mention of it, and then I think it  5 kind of got launched that year, which is --  6 and this is a federal Department of Justice  7 program.  8 <b>Q. And I think you mentioned it was</b>  9 <b>initially raised in 2001; is that correct?</b>  10 A. Yes, I believe there was a press  11 release put out by the US Attorney General  12 in, like, March, I think, of 2001,  13 announcing this initiative inside the  14 Justice Department.  15 <b>Q. Do you know if that initiative --</b>  16 <b>it sounds like not as to the initial</b>  17 <b>implementation, but if continued</b>  18 <b>enforcement ever had any connection or</b>  19 <b>understood relationship to terrorism around</b>  20 <b>the 9/11 attacks?</b>  21 A. Whether the Ballot Access and  22 Voting Integrity Initiative was connected  23 to terrorism?  24 <b>Q. I guess what I'm wondering about</b>  25 <b>is if, in your understanding, the</b></p>
<p style="text-align: right;">Page 34</p> <p>1 manipulated per se, but it has -- in the  2 very beginning, because I was there -- in  3 the very beginning, reporters were simply  4 taking what was being said and reporting it  5 and not really investigating it. And that  6 has changed over the years, but initially,  7 again, you could have so many allegations  8 in the press. And I could -- I, myself, in  9 the beginning, didn't really have an  10 opinion about whether there was or wasn't  11 voter fraud. Sort of, why do people think  12 there's voter fraud? It's in the paper all  13 the time. And that's really, I believe,  14 what -- that and the combination of the  15 fact that most people have some kind of  16 acceptable ID, it's perfectly reasonable to  17 see those results in the survey research.  18 <b>Q. You mentioned in the beginning.</b>  19 <b>When are you talking about?</b>  20 A. In the beginning of my own  21 research on the subject, which started  22 after the 2000 election.  23 <b>Q. Did that correspond with the</b>  24 <b>BAVII? Do you refer to that as BAVII?</b>  25 A. The Ballot Access and Voting</p>	<p style="text-align: right;">Page 36</p> <p>1 <b>enforcement of these ballot integrity</b>  2 <b>initiatives were ever framed in terms of</b>  3 <b>combatting terrorism?</b>  4 A. I'm still not sure I understand  5 your question, but I guess to the extent  6 that I do, I don't think so. I mean, I'm  7 not sure, though, that I really understand  8 your question.  9 <b>Q. Just trying to get at if the</b>  10 <b>Justice Department viewed this enforcement</b>  11 <b>as part of its broader attempts to combat</b>  12 <b>terrorist influence?</b>  13 A. Well, I certainly don't recall  14 any official statements by anyone connected  15 with the program about preventing terrorism  16 through the enforcement of this program.  17 <b>Q. Okay.</b>  18 <b>Looking at Page 10, you talk</b>  19 <b>about the -- or you refute, rather, the two</b>  20 <b>reasons that opponents say that crime</b>  21 <b>statistics are an invalid measure of the</b>  22 <b>extent of voter fraud.</b>  23 A. Yes.  24 <b>Q. Do you see that?</b>  25 A. Yes.</p>

<p style="text-align: right;">Page 37</p> <p>1 <b>Q. And the two reasons are</b>  2 <b>prosecutorial discretion or under</b>  3 <b>enforcement; is that one?</b>  4 A. Yes.  5 <b>Q. And the second is that, because</b>  6 <b>voter fraud is impossible or difficult to</b>  7 <b>detect, that it goes unreported and</b>  8 <b>unaddressed?</b>  9 A. Well, I don't say it that way. I  10 say that the -- the argument is that voter  11 fraud escapes detection.  12 <b>Q. Before the Ballot Access Voter</b>  13 <b>Integrity Initiative, were you aware of any</b>  14 <b>federal or state program that was focused</b>  15 <b>on combatting voter fraud?</b>  16 A. Well, the public integrity  17 section of the criminal division of the  18 Justice Department has that responsibility.  19 So that's been in place, I think, since the  20 1970s, that particular office.  21 <b>Q. And do you know, were they</b>  22 <b>actively enforcing protections against</b>  23 <b>voter fraud?</b>  24 A. Well, my understanding is that  25 they certainly were always looking at --</p>	<p style="text-align: right;">Page 39</p> <p>1 A. I don't know about resources. I  2 know that this program, when it was  3 created, brought together attorneys from  4 the civil rights division and civil  5 division of the Justice Department with the  6 investigators and attorneys in the criminal  7 division, brought them together. And then  8 launched an enhanced training program for  9 US Attorneys on how to detect, prosecute,  10 investigate voter fraud, including -- I  11 mean, they -- the program, Ballot Access  12 and Voting Integrity Initiative was always  13 described as looking for both fraud and  14 intimidation. So on both sides of that was  15 always part of what they were doing or said  16 they were doing.  17 So I don't know specifically  18 about resources, except to the extent that  19 it was bringing these attorneys together  20 and then doing more training for US  21 Attorneys.  22 <b>Q. So you don't know if there was</b>  23 <b>dedicated funding to address voter fraud?</b>  24 A. I don't know specifically it was  25 dedicated funding. I know that -- and I</p>
<p style="text-align: right;">Page 38</p> <p>1 looking for conspiracies to corrupt voting.  2 That's pretty much mostly what they did.  3 <b>Q. Would that fall within the</b>  4 <b>broader election fraud as opposed to voter</b>  5 <b>fraud?</b>  6 A. Yes, they would -- they looked at  7 it broadly, including looking at voter  8 fraud, but they didn't tend to prosecute  9 individuals who may have voted more than  10 once. They were looking more, for example,  11 at broader vote buying conspiracies. They  12 prosecuted a number of complex cases in  13 Appalachia, in a number of states involving  14 corruption, local corruption that had gone  15 on for a number of years, for example.  16 That would be more the kind of a case that  17 they would prosecute, but that there was a  18 policy change made after the -- George W.  19 Bush became President. There was a policy  20 change inside the Justice Department to  21 look at the possibility of strategies for  22 prosecuting individual voters.  23 <b>Q. And was that to the exclusion</b>  24 <b>then -- I guess were resources shifted away</b>  25 <b>from the broader election law enforcement?</b></p>	<p style="text-align: right;">Page 40</p> <p>1 think I have the quote in here from the  2 person who was the long-time director of  3 the public integrity section saying it was  4 a very high priority for the Justice  5 Department at that time, and he says, you  6 know, second to combatting terrorism.  7 <b>Q. You talk about the Minnesota</b>  8 <b>example, as DAs in Minnesota being required</b>  9 <b>to investigate any allegations of voter</b>  10 <b>fraud?</b>  11 A. Yes.  12 <b>Q. Do you know if that is typical</b>  13 <b>across the country?</b>  14 A. I don't know for sure. My sense  15 is that it is not.  16 <b>Q. Why is that your sense?</b>  17 A. Well, because when I looked up  18 this law to check this out because I had  19 read this, and I also did a survey of all  20 county district attorneys in the United  21 States, which I don't rely on and I don't  22 report here, but in doing that, I talked  23 to, here and there, some district  24 attorneys, including my cousin, who is a  25 district attorney in New Jersey, about</p>

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<p>1 whether there was a law that they had to --  2 specific law about investigating  3 election-related allegations, and the  4 anecdotal evidence was it was not.  5 <b>Q. That prosecutors are not</b>  6 <b>typically required to --</b>  7 A. That it wasn't like in a law  8 saying you had to do it, that it was more  9 the typical scenario of all prosecutors  10 have some discretion of what they  11 prosecute.  12 <b>Q. How many prosecutors did you</b>  13 <b>interview?</b>  14 A. For this report?  15 <b>Q. For this report and for your book</b>  16 <b>or for other cases, how many prosecutors</b>  17 <b>have you spoken with, I should say?</b>  18 A. I would have to add it up. I  19 know when I did my survey of county  20 prosecutors, which wasn't exactly a  21 person-to-person interview, but I was  22 asking them to provide data on allegations,  23 cases, investigations and so forth related  24 to specific things in a state's election  25 code that I identified as voter fraud, I</p>	<p>1 researcher and I was collecting statistics  2 on cases of voter fraud, and then I  3 specifically defined for them in their own  4 state's election code what that was. So,  5 for example, if there was a -- because the  6 state codes are all different. But if  7 there was a law that said no voter may vote  8 more than once in any single election, you  9 know, I captured that. I said I'm looking  10 for any cases in which people have been  11 charged under these specific statutes, and  12 I think it was for two years, might have  13 been for 2004 and 2005, and it had a survey  14 and they could just fill in the numbers of  15 things related to registration, fraud,  16 absentee ballot fraud and illegal voting,  17 however that was defined.  18 <b>Q. You mentioned a law that says no</b>  19 <b>voter may vote more than once. In the</b>  20 <b>situation where somebody votes for an</b>  21 <b>identity that is not them but only once,</b>  22 <b>they couldn't be prosecuted under that,</b>  23 <b>correct?</b>  24 MS. WILSON: Objection, calls for  25 a legal conclusion.</p>
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<p>1 had a 14 percent response rate. So how  2 many was that? I think I sent out 2,700  3 surveys. So it was, like, whatever,  4 300-some responses from those prosecutors.  5 And then I did in-depth interviews with the  6 US Attorney for the Eastern District of  7 Wisconsin and with maybe five, six  8 attorneys -- defense attorneys, they  9 weren't prosecutors -- in Wisconsin. I'd  10 have to think to give you an accurate  11 number.  12 <b>Q. Do you recall the questions that</b>  13 <b>you asked in your survey?</b>  14 A. Yes. I did a personal letter  15 to -- first I had to create the database,  16 because it didn't exist. So I had to type  17 in all the names and the addresses of all  18 the county prosecutors in the United  19 States. There was a directory, but it was  20 not computerized. And then I produced a  21 personal letter and I cited part of the  22 public records law for that state, saying  23 under this public records law, I would like  24 to request this information, and I  25 explained what I was doing. I was a</p>	<p>1 You can answer.  2 THE WITNESS: Well, I just gave  3 that as an example, but because state  4 election codes, because I have read all 50  5 states, their election codes, probably more  6 than once, and they differ in how they  7 define what I have described conceptually,  8 I guess, as voter fraud. I have my  9 definition and then I looked to the law to  10 see, well, what -- how would a person be  11 guilty of what you're saying is voter  12 fraud? How is it worded in a particular  13 election code? And so some of them say --  14 I think there's some that might say  15 something about impersonate -- you know,  16 you can't impersonate. But it goes more to  17 eligibility. It might say, you know, that  18 there's certain characteristics of  19 eligibility. In most states, you have to  20 be a certain age, you have to be a US  21 citizen, and then the felon  22 disenfranchisement laws are all different.  23 So it might say something like knowingly,  24 willingly, falsely, you know, submit  25 information about your identity or</p>

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<p>1 something like that.</p> <p>2 So all states have the ability to</p> <p>3 prosecute people who do what you just</p> <p>4 described, impersonate somebody else,</p> <p>5 because they are misrepresenting who they</p> <p>6 are. Some state codes might say that,</p> <p>7 misrepresent your identity, but they vary</p> <p>8 across the United States in terms of how</p> <p>9 they describe the crime.</p> <p>10 BY MR. JOHNSON-KARP:</p> <p>11 <b>Q. Is it fair to say that that</b></p> <p>12 <b>offense that we just were talking about,</b></p> <p>13 <b>the pretending to be somebody else, is more</b></p> <p>14 <b>difficult to investigate than the situation</b></p> <p>15 <b>where somebody -- for example, the felon</b></p> <p>16 <b>voter who votes in their own name or the --</b></p> <p>17 <b>well, I'll let you answer that first.</b></p> <p>18 A. Is it more difficult to</p> <p>19 investigate voter impersonation compared to</p> <p>20 something else?</p> <p>21 <b>Q. Compared to, we'll start with,</b></p> <p>22 <b>for example, felon voting.</b></p> <p>23 MS. WILSON: Objection. Your</p> <p>24 question is vague.</p> <p>25 If you can, respond.</p>	<p>1 You know, I'm suspicious of my neighbor, I</p> <p>2 think he voted, and that kind of stuff goes</p> <p>3 on. People, individuals can bring</p> <p>4 complaints or bring issues to the attention</p> <p>5 of election officials. That would be</p> <p>6 another way.</p> <p>7 <b>Q. Do you have any sense in terms of</b></p> <p>8 <b>felon voters, whether it's more often</b></p> <p>9 <b>citizen complaints or through the list</b></p> <p>10 <b>matching procedures?</b></p> <p>11 A. Well, I know in one of the cases</p> <p>12 I describe in this report, that I describe</p> <p>13 in my book, and it actually came out in</p> <p>14 interviews that I did in Milwaukee, people</p> <p>15 who had felony convictions who ended up</p> <p>16 being indicted by the federal government,</p> <p>17 that that process started with list</p> <p>18 matching. I think many states do various</p> <p>19 kinds of list matching now.</p> <p>20 <b>Q. Fair to say that having that</b></p> <p>21 <b>tool, of being able to match lists, makes</b></p> <p>22 <b>enforcement easier than not having list</b></p> <p>23 <b>matching to use?</b></p> <p>24 A. Yeah, probably. I think the</p> <p>25 federal government, in the Help America</p>
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<p>1 THE WITNESS: Well, I don't -- I</p> <p>2 never say it's easy to investigate fraud.</p> <p>3 I think any kind of fraud requires</p> <p>4 different tools and knowledge and so forth.</p> <p>5 So I don't know if it's more difficult or</p> <p>6 not.</p> <p>7 BY MR. JOHNSON-KARP:</p> <p>8 <b>Q. Are you familiar with the process</b></p> <p>9 <b>of how, for example, felon voting is</b></p> <p>10 <b>investigated?</b></p> <p>11 A. Well, I know that in a number of</p> <p>12 states, and I believe in Wisconsin as well,</p> <p>13 election officials, on some kind of regular</p> <p>14 basis, obtain records of people who have</p> <p>15 been recently convicted of felonies so that</p> <p>16 they can check them against the voter</p> <p>17 registration rolls and whatever the state's</p> <p>18 law are related to that, remove them,</p> <p>19 cancel their registrations. So...</p> <p>20 <b>Q. Does enforcement then start with</b></p> <p>21 <b>this sort of list matching?</b></p> <p>22 A. It may.</p> <p>23 <b>Q. What else might it start with?</b></p> <p>24 A. Well, it can start with people</p> <p>25 bringing complaints to election officials.</p>	<p>1 Vote Act, encouraged states to do that, to</p> <p>2 regularly, in a sense, audit their own</p> <p>3 registration rolls in various ways, and one</p> <p>4 could be by matching it against lists of</p> <p>5 people who died, if you have that. Your</p> <p>6 state vital records office, for example,</p> <p>7 has that, or lists of felons.</p> <p>8 <b>Q. About the instances I'm thinking</b></p> <p>9 <b>of, for example, the husband and wife</b></p> <p>10 <b>voting each other's absentee ballot, are</b></p> <p>11 <b>you familiar with that kind of general</b></p> <p>12 <b>situation that I'm talking about?</b></p> <p>13 A. I have come across cases where</p> <p>14 one spouse has submitted the absentee</p> <p>15 ballot for another spouse.</p> <p>16 <b>Q. Do you know how any investigation</b></p> <p>17 <b>would start in that instance?</b></p> <p>18 A. No. Unless you can be more</p> <p>19 specific, I don't -- I could imagine maybe</p> <p>20 it could start any number of ways.</p> <p>21 <b>Q. Do you have any sense of how</b></p> <p>22 <b>those ultimately end up as a prosecution?</b></p> <p>23 <b>How the process from an illegal vote</b></p> <p>24 <b>becomes a prosecution for voter fraud?</b></p> <p>25 A. Well, I think in my research I've</p>

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<p>1 come across a variety of ways that that                  2 happens. So, for example, I believe one of                  3 the cases I talk about in here involved a                  4 man who submitted an absentee ballot for                  5 his recently deceased wife, and someone who                  6 was working at the poles saw the ballot,                  7 knew the woman had died and brought that to                  8 the attention of officials. So that's --                  9 that would be one way, another way.                  10 <b>Q. Are there instances that you're</b>                  11 <b>aware of where voter rolls were compared</b>                  12 <b>to -- and I think you might have said this,</b>                  13 <b>the vital statistics recently deceased</b>                  14 <b>individuals that then resulted in the</b>                  15 <b>prosecution?</b>                  16 A. Then resulted in a prosecution.                  17 I'd have to think about it. I don't know                  18 specifically. I couldn't name a case where                  19 that occurred. But it may have.                  20 <b>Q. Would that be a method by which</b>                  21 <b>investigators could find fraudulent voters</b>                  22 <b>or incorrect voters, putting aside any</b>                  23 <b>intent?</b>                  24 A. Well, I think I say in here and                  25 also in my rebuttal report that list</p>	<p>1 match, even say here's somebody who looks                  2 like they had a felony conviction at this                  3 state, but they voted at this state -- you                  4 can't say assume that's fraud until you                  5 further look into it.                  6 <b>Q. Would you say that having the</b>                  7 <b>list to start the investigation provides</b>                  8 <b>investigators a leg up on identifying and</b>                  9 <b>prosecuting voter fraud?</b>                  10 MS. WILSON: Objection, vague.                  11 THE WITNESS: I think list                  12 matching is very difficult and very tricky,                  13 and people who are skilled in it should be                  14 the ones who do it. When political parties                  15 do it, which they've done a lot of, we've                  16 seen how they come up with a lot of sort of                  17 garbage data, because they don't know what                  18 they're doing. Or they may only be able to                  19 match on some portion of a person's name                  20 and then a birth date, and, actually, the                  21 odds of people sharing a name and a birth                  22 date are much higher than you would expect.                  23 So people who have no background or                  24 training in list matching really shouldn't                  25 be the ones who do it. So if there are</p>
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<p>1 matching can be a useful tool for starting                  2 to flag irregularities, but those                  3 irregularities are not fraud until they're                  4 investigated and it's found that a person                  5 knowingly, willfully committed the crime.                  6 People make mistakes and there can be a lot                  7 of confusion about voting for the reasons I                  8 stated before, which is that the rules are                  9 different from state to state, and you move                  10 to another state and you don't know what                  11 the rules are. You can sometimes make a                  12 mistake. Election officials can make                  13 mistakes. Computer programmers can make                  14 mistakes. So there's an alternative                  15 explanation for an irregularity, which is                  16 an administrative mistake or voter                  17 confusion, that should be ruled out before                  18 the suspicion of fraud really even enters                  19 into it.                  20 So I see it as a -- you know,                  21 there can be a process whereby you begin to                  22 whittle things down, and list matching can                  23 give you a place to start with mismatched                  24 records or whatever. But it certainly                  25 should not be assumed that records that</p>	<p>1 personnel in an election office or wherever                  2 who can do it correctly and carefully and                  3 then maybe they produce some set of cases                  4 that look funny or don't look right, here's                  5 a -- it looks like this person died on                  6 October 10, but it looks like they                  7 submitted an absentee ballot on October 12,                  8 well, what's going on with that? It has to                  9 be investigated.                  10 So, yes, I say that in my report,                  11 that I don't have any kind of blanket                  12 objection to list matching. I think we                  13 have to just be clear about what the value                  14 of it is and how -- you know, what I say                  15 is, if you have two lists and they have                  16 errors in them and you match them, you're                  17 multiplying the errors in the match list,                  18 and you have to be aware of that and check                  19 it out.                  20 <b>Q. In the instance where somebody</b>                  21 <b>impersonates another, whether the person</b>                  22 <b>they're impersonating actually exists or is</b>                  23 <b>just a totally fictitious registration,</b>                  24 <b>there wouldn't be any list to compare that</b>                  25 <b>to, would there?</b></p>

<p style="text-align: right;">Page 53</p> <p>1 A. You'd have to give me an example 2 of that, cause it's so rare that I don't 3 come -- I can't think of an example. But 4 maybe you can give me an example of what 5 you mean, a real example. 6 <b>Q. Well, not from any empirical 7 research, but I could give you kind of a 8 hypothetical. John Smith goes to vote and 9 is aware that there's a registration for 10 Frank Johnson at X address. John Smith 11 represents himself as Frank Johnson at the 12 polling place and then votes as Frank 13 Johnson. Does that make sense?</b> 14 A. No. 15 <b>Q. What doesn't make sense it about 16 it?</b> 17 A. Well, I mean, I would like to 18 know a real case where this has occurred to 19 understand that, because it's so unlikely 20 that somebody would do that, that it's hard 21 to -- you know, I think we should talk 22 about when that occurs. If you can give me 23 a real example, and I can think about what 24 I know about that case. 25 <b>Q. Why do you say it's unlikely?</b></p>	<p style="text-align: right;">Page 55</p> <p>1 conspiracy. 2 <b>Q. And would that kind of conspiracy 3 then not fall under your definition of 4 voter fraud?</b> 5 A. Well, I -- you know, to be 6 honest, vote buying is a little bit in 7 between, because you have the vote buyer 8 and you have the vote seller. And many 9 states have laws essentially against vote 10 selling as well. But conspiracies aren't 11 organized by the vote sellers. They're 12 organized by the vote buyers. So that is 13 why, in the past, the federal government at 14 least has targeted its resources on the 15 vote buyers, because you don't have vote 16 buying without the buyers. Sellers just 17 don't go out and sell their votes to 18 people. They're organized conspiracies. 19 So it's wrong to sell your vote, 20 and that would be a kind of fraud, except 21 that voters, what you don't know, this is 22 why vote buying is -- you don't see it 23 except in places -- usually, you don't see 24 it except in places where people are very 25 poor. It doesn't make even a lot of sense</p>
<p style="text-align: right;">Page 54</p> <p>1 A. Well, for all the reasons that I 2 discuss in great detail in my book and 3 subsequently, which is that there is almost 4 no benefit to doing that for an individual, 5 and there are safeguards in place to 6 prevent it. So that makes it very 7 unlikely. If you consider the universe of 8 votes that are cast in an election in 9 general, even local elections, hundreds of 10 votes cast, it's unlikely and it's not easy 11 to do. So that's my reasoning for why it's 12 not likely to happen. 13 <b>Q. If people were being paid to do 14 that, would it make more sense?</b> 15 A. Well, then you have what we call 16 vote buying, and when you have vote buying, 17 you have conspiracies, and when you have 18 conspiracies, you have money trails, even 19 if it's just cash. I mean, these were the 20 cases that the Justice Department 21 investigated that I looked into quite 22 carefully. Even if when it's just cash, 23 there are ways to trace the money, and so 24 that makes it even more likely that it's 25 going to be discovered, when it's</p>	<p style="text-align: right;">Page 56</p> <p>1 to do that, because you have to know that 2 the person you're paying is actually going 3 to vote the way you want them to vote, and 4 with the secret ballot, that's not usually 5 -- you're not usually able to know that. 6 So it's not really even an efficient way of 7 trying to steal an election anymore either, 8 as it was, maybe, in the 19th Century where 9 we had more of it. 10 So I do look at vote buying, and 11 I would actually like to write a whole book 12 about vote buying, but I treat it more the 13 way it's been prosecuted, which would be, 14 more generally, election fraud. You know, 15 I paid a lot of attention to vote buying 16 because I also wanted to know if that was a 17 big problem. I think I would have had to 18 have done more work for my book on that, 19 but I was very aware of cases of vote 20 buying, and it was -- there's still 21 isolated incidents of vote buying. It's 22 not common. 23 <b>Q. Would vote selling prosecutions, 24 then, be less likely than vote buying 25 prosecutions?</b></p>

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15 (Pages 57 to 60)

<p style="text-align: right;">Page 57</p> <p>1 A. Well, I think that's what the 2 record shows, is that prosecutors have 3 decided that it was more important to go 4 after the vote buyers, because there is no 5 vote buying without the buyers, as I say, 6 and so then they're out looking for people 7 who are, you know... I mean, people don't 8 walk around and say here's my vote. You 9 know, give me ten bucks, I'll give you my 10 vote. What has happened in these cases, 11 it's usually powerful people. Like, for 12 example, in one case I'm thinking of in 13 Appalachia involved a coal mine operator, 14 and the coal industry had just controlled 15 politics in that part of Kentucky for a 16 long time, and they wanted to retain 17 control by being able to control to the 18 politicians. So in order to make sure that 19 their politicians got elected, they needed 20 to control the electorate. And people were 21 very, very poor and they organized 22 conspiracies through other people, you 23 know, to say, hey, you can get -- I think 24 it was five bucks, ten bucks, fifteen 25 bucks, you know, to vote for so and so.</p>	<p style="text-align: right;">Page 59</p> <p>1 show which individuals sold their votes, 2 that it was a small-scale operation to 3 begin with, but I think even if you could 4 include them, it wouldn't change my opinion 5 about the incidents of voter fraud. And 6 I'm trying to explain a sort of complex 7 scenario here, with vote buying having a 8 foot a little bit in both, like, voter 9 fraud and election fraud but treat it 10 primarily as election fraud. So I -- as I 11 say, I don't describe vote selling as -- I 12 don't describe it specifically, because I 13 don't have those cases in my book, but 14 technically we could consider it -- we sort 15 of could consider it as voter fraud, except 16 that, again, it doesn't happen unless 17 there's an organized conspiracy to make it 18 happen. So it's a complex -- it's sort of 19 like a nested answer, if you will. It's 20 not the sort of stand-alone voter fraud 21 that could occur with a person simply 22 trying to vote twice or impersonate 23 somebody else. 24 <b>Q. Is it fair to say that there are</b> 25 <b>instances of vote selling that are not</b></p>
<p style="text-align: right;">Page 58</p> <p>1 And it went all the way to -- county judges 2 were involved in this particular case I'm 3 thinking of. And so the federal government 4 didn't prosecute the people who sold their 5 votes because, again, you're not supposed 6 to do it, but a person could say, hey, he 7 gave me ten bucks to vote for so and so. I 8 was going to vote for him anyway; why not 9 take the ten bucks? So you couldn't really 10 show that it corrupted the vote. And they 11 didn't vote as somebody else, they voted as 12 themselves, and they didn't vote twice, 13 they only voted once. So it was more a 14 mechanism for trying to keep control of 15 people and not allow them to put forward 16 candidates who would challenge the power of 17 the coal mine operator in that particular 18 case. 19 <b>Q. So is it fair to say, then, that</b> 20 <b>there would not be a reflection in any</b> 21 <b>statistics of prosecutions -- or, I should</b> 22 <b>say, there would be an infrequent or lesser</b> 23 <b>indication in statistics of vote selling?</b> 24 A. There are very few cases that I 25 know of where they've been able to even</p>	<p style="text-align: right;">Page 60</p> <p>1 <b>reflected in your empirical data showing</b> 2 <b>indictments or charges or prosecutions for</b> 3 <b>voter fraud?</b> 4 A. In which particular data are you 5 pointing to? This report? 6 <b>Q. In your report in this case.</b> 7 A. I don't know of any prosecutions 8 in Wisconsin for vote selling. 9 <b>Q. Are you aware of any prosecutions</b> 10 <b>or indictments for the conspiracy vote</b> 11 <b>buying?</b> 12 A. In Wisconsin? 13 <b>Q. Yes.</b> 14 A. I'm trying to think. I don't 15 think so. But I would want to go back and 16 refresh my memory from my files about that, 17 but I don't think so. 18 --- 19 (Whereupon a short recess was 20 taken.) 21 --- 22 BY MR. JOHNSON-KARP: 23 <b>Q. Going back to the situation of</b> 24 <b>vote selling, from an enforcement</b> 25 <b>standpoint, is it fair to say that that</b></p>

<p style="text-align: right;">Page 61</p> <p>1 <b>would be -- that would be more</b>  2 <b>resource-intensive to investigate a</b>  3 <b>situation like vote selling? Putting aside</b>  4 <b>the conspiracy angle.</b>  5 A. Well, but the conspiracy angle  6 goes to the issue of resources, because the  7 conspiracy creates more points of  8 vulnerability. You know, when you have  9 multiple people involved in trying to -- in  10 conspiring to try to corrupt an election,  11 then you have more chances, in a way, of  12 finding out about it. So it could be I  13 don't want to say less resources, but it  14 creates a different set of conditions for  15 the investigation that might make it  16 actually -- it might make it easier to  17 detect.  18 <b>Q. Again, putting aside the</b>  19 <b>conspiracy angle, the vote selling offense,</b>  20 <b>if it's not caught at the polling place,</b>  21 <b>would you say it's virtually impossible to</b>  22 <b>catch that person?</b>  23 A. No --  24 MS. WILSON: Objection,  25 incomplete hypothetical.</p>	<p style="text-align: right;">Page 63</p> <p>1 <b>kind of I don't want to know who you are,</b>  2 <b>here's your ten dollars, would that change</b>  3 <b>the analysis?</b>  4 A. I haven't seen that in the cases  5 that I've looked at. These have been so  6 local that -- I mean, in fact, they're so  7 local that I had a little bit of a hard  8 time in the beginning with the case I  9 mentioned before, the case in Kentucky,  10 which proceed in three different federal  11 cases that all had multiple defendants and  12 many of them had the same last name across  13 all three cases in different states, and it  14 was a little bit hard to kind of keep in  15 mind who was doing what and who had what  16 role in that conspiracy. But I haven't  17 seen that, that -- you know, it's possible  18 that they wouldn't know who they are, but  19 usually these are small communities where  20 everybody knows everybody.  21 <b>Q. Would you say also that there's a</b>  22 <b>measure of prosecutorial discretion</b>  23 <b>involved in the decision to prosecute the</b>  24 <b>broader conspiracy versus the individual?</b>  25 A. I think there's always</p>
<p style="text-align: right;">Page 62</p> <p>1 You can answer.  2 THE WITNESS: No. Again, you  3 know, you get to the vote seller through  4 the vote buyer. So -- which could give you  5 more leverage, if you will, in the  6 investigation. I'm not trying to ignore  7 your question, but I can't separate out the  8 conspiracy part of it, because it's  9 inherent in the act. So in other words,  10 you couldn't have -- you wouldn't have an  11 isolated vote seller just because of the  12 nature of the act itself as a transaction  13 between a buyer and a seller. So, I think  14 that's why these experienced investigators,  15 at least in the federal government, have  16 always gone after the buyers first and  17 foremost, because the problem goes away if  18 you get rid of the buyers. The sellers are  19 sort of adjunct to the process. They're  20 part of the transaction. But you could  21 find out about the vote sellers through the  22 vote buyers.  23 BY MR. JOHNSON-KARP:  24 <b>Q. If the vote buyers didn't know</b>  25 <b>identities of the sellers, just for example</b></p>	<p style="text-align: right;">Page 64</p> <p>1 prosecutorial discretion. Prosecutors  2 always exercise discretion about how they  3 go about their job.  4 <b>Q. From a resource standpoint, would</b>  5 <b>it make more sense for a prosecutor to go</b>  6 <b>after the kind of bigger fish than the</b>  7 <b>smaller fish or the individual vote seller?</b>  8 MS. WILSON: Objection, calls for  9 speculation, lacks foundation and beyond  10 the scope.  11 But you can answer.  12 THE WITNESS: Well, I'm not a  13 prosecutor, so I'm not trained as a  14 prosecutor and I'm not presenting myself as  15 a prosecutor. I'm, you know, reporting on  16 what I'm able to observe as a social  17 scientist and what certainly federal  18 investigators have explained, because  19 there's a manual for training federal  20 prosecutors in these election crimes, and I  21 have read at least three versions of it.  22 The most recent one was put together in  23 2007. And, so, in that manual there's a  24 lot of discussion, description about the  25 kinds of crimes that can occur in</p>



<p style="text-align: right;">Page 65</p> <p>1 elections, and, in fact, again, in that 2 manual it says that election crimes of this 3 kind are probably easier to detect than 4 other kinds of fraud, and the reason is, if 5 there's any money involved at all, there's 6 a money trail, and if not, the person has 7 to commit the crime in front of election 8 officials, whose job it is to prevent them 9 from doing it. 10 So this is coming from, you know, 11 many years of experience at the federal 12 level of federal prosecutors and the manual 13 that they use to train US Attorneys and 14 their personnel in how to detect, look for, 15 investigate various kinds of voter fraud. 16 And they're saying, you know, this is a 17 little bit easier to do than other kinds of 18 fraud. That's what they say. As I said, 19 I'm not a prosecutor. I'm not testifying 20 as one. 21 BY MR. JOHNSON-KARP: 22 <b>Q. Again, as a resource allocation</b> 23 <b>issue, you mentioned that these broader</b> 24 <b>experiences are easier to trace because</b> 25 <b>they involve money, correct?</b></p>	<p style="text-align: right;">Page 67</p> <p>1 <b>the ineligible voting or the double voting.</b> 2 A. No. I mean, what I understood in 3 my study of how the federal government has 4 proceeded in this area is that they 5 prosecuted conspiracies because 6 conspiracies, these kinds of conspiracies, 7 vote buying conspiracies, had a much 8 broader impact on the electoral process. 9 So in a sense, it was more efficient to go 10 after, say, a broad vote buying conspiracy 11 that was corrupting many elections over and 12 over again in a small community than it is 13 to try to go after one person in Milwaukee 14 who voted while they still were on 15 probation and didn't know that they weren't 16 allow to vote. The federal government 17 experimented with that, and I think, in the 18 end, concluded that that was not a wise use 19 of resources and that because one person 20 who makes a mistake in Milwaukee is 21 unlikely to change the outcome of the 22 election in Milwaukee, whereas endemic 23 corruption in a place like Wise County, 24 Kentucky that was occurring over 25 generations was something that really</p>
<p style="text-align: right;">Page 66</p> <p>1 A. With respect to vote buying. 2 <b>Q. And that's distinct from what you</b> 3 <b>talk about as more of the true, in your</b> 4 <b>definition, voter fraud, the felon voting,</b> 5 <b>the other ineligible voting, double voting?</b> 6 <b>Those don't usually involve money; is that</b> 7 <b>correct?</b> 8 A. That's correct. 9 <b>Q. And in your research, did you</b> 10 <b>come across any indication that the</b> 11 <b>financial incentive informed the</b> 12 <b>prosecution decision, the decision to</b> 13 <b>prosecute? The fact that it involved money</b> 14 <b>encouraged prosecution? Have you come</b> 15 <b>across any information like that?</b> 16 A. Well, to the extent that I 17 understand what you're asking me, are you 18 asking me are -- I actually don't exactly 19 know what you're asking me with the 20 financial incentive part of that question. 21 <b>Q. Have you come across any</b> 22 <b>indication that prosecutors were more</b> 23 <b>likely to prosecute those types of fraud</b> 24 <b>involving money than the types of fraud</b> 25 <b>that didn't involve money and just involved</b></p>	<p style="text-align: right;">Page 68</p> <p>1 needed the attention of the federal 2 government. 3 So it wasn't money, per se, that 4 helped make that decision about maybe 5 allocation of resources; it was more the 6 broad control that was being exercised to 7 corrupt the whole electoral process that 8 was the reason they were putting resources 9 into conspiracies, rather than individuals, 10 like I've described. 11 <b>Q. I'm looking at Page 13. Speaking</b> 12 <b>broadly about your reliance on historical</b> 13 <b>evidence, you say that historical evidence</b> 14 <b>supports the conclusion that voter</b> 15 <b>demobilization might be based on race. Is</b> 16 <b>that correct?</b> 17 A. Yes. 18 <b>Q. Could you go into some of that</b> 19 <b>historical evidence, please.</b> 20 A. Well, are you pointing to 21 something specific in my report? 22 <b>Q. No, just if you could describe</b> 23 <b>generally the historical evidence.</b> 24 A. Well, we have a sort of amazing 25 history with respect to race and voting,</p>

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18 (Pages 69 to 72)

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<p>1 and, you know, we have slavery, we have                  2 black people who can't vote, we have the                  3 Civil War in which slavery is outlawed and                  4 African-Americans believe that they being                  5 enfranchised, at least African-American men                  6 with 15th Amendment. And, in fact, in many                  7 places, in the south in particular,                  8 African-American communities organize and                  9 they elect people of their choice and they                  10 send the first black people to the US                  11 Congress or in-state government within just                  12 years of the Civil War. But, at the same                  13 time, there's a violent backlash to that,                  14 and that violent backlash involves the                  15 creation of the Klu Klux Klan and all kinds                  16 of marauding militias that terrorize black                  17 people, to put them back into their place.                  18 So by 1900, in places like                  19 Alabama where new constitutions are adopted                  20 and new mechanisms like literacy tests and                  21 poll taxes and grandfather clauses, these                  22 are sort of all techniques to try to get                  23 around the fact that the 15th Amendment                  24 says you can't discriminate against people                  25 in voting by race. So how do you</p>	<p>1 before, but were taken away. I think that                  2 is just an incredible, amazing story about                  3 how -- because Americans believe we tend to                  4 make progress. We've opened up the vote to                  5 women, to people, young people, to                  6 African-Americans. But, you know, we have                  7 this story that many people forget, that                  8 people had the right to vote and it was                  9 taken away from them. So that's the sort                  10 of foundation of the historical facts,                  11 basically, of how and why African-Americans                  12 have been really the people the most in the                  13 United States who have been targeted for                  14 disenfranchisement. It's a long, long                  15 history of it. And you asked me earlier                  16 about Republican party, Democratic party.                  17 It was the Democratic party in the south                  18 that did this, not the Republican party as                  19 much. The Republican party engaged in some                  20 of it in the north with respect to                  21 immigrants, but the Democratic party was                  22 the perpetrator of this disenfranchisement                  23 of African-Americans in the late 19th                  24 century.                  25 And, again, understanding that</p>
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<p>1 disenfranchise people when the Constitution                  2 says you can't do it? And they do it                  3 through the mechanisms of election law.                  4 And so, by the beginning of the                  5 20th century in a place like Alabama, there                  6 were almost no black people anymore on the                  7 voter rolls, because they had been                  8 terrorized into being pushed off the rolls                  9 and terrorized into not registering to                  10 vote. You know, they would try to register                  11 to vote, they'd be attacked by the Klu Klux                  12 Klan, or you had these sort of -- they                  13 called them understanding tests, where you                  14 had to do whatever the registrar said. You                  15 have to recite the first part of the                  16 Constitution or you had to answer a                  17 question like how many bubbles are there in                  18 a glass of water, all kinds of mechanisms                  19 to effectively disenfranchise                  20 African-Americans.                  21 So it's not until the Civil                  22 Rights Movement, which really begins in the                  23 1930s, but we see it in the 1950s, which                  24 becomes a movement around reclaiming civil                  25 rights that African-Americans actually had</p>	<p>1 history and understanding why, how it                  2 worked structurally with respect to the                  3 two-party system was part of what Keeping                  4 Down the Black Vote, what that book was --                  5 what we were trying to explain and                  6 describe, that it was produced by party                  7 competition, and both parties look for                  8 rules that shape the electorate to their                  9 advantage. After the Civil Rights                  10 Movement, when African-Americans become                  11 incorporated into the electorate, they are                  12 incorporated by the Democratic party. And                  13 so that's why you see this overlay of                  14 partisanship and race today in American                  15 politics, with African-Americans being the                  16 most loyal Democratic party voters. In                  17 most elections, Democrats running for                  18 President are going to get 90 percent of                  19 the black vote, and part of the reason why                  20 is because when they moved to the north,                  21 they were incorporated into the Democratic                  22 party at the local level, and then, through                  23 the actions of the Civil Rights Movement,                  24 they claimed their place as voters. They                  25 put forward candidates and now they have</p>

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<p>1 become part of the Democratic party in a 2 way that they have not in the Republican 3 party because the Republican party, which 4 probably was more liberal on civil rights 5 in the 1950s, turned away from 6 African-Americans. 7 So it's a complicated history, 8 but there's an overlay of partisanship 9 that's structured by the two-party system 10 that we have and the competition. You 11 never have to win a majority. You just 12 have to win more than the other party. So 13 it's a plurality system, not a majority 14 system. And that creates the incentive for 15 trying to shrink your opponent's 16 electorate. That's where the 17 demobilization, the logic of demobilization 18 comes, in the two-party system. I would, I 19 think -- I haven't really studied this, but 20 the logic would predict that there's less 21 efforts at what some people call vote 22 suppression, what we call demobilization. 23 There's probably less of that in a 24 multi-party system. In a two-party system, 25 you can win by trying to get more voters</p>	<p>1 <b>Q. Well, what I'm looking at is 33</b> 2 <b>to 35, and I would just be curious if you</b> 3 <b>have any critiques of the numbers he uses,</b> 4 <b>the data sets that he uses.</b> 5 A. Oh, no. I can tell you I won't, 6 because I can't -- 7 MS. WILSON: Hold on. 8 I'm going to object to this. 9 It's beyond the scope of her -- 10 THE WITNESS: Yeah. 11 MS. WILSON: -- expertise and her 12 expert opinion. 13 But you can answer. 14 THE WITNESS: No, I didn't form 15 any opinion about this at all. I would -- 16 I would have to do a lot more work before I 17 could really have anything to say about it. 18 I wasn't responding to this, because it's 19 not my -- not what I've been asked to do in 20 this case, which is just to talk about or 21 to analyze the evidence of voter fraud. So 22 this is something completely different. 23 BY MR. JOHNSON-KARP: 24 <b>Q. If I could then just maybe limit</b> 25 <b>it to table 15 on Page 35. Professor Hood</b></p>
<p>Page 74</p> <p>1 than your opponents, but that means you 2 have more voters -- if you don't want to 3 expand your own party, you have more voters 4 if you can shrink the other party's 5 electorate. That's the logic and the 6 incentive for demobilization, and both 7 parties have engaged in it over a long 8 history in the United States. 9 <b>Q. Are you familiar with Professor</b> 10 <b>Hood's analysis of the racial partisan</b> 11 <b>breakdown in Wisconsin? And I'll hand you</b> 12 <b>this. Looking at between 33 and 35,</b> 13 <b>Professor Hood breaks down the two-party</b> 14 <b>breakdown by race for Wisconsin and then</b> 15 <b>applies that to a percentage of the</b> 16 <b>population.</b> 17 A. I read his report when he filed 18 it, but I did not pay any attention to this 19 part of his report, because I was only 20 responding to what he was saying about 21 voter fraud. So I can read it now, but I 22 don't know that I have any particular 23 opinion on it. 24 <b>Q. If you want to take a --</b> 25 A. You want me to read what page?</p>	<p>Page 76</p> <p>1 <b>breaks down the Wisconsin partisans within</b> 2 <b>each racial group. Do you see those</b> 3 <b>numbers?</b> 4 A. Yes, I see it, but -- 5 MS. WILSON: Wait a second. You 6 have the same problem and, in addition, 7 based on her testimony, it lacks 8 foundation. But... 9 THE WITNESS: No, I have no 10 comment on it because I'm not -- I wasn't 11 engaged to analyze the question of really 12 even the photo ID law's effects here, which 13 is what you're pointing to at table 15, 14 looking at partisans without identification 15 by race. I don't have any opinion on it. 16 BY MR. JOHNSON-KARP: 17 <b>Q. As a matter of logic, I guess,</b> 18 <b>would the demobilization argument that you</b> 19 <b>make be weakened if there wasn't a strong</b> 20 <b>showing of partisan by partisanship by</b> 21 <b>race?</b> 22 MS. WILSON: Objection, vague. 23 THE WITNESS: Yeah, I don't -- 24 I'm trying to understand your question. 25 BY MR. JOHNSON-KARP:</p>

<p style="text-align: right;">Page 77</p> <p>1 <b>Q. I think your conclusion that</b>  2 <b>demobilization is perpetrated by partisan</b>  3 <b>groups; is that correct?</b>  4 A. Yes. I'm saying, which is worked  5 out in this other book that I mentioned,  6 Keeping Down the Black Vote, I'm saying  7 there's a kind of logic in the two-party  8 structure that creates incentives for  9 demobilization, and there's this purely  10 hypothetical or theoretical model would  11 suggest that both parties could see that to  12 their advantage. In other words, parties  13 have maybe two choices. One is try to  14 expand their appeal so that they capture  15 the appeal of more voters, say 51 percent  16 of the voters, or, if they have 48 percent  17 with them and say 50 percent against them  18 and two undecided, they could try to move  19 people out of that, their opposing party's  20 camp, in any number of ways. They can --  21 and demobilization in general can occur --  22 there are many paths to doing that. There  23 could be rules, fighting over the rules,  24 which we're seeing right now, and we've  25 certainly had a number of, recently too,</p>	<p style="text-align: right;">Page 79</p> <p>1 they try to think about, well, who might  2 have trouble complying with this one or who  3 -- how might this open up voters to be  4 more, you know, to expand access, because  5 expanding access could help us. It's the  6 calculations that are made. But I'm simply  7 saying that the parties compete that way.  8 So going back to your question,  9 maybe you could restate it again. I'll see  10 if I can try to answer it, but I can't  11 really comment on Professor Hood's  12 statistics here.  13 <b>Q. I guess separate from the actual</b>  14 <b>numbers, then, just as a matter of logic,</b>  15 <b>would -- if it were the case that, for</b>  16 <b>example, the voter ID law and its</b>  17 <b>demobilizing effect were to be borne</b>  18 <b>equally or roughly equally by both parties,</b>  19 <b>that would undercut the logic of that form</b>  20 <b>of demobilization, wouldn't it?</b>  21 MS. WILSON: Objection, vague,  22 incomplete hypothetical.  23 THE WITNESS: You know, there's  24 another thing going on here, which is that  25 party operatives may believe that something</p>
<p style="text-align: right;">Page 78</p> <p>1 Republican elected officials saying photo  2 ID will help us win. They're sort of --  3 the cat's out of the bag when they say  4 that. At least they believe that. It may  5 or may not be true, but they believe that  6 photo ID will help them, and the question  7 is why, because photo ID burdens more,  8 disproportionately burdens the voters who  9 are more likely to give their votes to the  10 Democratic party.  11 So I'm simply saying there's a  12 logic that both parties -- theoretically,  13 both parties could engage in  14 demobilization, because it involves trying  15 to shrink the support for the other side,  16 and it could be shrinking it in any number  17 of ways. Rules that shave off 1 percent,  18 for example, of the other side's voters.  19 It's not a precise science, but it's an  20 approach, and it's an approach that is --  21 that we've had for a long time in the  22 United States, which is that we have  23 partisan election administration primarily,  24 in most states, and that means that party  25 actors look at the rules very carefully and</p>	<p style="text-align: right;">Page 80</p> <p>1 is going to help them and it may or may not  2 in practice. And I think if you go back to  3 look at the legislative debates over photo  4 ID in the states, I'm familiar with some of  5 them, they don't have any -- they never  6 bring any proof into the debate that the  7 photo ID law is going to advantage one  8 party or the other.  9 So what I'm trying to say is that  10 there's the belief that it will help them  11 that motivates the voting, that motivates  12 the adoption of these laws, and there might  13 be a reality that actually undermines them.  14 Instead of helping them, it hurts them.  15 For example, to the extent that photo ID  16 laws condition a response, you know, it  17 could undercut what they think it's going  18 to do, the proponents think it's going to  19 do.  20 So you're sort of asking me the  21 question about logic in a hypothetical way,  22 and I'm trying to answer it, I guess, in a  23 hypothetical way that I don't think that  24 proponents of photo ID laws are pushing  25 photo ID laws because they think they're</p>

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<p>1 going to have an equal impact. They may or                  2 they may not. It depends on the specific                  3 conditions. But I believe that they put --                  4 that they are advocating for photo ID laws                  5 because they believe that there will be a                  6 benefit to their party.                  7 BY MR. JOHNSON-KARP:                  8 <b>Q. Going back, I'm at 13 still, just</b>                  9 <b>going back to kind of the historical</b>                  10 <b>evidence, you're familiar with the Crawford</b>                  11 <b>decision; is that correct?</b>                  12 A. Yes.                  13 <b>Q. And do you recognize what's been</b>                  14 <b>marked as Exhibit 4?</b>                  15 A. Yes.                  16 <b>Q. And what is it?</b>                  17 A. It looks like the -- I don't know                  18 the technical terms, the syllabus, but the                  19 opinion in Crawford versus Marion County                  20 Election Board, the Supreme Court opinion.                  21 I look for Justice Souter's dissent,                  22 because he cites my work.                  23 <b>Q. That's a nice shout out.</b>                  24 A. Yeah.                  25 <b>Q. My understanding of part of your</b></p>	<p>1 <b>Q. I'm looking at Page 7 of the</b>                  2 <b>document, paging on the bottom right-hand</b>                  3 <b>corner, the left hand column, the paragraph</b>                  4 <b>starting with a good registration list up</b>                  5 <b>at the top there (indicating)?</b>                  6 A. Uh-huh.                  7 <b>Q. A good registration list will</b>                  8 <b>ensure than citizens are only registered in</b>                  9 <b>one place, but election officials still</b>                  10 <b>need to make sure that the person arriving</b>                  11 <b>at a polling site is the same one that is</b>                  12 <b>named on the registration list.</b>                  13 <b>Did I read that correctly?</b>                  14 A. Yes.                  15 <b>Q. And that is one of the drivers of</b>                  16 <b>photo ID law, correct, to allow pole</b>                  17 <b>workers to make sure that the person</b>                  18 <b>presenting is, in fact, the person they</b>                  19 <b>claim to be?</b>                  20 MS. WILSON: Objection, vague.                  21 Do you mean in general or more                  22 specifically with respect to Wisconsin?                  23 MR. JOHNSON-KARP: I think in                  24 general for photo ID laws that the purpose                  25 is to allow poll workers to confirm that</p>
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<p>1 <b>objection to the decision reached here is</b>                  2 <b>the historical basis for the Court's</b>                  3 <b>discussion of voter fraud; is that correct?</b>                  4 A. Are you pointing to something                  5 specific I've said about Crawford?                  6 <b>Q. I think you mentioned that the</b>                  7 <b>Court's reliance on kind of the Boss Tweed</b>                  8 <b>era was an inaccurate historical analysis;</b>                  9 <b>is that correct?</b>                  10 A. Well, I'm trying to think of                  11 where I may have written it. I can tell                  12 you what I think.                  13 <b>Q. That would be great.</b>                  14 A. Which is that referencing Boss                  15 Tweed as a kind of historical record, you                  16 know, upon which to then say, well, we've                  17 had voter fraud in the United States is, in                  18 my opinion, really inadequate, in the sense                  19 that it's a reference to the 1860s in New                  20 York and that much has changed since then.                  21 So it would be better to reference a more                  22 current record of voter fraud, of actual                  23 voter fraud. I would have felt more                  24 confident, in a way, if Justice Stevens had                  25 been aware of that history.</p>	<p>1 the person presenting themselves is who                  2 they represent themselves in the pole -- in                  3 the book, sorry.                  4 THE WITNESS: I don't know. I                  5 mean, most rationales given in legislative                  6 debates over photo ID are about preventing                  7 fraud.                  8 BY MR. JOHNSON-KARP:                  9 <b>Q. As opposed to identifying the</b>                  10 <b>individuals; is that what you're saying?</b>                  11 A. Well, this doesn't -- I mean,                  12 this statement that you just read, to make                  13 sure that the person arriving at a polling                  14 site is the same one that is named in the                  15 registration list, doesn't compel photo ID                  16 as a mechanism for doing that.                  17 <b>Q. That there are other ways that</b>                  18 <b>that could be done?</b>                  19 A. Right.                  20 <b>Q. For example?</b>                  21 A. For example, asking the person's                  22 name, checking them on the list, maybe a                  23 signature. In some states, they use a                  24 signature to identify a person.                  25 <b>Q. Moving down to the next</b></p>

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<p>1 <b>paragraph, starting with there is no</b></p> <p>2 <b>evidence; do you see this?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. There is no evidence of extensive</b></p> <p>5 <b>fraud in US elections or of multiple voting</b></p> <p>6 <b>but both occur, and it could effect the</b></p> <p>7 <b>outcome of a close election.</b></p> <p>8 <b>Did I read that correctly?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Do you agree with that statement?</b></p> <p>11 A. In a general way, but let's be</p> <p>12 clear. This is a quote from the Carter</p> <p>13 Baker report. This is not Justice Stevens'</p> <p>14 words in this opinion, even though he's</p> <p>15 obviously citing to it because he wants to</p> <p>16 include it. But I have a lot to say about</p> <p>17 the Carter Baker report. So you can ask me</p> <p>18 about the Carter Baker report, if you'd</p> <p>19 like... But, I mean, you're sort of</p> <p>20 implying by reading this that these are</p> <p>21 conclusions that Justice Stevens came to on</p> <p>22 his own or that was even in this case. I</p> <p>23 don't recall. I don't recall, but I would</p> <p>24 have to look, you know, whether the Carter</p> <p>25 Baker report was in the litigation or</p>	<p>1 create a commission and we'll get two</p> <p>2 high-profile politicians, you know, a</p> <p>3 Democratic and a Republican, so we'll look</p> <p>4 like we're bipartisan. They had very few</p> <p>5 actual election administration experts on</p> <p>6 the commission. They held very few</p> <p>7 hearings, one or two. They didn't let the</p> <p>8 public speak. And there was a dissent, a</p> <p>9 vigorous dissent to the findings,</p> <p>10 specifically the recommendation of this</p> <p>11 report that going to a kind of biometric ID</p> <p>12 card, the real ID card it's called, might</p> <p>13 be the way to go. There was a very</p> <p>14 vigorous dissent by Spencer Overton, who is</p> <p>15 a law professor who was on the commission,</p> <p>16 and he was not allowed to submit his entire</p> <p>17 dissent. He had to do it separately. So</p> <p>18 at the time, it was very -- I think there</p> <p>19 was maybe a hope that there could be a kind</p> <p>20 of patent bipartisanship and that there</p> <p>21 could be a kind of sense that what the</p> <p>22 commission was recommending was a</p> <p>23 compromise, that maybe Democrats don't like</p> <p>24 photo ID but Republicans would put photo ID</p> <p>25 in the context of universal access to photo</p>
<p>1 whether it was added by Justice Stevens. I</p> <p>2 don't remember.</p> <p>3 <b>Q. So --</b></p> <p>4 A. Meaning whether it was introduced</p> <p>5 in some way in the lower court when</p> <p>6 evidence was taken at trial. I don't</p> <p>7 recall. It may have been, but I don't</p> <p>8 recall whether it was. Or whether Justice</p> <p>9 Stevens is just kind of putting this in</p> <p>10 here to represent maybe an opinion he</p> <p>11 agrees with. I don't know. But it's a</p> <p>12 little strange to ask me about a quote in a</p> <p>13 Supreme Court opinion that comes from a</p> <p>14 report that was actually quite</p> <p>15 controversial. It didn't represent any</p> <p>16 consensus among experts. It was seen as</p> <p>17 very political.</p> <p>18 <b>Q. Why is that? Why was it seen as</b></p> <p>19 <b>political?</b></p> <p>20 A. Well, I mean, it was seen as</p> <p>21 political because, first of all, it was a</p> <p>22 self-appointed committee. It was not a</p> <p>23 government commission to study problems in</p> <p>24 the 2000 election. It was a bunch of</p> <p>25 people who just said let's get together and</p>	<p>1 ID.</p> <p>2 So, for example, the</p> <p>3 recommendation to use the real ID card,</p> <p>4 which is something that was mandated by</p> <p>5 another federal law that was passed in</p> <p>6 2005, which is basically an enhanced</p> <p>7 driver's license, to use that as a form of</p> <p>8 identification for voting was coupled with</p> <p>9 various initiatives to ensure that</p> <p>10 everybody had the ID card before you</p> <p>11 started requiring it, that it was free,</p> <p>12 that it was universal access and, and that</p> <p>13 the government would go out and register</p> <p>14 people.</p> <p>15 So everybody forgets that and</p> <p>16 they just focus on, oh, the Carter Baker</p> <p>17 report recommended using the real ID card</p> <p>18 as an ID card for voting. Both Carter and</p> <p>19 Baker authored Op-Eds in the New York Times</p> <p>20 twice where they said people are</p> <p>21 misunderstanding our recommendation. We</p> <p>22 are not simply saying use the real ID card.</p> <p>23 We can't use the real ID card unless</p> <p>24 everybody has it, first. And also, that</p> <p>25 there is affirmative actions on the part of</p>

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<p>1 state governments to register everybody.  2 You have to go out and find people and  3 register, which is kind of a different  4 system than the one we have. We have  5 personal registration, which means it's  6 incumbent upon the individual to register  7 themselves. They were arguing for what  8 they have in Europe and other places, where  9 the government is responsible for everybody  10 getting registered.</p> <p>11 So there's -- it was both a  12 controversial report and commission. There  13 was dissent, there was significant dissent  14 to the findings on ID, and even Carter and  15 Baker have pointed out that proponents of  16 ID who like to point to the Carter Baker  17 report are not being honest about what the  18 report actually says with respect to the ID  19 recommendation. So I don't know why  20 Justice Stevens was including it here. I  21 would like to go back to see if it was  22 actually entered in the trial record as  23 some kind of evidence or if he -- you know,  24 in the way that he is pointing to Boss  25 Tweed, it's kind of in his knowledge of</p>	<p>1 it. I gave you my broader opinion about  2 the Carter Baker report and specifically  3 their ID recommendation, to use the real ID  4 card.</p> <p>5 You know, I don't know why  6 Justice Stevens has this in here. But,  7 again, I can tell you that I believe that  8 the evidence that he cites in the next two  9 paragraphs or so under the headline voter  10 fraud should not be the basis for him  11 coming to a conclusion that we have a  12 problem with voter fraud, either in Indiana  13 or in the United States in general. That  14 was the whole point of the, you know, years  15 of work that I did to try to make a  16 contribution to that understanding about  17 the evidence.</p> <p>18 <b>Q. Would you say you disagree then</b>  19 <b>with the Court's statement -- I'm sorry,</b>  20 <b>Justice Steven's statement at the end of</b>  21 <b>the last full paragraph in that column,</b>  22 <b>basically reiterating the Carter Baker</b>  23 <b>report there? Not only is the risk of</b>  24 <b>voter fraud real, but that it could affect</b>  25 <b>the outcome of a close election?</b></p>
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<p>1 what was going on at the time that he's  2 putting this in here to be a little bit  3 supportive of what the ultimate decision in  4 this case is, which was to uphold Indiana's  5 photo ID law.</p> <p>6 <b>Q. Do you think Justice Stevens was</b>  7 <b>mistaken in his reliance on this portion of</b>  8 <b>the report then?</b></p> <p>9 A. Well, I want to be very careful  10 about what I say about a Supreme Court  11 decision, because lawyers get all excited  12 when you say you disagree with the Supreme  13 Court. But I'm not a lawyer. I'm a  14 citizen and I'm an academic and I have no  15 problem criticizing the Supreme Court. So  16 I have criticized this decision for its  17 completely superficial reliance on what I  18 call the myth of voter fraud, and I don't  19 know -- you know, again, I -- you'd have to  20 give me time to re-read the whole case so I  21 could put into context this quote you're  22 asking me about. But -- you know, I don't  23 think it's really fair to just kind of pull  24 me into the Carter Baker report on a couple  25 of statements and ask me if I agree with</p>	<p>1 A. Well, again, we --</p> <p>2 MS. WILSON: Objection, to the  3 extent it's been asked and answered.</p> <p>4 THE WITNESS: You know, we can  5 take the parts of these things completely  6 out of context, and you can ask me do I  7 agree or disagree and I can answer them,  8 but it's not a full understanding of both  9 the record of evidence and my analysis of  10 it, to have me do that. If you're asking  11 me is there a risk of voter fraud... Sure.  12 There's a risk of voter fraud. Could it  13 affect the outcome of a close election?  14 It's possible.</p> <p>15 BY MR. JOHNSON-KARP:</p> <p>16 <b>Q. I'm looking at the next Westlaw</b>  17 <b>page, Page 8, the first left-hand column,</b>  18 <b>the end of that first paragraph, the</b>  19 <b>sentence starting with: Burdens of that</b>  20 <b>sort arising -- do you see that?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Burdens of that sort arising from</b>  23 <b>life's vagaries, however, are neither so</b>  24 <b>serious or so frequent as to raise any</b>  25 <b>question about the constitutionality of SCA</b></p>

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<p>1 <b>483. The availability of the right to cast</b>                  2 <b>a provisional ballot provides an adequate</b>                  3 <b>remedy for problems of that character.</b>                  4 <b>Do you have any opinion on that</b>                  5 <b>statement?</b>                  6 A. Well, again --                  7 MS. WILSON: Where is that again?                  8 THE WITNESS: It's on Page 8, the                  9 top paragraph, starting right here                  10 (indicating).                  11 MS. WILSON: I see it.                  12 What was the question?                  13 BY MR. JOHNSON-KARP:                  14 <b>Q. Do you have any opinion on that</b>                  15 <b>statement?</b>                  16 MS. WILSON: Objection, vague and                  17 outside the scope of what she is testifying                  18 about.                  19 But go ahead.                  20 THE WITNESS: It's not based on                  21 any evidence that Justice Stevens cites                  22 that measures burdens. So it looks like it                  23 might be his opinion, it's in this opinion,                  24 but I don't think that it's informed by an                  25 understanding of what the burden might be,</p>	<p>1 in, this has come up, and there's been an                  2 attempt to say to the judge look how                  3 arrogant she is, she doesn't agree with a                  4 plurality opinion, a barely plurality                  5 opinion, of the Supreme Court on this                  6 issue. She's such a partisan. She's so                  7 connected to, you know, her own opinions                  8 and trying to outweigh them, and, you know,                  9 I'd be happy, maybe at some other venue, to                  10 have this discussion, but it's really not                  11 what I had been engaged to do, which is to                  12 talk about the evidence of voter fraud in                  13 Wisconsin.                  14 MR. JOHNSON-KARP: Okay.                  15 THE WITNESS: I want to just                  16 point one thing out, too. It's not just me                  17 who disagrees with the foundation of this                  18 opinion. Judge Posner in the Seventh                  19 Circuit, who was involved in the Crawford                  20 case in that the appeal came to him and he                  21 wrote the opinion in the Seventh Circuit                  22 that upheld the lower court and then that                  23 case was appealed to the Supreme Court and                  24 that's what we're looking at here, is the                  25 Supreme Court upholding Judge Posner's</p>
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<p>1 for example, on a poor person who doesn't                  2 have any resources and doesn't have a                  3 driver's license because they can't afford                  4 a car, doesn't have a passport because they                  5 can't travel, they don't have any money. I                  6 wouldn't call that life's vagaries. Those                  7 are real conditions that real people live                  8 under, people that I have interviewed, that                  9 are not reflected in this statement.                  10 BY MR. JOHNSON-KARP:                  11 <b>Q. So as a factual matter, then,</b>                  12 <b>would you say that the decision is based on</b>                  13 <b>an incomplete view of the facts?</b>                  14 MS. WILSON: Objection, vague,                  15 lacks foundation.                  16 THE WITNESS: You know, I don't                  17 want -- I am not here to argue or quarrel                  18 with the --                  19 MS. WILSON: It's beyond the                  20 scope of her testimony.                  21 But go ahead.                  22 THE WITNESS: You know, I think                  23 there's an attempt sometimes to make me                  24 look arrogant because I disagree with the                  25 Supreme Court. So in some cases I've been</p>	<p>1 opinion -- has completely changed his mind                  2 on this, and he might argue that he didn't                  3 change his mind and he has written a book                  4 and he has also written another article                  5 about the difficulties that modern judging                  6 encounters when judges are asked to decide                  7 cases where there's a lot of technical                  8 information they don't understand or there                  9 are just areas of disciplines or whatever                  10 that are brought to them and they don't                  11 know everything. So they don't know                  12 everything about election administration,                  13 for example here, and how modern judging is                  14 very fraught and difficult kind of job and                  15 that, in this case, he now sees this with                  16 respect to photo ID as photo ID laws are                  17 meant to discriminate against people. He                  18 now -- in that sense, he's changed his                  19 mind. And this came out in a dissent to                  20 the three-judge panel of the Seventh                  21 Circuit basically upholding -- I'm sorry.                  22 Basically overturning -- is that the right                  23 word? I'm not sure. But the case that I                  24 was involved with, the Jones versus                  25 Deininger case, where the lower court found</p>



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25 (Pages 97 to 100)

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<p>1 for the Plaintiffs and the Seventh Circuit 2 Panel, in a sense, reversed and then just 3 Judge Posner wanted -- he supported the 4 idea of the whole thing being heard en banc 5 on the Seventh Circuit, and there was a 6 split vote to not do that. And in that 7 decision, he wrote a dissent very -- I 8 thought it was a very impassioned dissent 9 about why that was wrong and that, 10 basically, the facts had changed and that 11 the case should have been re-heard because 12 the facts had changed and that now we see 13 voter ID laws, photo ID laws are meant to 14 discriminate against people.</p> <p>15 So I want to just put that out 16 there because, again, this is taken a 17 little bit out of context in terms of the 18 whole history of this case, even this 19 specific case and what has happened since 20 then, with the opinion of the leading 21 jurist in the United States, Richard 22 Posner, now seeing these laws as motivated 23 by partisan interests and efforts to try to 24 discriminate against certain kinds of 25 people. And I would say also in that -- I</p>	<p>1 THE WITNESS: Right. Not 2 Crawford, right, to this current case. 3 Yes, I am limited to looking at the 4 evidence, which I have looked at in 5 Wisconsin now for more than ten years at 6 different points in time, offered the 7 opinion, you know, based on what the 8 evidence was at that time, looking again 9 did it change, in fact, was there a problem 10 that I missed the first time I looked at 11 it, and looking at it a third time, which 12 is what this case is, that's all that I'm 13 offering. Or -- that's all that I was 14 asked to do.</p> <p>15 So I'm trying to cooperate in 16 answering your questions, but I want to 17 make sure the context is there for those 18 other things that we're talking about.</p> <p>19 BY MR. JOHNSON-KARP: 20 <b>Q. And to be clear, you're not 21 opining as to the existence or nonexistence 22 of other state interests in adopting photo 23 ID laws; is that correct?</b> 24 MS. WILSON: Hold on. 25 Can I hear that question again?</p>
<p>Page 98</p> <p>1 don't know what you call it, but his 2 dissent to that decision not to hear the 3 case en banc, he liberally cites my work as 4 the evidence in the case. So that should 5 come in, if you're going to ask me about, 6 you know, do I disagree or agree with one 7 line in the Crawford case to try to make it 8 look like I'm disagreeing with the Supreme 9 Court. This still is all, I believe, not 10 within the scope of what I was asked to do. 11 I'm not a lawyer. I'm not a constitutional 12 scholar. So I'm -- but you're asking me my 13 opinion; I do have opinions based on having 14 followed this very, very closely.</p> <p>15 BY MR. JOHNSON-KARP: 16 <b>Q. But as to this case, you're 17 limiting your opinion just to the empirical 18 fact that there isn't evidence to support 19 the claim that voter fraud exists?</b> 20 A. Yes, I'm -- 21 MS. WILSON: So to be clear, when 22 he says as to this case, he means the 23 Wisconsin case, not the case -- 24 MR. JOHNSON-KARP: Correct, 25 correct.</p>	<p>Page 100</p> <p>1 --- 2 (Whereupon the court reporter 3 read back the requested testimony.) 4 --- 5 MS. WILSON: Objection, assumes 6 facts. 7 But you can answer. 8 THE WITNESS: I wasn't 9 specifically focusing on any specific 10 rationales that were offered in Wisconsin, 11 but to the extent that I'm trying to 12 explain the discrepancy between, let's say, 13 the belief that there's a lot of voter 14 fraud on the level of allegations about 15 voter fraud and the actual facts, I'm 16 bringing in my analysis, my historical 17 analysis we called it, of understanding 18 what would be generating the allegations. 19 And -- or, you know, generating the belief 20 that there's a lot of voter fraud, that 21 there is a -- it is tinged by racism, in my 22 opinion, because the targets historically 23 have been African-Americans, and the fact, 24 for example, and I talk about that in my 25 report, I paid attention to that because of</p>

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26 (Pages 101 to 104)

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<p>1 my interest and my work in race and 2 American political history. I talk about 3 racial differences, even in the most recent 4 cases that were prosecuted in Wisconsin. 5 All of the -- all but maybe one of the 14 6 people who were prosecuted earlier under 7 the ballot access and voting integrity 8 initiative project between 2002 and 2005, 9 all of them, it's supposed to be 10 state-wide, those 14 people, it might have 11 been 13, I'm not clear about the identity 12 of one of them, but at least 13 of the 14 13 people were indigent African-Americans who 14 lived in Milwaukee.</p> <p>15 So the message was, the only 16 people who commit fraud in Wisconsin are 17 poor black people. Why didn't they find 18 anybody else when they looked? Why were 19 those prosecutions only of poor black 20 people in Milwaukee? And to me, it fits 21 the historical pattern and the presumption 22 that these are the people who commit the 23 fraud. You don't have to say it's about 24 black people anymore. You don't have to 25 say that. But if you look at the behavior,</p>	<p>1 and in Wisconsin at the time. And so -- 2 and I talk about this in other things that 3 I've written about these allegations and 4 the issue of voter fraud being sort of 5 fraught with racist implications. I don't 6 have any problem saying that. I've said 7 that before. And in Wisconsin again, you 8 know that this is something the federal 9 government has -- never seen the federal 10 government do this before, go after 11 individual voters. And they put -- in 12 fact, one of the people I interviewed, who 13 had been targeted and prosecuted, was so 14 humiliated by the fact that her picture 15 appeared in the paper as she was being 16 charged -- that's how she found out she was 17 being charged -- she left Milwaukee. And 18 she said to me she'll never vote again. So 19 that was happening. It was in the 20 newspaper. And the only faces you saw were 21 black faces being prosecuted by the federal 22 government. That's part of the discussion 23 and I think it would be, you know, really 24 dishonest not to acknowledge that. 25 Now, the issues in the</p>
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<p>1 why in the whole state of Wisconsin, when 2 the federal government put whatever 3 resources it was going to put, all they 4 could come up with was 14 poor people in 5 Milwaukee? That raises a lot of questions 6 for me.</p> <p>7 So that's the historical -- you 8 know. When I have that historical 9 knowledge, I bring that, to understand that 10 pattern. If you don't think about those 11 issues, you might not have raised any 12 questions about the pattern itself.</p> <p>13 BY MR. JOHNSON-KARP: 14 <b>Q. What you described there, the 15 prosecution of 13 individuals, that goes to 16 law enforcement and prosecutorial 17 discretion, correct? Not to legislative 18 intent?</b></p> <p>19 A. Well, I mean, this was what was 20 happening in Wisconsin in the few years 21 before the legislature is adopting photo 22 ID. Actually, legislature had tried to 23 adopt photo ID before, several times before 24 it was actually passed. So it's part of 25 what was happening in Wisconsin politics</p>	<p>1 legislature are what they are, but I am, 2 again, primarily looking at the evidence of 3 voter fraud, but this question you're 4 raising comes up and I have stated it in 5 the report that I believe there is -- there 6 are racial components to this issue. So 7 that's the extent to which I can comment on 8 whatever legislators say their motives are.</p> <p>9 <b>Q. Are you aware of anything in the 10 legislative record tying Wisconsin's Act 23 11 to the incidents of voter fraud in the 12 early 2000s in Wisconsin?</b></p> <p>13 A. Meaning do they ever cite those 14 cases?</p> <p>15 <b>Q. Right.</b></p> <p>16 A. I don't know. I would have to go 17 back and look. But I do know that it was 18 something that was in the news to the 19 point, like an ordinary person who ends up 20 being a victim of it, saw it that way. So 21 I would imagine legislators who read the 22 newspapers and are aware would also be 23 aware of it. But I would have to go back 24 and, you know, look at whatever I could 25 look at with respect to the debate before</p>

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<p>1 being able to say it. Of course, I would 2 never expect the issue to be frankly 3 discussed in a legislative environment. No 4 legislator is going to come in and say we 5 need photo ID because we want to shave off 6 some points for Democrats. Or -- and, you 7 know, Democrats become also a label. You 8 don't have to say black people; you can say 9 Democrats, because they vote 90 percent or 10 more for the Democrats. So there's an 11 alignment.</p> <p>12 So we have lots of code words 13 that we use, and the book, the reason I 14 titled my book The Myth of Voter Fraud is 15 because I am, first, looking at the 16 evidence and then puzzling over, well, if 17 this is the evidence, why do people believe 18 there's so much voter fraud? And I'm 19 working that through in the book, and I 20 connect it to the history and also the fact 21 that we don't -- no politician is going to 22 say that, that what they're trying to do is 23 to keep down the Democratic vote or keep 24 down the black vote. They're not going to 25 usually -- we have few instances of it.</p>	<p>1 evidence is. I often have to explain to my 2 students what a fact is, because they think 3 everything is just your opinion. I say, 4 no, there's opinions and then there are 5 things we call facts, and as an empirical 6 social scientist, I deal in facts. I try 7 to deal in facts, with lawyers who deal in 8 facts.</p> <p>9 So I know there are people who 10 are not -- don't have racial hatred in 11 their hearts or are not particularly 12 partisan who might just believe there's 13 fraud, and, again, the photo ID might seem 14 reasonable to a lot of people, because most 15 of us have drivers' licenses. So what's 16 the big deal, you would say. But that -- 17 but with respect to the public policy 18 question -- and this is something also that 19 I teach courses on, policy analysis -- it's 20 relative as context, but it's not the 21 reason why you adopt laws, we would hope. 22 In a rationale environment, you would have 23 an assessment of a problem, and a good 24 policy would be one that solves the 25 problem.</p>
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<p>1 Even in Wisconsin, recently, we have a 2 legislator who just recently, Mr. Grothman 3 (ph) saying this is going to help us. 4 Photo ID is going to help us. But that's 5 rare. Most of the time, the political 6 motivations are not frankly discussed in 7 the legislative arena.</p> <p>8 <b>Q. In your research and in reaching 9 your conclusion, was there ever any, say, 10 middle ground between kind of the lack of 11 empirical support for voter fraud and your 12 ultimate conclusion of nefarious intent in 13 imposing a voter ID requirement?</b></p> <p>14 A. What do you mean by middle 15 ground?</p> <p>16 <b>Q. Are you aware of or did you come 17 across or consider any less nefarious 18 purposes for implementing a voter ID law?</b></p> <p>19 A. Well, I think you can certainly 20 have people who may believe that there's a 21 big problem, no matter what evidence is put 22 before them. They could honestly believe 23 it and they just don't believe the evidence 24 or they don't know how to assess evidence 25 or what kind of weight or even what</p>	<p>1 And so, given the fact that, you 2 know, in many places when Republicans were 3 able to get full control of the state 4 government -- that is to say, say both 5 houses of the legislature and a governor's 6 office and they knew they had an agenda -- 7 the first thing they do is photo ID. Not 8 address poverty or problems in the schools 9 or potholes or bridges falling down. First 10 thing they do is the photo ID. And they do 11 it, in part, because they understand or 12 they believe that this is their opportunity 13 to put through some rules that Democrats 14 are going to perceive as being detrimental 15 to them in terms of elections.</p> <p>16 And so, you know, when you're 17 asking me is it nefarious or not nefarious, 18 yes, there are other people who could sort 19 of honestly believe that this is not a big 20 deal, this is a good thing and they could 21 -- you know, they don't have to be -- they 22 don't have to have any kind of hidden 23 agenda. But that's not what goes on inside 24 a state legislature. State legislature are 25 people who are elected to office who want</p>

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<p>1 to stay elected, both sides. So the rules 2 are fought over very -- they can be fought 3 over very intensely. It's more intense 4 right now than it's been in a little while, 5 but the -- what you're pointing to, I 6 think, as middle ground really isn't 7 relevant.</p> <p>8 <b>Q. Why do you say not relevant? I</b> 9 <b>guess, just to clarify, there could be</b> 10 <b>instances of legislators voting to</b> 11 <b>implement voter ID that are not motivated</b> 12 <b>by an intent to demobilize any groups; is</b> 13 <b>that correct?</b></p> <p>14 A. Well --</p> <p>15 <b>Q. That's what I meant by not</b> 16 <b>nefarious.</b></p> <p>17 A. Well, I would -- you know, I 18 would point to somebody like Judge Posner 19 again, who looked at the case in front of 20 him and didn't see the burden part of it. 21 That evidence he did not feel was developed 22 at the trial level. So when he did his 23 balancing, he concluded, in effect, that 24 this really wasn't a big deal, photo ID. I 25 mean, he's not a political actor in the</p>	<p>1 <b>would that mitigate your conclusion about</b> 2 <b>the demobilizing effects?</b></p> <p>3 MS. WILSON: Objection, vague, 4 and mischaracterizes prior testimony. 5 But go ahead.</p> <p>6 THE WITNESS: I would still be of 7 the opinion why are we doing this? If we 8 have a system in place, we have -- every 9 state has laws against voted fraud, if you 10 want to call it that generally. They don't 11 tend to say voter fraud in the statutes, 12 but against voting more than once, against 13 knowingly, willingly misrepresenting your 14 eligibility, et cetera. We have criminal 15 laws against it. We have election 16 administration procedures that I think 17 probably are always improving to make sure 18 that each person votes only once and is 19 eligible to vote. Why are we requiring 20 photo ID? I would still ask that question 21 because, as we've seen, you know, it's kind 22 of ironic for the Republican party, which 23 likes to present itself as a fiscally 24 conservative party, has now imposed lots of 25 costs on local counties and administrators.</p>
<p>Page 110</p> <p>1 legislature, but he has changed his mind. 2 And so if there were legislators who, just 3 like him, thought, hey, this sounds like a 4 good thing, maybe there's some fraud cases 5 in the news, this will address it, nobody 6 will be hurt, this is a good thing. Well, 7 they certainly should know by now, like 8 Judge Posner does, that these laws have an 9 impact, a big impact, on people and that 10 they could correct it. They could correct 11 it.</p> <p>12 So if the legislators you may be 13 thinking of are in the middle ground, I 14 would be looking to see if they're now 15 going into the legislature in Wisconsin and 16 offering to change that law. And I don't 17 see that, but maybe they are. I haven't 18 looked at that activity in months, so I 19 don't know what's going on there.</p> <p>20 <b>Q. With regard to your conclusion</b> 21 <b>about demobilization, if there were</b> 22 <b>provisions in the law, and this is kind of</b> 23 <b>getting back to what I understood your</b> 24 <b>discussion of the Carter Baker report to</b> 25 <b>suggest, that if IDs were widely available,</b></p>	<p>Page 112</p> <p>1 They have places where they have to hire 2 more people because of the requirements of 3 photo ID. They have to make photo IDs 4 available. They're spending more money. 5 And me, being fiscally conservative, I'm 6 looking at that and I'm saying why are we 7 doing that? If we only have limited funds, 8 why are we spending it on this, if there's 9 no problem?</p> <p>10 So there's the hypothetical of 11 the Carter Baker report, which is that 12 every person is registered by the 13 government. There's a seamless process and 14 every person has the ID, you know. And at 15 that point, you say, well, this is not a 16 burden on everybody. Everybody has a 17 Social Security number, almost. There are 18 lots of people actually who don't have 19 Social Security numbers. But, you know, if 20 we have something universally accessible to 21 people, then there's no burden. That's 22 like a big hypothetical. I'm still at the 23 point of asking why are we doing this now? 24 Why are we spending money, wasting money in 25 my opinion on this now, if there's been no</p>

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1 showing in any state that's adopted a photo  
 2 ID law of any problem at all. It's kind  
 3 of -- it's frustrating. It's really hard  
 4 to figure out, except that my political  
 5 analysis figures it out for me, answers the  
 6 question for me what it's about.  
 7 BY MR. JOHNSON-KARP:  
 8 **Q. It seems, though, that in the**  
 9 **scenario where there's -- if we can say no**  
 10 **burden on obtaining an ID -- wouldn't that,**  
 11 **then, lend credence to the conclusion that**  
 12 **the law is intended to, for example,**  
 13 **promote confidence in the electoral**  
 14 **process?**  
 15 A. No. I go back to my reasoning  
 16 and the little bit of evidence that we have  
 17 on that, that it -- it's not the reason why  
 18 people don't have confidence in government.  
 19 The lack of photo ID is not the reason.  
 20 There's no evidence that shows that. I  
 21 would like to see somebody point that out  
 22 to me with evidence. There's no evidence  
 23 that people think, you know, whatever they  
 24 think when they say I don't have confidence  
 25 in government is because of a lack of photo

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1 ID law.  
 2 **Q. Is there a distinction to be**  
 3 **drawn between confidence in government in**  
 4 **the sense of legislative body, executive**  
 5 **body versus confidence in the electoral**  
 6 **process?**  
 7 A. Well, this kind of gets started  
 8 with, if we go back to the 2000 election,  
 9 and the confidence problem was that your  
 10 ballot wasn't going to get counted or that  
 11 you were a registered voter, you know,  
 12 you're a minister in Florida, you're a  
 13 black minister in Florida and you go into  
 14 vote and they tell you you're a felon and  
 15 you can't vote, and they tell you this in  
 16 front of other people. Okay? That's the  
 17 kind of confidence problem people have.  
 18 Not that fraudsters are voting, but that  
 19 politicians and election officials are  
 20 screwing around with the rules and they are  
 21 preventing American citizens from casting  
 22 ballots. That's what that was about.  
 23 So it's been twisted and kind of  
 24 tried to put it together with the photo ID  
 25 issue, but that's not what people were

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1 complaining about in the Florida election  
 2 in 2000. The confidence was, I am an  
 3 American citizen, I registered to vote, I  
 4 go to vote and you tell me I'm a felon.  
 5 What is wrong with your recordkeeping? I  
 6 am not a felon. That's the confidence  
 7 problem that people had that was being  
 8 written about and talked about at the time,  
 9 and it got twisted by people who were  
 10 trying to put it together with this idea  
 11 that there's -- that Americans believe  
 12 there's all this fraud and if you don't ask  
 13 me for an ID, I believe there are  
 14 fraudsters voting. There's no evidence of  
 15 that. It's a really twisted  
 16 mischaracterization of the confidence  
 17 problem in American elections with respect  
 18 to going back to that moment in 2000 and  
 19 the election in Florida.  
 20 ---  
 21 (Whereupon a brief break was  
 22 taken.)  
 23 ---  
 24 MR. JOHNSON-KARP: I just have a  
 25 couple more.

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1 BY MR. JOHNSON-KARP:  
 2 **Q. Are you familiar with Robert**  
 3 **Monroe?**  
 4 A. Yes, I think I mention him in  
 5 this report.  
 6 **Q. You can take your time looking at**  
 7 **that.**  
 8 A. (Witness complies) Okay.  
 9 **Q. And would this fall within your**  
 10 **definition of voter fraud?**  
 11 A. Yes.  
 12 **Q. Because there's intent and it's**  
 13 **committed by the voter; is that correct?**  
 14 A. That's correct.  
 15 **Q. Is it your position that this**  
 16 **type of voter fraud would not be impacted**  
 17 **by a voter ID requirement?**  
 18 A. Well, I think some parts of it.  
 19 What I read about him voting in Wisconsin  
 20 and Indiana, that wouldn't have mattered.  
 21 I don't know why he was on the voter rolls  
 22 in Indiana, if he lived in Wisconsin, for  
 23 example. And my recollection, I don't know  
 24 if it's in -- I don't see it in this  
 25 article, but my recollection of it, when I

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<p>1 looked at it earlier, was that he had --  2 one of the things that he did was request  3 an absentee ballot in the name of his son  4 and voted his son's absentee ballot. And  5 to the extent that, in some states, voter  6 ID laws don't apply to voting by absentee  7 ballot, it wouldn't apply in that case.  8 And to the extent that he voted in two  9 places in Wisconsin under a different name,  10 I don't remember seeing that. I think that  11 -- I don't know if he did. I don't think  12 it says it in here either. So I don't know  13 all the specifics of each of the illegal  14 ballots that he submitted, whether he ever  15 voted in somebody else's name.  16 <b>Q. But if he did vote in somebody</b>  17 <b>else's name, that would be prevented by</b>  18 <b>that voter ID law?</b>  19 A. Not if he did it by mail.  20 <b>Q. With the requirement of sending</b>  21 <b>in a copy of the driver's license? Would</b>  22 <b>that --</b>  23 A. It could or it could not be. I  24 mean, in the cases, in the few cases,  25 really, like I can count on one hand of</p>	<p>1 <b>7,717,032 votes cast in the five elections</b>  2 <b>covered by the audit period. Is it your</b>  3 <b>position that that extremely low percentage</b>  4 <b>supports the inference that voter ID</b>  5 <b>efforts are intended to serve a</b>  6 <b>demobilizing purpose as opposed to</b>  7 <b>addressing fraud?</b>  8 A. Well, it could be part of the  9 evidence I considered, in that I mainly  10 look at what was the stated rationale to  11 prevent voter fraud. Well, if there's  12 almost zero voter fraud, that can't be the  13 reason. That can't be the real reason. So  14 we have to eliminate that. You brought up  15 confidence. That's come up before.  16 There's no evidence for that. We have to  17 eliminate that. So if you take away the  18 most commonly stated rationale for photo ID  19 laws, which is that they prevent voter  20 fraud -- in fact, that's what you just  21 asked me about with this Robert Monroe  22 case. Would photo ID have prevented voter  23 fraud? That's a case of voter fraud.  24 Would a photo ID have prevented it? You're  25 reflecting what most people think and what</p>
<p>Page 118</p> <p>1 voter impersonation that we have, it's  2 interesting. This is really the case to --  3 in Texas there were a few cases, but  4 they're often family members, and they  5 might be a father and son who have the same  6 name. Or the person has access to the  7 other person's ID. So it may or may not  8 prevent it. And in his case, he was voting  9 in the names of relatives, my recollection  10 is, at least in the name of the son. But I  11 would want to look carefully at every  12 specific case in which he submitted an  13 illegal ballot, to think through whether a  14 photo ID would have prevented it or not. I  15 know at least in some cases it would not.  16 <b>Q. Now, I'm looking at Page 30 of</b>  17 <b>your report, the middle paragraph of that</b>  18 <b>page, the paragraph starting with in</b>  19 <b>conclusion, and I'm looking in the middle</b>  20 <b>of that paragraph, starting with however,</b>  21 <b>even if; do you see that?</b>  22 A. Yes.  23 <b>Q. However, even if all 84 cases</b>  24 <b>were actual cases of voter fraud, they</b>  25 <b>would account for .00109 percent of the</b></p>	<p>Page 120</p> <p>1 legislators say, almost exclusively, about  2 the purpose of photo ID laws.  3 So to try to answer your question  4 about that, this says to me -- again, it  5 confirms again and again and again every  6 time I look at it and every which way I  7 look at it, the evidence is simply not  8 there with respect to a justification of  9 preventing voter fraud. The evidence of  10 voter fraud is not there. You can't say we  11 want to prevent voter fraud when it's  12 practically not happening. I never say it  13 never happens. We have this one case you  14 just pointed to. But the question is more  15 to how frequently it happens, why would we  16 expect it to be happening all the time, if  17 we do. Those are the questions that have  18 to be answered, and those are the questions  19 I try to answer with data like this.  20 <b>Q. Do you have a number in mind as</b>  21 <b>to, you know, this low percentage here, if</b>  22 <b>there were a higher percentage of</b>  23 <b>successful prosecutions of voter fraud?</b>  24 A. Well, keep in mind, these are not  25 even prosecutions. I don't narrow it only</p>

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<p>1 to say, like, convictions. I widen it. I 2 try to look at indictments, for example, or 3 I looked at allegations and I looked at 4 whatever I could find to not be locked into 5 simply saying it's just convictions. So 6 I'm saying here, we don't really know. But 7 let's assume. Let's assume that what they 8 found are actual cases, confirmed cases of 9 voters intentionally trying to corrupt the 10 process. Eighty-four people out of 7.7 11 million is not overwhelming evidence of a 12 problem that needs to be addressed with a 13 photo ID law that we know could harm people 14 who don't have the ID with respect to their 15 voting rights. That's how I would approach 16 it and say, you know, this -- let's 17 understand what happened here and see if we 18 can address it through other means 19 available to us, procedural means that 20 don't place a burden on voters. 21 <b>Q. As an empirical matter, what</b> 22 <b>measure would give you confidence in the</b> 23 <b>stated rationale of fraud prevention?</b> 24 A. What measure of what? 25 <b>Q. In this specific example, I'm</b></p>	<p>1 there's a sort of systematic response. 2 There should be a systematic problem, and I 3 would look -- empirically, I would look for 4 that. I would look for evidence of that. 5 <b>Q. Do you have anything in mind that</b> 6 <b>would, you know, say if there was a 5</b> 7 <b>percent rate within votes -- for example,</b> 8 <b>this, the number here of .001 percent of</b> 9 <b>the 7.7 million votes, if that were 1</b> 10 <b>percent?</b> 11 A. No, I don't, I don't look at it 12 that way. I don't get locked in on a 13 number. I mean, obviously, if it's sort of 14 10 percent or something like that, you 15 know, every election were proven to be 16 fraudulent votes... I mean, if this were 17 the Ukraine or someplace like that, 18 Kyrgyzstan or, you know, we can point to a 19 number of countries where international 20 election observers have calculated problems 21 to that scale, of course, we'd all be very 22 worried about it. But that misses the 23 point a little bit, that we don't want to 24 get locked in systematically to a 25 particular number, although it would be</p>
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<p>1 <b>wondering about whether you look at</b> 2 <b>prosecutions, indictments. Is there some</b> 3 <b>sort of empirical measure that would give</b> 4 <b>you confidence in a stated rationale that</b> 5 <b>voter ID laws are intended to address voter</b> 6 <b>fraud?</b> 7 A. Well, we certainly want to see 8 whether there was a pattern. So you 9 couldn't really judge it based on one 10 election, for example. I would be looking 11 for whether there was a persistent pattern 12 of a problem, whether front line workers, 13 let's say poll workers, were consistently 14 filing reports about problems with respect 15 to this, which they don't. They don't. 16 There's no record of that. There could be 17 other things that I would look at, but 18 mainly I would be looking at systematic 19 problems because of photo ID policy -- the 20 policy to impose photo ID on voters is a 21 systematic requirement on people. It's 22 addressing, it's addressing the entire 23 process by which voters cast their ballots. 24 They have to now bring this ID or have this 25 ID to bring it in the first place. So</p>	<p>1 obvious to everybody if 10 percent of all 2 votes cast in an election were consistently 3 proven to be fraudulent. Everybody would 4 be upset about that. So I don't think it's 5 the best way to either ask or answer the 6 question. 7 I think the issue is, do we have 8 a systematic problem? And there could be 9 multiple measures of systematic. Some 10 number might come into play, but I think it 11 would be foolish to sort of peg your answer 12 on that as only one measure of what's going 13 on. You want to look, systematically, 14 where is the breakdown but, also, I would 15 be extremely surprised in the current 16 context that there could be anything of 17 that scale, because there are no -- there 18 are practically no benefits to the ordinary 19 voter of committing a crime. It's already 20 illegal. We have laws on the books to 21 deter the activity. They're there. But 22 there's also very little motivation for 23 doing it for most people. Most people, 24 wouldn't even come into their minds to do 25 something like that. It makes no sense,</p>

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<p>1 even in the context of the 2000 election,  2 357 votes in Florida. Even in that  3 context. You have to know that's going to  4 happen, for one thing, to risk getting  5 convicted, like this poor fellow here,  6 crying on the stand. You have to risk  7 being caught. And so for that risk to pay  8 off, it's almost like you have to be able  9 to predict that the election is going to be  10 a tie. Nobody can do that. But you almost  11 have to do that to feel the full effects of  12 taking your risk, right? I mean, the risk  13 is, I'm going to get caught and something  14 bad is going to happen to me, but I might  15 be willing to do it if that person that I  16 want elected gets elected because of me.  17 And that's a really not very rational way  18 of thinking, because you can't predict what  19 the electoral outcome will be. You don't  20 know ahead of time how close it will be.  21 So you may have risked -- let's say you are  22 one of these motivated people, like  23 Mr. Monroe, and you say I have to get that  24 person elected and I'm willing to face jail  25 to do that. I'm going to do it. I'm going</p>	<p>1 was involved in this conspiracy to try to  2 keep certain people elected, and she lived  3 in a housing project and he offered her  4 money and she said I'm not taking your  5 money; that's illegal. And she's the one  6 who turned him in and identified it. So  7 it's not even to say that even poor people  8 would take \$10 to commit a crime. I don't  9 mean to even imply that. But if the  10 question is sort of rationality, you can  11 kind of understand. People who are very,  12 very, very poor being offered money might,  13 in the context of your question about is it  14 rational, it's still really not rationale,  15 because you end up with a criminal record.  16 That could really hurt you further on. So  17 it may not even be rational. But in  18 desperation, some people might take the  19 money. But, again, we're talking about  20 something that doesn't happen much at all,  21 and it does not really impact my opinion in  22 this case in Wisconsin and the evidence in  23 Wisconsin.  24 <b>Q. That there's no evidence of vote  25 selling?</b></p>
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<p>1 to submit a second, illegal ballot. You  2 want to know that that is going to matter.  3 Otherwise, you've taken that risk for  4 nothing, for no reason at all. You can't  5 affect the outcome of the election. So  6 that goes -- that sort of goes to the  7 rationality.  8 <b>Q. I think, as we discussed earlier,  9 the rationality argument is slightly  10 undermined if we take into account vote  11 selling, right?</b>  12 A. Well, for some people -- I mean,  13 if you were going to say to me, look, I'll  14 give you ten bucks to vote for so and so.  15 I don't need the ten bucks. I'm not going  16 to do it. So, you know, for some people,  17 that \$10 may buy them dinner for the next  18 three days, and there could be, in that  19 sense, a rationality for the money. But it  20 doesn't apply to everyone, and it may not  21 -- it doesn't necessarily apply to poor  22 people either. In fact, a recent case of  23 vote buying that I examined in Virginia  24 involved a woman who had been approached by  25 -- it was actually a county employee who</p>	<p>1 A. In recent elections, I don't  2 recall any. I certainly didn't document  3 any in the report. But again, I do pay  4 attention to it and I'm looking at it, but  5 I'm also thinking about it in the context  6 of it being maybe even like a hybrid kind  7 of voter fraud that it -- it has to have  8 that other component of buying, and that  9 would be what we would be looking at in  10 terms of -- and I do look at it, but I  11 think you could make an argument in another  12 way, which I just -- you know, I'm sort of  13 erring on the side of saying I didn't  14 include it, but you could certainly make an  15 argument on the other side that it's not,  16 because a person might say, well, my  17 understanding of, you know, yeah, he gave  18 me some money, but that was just to get me  19 to go out and vote. He didn't buy my vote.  20 You know, I voted for who I voted for and  21 I'm not telling you because it's a secret  22 ballot. And, you know, that may or may not  23 be true, but it just points to the  24 complexities. That's the one area where  25 it's a little more complex to both</p>



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<p>1 conceptualize and empirically, like, put 2 boundaries around the behavior so that you 3 can measure it, study it. But I'm not 4 concerned that it's an issue in Wisconsin. 5 <b>Q. Why not?</b> 6 A. Because when I did my research on 7 Wisconsin, I paid attention to it, and I 8 would want to go back and look, again, I -- 9 if I had seen it, I would have reported it. 10 So for example, in my expert report in the 11 Lee versus Virginia State Board of 12 Elections case, the one case that I've done 13 since this, most of the report is about 14 that vote buying case that I just told you 15 about. And I was just simply saying, look, 16 when I looked in Virginia, this is what I 17 found. Now, I'm not even really counting 18 it, if you will, in terms of an empirical 19 count, but I want you to be aware of the 20 fact this is what I looked at. You know, 21 looked for the same thing I've always 22 looked for in these reports that I've done 23 in recent litigation, which is this, the 24 incidents of voter fraud, and the only 25 thing that came up, practically, was this.</p>	<p>1 I mean, imposing a photo ID requirement on 2 you doesn't stop you from taking the money, 3 is my point. Or from the buyer offering 4 the money. Photo ID doesn't come into 5 that. 6 <b>Q. If it were the case, though, that 7 the person selling vote were not a 8 registered voter, and they were instructed, 9 for example, to vote as person X, that kind 10 of situation would be addressed by voter 11 ID, wouldn't it?</b> 12 A. It depends. Again, if there's 13 such a concerted effort to rig an election 14 that you have to go out and find people -- 15 first you got to go out and find all the 16 people on the rolls who may not vote, for 17 whatever reason, so that you have a kind of 18 set of identities that you want people to 19 impersonate, and then you got to pay people 20 to do it. Then you hope they don't say 21 that they took \$10 to do this. You've 22 given it to all these people you don't know 23 and they might turn you in? That doesn't 24 seem very smart. And then, when they get 25 there, you know, if they have a photo ID, I</p>
<p>Page 130</p> <p>1 There were a few other things, but this was 2 sort of -- there were actually two cases in 3 Virginia that I would call vote buying and 4 I documented them clearly there. So 5 there's no effort to evade the tissue and 6 not include it. But I don't recall any 7 cases in Wisconsin, and I think if I had, I 8 would have included them in here, just to 9 say there's this, but let's understand what 10 it is and whether photo ID would affect it 11 -- not at all. I mean, photo ID wouldn't 12 stop vote buying at all. It has no 13 relevance to vote buying. 14 <b>Q. But it would as to vote selling, 15 right?</b> 16 A. No, not necessarily, because I 17 could say to you, you know, I want you to 18 vote for the Democrat and, you know, I want 19 to make sure you vote for him. I'm going 20 to give you ten bucks to vote for him. 21 You're already a legitimate registered 22 voter. You go in without photo ID or with 23 photo ID, but you go in and you're a 24 legitimate voter and you're on the 25 registration list and you simply vote. So,</p>	<p>Page 132</p> <p>1 could imagine producing a fake license and 2 giving it to them. You know? I want you 3 to go in and vote for John Smith. Here's 4 the ID you need. Why couldn't they do 5 that? 6 <b>Q. But there would be one less step 7 if there wasn't voter ID, right?</b> 8 A. But if you're really intent on 9 doing it, that's not hard to do, and I can 10 tell you, as a college professor, it's not 11 hard for students to come up with a fake 12 license. They want to drink and they're 13 under age, they do it. 14 <b>Q. But that doesn't --</b> 15 A. Well, I'm just saying, again, it 16 goes to the motivation and the perpetrator, 17 and that's why I don't say it absolutely 18 never happens, because we have, you know, 19 we have some evidence that it has happened 20 here and there once or twice, you know, 21 anecdotally or whatever. But we have -- 22 not anecdotally -- systematically. We have 23 evidence of it occurring, and what I have 24 tried to do in my work is understand how it 25 occurred, why it occurred, and then to</p>

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<p>1 think broadly about the system and how the 2 system could be corrupted and what the 3 chances of it being corrupted are. I mean, 4 are there as many people, you know, as 5 Mr. Monroe in Wisconsin? Or is that an 6 isolated incident in Wisconsin? And I 7 would argue, based on all the work that 8 I've done, that that's an isolated 9 incident. It's not a systematic problem. 10 And whether you want to corrupt an election 11 to the point where you -- as I said, the 12 harder thing might figuring out registered 13 voters on the registration lists who don't 14 -- who might not show up or even, even if 15 you have same day registration, you always, 16 in states that have same day registration, 17 even states that don't have photo ID laws 18 in the past, you have to have documentation 19 to do the same day registration. So the 20 case I document in this report and I 21 document it in my book about the fellow who 22 had the felony conviction and he went to -- 23 you know, he was living with a relative and 24 she says you got to vote, he said, okay, 25 I'll do it. And she said you have to take</p>	<p>1 it. We see it with Mr. Monroe, in a way. 2 But that's why I say you're asking me does 3 photo ID prevent vote buying, and I say I 4 can reason through a way in which, no, it 5 doesn't have much -- it might not have much 6 of an impact at all. 7 <b>Q. But it could make it harder? The</b> 8 <b>vote selling.</b> 9 A. I don't know if it would make it 10 that harder. You know, I think it would be 11 hard, if I try to imagine myself as a 12 conspirator trying to rig an election. I 13 think the harder part probably is finding 14 enough people who will do it and won't tell 15 on me and won't report on me that they took 16 the money. That would be the hardest part. 17 Round up enough people who are going to 18 stay silent about what they did. Again, 19 going to who is going to do this? Who -- 20 you know, what kind of people would do 21 this? Do you have enough of them in a 22 local jurisdiction to collectively do that 23 and then remain silent about it? I would 24 worry most about that, not about overcoming 25 the ID requirement. You know, we're</p>
<p>Page 134</p> <p>1 ID because you have to register now. 2 You've been in jail, you're not on the 3 registration rolls anymore and we have 4 election day registration. You can 5 register, but you have to have 6 documentation. And he brings a letter from 7 his parole officer, you know, that's 8 addressed to him at that address just to 9 show his address; I live here. 10 So same day registration has 11 always required more documentation in order 12 to register. So either way, if you are a 13 conspirator trying to orchestrate a vote 14 buying scam, if you're that twisted that 15 you're going to try to pay people, 16 especially people you don't know, to take 17 money to vote in a way that you can't check 18 up on them, whether they voted that way or 19 not, I can't imagine it would be that hard 20 to overcome that barrier, that photo ID 21 barrier. It goes to motivation. And the 22 question of whether there are individuals 23 who are -- who might be so motivated in 24 ways that most of us think are crazy, there 25 could be people out there like that. I say</p>	<p>Page 136</p> <p>1 talking hypotheticals and theoretical 2 things, so I can only answer you at that 3 level. 4 <b>Q. You talk about finding enough</b> 5 <b>people, that that would be the hard part.</b> 6 <b>Fair to say, though, that without the added</b> 7 <b>step of producing these fake voter IDs, it</b> 8 <b>would be easier to perpetrate this broad</b> 9 <b>fraud?</b> 10 A. I mean, you can disagree with me, 11 but, no. I don't see that part as being 12 the hard part in doing something like this. 13 I really don't. I would be much more 14 concerned about the transactions that were 15 going on, and you want to ensure that your 16 investment in rigging the election isn't 17 wasted. You need to have some insurance by 18 not just doing it with one person, but with 19 doing enough people that you would 20 overcome, you know, if that candidate was 21 losing and you're trying to overcome the 22 deficit. If the candidate is winning, if 23 the candidate is 80 percent or something in 24 the polls, you don't need to do it. You do 25 it because you're trying to flip the</p>

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<p>1 outcome and you're trying to corrupt the 2 process of what the majority wants. So 3 that's the harder part. Whatever the ID 4 part of it would maybe, you know, add a 5 step, but it doesn't necessarily make it 6 easier to do. I'm sorry, it doesn't make 7 it harder to do.</p> <p>8 <b>Q. But the added step necessarily 9 would be one more step?</b></p> <p>10 A. I mean, the question you're 11 asking me is kind of like, you know, could 12 I get the money through an electronic 13 transfer or do I have to go to the bank? 14 It may be a little more of an 15 inconvenience, but it's not -- I don't see 16 it as -- in the way you're -- you know, 17 you've asked me like three or four times 18 the same thing, and I'm going to answer it 19 in the same way, which is that it doesn't 20 -- it is not a big problem for somebody who 21 wants to orchestrate a conspiracy. It 22 might add some inconvenience to the 23 methodology, but it's unlikely to be the 24 reason why they don't carry out the 25 conspiracy when they say, hey, we want to</p>	<p>1 <b>said -- correct me if I'm wrong -- you said 2 something -- you answer the question, but 3 you said it was taken out of context. Do 4 you recall that testimony?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And what did you mean, taking it 7 out of context? What does that mean?</b></p> <p>8 A. Well, I think, if we're referring 9 to this, these two paragraphs that are 10 excerpted from Building Confidence in US 11 Elections, which is also known as the 12 Carter Baker report, and I'm trying to 13 remember what specific sentence I was being 14 asked about in this.</p> <p>15 <b>Q. I think it was that's no evidence 16 of extensive fraud in the US elections.</b></p> <p>17 MS. WILSON: Counsel, did I get 18 that right?</p> <p>19 MR. JOHNSON-KARP: Yep.</p> <p>20 THE WITNESS: Where is that? Oh, 21 the second photograph. Oh, right. But 22 both occur and could effect the outcome, 23 right, of a close election. Right. Okay.</p> <p>24 So what I guess I was getting at 25 was that that statement is in the context</p>
<p>Page 138</p> <p>1 rig this election and I think I can find, 2 you know, 50 people and I got the money or 3 100 people or 200 people, whatever it is. 4 I got the money and, of course, I'm not 5 going to be the one handing money to them, 6 cause I want my hands clean. I got to find 7 other people who will give them the money. 8 Oh, but they have a photo ID requirement. 9 Oh, I'm not going to do it. No. I don't 10 believe that's how that would work. And 11 again, you can disagree with me, but that' 12 my opinion.</p> <p>13 <b>Q. I won't ask four times, then.</b></p> <p>14 A. Okay.</p> <p>15 MR. JOHNSON-KARP: With that, I 16 don't have anymore questions.</p> <p>17 MS. WILSON: I just have one, for 18 clarification.</p> <p>19 --- 20 EXAMINATION 21 --- 22 BY MS. WILSON: 23 <b>Q. Now, counsel was asking you about 24 Crawford and specifically about Page 7 and 25 some of the lines from the opinion, and you</b></p>	<p>Page 140</p> <p>1 of this report, and I talked about what we 2 need to know about this report to put that 3 statement in context, which was that the 4 report came to a conclusion about a 5 recommendation that we adopt the real ID 6 card as a voter identification, use that. 7 And in fact, they point out that it 8 wouldn't even be used the way it -- they 9 were not recommending it be used the way 10 that it was mandated, because it doesn't 11 have -- the mandate for what needs to be on 12 the real ID card doesn't include 13 citizenship. So they were actually saying, 14 well, we have to amend the real ID card. 15 We want to make that -- we want to make it 16 a true voter identification, which means it 17 should indicate on there whether the person 18 is a citizen or not. It doesn't have that 19 in the current version. So they were -- 20 that was another thing I guess I didn't 21 mention.</p> <p>22 But in the context of their 23 concluding set of recommendations where 24 they recommend the real ID card, they also 25 recommend the affirmative role. They say</p>

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<p>1 it's connected. They say it shouldn't be                  2 used until everybody has it and there's an                  3 affirmative role for the government to do                  4 that, that the government should go out                  5 there, find everybody who's not registered,                  6 register them, get them the card. That's                  7 the context for this question -- sorry, for                  8 this excerpt that I was being asked about                  9 in the Crawford case.                  10 Does that answer the question?                  11 MS. WILSON: It does.                  12 Nothing else for me.                  13 - - -                  14 (Whereupon the witness was                  15 excused and whereupon the deposition                  16 concluded at 12:20 p.m.)                  17 - - -                  18                  19                  20                  21                  22                  23                  24                  25</p>	<p>1 INSTRUCTIONS TO WITNESSES                  2 Read your deposition over carefully.                  3 It is your right to read your deposition                  4 and make changes in form or substance. You                  5 should assign a reason in the appropriate                  6 column on the errata sheet for any change                  7 made. After making any change in form or                  8 substance which has been noted on the                  9 following errata sheet along with the                  10 reason for any change, sign your name on                  11 the errata sheet and date it. Then sign                  12 your deposition at the end of your                  13 testimony in the space provided. You are                  14 signing it subject to the changes you have                  15 made in the errata sheet, which will be                  16 attached to the deposition before filing.                  17 You must sign it in front of a witness.                  18 Have the witness sign in the space                  19 provided. The witness need not be a notary                  20 public. Any competent adult may witness                  21 your signature. Return the original errata                  22 sheet &amp; transcript to deposing attorney,                  23 (attorney asking questions) promptly!                  24 Court rules require filing within                  25 30 days after you receive the deposition.</p>
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<p>1                  2 CERTIFICATION                  3                  4                  5                  6 I hereby certify that the                  7 proceedings and evidence noted are                  8 contained fully and accurately in the                  9 stenographic notes taken by me upon the                  10 foregoing matter on April 13, 2016, and                  11 that this is a correct transcript of the                  12 same.                  13                  14                  15                  16                  17 Kathleen Jastrzembski                  18 Court Reporter and                  19 Notary Public                  20                  21 (The foregoing certification of                  22 this transcript does not apply to any                  23 reproduction of the same by any means,                  24 unless under the direct control and/or                  25 supervision of the certifying reporter.)</p>	<p>1 Thank you.                  2 I have read the foregoing                  3 deposition and the answers given by me are                  4 true and correct, to the best of my                  5 knowledge and belief.                  6                  7                  8                  9                  10 _____                  11 Dr. LORRAINE MINNITE                  12                  13 _____                  14 WITNESS TO SIGNATURE                  15                  16 _____                  17 ADDRESS                  18                  19                  20                  21 My Commission Expires                  22 .....                  23                  24                  25</p>

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