

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

* * * * *

VIVIETTE APPLEWHITE; *

WILOLA SHINHOSTER LEE; GROVER * Case No.

FREELAND; GLORIA CUTTINO; * 330 MD 2012

NADINE MARSH; DOROTHY BARKSDALE; *

BEA BOOKLER; JOYCE BLOCK; *

HENRIETTA KAY DICKERSON; DEVRA *

MIREL (ASHER) SCHOR; THE LEAGUE *

OF WOMEN VOTERS OF PENNSYLVANIA, *

NATIONAL ASSOCIATION FOR THE *

ADVANCEMENT OF COLORED PEOPLE, *

PENNSYLVANIA STATE CONFERENCE; *

HOMELESS ADVOCACY PROJECT, *

Petitioners *

vs. *

THE COMMONWEALTH OF *

PENNSYLVANIA, THOMAS W. CORBETT, *

in his capacity as Governor; *

August 1, 2012

Volume VI

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1 CAROL AICHELE, in her capacity *

2 as Secretary of the Commonwealth,*

3 Respondents *

4 * * * * *

5

6 BEFORE: HONORABLE ROBERT SIMPSON

7

8 HEARING: Wednesday, August 1, 2012

9 9:00 a.m.

10

11 LOCATION: PA Judicial Center

12 601 Commonwealth Avenue

13 Harrisburg, PA 17110

14

15 WITNESSES: Oliva Thorne, Jorge Santana,

16 Lorraine C. Minnite, Ph.D.

17

18 Reporter: Nicole Montagano

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MR. TURNER:

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

JUDGE SIMPSON:

Good morning. It's Wednesday, August 1st. We went over the exhibits that have been received into evidence. We are lacking a copy of one of the Respondents' exhibits, Exhibit Number Two identified during Shannon Royer's testimony as a list of agencies, organizations that have been contacted approximately three weeks --- within the three weeks of his testimony. So we're going to need a marked copy of that somewhere. I don't need it this minute, but I'm going to need it today.

ATTORNEY CAWLEY:

Yes, Your Honor.

JUDGE SIMPSON:

Anything before we get started?

ATTORNEY GERSCH:

No, Your Honor.

ATTORNEY SCHNEIDER:

No, Your Honor.

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JUDGE SIMPSON:

You may call your next witness.

ATTORNEY SCHNEIDER:

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

MR. TURNER:

Would you raise your right hand?

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

DIRECT EXAMINATION

BY ATTORNEY SCHNEIDER:

Q. Good morning, Ms. Thorne. My name is Marian
Schneider, and I'm here on behalf of the Petitioners.
And would you please state your full name for the
record?

A. Olivia Thorne.

Q. Where do you live?

A. Wallingford, which is also Nether Providence,
Pennsylvania.

Q. Are you employed?

A. Part time.

Q. And what do you do?

A. I'm a computer consultant.

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

2 A. Yes, I am.

3 Q. How long had you been a member of the League?

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

5 Q. What is your position with the League?

6 A. Currently I'm president of the League of Women
7 Voters of Pennsylvania.

8 Q. How long had you been president?

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

11 Q. And before you were president of the League of
12 Women Voters of Pennsylvania, did you hold any other
13 leadership positions?

14 A. Yes, from 2000 to 2006 I was on the National
15 Board of the League of Women Voters and I was also
16 local president twice over, once in the mid '80s and
17 once in the late '90s. And I also was on the state
18 board in the --- from '87 to '93.

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

21 A. I think probably my larger claim to fame is I'm
22 known in the national circles as the lead geek, which
23 means that I work on discussion lists and I helped
24 institute discussion lists for the National League
25 back in the mid late '90s and help people set up

1 websites so that they can get information out.

2 Q. Now, how is the Pennsylvania League of Women
3 Voters organized?

4 A. The League is a grassroots organization, so the
5 State League is --- they are to do and coordinate the
6 bidding of the local league, so our job is to work on
7 state issues and do things that would involve
8 everyone in the state or state legislature.

9 Q. So are you saying that there's a state board and
10 then are there other organizations within
11 Pennsylvania, league organizations?

12 A. Yes, there are 33 local leagues and three
13 interleague organizations which help again with the
14 coordinating and that the local leagues are where the
15 work starts.

16 Q. And how many members do you have in
17 Pennsylvania?

18 A. Approximately 1,800 right now.

19 Q. What is the mission of the League of Women
20 Voters of Pennsylvania?

21 A. Well, the first part is the informed and active
22 participation of citizens and government. We want
23 everybody to be involved in the government process
24 and the voting process, but we also believe in
25 educating the public and our members and then

1 lobbying. Once we reach consensus on an issue, then
2 we lobby and try to get good laws on the books.

3 Q. Now, in general, what kinds of activities does
4 the League engage?

5 A. We have two different arms in that respect. We
6 have our voter service voter education arm, which
7 deals with everything from voter registration to
8 voters guide and electronic voter system, which I'm
9 proud of called Smart Voter, and also debates, but we
10 also right now have taken a --- focusing a huge
11 amount of time on voter ID and making sure that
12 everyone gets a voter ID that needs one.

13 Q. Do you have an education advocacy or --- part of
14 your activities?

15 A. Yes, the advocacy, that's the education side of
16 things. It's the voter service side of things and
17 voter education, and that would include our rural
18 education project and also the shared education
19 project. But we also have an advocacy side, and we
20 have probably 75 positions on different issues. And
21 as bills are introduced into the legislature at state
22 level, we review them, do we have a position on them,
23 learn more about the bill and then advocate and
24 educate our members of the public about what's in the
25 bill.

1 Q. So can you explain a little bit more about the
2 relationship between what the State Board does and
3 the local chapters? First, what is your state board
4 comprised of?

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

12 Q. And what role do they play in relation to this
13 --- local chapters?

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

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

24 A. There is on the ground, feet on the ground ready
25 to do the work, and though the state league obviously

1 does some work, none of us can do as much as 1,800 of
2 us can do. So we really count on them to be out
3 doing a lot of the things, especially the voters of
4 this area, the voter registration, voter ID and all
5 that information and all of that sort of thing.

6 Q. Well, let's talk about Pennsylvania's voter ID
7 law. When did you first become involved with
8 Pennsylvania's --- with what was enacted as Act 18?

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

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

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

23 Q. And what was the response you got?

24 A. The main reason was voter fraud.

25 Q. And what was the League's position --- and it

1 was called House Bill 934; right?

2 A. Yes.

3 Q. What was the League's position on House Bill
4 934?

5 A. We were opposed to it.

6 Q. Why were you opposed to it?

7 A. Because we believed it put up barriers to
8 voting, and we didn't think that --- we had not been
9 able to find any incidents of reported prosecuted
10 fraud in Pennsylvania, and we thought that the
11 barriers and disenfranchising the voters was just the
12 emphasis of what we believed in as a suffrage
13 organization.

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

16 A. Yes, we do.

17 Q. Is that at the national level?

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

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

24 A. A little.

25 Q. What do you know about it?

1 A. That it was --- has come in in stages and they
2 started in 2005, but it was really in 2007 where it
3 really got going along, and they're still enhancing
4 it this year.

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

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

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

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

18 Q. And who else was there?

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

22 Q. Were there other members of the Department of
23 State staff there?

24 A. Yes, there were, but I don't remember their
25 names.

1 Q. Okay. And again, what was the purpose of the
2 meeting?

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

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

9 A. It's been good.

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

12 A. Yes.

13 Q. Okay. So since the filing of this lawsuit, have
14 you had any communications with the Department of
15 State?

16 A. We've sent e-mails, but they haven't been
17 answered.

18 Q. Okay. Now, after you had this meeting, after
19 you had the meeting to find out about Act 18, what
20 happened? What did the League do?

21 A. We started writing it down and collecting
22 information from the Votes PA, which is the
23 Department of State website on the different forms
24 and things that you might need, and we found pretty
25 quickly that there were some gaps and holes and

1 things that we needed to do more research on to be
2 able to understand. And at the beginning the
3 Department of State was helpful and then we got into
4 the lawsuit and it stopped. But what we then did was
5 we started writing --- collecting this and sending it
6 to local leagues in packets so that they could deal,
7 you know, first with this new registration and then
8 later with the provisional ballot and absentee
9 ballot.

10 So different things at different points along
11 the way, but we also developed an action plan. And
12 our action plan was really designed so we could work
13 smart and know if one person develops a brochure, it
14 could be used all over the state. It didn't have to
15 be a different one and we would save time and
16 effort. And so we did develop a brochure, and
17 it ---.

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

21 A. Right.

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

25 A. Right. And then they asked us for more

1 brochures as well.

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

5 A. Yes.

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

8 A. Yes.

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

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

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

23 A. I think there's a confusion. We are being told
24 as we go out and do voter registration drives I heard
25 this, I heard this, and then we say, no, that's not

1 quite true. Well, what about this? Well, that's not
2 true either. And so we're finding that they don't
3 really understand what this law meant to them.

4 Q. Okay.

5 ATTORNEY SCHNEIDER:

6 Your Honor, Petitioners are going to
7 mark Exhibit 47.

8 (Petitioners' Exhibit 47 marked for
9 identification.)

10 BY ATTORNEY SCHNEIDER:

11 Q. Ms. Thorne, I've just handed you what's been
12 identified as Exhibit 47. What is this document?

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

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

20 A. Yes.

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

23 A. Yes.

24 Q. And there are two different versions of this
25 brochure on Exhibit 47; is that right?

1 A. That's correct.

2 Q. Turning to the first page in the exhibit, which
3 is 2069, can you explain what that version of this
4 exhibit is?

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

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

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

20 Q. So did you change that?

21 A. Yes, we did.

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

24 A. That's the revised version that was used up
25 until a week ago, and now we're down to ---.

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

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

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

16 A. 5,000.

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

19 A. 1,500.

20 Q. And some of them have been disseminated?

21 A. They were immediately disseminated to 1,000 ---.

22 Q. The American Legion ---?

23 A. The American Legion, yes.

24 Q. So what are your plans to use with the remainder
25 of your fliers?

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

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

8 A. Yes, \$500.

9 Q. \$500 for ---?

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

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

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

25 Q. So the \$2,000, how does that compare to the

1 budget that the League usually spends on its
2 activities?

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

9 Q. Is it more than you usually spend?

10 A. Absolutely. Significantly more.

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

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

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

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

25 Q. So there are some restrictions on how you can

1 use the money?

2 A. Yes, there was.

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

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

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

1 were voting for, and so we thought this would be
2 very helpful and it was to be launched on our new
3 website.

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

6 A. Yes. And then hopefully be able to go on to
7 publishers.

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

10 A. No. That's been completely tabled. And the
11 third thing we had a planned giving campaign that
12 we'd start our own charitable gift annuity and it's
13 since been put off.

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

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

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

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

25 Q. Okay. Now, I want to talk about your specific

1 outreach efforts that you've made on photo ID, so
2 what kind of outreach has the League been doing that
3 it ordinarily does not do in connection with photo
4 ID?

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

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

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

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

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

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

3 A. No, not at this point.

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

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

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

14 A. Yes.

15 Q. Can you please describe that?

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

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

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

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

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

9 A. It would not comply.

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

13 A. Yes.

14 Q. And who contacted the League?

15 A. The Pennsylvania Budget and Policy Center.

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

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

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

25 A. Yes, they did.

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

3 A. As I understand, yes.

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

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

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

12 A. I'm sorry.

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

15 A. Yes, absolutely.

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

18 A. Yes.

19 Q. Do you know how many approximately?

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

21 Q. Did you personally visit a PennDOT center?

22 A. Yes, I did.

23 Q. Which PennDOT center did you visit?

24 A. Delaware County, Media.

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

1 A. Three times overall.

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

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

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

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

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

22 A. It was in late June.

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

25 A. I was greeted by two older African-American

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

6 Q. Did you do that?

7 A. I did.

8 Q. And how long did you wait?

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

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

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

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

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

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

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

8 A. Yes, I did.

9 Q. What happened on the third time?

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

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

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

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

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

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

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

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

15 Q. They don't issue photo documents?

16 A. No.

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

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

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

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

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

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

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

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

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

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

22 A. Yes.

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

25 In your efforts that the League has been doing

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

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

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

21 A. No.

22 Q. Why not?

23 A. I think --- it is unrealistic to assume that
24 you're going to be able, in a four-month period, to
25 reach out to this many people, and especially as it

1 keeps changing. And now we have a whole new ID that
2 we need to try to explain, and try to explain you can
3 only use it for voting and not for anything else.

4 And when we set the last one, a non-driver's could be
5 used for something else, but then they'd have to pay.
6 So it's the payment. There just seems to be a lot of
7 half understandings of what's really going on.

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

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

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

17 A. No.

18 Q. Why not?

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

1 ATTORNEY SCHNEIDER:

2 I have nothing further.

3 JUDGE SIMPSON:

4 You may inquire.

5 CROSS EXAMINATION

6 BY ATTORNEY CAWLEY:

7 Q. Good morning.

8 A. Good morning.

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

11 A. Yes, they do.

12 Q. Do you have fundraisers?

13 A. Yes.

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

17 A. Correct.

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

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

23 Q. And you're committing time?

24 A. Time and effort, absolutely.

25 Q. Traveling to meet with members of the General

1 Assembly and so forth?

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

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

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

16 Q. And are you reaching out to churches?

17 A. Yes.

18 Q. Chambers of Commerce?

19 A. Yes.

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

22 A. Less so because we don't want to appear
23 partisan, but if they call us and ask us a question,
24 do we have any clarification, we give them what we
25 have, because that way we're out reaching other

1 people.

2 Q. Sure. Are you reaching out to information desks
3 at malls?

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

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

8 A. Yes.

9 Q. Okay. Are you reaching out to retirement
10 communities?

11 A. Absolutely.

12 Q. Meals on Wheels?

13 A. Yes. We have several members who work for Meals
14 on Wheels. They were quick to tell us that you ought
15 to talk to them, too.

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

17 A. Uh-huh (yes).

18 Q. How about Armed Forces recruitment offices?

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

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

23 A. Yes.

24 Q. Okay. And will your efforts at outreach to
25 these community --- these points of contact in the

1 community continue through November?

2 A. Absolutely.

3 Q. And you will continue to discuss voter ID
4 through that time period?

5 A. Absolutely.

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

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

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

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

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

25 A. No. That's correct. Yes. I'm agreeing with

1 you.

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

3 A. I believe so, yes.

4 Q. And what I'm referring to is that college and
5 university IDs can be used; right?

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

12 Q. Well, the language of the law hasn't changed
13 since ---.

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

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

19 A. Yes, I think so.

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

22 A. Right.

23 Q. And you think that it should be uniform, the
24 same standards for all IDs across the board?

25 A. Yes, I would say that.

1 Q. Are you aware that the Department of Health and
2 the Department of Transportation are now connected in
3 a way that saves Pennsylvania natives from having to
4 take a separate trip to vital statistics ---

5 A. Yes.

6 Q. --- to get a birth certificate?

7 A. Yes.

8 Q. Do you believe that that makes it easier for
9 those Pennsylvania natives to get ---

10 A. Yes.

11 Q. --- an ID?

12 A. Yes, I agree.

13 Q. You gave some testimony just now about a
14 pamphlet and revisions you had to do regarding an
15 expiration date?

16 A. Yes.

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

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

25 Q. That's a good way to call it.

1 A. You know, and so that one is the one that I see
2 that really needed a revision on because we need to
3 explain it. And I also think we have got to explain
4 the signing of the affirmation and how that ID can be
5 used, because there's so much confusion on whether
6 that ID can only be used for voting or whether it can
7 be used to cash a check.

8 Q. Okay. You testified about care facilities, and
9 certain care facilities you are aware are not going
10 to provide an acceptable photo ID under this law.
11 Are you aware of care facilities that will provide
12 photo IDs that will work for this law?

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

16 Q. And you testified about colleges and
17 universities that are still holding out and not
18 providing an acceptable photo ID under this law. Are
19 you aware of universities that will provide such IDs?

20 A. Probably the biggest one is Bryn Mawr and
21 Temple. I know because I'm in the Philadelphia area,
22 so I know those two are going to provide IDs with
23 expiration dates. And Bryn Mawr will issue a whole
24 new ID, and I gather Temple will use a sticker.

25 Q. Okay. And are you aware that all of the state

1 system universities will be providing such IDs?

2 A. I would hope they are.

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

4 A. I haven't heard from State College. Centre ---
5 we have a league in State College, and I haven't
6 heard back yet.

7 Q. My question was actually about the State System
8 of Higher Education, such as Shippensburg and
9 Slippery Rock. Are you aware of those schools
10 providing such IDs?

11 A. I have not heard yet.

12 Q. Okay. And I think that you were anticipating
13 Penn State. Do you know one way or the other whether
14 Penn State will?

15 A. No.

16 Q. But you're aware that there's a list of the
17 universities on the Department of State website that
18 will be providing photo IDs?

19 A. Yes. And I would hope that everybody's heavily
20 encouraged if they weren't doing it to change their
21 mind.

22 Q. So you're going to continue to work with the
23 universities?

24 A. Absolutely.

25 Q. And students at technical schools have a number

1 of acceptable photo ID options available to them
2 under the law; right?

3 A. Not that we've been able to interpret. And what
4 we're finding is that they need a driver's license,
5 and the non-photo (sic) ID they could get if they
6 happen to have a birth certificate and they have ---
7 you know, in the case they're married, the marriage
8 license. But the --- they can get it, but it's going
9 to cost them more money, and it seems unfair that
10 some are being charged more than others.

11 Q. They ---.

12 A. It doesn't seem very democratic.

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

14 A. Yes, if they have a passport, but this group
15 does not see as many passports as, you know, some
16 others might have.

17 Q. Okay. And they can use the Department of State
18 voter ID card when that becomes available later this
19 month?

20 A. Yes. But they can only use it for voting
21 purposes, correct.

22 Q. I believe that's correct.

23 A. Yes.

24 Q. And you're going to continue to reach out to
25 these technical students?

1 A. Yes.

2 ATTORNEY CAWLEY:

3 Those are all the questions I have.

4 Thank you.

5 ATTORNEY SCHNEIDER:

6 We have no further questions, Your

7 Honor.

8 JUDGE SIMPSON:

9 Thank you. You may step down. You may
10 call your next witness.

11 ATTORNEY SCHNEIDER:

12 Your Honor, Petitioners call Jorge
13 Santana, and he's being retrieved from sequestration.

14 ATTORNEY CLARKE:

15 Good morning, Your Honor. Have we
16 already indicated that Petitioners are calling Jorge
17 Santana?

18 JUDGE SIMPSON:

19 Yes. Thank you.

20 ATTORNEY CLARKE:

21 Yes.

22 JUDGE SIMPSON:

23 Please remain standing. Raise your
24 right hand.

25 MR. TURNER:

1 Raise your right hand.

2

3 -----
4 JORGE SANTANA, HAVING FIRST BEEN DULY SWORN,

5 TESTIFIED AS FOLLOWS:
6 -----

7

8 DIRECT EXAMINATION

9 BY ATTORNEY CLARKE:

10 Q. Good morning, Mr. Santana. Would you please
11 state your name for the record and also spell your
12 first name?

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

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

17 A. My title is I'm a deputy commissioner, and I
18 work in the City Commission of Philadelphia directly
19 for Commissioner Singer as her communications and
20 government relations person.

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

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

1 Q. And what is --- how many people are on the
2 commission?

3 A. There are three elected commissioners. There
4 are two majority party elected and then there is just
5 one position for a minority party.

6 Q. And then you said that the City Commission
7 oversees the County Board of Elections?

8 A. Yes.

9 Q. And what are the functions of the City
10 Commission as opposed to the --- and also the County
11 Board of Elections?

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

23 JUDGE SIMPSON:

24 Would you pull that microphone closer
25 to you, please?

1 A. Sure. Is that better?

2 BY ATTORNEY CLARKE:

3 Q. Maybe slow down just a little bit.

4 A. Sure.

5 Q. So the County Board of Elections --- so if you
6 could explain what the County Board of Elections does
7 as opposed to the city commissioners?

8 A. Sure. The County Board of Elections is the body
9 that oversees the election board. The election board
10 is comprised of in Philadelphia over 8,000 election
11 board workers including judges of election, majority
12 inspectors, minority inspectors, clerks and machine
13 inspectors. So the county board, its official
14 function is to help oversee and manage the election
15 board.

16 Q. Okay. Now, what are your responsibilities
17 specifically?

18 A. Specifically, my responsibilities are directly
19 for Commissioner Singer. I coordinate communication
20 for her. I work on legislation --- some government
21 relations, but really more legislation and policy.
22 She's a new commissioner, so we've --- primarily I've
23 been tasked with seeing how we can identify things
24 that we want to work on in the future, improvements
25 to management of elections in Philadelphia and

1 working with legislative bodies to see if we can move
2 those reforms forward.

3 Q. And who is Commissioner Singer?

4 A. Commissioner Singer is the elected chair of the
5 City Commission.

6 Q. So just to make sure that I have this straight,
7 we've got the Philadelphia City Commission, which is
8 overall responsible for elections in Philadelphia; is
9 that right?

10 A. The City Commission has overall responsibility.

11 Q. And then ---.

12 A. The commissioners as a body, they elect a chair,
13 so really for ease of practice, for coordinating with
14 the state, the chair is the top person that actually
15 coordinates with the state on most issues, including
16 voter ID.

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

20 A. That's correct.

21 Q. And those two divisions ---

22 A. They answer to the commission.

23 Q. --- report to the commission?

24 A. They report to the commission, correct.

25 Q. Now, could you just --- I want to give the Court

1 an overview of elections in Philadelphia. How many
2 registered voters are in Philadelphia?

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

5 Q. And how many polling places are there in
6 Philadelphia?

7 A. There are 1,687 polling places in the City of
8 Philadelphia.

9 Q. Okay. And could you describe the nature of the
10 polling places in Philadelphia?

11 A. Sure. Well, it's a very large county with a
12 large number of polling places. Historically we try
13 to have polling places in the most convenient
14 location within an election division. So we have had
15 them in schools, churches, but we have also had them
16 in storefronts at times, sometimes garages. I
17 personally vote out of a garage in north
18 Philadelphia. Really wherever we can actually find
19 the proper location that's going to best meet the
20 need of the voters in an election division.

21 Q. Okay. And when --- how many poll workers are
22 there in Philadelphia?

23 A. Sure. We have over 8,000 poll workers. There
24 are --- for each polling place division we have as
25 --- we have between five and seven. Officially poll

1 workers, we have the election boards, the judge, the
2 majority, the minority, the clerk and then also
3 machine inspectors. But in addition to that, we have
4 an agreement to have bilingual interpreters who are
5 not formally part of the election board, but
6 bilingual interpreters are also --- they have the
7 ability to actually be inside the polling places to
8 assist voters.

9 Q. Let me just slow you down.

10 A. Sure. Sorry.

11 JUDGE SIMPSON:

12 Yes, I was actually going to say
13 something. In order to make sure that we get
14 everything you say accurately recorded, it will help
15 if you just sort of take a deep breath and slow down
16 a little. I'm having difficulty hearing as fast as
17 you're speaking.

18 A. Okay.

19 JUDGE SIMPSON:

20 And I want to make sure that the court
21 reporter gets it down right, so just take your time.
22 We'll be here as long as we need to be here to hear
23 what you have to say.

24 BY ATTORNEY CLARKE:

25 Q. So what I want to do is go back through the

1 people in a typical polling place in Philadelphia.
2 So could you go through each one and describe what
3 that person's role is?

4 A. Sure. In each polling place, you have a full
5 election board. You have a judge of elections, you
6 have a majority inspector, you have a minority
7 inspector, you have a clerk, and then you have a
8 machine inspector. That's the election board
9 formally. The judge of elections is the main arbiter
10 and manager of the election division. They manage
11 what we call in Philadelphia the election box of
12 materials, which includes everything they will need
13 for managing the poll that day. They are ultimately
14 responsible for the counts, and they are really the
15 point two person for communication with the Voter
16 Registration Office and the election division on
17 election day.

18 Q. And let me just stop you for a minute. Is the
19 judge of elections an elected position?

20 A. Judges of elections are elected positions.

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

23 A. Majority inspectors and minority inspectors are
24 also elected positions. The majority inspector's
25 role is to help the judge of elections manage the

1 polling place. They primarily are there to manage
2 the poll book on election day. That's the
3 traditional role, although ultimately judges set the
4 table for how --- who's going to be doing what on
5 election day. Minority inspectors are elected from
6 the minority --- from a minority party within an
7 election division.

8 So in Philadelphia, predominantly a Democratic
9 city, so we have often a Republican or Independents
10 working as minority inspectors. And then the clerk
11 is actually appointed by the minority inspector, the
12 elected minority inspector.

13 Q. Okay. And then we also have the machine
14 inspector?

15 A. That's correct.

16 Q. And the machine inspector inspects the machines?

17 A. The machine inspector actually manages the
18 machine. They inspect the machines when they first
19 come in. And they're brought in by the machine
20 section of our office on election day or the night
21 before. The machine inspector is ultimately
22 responsible for opening the machine, making sure that
23 it's working. They run a test on the machine, and
24 then during --- on election day, during a primary,
25 their main role is to switch between the parties,

1 because the machine has a button that machine
2 inspectors have to switch depending on the party of
3 the person coming into the poll. They get told by
4 the judge of elections, you know, Republican or
5 Democrat or Independent or other, and then the
6 machine inspector operates the machine that way.

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

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

21 A. I am.

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

1 A. Yes.

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

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

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

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

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

20 A. Our effort in Philadelphia --- our goal was to
21 administer this election to make sure that voters
22 know about the election, that they're informed about
23 the election and that they had everything they need
24 to make --- to go to the polls and have a free and
25 fair election.

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

2 A. She wanted a list. She wanted the list of
3 voters so she could actually --- we could start an
4 outreach effort within our office, but also with
5 coordination of community partners who have
6 suppressed concern that people are not hearing enough
7 about the law.

8 Q. So when she first asked for the list in April,
9 what happened?

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

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

12 A. Yeah, we continued --- the Commissioner
13 continued to make a request really through the moment
14 that the information was finally delivered.

15 Q. And when was the information finally delivered?

16 A. Late June.

17 Q. And what was your understanding of what the list
18 was?

19 A. Well, the first list that we received was a list
20 of non --- what we now refer to as non-PennDOT voters
21 or non-PennDOT registered voters. This would be a
22 list of people in the voter registration file that
23 did not have a PennDOT issued ID.

24 Q. And how many of those people who did not have a
25 PennDOT ID --- registered voters who did not have a

1 PennDOT ID were in Philadelphia?

2 A. About 185.

3 Q. 185?

4 A. Thousand.

5 Q. 185,000?

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

7 Q. Okay. And the list that was sent to
8 Philadelphia with 185,000 registered voters on it
9 without PennDOT ID, was that list accompanied by a
10 press release by the Secretary of State?

11 A. I don't recall. I don't recall that.

12 Q. Okay. Then did the commissioners receive a
13 second list of voters?

14 A. Yes. So we had been asking for --- once we
15 received the list, we started looking through to ---
16 wanted to see what the list actually told us. And we
17 did receive a second list based on some inquiry that
18 the Commissioner had made. The second list was ---
19 do you want to talk about the list?

20 Q. Why don't you tell us what the second list
21 contained?

22 A. We received a second list that was actually a
23 statewide list of 575,000 voters of which about
24 170,000 --- 170,000 voters were from Philadelphia, of
25 people who did have a PennDOT ID, but the PennDOT ID

1 would be expiring one year beyond what would be
2 eligible for election day.

3 Q. So the fact that their voters --- their IDs were
4 expired meant that they couldn't use those
5 documents ---

6 A. That's correct.

7 Q. --- to vote; is that right?

8 A. That's correct.

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

12 A. Yeah, with an expired PennDOT ID, they would
13 have to get a new PennDOT ID with an accurate
14 expiration date.

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

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

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

20 A. Sure.

21 Q. And what was that total in Philadelphia?

22 A. It was 180 plus 170.

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

25 A. Right. That's correct.

1 Q. And did you do the percentage of what percentage
2 of people?

3 A. Well, I don't have the rough percentage, but
4 it's over 20 percent. I think it was 36 percent is
5 the number.

6 JUDGE SIMPSON:

7 Thirty-six (36) percent of what?

8 A. Thirty-six (36) percent of the voters. But are
9 you asking for all the registered voters or the
10 active voters?

11 BY ATTORNEY CLARKE:

12 Q. What is the percentage of registered voters?

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

15 Q. Now, I want to talk about education of voters.
16 Does the commission have a budget for educating
17 voters?

18 A. We do not.

19 Q. But is the commission nonetheless trying to
20 educate voters about the photo ID law?

21 A. Yes, we are.

22 Q. And is that one of your responsibilities
23 personally?

24 A. Yes, it's my responsibility as well as one other
25 person in our office who's we call an outreach

1 coordinator who's helping engage with communities
2 about this issue.

3 Q. And we've heard testimony in this trial that the
4 Department of State has sent a multitude of e-mails
5 and memos to the County Commissioners about how to
6 implement this voter ID law. Have you seen a
7 multitude of e-mails and communications?

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

22 Q. Now, you have been out --- the commission has
23 been out in the community trying to educate voters;
24 isn't that right?

25 A. That's correct.

1 Q. And the Department of State witnesses in this
2 case have testified that they have made large efforts
3 to be in the community educating voters. Have you
4 seen those efforts?

5 A. No.

6 Q. Have you seen any Department of State people in
7 the communities trying to educate voters in
8 Philadelphia?

9 A. No. I've seen --- Secretary Aichele has made
10 several appearances in Philadelphia, not in the
11 context of educating voters, but in the context of
12 --- I saw one debate, for instance, at Fels Institute
13 at the University of Pennsylvania that was held. And
14 there are a couple of those types of appearances, but
15 nothing in the form of a forum or a space for voters
16 to actually ask questions, nothing like that.

17 Q. Now, in your role as trying to help educate
18 people in Philadelphia, are you receiving calls from
19 people about the voter ID law?

20 A. Yes, we are.

21 Q. And can you describe generally what types of
22 calls they are?

23 A. There's a lot of confusion about the law because
24 we get a lot of calls that are specifically asking
25 us, well, what is this law about, and it always

1 starts with a general question what is this law?
2 I've heard there's a new voter ID law requirement,
3 what does that mean for me? And usually we walk
4 through with the voter what the law is, what the new
5 requirement is, and then we ask them if they have one
6 of the IDs that are listed in the law. That's
7 primarily most of the contact that we have had.

8 Our office has never historically had a
9 constituent services operation. So for the most
10 part, that is what we've been focusing on, just
11 being able to deliver the information the state has
12 provided. And then to a certain extent we have also
13 been dealing with more complicated walk-ins. People
14 that come into our office that --- with the same
15 question, the same starting question, but often have
16 more complicating answers.

17 For example, they need more documentation, they
18 need birth certificates and they need help
19 identifying how they get to the vital records office
20 and what that process is, or they may need help with
21 the Social Security Administration and don't really
22 know how to navigate that office because they need
23 those types of documents to go to PennDOT. They
24 need a Social Security card and a birth certificate
25 to go to PennDOT to ask for an ID.

1 Q. When you have gone into the community to educate
2 people, can you just describe in very general terms
3 what kind of efforts the commission has made to go
4 into the community to educate people?

5 A. Sure. So we have --- the first thing we did is
6 we participate in the Pennsylvania Voter ID
7 Coalition, a non-partisan coalition that's led by the
8 Committee of Seventy in Philadelphia and has a number
9 of partners that represent different areas of the
10 city, a large number of non-profits that are actually
11 participating. And through that coalition we have
12 helped inform the coalition of what we believe are
13 the requirements, what election day may look like,
14 what voters really need to know to be prepared, so
15 that's one thing we have done. The second ---.

16 Q. Let me just stop you with that.

17 A. Sure.

18 Q. There have been some changes to the
19 implementation. Up until today there have been
20 changes. Has that affected your ability to provide
21 accurate information to the coalition?

22 A. Yes, it does. So there's --- every time there's
23 a change we have to update --- we immediately update
24 the coalition and also other community partners that
25 may not be part of this coalition that we are also

1 speaking to, mainly mostly schools --- actually a lot
2 of high schools, concerned seniors, and we update ---
3 we let people know what the new changes are and the
4 new changes often just generate a lot more confusion
5 and more questions about what the requirements are.
6 So the answer is yes.

7 Q. Other than working with the coalition, can you
8 describe in just general terms what types of
9 activities you have engaged in to try to educate the
10 public in Philadelphia?

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

20 We've gone to --- we have reached out to every
21 community organization individually as part of the
22 Pennsylvania Voter ID Coalition to let them know
23 that we are available as a resource, and through
24 that we have participated in birth certificate
25 workshops at several large non-profits in the city.

1 We have gone to churches to speak to congregants
2 about this new problem. We've actually gone to ---
3 we've participated in some public speaking
4 engagements. Commissioner Singer herself has been
5 on MSNBC, on the radio. We've been writing op-eds,
6 letters to the editor. We're doing everything we
7 can on the media side to try to get the word out
8 that way as well. And usually, that generates more
9 questions as well. It also generates more
10 invitations to participate in more community events.

11 Q. So again, with all of these activities in the
12 community, you have not seen any activity by the
13 Department of State in voter education in
14 Philadelphia?

15 A. No.

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

18 A. Yes. Yes, we have to.

19 Q. And are you confident that with all of these
20 activities you will be able to reach every registered
21 voter and get an ID in their hands?

22 A. No. Philadelphia is a very large place, a very
23 large population. There's no --- I don't have
24 confidence that we can reach every voter. One of the
25 main functions --- or one of my main goals as a

1 communications person for the office is to try to
2 help the Commissioner get the word out about the new
3 law and its requirements in media outlets. The
4 reason we focus on that, because we feel the more we
5 do that the more people will know about it.

6 But if you understand Philadelphia's
7 demographics, there are a lot of people in
8 Philadelphia that don't necessarily read newspapers,
9 so there's a gap there in how we can actually reach
10 the --- let's just say the less fortunate in north
11 Philadelphia, specifically south Philadelphia, areas
12 of major population that are harder to reach. Even
13 when partnering with community organizations that
14 serve those populations, you don't really get to
15 everyone.

16 Q. Let me just talk to you now about a different
17 subject. I want to talk about training of poll
18 workers. And do the Philadelphia City Commissioners
19 have responsibility for training poll workers in
20 Philadelphia?

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

22 Q. Do they have ---?

23 A. Yes, yes.

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

1 A. Over 8,000.

2 Q. And are the commissioners preparing the training
3 now as we speak?

4 A. Yes.

5 Q. And is it mandatory for poll workers in
6 Philadelphia to attend training?

7 A. No, they're not compelled.

8 Q. Okay. And typically in a typical year, what
9 percentage of poll workers in Philadelphia attend
10 training?

11 A. At best 20 percent.

12 Q. Twenty (20) percent?

13 A. Twenty (20) percent of the poll workers. So
14 you're looking at between 1,500 and 2,000 poll
15 workers will attend training.

16 Q. And why so few people attend training?

17 A. There are several reasons. One main reason is
18 that they're not compelled to attend training.
19 Another reason is there are --- for many divisions
20 there are poll workers that have been working on
21 election boards for a very long time. They may have
22 gone through training years and years and years ago,
23 maybe not. But they've been doing it for a very long
24 time and feel confident that they know everything
25 they need to know about managing an election.

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

3 A. Yes.

4 Q. --- at the commission?

5 A. It certainly does, yes.

6 Q. And why is that?

7 A. Well, especially when there's a major seat
8 change in the way elections will be operating in
9 Philadelphia due to this law, we need to make sure
10 that every judge of elections, and, in fact, the
11 majority inspectors and minority inspectors, and
12 really everyone, machine inspectors --- everyone on
13 the election board, that they all understand what the
14 requirements are so that they know how to address the
15 problems that may arise on election day.

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

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

23 Q. And what kinds of questions are you concerned
24 might arise as a result of the photo ID law?

25 A. Most of the questions will result based on the

1 types of IDs that people may bring to the polls. For
2 example, we have student IDs, what type of student ID
3 is acceptable versus which one is not. The guidance
4 we've gotten so far through the state give us a range
5 and training a range is much more difficult than
6 training something more specifically.

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

8 A. So, for instance, you --- we have some guidance
9 from the state that a certain number of --- certain
10 variation of listing of expiration dates will be
11 acceptable including even just having the number 12
12 or the number 13, which is supposed to represent, I
13 guess, the year of an expiration on a student card.
14 It's very different than some other universities.
15 All the colleges are doing --- there's no uniformity
16 for how they're doing their student IDs for a lot of
17 different reasons.

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

19 A. Sure. For a lot of reasons. I mean, student
20 IDs is actually --- for universities are not just a
21 way of identifying students with a picture. I mean,
22 many of them don't even have pictures on their IDs.

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

1 A. Mostly the problems really are about the lack of
2 knowledge of how to respond to questions is one major
3 issue. Confusion that will arise from voters and
4 judges negotiating what their understanding of what
5 the new requirement is, judges of elections who have
6 long --- who have been serving for a very long time
7 knowing and recognizing voters, not wanting to
8 actually implement the law, which is something that
9 we're combating now and asking judges to understand
10 that they have a requirement to do that, these kind
11 of tensions actually lead to disruptions at the polls
12 and delays at the polls.

13 Q. So let's just go to the polling place and try to
14 envision a polling place in Philadelphia. In a year
15 before this year, before the voter ID law was
16 implemented or was passed, describe the typical setup
17 of a polling place. A person walks up and wants to
18 vote, what happens?

19 A. A voter walks up to usually a table. The table
20 is where the judge of elections will have set up the
21 polling book, the poll book and is open, you know,
22 usually on this table. The judge sits behind the
23 poll book, the majority inspector sits next to the
24 judge, the minority inspector sits next to the
25 majority, and the clerk sits there as well. The

1 voter walks up to the judge and says my name is Jorge
2 Santana, the voter says --- the judge looks in the
3 poll book for Jorge Santana. You know, how is your
4 name spelled, maybe I'm missing it? They find me.
5 Once the judge finds my name in the polling place ---
6 in the poll book, they call out the address. And
7 this is often how it happens.

8 They call out the address. They'll say 2317
9 Cedar Street and the majority inspector and the
10 minority inspector take note of my name in what's
11 called the number two and the number four book.
12 They're called registers. It's really a way of
13 double checking and triple checking the accuracy of
14 a poll book later on after we do the vote count. So
15 once they identify me as --- this is the voter, he's
16 right there. Usually there's a signature --- in the
17 poll book comes preprinted with a signature that's
18 on record from the voter file. I will then --- the
19 voter will then sign next to their signature, the
20 signature affirmation. And once I do that, the
21 machine inspector gets notified that the vote is
22 prepared --- the voter is prepared to vote, they
23 direct me to the curtain and then I'm actually
24 registering my vote. That's traditionally what
25 happens.

1 Q. And then let's just introduce the provisional
2 ballot ---

3 A. Sure.

4 Q. --- for photo ID. How did the provisional
5 ballot work? If I'm a voter and I walk in, how did
6 that get processed?

7 A. Sure. Provisional ballots are very rare.

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

9 A. So, for example, in 2008, the last Presidential,
10 there were 8,300 --- slightly over 8,300 provisionals
11 that were counted. Now, there were slightly more
12 than that that are cast, but --- that were counted.
13 So just to give you a sense, that's for the entire
14 City of Philadelphia.

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

17 A. So if a voter comes in and they are not ---
18 there are a couple of ways that this actually gets
19 done in Philadelphia. If a voter comes into the
20 polling place and they are in the wrong location,
21 we'll tell them, you're in the wrong location, you
22 have to go vote somewhere else. There have been
23 circumstances where a voter will do a provisional
24 ballot if they're in the wrong division because
25 there's been a change. Usually this only happens

1 around districting. There's a change in the
2 divisions and they just don't know where they're
3 supposed to vote. That's extremely, extremely rare.
4 Primarily it's when the person is not in the poll
5 book, the judge will call the Voter Registration
6 Office to verify that the person is a registered
7 voter and then they will do a provisional ballot at
8 that time after the confirmation has been made.

9 Q. And when the judge is taking the time to call to
10 see if the person's registered, and then let's say
11 that the person has to cast a provisional ballot,
12 what happens to that regular process that you just
13 described to us?

14 A. Sure. The provisional ballots get collected
15 throughout the day.

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

18 A. Sure. So the voter --- so the judge or the
19 majority inspector --- if it's very busy, often the
20 judge will assign the majority inspector or a clerk
21 or someone else who's available to take the voter
22 aside and show them how --- show them what they have
23 to do with the provisional ballot, show them how to
24 fill out the provisional ballot. The provisional
25 ballots are about the size --- it's a legal size

1 paper. Often they are --- they may have a clipboard
2 or something, but often there's a room on the table
3 and a small turnout election --- there's often room
4 on the table for someone to fill out provisional and
5 then hand the provisional back to the judge, the
6 judge puts it in a green envelope, sets it aside and
7 then they get counted later.

8 Q. Now, while the judge is off helping the person
9 with the provisional ballot before this year, what
10 happens to the rest of the people in line and what
11 happens to the ---

12 A. Sure.

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

15 A. Sure. Whenever you have a provisional being
16 done, it's time consuming, so whoever the number two
17 person is at the poll, the majority inspector, the
18 minority inspector, they take over the poll book and
19 the judge will take the voter aside to work with them
20 while the rest of the line continues with the poll
21 book. And so that's actually --- that's usually ---
22 an off year election is when it's a low turnout,
23 that's an okay process, that's manageable. During
24 Presidentials that's already a source of delay even
25 with the 8,000 that we talked about. One of the

1 reasons that we have longer lines, longer wait times
2 at Presidential election years is because you have a
3 lot more people showing up. And many people show up
4 to vote at the same times between seven and nine
5 o'clock in the morning in between 5:00 and the close
6 of polls at eight o'clock in the evening, and so you
7 have these crunch times. And the more provisionals
8 that you have at that time, the more time the judge
9 has set aside. So you may end up having longer
10 lines, longer wait times. Not everyone on the
11 election board understands how to work the
12 provisionals, so the judge doesn't always have
13 someone they can turn to, to say please work with
14 this person on provisional.

15 There's also a matter of skill level that's
16 lacking associated with even managing the poll book
17 correctly. So it's very important that the judge be
18 the final arbiter actually there managing the poll
19 book and overseeing the election.

20 Q. So in those instances, the judge is off helping
21 the person with the professional ballot, and then
22 everybody has to wait until the judge comes back
23 to ---?

24 A. Not in every instance. Again, it depends on
25 whether or not --- it depends on whether or not the

1 majority inspector, minority inspector, clerk are
2 capable, you know, of managing the rest of the
3 election. But often it is the judge that's
4 scrambling to basically take care of everything, and
5 that's usually where the concerns are. Keep in mind,
6 the judge is also the person who is on the phone with
7 the Voter Registration Office and the election office
8 to --- if there's a problem that happens with the
9 machine, the machine inspector has to report back to
10 the judge of elections. The machine inspector is not
11 calling the election board directly, so the judge of
12 elections is ultimately responsible for all those
13 aspects of what's happening on election day.

14 Q. So if the judge is busy doing other things, that
15 creates delays?

16 A. It does, because if a judge is working on, say,
17 opening up the polls, making sure the polls are open
18 or saying the machine is done, the judge is the one
19 on the phone dealing with that problem. Now the
20 majority inspector is the person that's working with
21 the people coming to vote. And if the majority
22 inspector is working with the provisional ballot, you
23 just start going down the line of competency.

24 Q. Okay. Now, before we get to a polling place
25 with photo ID, I just want to ask if there are any

1 other things in a regular election before this year
2 that caused delays at the polling place, any other
3 abnormalities that caused delays at the polling
4 places?

5 A. Yes. I mean, there are a lot of --- again, this
6 goes back to Philadelphia being a very large place, a
7 very difficult place to operate elections. 1,687
8 divisions. So there are often --- there are
9 instances where a polling place location has not been
10 opened on time and we have to make a decision whether
11 or not we're going to break open a door to actually
12 open --- run our election. Those cause dramatic
13 delays. That actually has happened.

14 Q. Do new voters --- when new voters come in cause
15 delays?

16 A. Yes, when a new voter --- in the past prior to
17 this law being past, every time a new voter came to
18 the polls they had to present a form of ID. The law
19 prior to this actually stated a new voter had to
20 present a form of ID at the polls, and that does
21 cause a delay. Judges of elections are unfamiliar
22 with the voter. They'll try to find them in the poll
23 book. If they do find them in the poll book, they
24 still have to look at the ID. The voter may not know
25 this is a requirement, you know. They're not

1 necessarily aware they have to actually have a form
2 of ID with them. So in the past this has already
3 caused some confusion.

4 Q. So let's now talk about the polling place with
5 the voter ID law. First of all, is Philadelphia
6 anticipating an increase in the number of provisional
7 ballots?

8 A. Yes.

9 Q. And what is the number of increased --- what is
10 the number of provisional ballots that Philadelphia
11 is anticipating?

12 A. That's a difficult question to answer. We are
13 looking at the range of voters that potentially may
14 need one. That's the only way to answer that.

15 Q. Have you actually planned to print additional
16 provisional ballots?

17 A. So we've already started the internal
18 conversation about how many we'll need. The
19 commissioners as a whole have not yet voted on the
20 final number of how many provisionals. Internally
21 we're looking at now having 125 --- at least 125
22 provisional ballots on hand in each division.

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

24 A. That's correct.

25 Q. And the total ---?

1 A. I cannot --- I'm sorry. I don't have the number
2 with me.

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

4 A. That's correct.

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

7 A. Well, the law requires --- the law is very clear
8 that if you do not have the accurate ID or a form of
9 ID that you can use that's listed by the state's
10 requirements, then you can actually vote
11 provisionally and within six days you can present the
12 form of ID --- one of the forms of IDs that are in
13 the list to the Voter Registration Office. There are
14 several ways that voters can actually do that, so
15 voters would have six days to show an ID. So instead
16 of turning a voter away --- instead of turning a
17 voter away, judges of election will be asking voters
18 for, number one, can you come back? You know, if you
19 have it at home, can you come back in a couple of
20 minutes and just vote with the ID, but if not, here's
21 a provisional ballot. So this is going to be a new
22 experience for a lot of voters that have never really
23 dealt with provisionals.

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

25 A. Well, we have seen the numbers. The numbers

1 show us that not many people --- a lot of people are
2 not going to have the IDs --- the type of ID that
3 they need to vote.

4 Q. Now, what will the --- let's go back to the
5 polling place. What do you anticipate the effect
6 will be of the combination of the new rules and what
7 you are contemplating as an increase in provisional
8 ballots from 8,000 in 2008 to 2,010 thousand this
9 year?

10 A. Well, I think --- I'm anticipating a mess on
11 election day, if I can be frank. The election --- on
12 election day we already anticipated --- we were going
13 to anticipate long lines because of the Presidential
14 election. And during Presidential elections
15 historically we have seen long lines at polling
16 places in Philadelphia. Over the course of the last
17 several years we have been moving certain polling
18 places to accommodate for handicap accessibility, so
19 we have many, many polling place divisions that are
20 in a single location. So we will have, say --- for
21 instance, I have one school in mind that has four
22 polling place divisions within that one school within
23 one auditorium, so you can already imagine that eight
24 tables potentially, that's eight machines and a lot
25 of voters trying to get to the right location within

1 that auditorium to vote.

2 Now, you add to that chaotic environment many
3 people with --- clipboards is one suggestion I've
4 heard or trying to find a surface to actually write
5 to fill out the provisional ballot and you have kind
6 of have a messy environment where you have people
7 from multiple divisions next to each other over each
8 others' shoulders basically filling out provisional
9 ballots. So I anticipate a lot of problems, a lot
10 of tension, a lot of stress on the voters, and
11 whenever we have those elements, you have increased
12 delays because you will have potentially
13 altercations. You will have potentially a lot of
14 calls coming in to our office for assistance from
15 the DA's office, from the police, from our office to
16 come and help manage a difficult environment. And
17 we have many places across the city that kind of fit
18 that description with limited resources to deal with
19 that type of impact.

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

24 A. Sure.

25 Q. --- how to interpret the forms, do you see an

1 impact from that?

2 A. Yes. And, in fact, the --- during what was
3 called the soft rollout, which I can explain, during
4 the soft rollout in the primary we actually already
5 saw a series of the types of problems that we are
6 going to anticipate. The soft rollout was what we
7 termed the first part of the law. When the voter ID
8 law passed, it passed in March and it was --- in the
9 law itself it called for having the primary be not
10 quite a test run, but be an opportunity to educate
11 voters about the requirement.

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

13 A. So during --- there were a lot of questions.
14 What the soft rollout entailed was the judges of
15 elections were given a handout of the state's
16 requirement and they were supposed to ask --- they're
17 not supposed to. They had to ask voters if they had
18 a photo ID, and if a voter said yes or no, it didn't
19 matter, they still could vote, but they were handed
20 this form.

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

22 A. And some of the problems were related to
23 questions --- there were some delays that happened
24 already at the polling places related to --- there's
25 a lot of questions that were generated by voters

1 about why they actually --- about the new law, about
2 why they needed to have an ID and there's confusion
3 among poll workers themselves, election boards
4 themselves, as to what their actual requirement was
5 and what the law actually meant and that was just for
6 the soft rollout.

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

12 A. I have not. I have not seen that. I have not
13 seen that. Commissioner Singer --- you know,
14 Commissioner Singer is actually out on vacation, so
15 I'm not sure if something has been sent to her. But
16 as of July 20th at least --- as of July 20th, we have
17 not received any.

18 Q. So as of July 20th, at least, the commission
19 hadn't received any guidance about what it meant to
20 be indigent?

21 A. That's correct, what the criteria is for
22 indigent.

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

1 A. We cannot have a plan unless we have guidance
2 from the state on what they actually mean by
3 indigent. So no, unfortunately not. I mean, I have
4 ideas, but until we have the actual language --- we
5 need to resolve that because if we train judges on a
6 definition that is not going to meet the threshold of
7 the state, then we're just wasting our time. So we
8 need that formal guidance to be able to do that.

9 Q. Now, the law says that a person can sign one of
10 --- can get a provisional ballot and sign an
11 affidavit, but they have to say that they are
12 indigent, but they also can't get an ID without
13 paying a fee. You understand that?

14 A. Sure.

15 Q. And the ID is free, so --- the ID is free?

16 A. Right.

17 Q. And especially if you live in Pennsylvania,
18 you're supposed to be able to go to PennDOT and
19 they're supposed to check your birth certificate, so
20 there are going to be people who may be indigent, but
21 --- especially people who are born in Pennsylvania,
22 they may be indigent, but they won't have to pay a
23 fee. So are they going to be able to sign that
24 affidavit?

25 ATTORNEY SCHMIDT:

1 Your Honor, I'm going to object to the
2 form of the question.

3 JUDGE SIMPSON:

4 I don't understand the question, so
5 whether or not he answers, it won't help me.

6 ATTORNEY CLARKE:

7 Okay. I'll try to ask a better
8 question.

9 BY ATTORNEY CLARKE:

10 Q. You're aware that the statute says that in order
11 to sign the affidavit that says you are indigent, and
12 therefore, you can vote, you have to say not only
13 that you're indigent, but also that you were unable
14 to get an ID without paying a fee. You understand
15 that to be the law?

16 A. Uh-huh (yes).

17 Q. And what I am asking you is, there will be some
18 people since the PennDOT ID is free and some people
19 won't --- who have no birth certificate, but PennDOT
20 will be able to check the people who are born in
21 Pennsylvania, PennDOT will be able to check, they
22 won't have to pay a fee, so ---.

23 ATTORNEY SCHMIDT:

24 Your Honor, I'll object to the
25 question.

1 JUDGE SIMPSON:

2 Sustain as to form.

3 BY ATTORNEY CLARKE:

4 Q. Sitting here today, do you have an understanding
5 as to how the poll workers in Philadelphia are going
6 to administer the indigent affidavit?

7 A. No.

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

12 A. We've never been in this environment, so it's
13 very difficult to see how we play --- how that plays
14 out. But it's going to increase --- it's certainly
15 going to increase the time --- the time it takes to
16 actually review provisionals can certainly lead to
17 delays if there are challenges, and the counties are
18 simply not prepared to deal with that right now. I
19 mean, I'm not really clear on how to answer that
20 question right now because we have, again, not seen
21 this type of environment before, including what
22 resources it might take to set up an office, set up a
23 space within the election division to manage these
24 types of challenges. We've only seen a very small
25 version of this type of thing before on a minor

1 basis. Not in terms of this, but regarding when two
2 parties are challenging each other on petitions or
3 some other things and even that requires a lot of
4 space for what may be a small state house race. So
5 in the environment of a presidential election, in
6 light of our efforts to be fully transparent where
7 the press can be involved and just --- I really don't
8 have a good answer for it. I mean, I just envision a
9 chaotic environment with a lot of potential problems.

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

11 A. Sure.

12 Q. We've heard in this Court testimony about a new
13 form of ID that the State Department plans to issue
14 at the end of August. Has the Department of State
15 provided any information about this new form of ID to
16 the commission?

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

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

19 A. Commissioner Singer left on vacation, yes.

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

22 A. Only what I have read in the press release of
23 the State Department.

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

1 A. No.

2 Q. And does this affect the commission's ability to
3 prepare the training for poll workers?

4 A. Absolutely.

5 Q. Now, I wanted you to imagine two different
6 scenarios. If this Court were to decide that the law
7 was unconstitutional, but then the Supreme Court
8 decided that the law was constitutional, what --- how
9 will the commission proceed with preparing for
10 elections?

11 ATTORNEY SCHMIDT:

12 Your Honor, I'll object to the
13 question. It calls for speculation on the part of
14 the witness.

15 JUDGE SIMPSON:

16 Actually, this is a useful category. I
17 don't think the question was phrased in a useful
18 manner. Do you understand the question?

19 A. Yes, I do.

20 JUDGE SIMPSON:

21 What she's asking is ---?

22 A. Will it change the way we administer the
23 election.

24 JUDGE SIMPSON:

25 You know what? I forget the question

1 now.

2 ATTORNEY CLARKE:

3 I'll ask a better question.

4 BY ATTORNEY CLARKE:

5 Q. Does the commission have a plan about preparing
6 for the photo ID law regardless of what happens in
7 this Court?

8 A. We are --- it's our obligation to run this
9 election. No matter what happens we're going to run
10 an election. We are operating under the assumption
11 that it will not get overturned because we have to,
12 because we have to. That includes trying to figure
13 out what to do with all these problems that we've
14 identified, provisional ballots expansion and
15 challenges of the parties and so on. So we are doing
16 everything we can to just get our election boards the
17 information that they need and to get voters in
18 Philadelphia --- over a million voters in
19 Philadelphia the information that they need to
20 understand what this means for them.

21 So for our purposes, we don't have some kind of
22 plan B where we're looking at what happens if it
23 gets thrown out. It's easier to take something away
24 --- as an administration, we're actually running an
25 election. Training, getting people information,

1 planning for the mess is easier than --- is harder
2 to do, but is essential, and it's actually easier to
3 remove some of the difficulties if the law actually
4 did get overturned. If the law did get overturned,
5 it would definitely relieve a lot of pressure and
6 could help alleviate a lot of these major concerns
7 that we may have. But we still have to prepare for
8 the worst. I'm not sure if that answers your
9 question.

10 ATTORNEY CLARKE:

11 Thank you. I have no further
12 questions.

13 JUDGE SIMPSON:

14 You have to stay there because the
15 other lawyer might have some questions.

16 A. Yes, I know. Thanks.

17 JUDGE SIMPSON:

18 I thought you were getting ready to
19 leave.

20 ATTORNEY SCHMIDT:

21 Thank you, Your Honor.

22 JUDGE SIMPSON:

23 You may proceed.

24 CROSS EXAMINATION

25 BY ATTORNEY SCHMIDT:

1 Q. Good morning, Mr. Santana. My name's Kevin
2 Schmidt. I represent the Respondents in this action.
3 I just have a few follow-up questions. Now, a lot of
4 your testimony you talked about these alleged
5 problems that you're concerned about, but wouldn't
6 you agree with me that at this point you're really
7 just speculating about what's going to occur; is that
8 correct?

9 A. No.

10 Q. No?

11 A. That's not correct. We have a basis of
12 experience from prior elections and we have evidence
13 of concern from judges of elections and participants
14 in the election currently, questions that are being
15 raised now, many of the questions are being raised by
16 election groups.

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

19 A. It is.

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

23 A. No. I'm actually basing my testimony not on
24 speculation, but on the concerns that have already
25 been raised, based on the soft rollout and based on

1 the information that we're receiving now from the
2 public about the law.

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

6 A. We are currently engaged in trying to educate
7 the public to the best extent we can without the
8 resources to do so.

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

11 A. The PA Voter ID Coalition is an independent
12 group that we are helping with information. They ask
13 us --- usually the Committee of Seventy actually ---
14 the Committee of Seventy asks us to verify a question
15 about what this section of the law or that section of
16 the law means. We've provided --- we've been that
17 partner and we've actually communicated back to the
18 state and provided feedback to the coalition that
19 way.

20 Q. And Commissioner Singer has also been
21 communicating with Jonathan Marks at the Department
22 of State; is that correct?

23 A. Yes.

24 Q. Now, you're aware that PA Voter ID Coalition
25 contains the League of Women Voters?

1 A. I'm aware.

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

3 A. Yes.

4 Q. And are you aware that they're both Petitioners
5 in this lawsuit?

6 A. Yes.

7 Q. And you testified that you're going to continue
8 to assist this large outreach because the law is in
9 place; is that correct?

10 A. That's correct.

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

14 A. That's correct.

15 Q. Okay. In your experiences when there have been
16 changes such as redistricting, do poll workers --- is
17 there an increase in poll worker attendance at
18 training?

19 A. I can't answer that. Actually I started at the
20 commission --- Commissioner Singer started her term
21 in January of this year. So we haven't experienced
22 enough of these types of changes to answer that
23 question.

24 Q. Well, would you agree with me that because this
25 is a new law there's a potential for more poll

1 workers to attend training so they can be properly
2 prepared come November 6th?

3 A. Potential, yes.

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

9 A. That's correct.

10 Q. Do you know how many were cast?

11 A. I don't have that number. I'm sorry.

12 Q. Do you know why those that were cast were not
13 counted?

14 A. With provisional ballots, since --- really since
15 2002, and this is my recollection --- I'm not the
16 expert on provisional ballots, on this particular ---
17 on the history, right, but the provisional ballots
18 when they're cast, there may be a problem of how
19 they're actually filled out, if they're not filled
20 out correctly. There's actually a green envelope
21 that the ballot has to go into, and if that envelope
22 doesn't have identifying information, it's the
23 election division's role and responsibility to try to
24 get in touch with the voter to make sure --- there
25 are times, instances where that may not be possible.

1 So for that reason you will have drop offs.

2 Q. So there's other reasons that provisional
3 ballots may not be counted other than confusion for
4 the voter ID law; is that correct?

5 A. Yes.

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

11 A. I had not heard that.

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

16 A. I can't answer that without actually seeing what
17 the manual is.

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

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

21 Q. Now, you also testified earlier that again this
22 is a new experience that people are going to have to
23 show identification to vote at the polls; is that
24 correct?

25 A. That's correct, yes.

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

3 A. I don't --- that's a strange question. So
4 Philadelphia may have a voter who has been voting for
5 20, 30, 40 years. We have a lot of those actually.
6 It's an old city with a lot of people. And for a lot
7 of those people, yes, that may be a problem.

8 Q. Would you agree with me that in everyday life
9 people all across Philadelphia have to show
10 identification to get medicine, to ride a bus?

11 A. They don't necessarily have to show photo
12 identification.

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

16 A. I don't know how to answer that question. Not
17 necessarily. It doesn't have to be photo
18 identification, including Social Security benefits
19 cards, which no longer have a photo on them, which is
20 for a lot of people in Philadelphia the number one
21 form of identification. So voter registration cards
22 don't have a photo on them. A lot of people in
23 Philadelphia use those as a proof of residency when
24 they go to a benefit's office, for example. So for a
25 large extent --- to a large extent if you talk about

1 Philadelphia, that's not necessarily true, but I'm
2 not going to speak to a number because I don't have
3 that data in front of me. But I just know from the
4 experience that we have had and the types of calls
5 that we are getting into our office, that, no, it
6 doesn't really apply.

7 Q. Mr. Santana, is it fair to say you're here
8 testifying today because you're opposed to the voter
9 ID law?

10 A. I'm here testifying on behalf of the City of
11 Philadelphia.

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

13 A. Because we're very concerned that the speed with
14 which this is being enacted is not allowing us to be
15 adequately prepared to ensure that voters are going
16 to have the right information that they need and that
17 we're going to have increased difficulty managing
18 this election.

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

20 A. I don't like it.

21 Q. So you're opposed to it?

22 A. The law itself?

23 ATTORNEY CLARKE:

24 Objection, Your Honor, it's irrelevant.

25 Mr. Santana has testified he's here on behalf of the

1 City of Philadelphia and his personal views, although
2 he's already stated his personal views, are
3 irrelevant.

4 JUDGE SIMPSON:

5 Overruled.

6 A. Yes.

7 ATTORNEY SCHMIDT:

8 I have nothing further. Thank you,
9 Your Honor.

10 ATTORNEY CLARKE:

11 Your Honor, just one clarifying
12 question.

13 REDIRECT EXAMINATION

14 BY ATTORNEY CLARKE:

15 Q. There's a reason that I'm a lawyer and not a
16 numbers person. It was pointed out to me that I did
17 the math wrong on the number of people on the
18 combined lists. And so I just want to ask you again
19 about the number of people who are on --- the
20 Philadelphia registered voters who are on the list of
21 no PennDOT ID was about 186,000?

22 A. That's correct.

23 Q. And the people on the second list --- the Court
24 has already caught this. The people on the second
25 list of people with expired PennDOT IDs was about

1 175,000?

2 A. That's correct.

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

6 A. That's correct.

7 ATTORNEY CLARKE:

8 Okay. Thank you. I have no further
9 questions.

10 JUDGE SIMPSON:

11 Anything else for this witness?

12 ATTORNEY SCHMIDT:

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

14 JUDGE SIMPSON:

15 Go ahead.

16 RECROSS EXAMINATION

17 BY ATTORNEY SCHMIDT:

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

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

23 ATTORNEY SCHMIDT:

24 No further questions.

25 ATTORNEY CLARKE:

1 No further questions, Your Honor.

2 JUDGE SIMPSON:

3 Thanks for coming. You can go back to
4 Philadelphia.

5 A. Thanks.

6 JUDGE SIMPSON:

7 Now would probably be a good time for a
8 break unless there's some special request.

9 ATTORNEY CLARKE:

10 No, Your Honor.

11 JUDGE SIMPSON:

12 There's one more witness?

13 ATTORNEY GERSCH:

14 Yes, Your Honor.

15 JUDGE SIMPSON:

16 All right. It's about five 'til 11:00.
17 We'll take a 30-minute break.

18 MR. TURNER:

19 Commonwealth Court is now in recess.

20 RECESS TAKEN

21 MR. TURNER:

22 Commonwealth Court is now in session.

23 You may be seated.

24 JUDGE SIMPSON:

25 You may call your next witness.

1 ATTORNEY GERSCH:

2 Before we call our next witness, we
3 would just like to offer into evidence the --- during
4 Mr. Marks' testimony, I had asked him if there was a
5 list --- a written list of the exceptions. Mr. Marks
6 indicated it was on the reverse side of Exhibit 30
7 which I had shown him. I made a request in open
8 court for the reverse side. The Commonwealth has
9 just provided that to us and we'd like to offer that
10 as Exhibit 48.

11 (Petitioners' Exhibit 48 marked for
12 identification.)

13 JUDGE SIMPSON:

14 So this is going to be a separate
15 exhibit?

16 ATTORNEY GERSCH:

17 It will be a separate exhibit. It's
18 Exhibit 48 and that is the reverse side of Exhibit
19 30.

20 JUDGE SIMPSON:

21 So you are offering that?

22 ATTORNEY GERSCH:

23 Yes, Your Honor.

24 JUDGE SIMPSON:

25 Any objection?

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ATTORNEY CAWLEY:

No objection, Your Honor.

JUDGE SIMPSON:

It's received. There was also ---
Exhibit 47 was identified during Ms. Thorne's
testimony.

ATTORNEY SCHNEIDER:

Yes, Your Honor, we'd like to move that
into evidence.

ATTORNEY CAWLEY:

No objection.

JUDGE SIMPSON:

It's received.

ATTORNEY CLARKE:

The Petitioners call Doctor Lorraine C.
Minnite.

MR. TURNER:

Please raise your right hand.

LORRAINE C. MINNITE, PH.D., HAVING FIRST BEEN DULY
SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION ON QUALIFICATIONS

BY ATTORNEY CLARKE:

Q. Good morning, Doctor Minnite.

1 A. Good morning.

2 Q. Would you please state your full name for the
3 record?

4 A. My name is Lorraine Carol Minnite.

5 Q. And what is your title?

6 A. I'm an associate professor in the Department of
7 Public Policy at Rutgers Camden. I'm also the
8 director of undergraduate urban studies program
9 there.

10 ATTORNEY CLARKE:

11 I would like to mark as Exhibit 49
12 Doctor Minnite's CV.

13 (Petitioners' Exhibit 49 marked for
14 identification.)

15 BY ATTORNEY CLARKE:

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

18 A. Yes, this is my current CV.

19 Q. Now, I want to just take you through your
20 experience. You received a Ph.D.?

21 A. Yes.

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

23 A. Political science.

24 Q. And where did receive it from?

25 A. The City University of New York.

1 Q. And what was the dissertation topic that you
2 pursued?

3 A. My dissertation title is there on the CV and the
4 topic was about political representation and
5 specifically a case study of redistricting in New
6 York City.

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

9 A. Yes.

10 Q. And what is that research focus?

11 A. That research focus is American elections, but
12 specifically the incidence of voter fraud in American
13 elections.

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

16 A. Yes.

17 Q. And if we could go to page five of your CV, I
18 want to draw your attention to the last publication
19 before the word journalism, Securing the Vote, An
20 Analysis of Election Fraud. Can you describe that
21 publication, what was the research question?

22 A. The research question was looking at what the
23 actual incidence of voter fraud was in American
24 elections.

25 Q. And in doing that research --- well, strike

1 that.

2 And then I wanted to draw your attention to the
3 point it talks about it being updated in 2007. What
4 was that research?

5 A. Well, the update there was because when that
6 report was written, the Help America Vote Act was
7 actually being debated and had just passed. So the
8 update was to take account of the fact that the Help
9 America Vote Act of 2002's federal law gave great
10 incentives to the states to computerize their voter
11 registration lists. And that actually had been one
12 of the recommendations in the report. So updated the
13 report to reflect the changes in the law.

14 Q. Now, I'm going to come back and ask you in more
15 detail about your findings. Right now I'm going to
16 just walk throughout the research that you have done.
17 If you just go to the next publication up from the
18 Securing the Vote, the Politics of Voter Fraud. What
19 was the research question in that publication?

20 A. The question there was, if voter fraud was so
21 rare, as I had found in the first report, what
22 explained the power of voter fraud allegations with
23 respect to election reforms aimed at widening access
24 to the ballot. And so that report sort of turned to
25 more of an analysis of what was the nature of the

1 allegations, how to classify them, tracing the way in
2 which allegations, in fact, were --- you know, did
3 not actually --- were not the same thing as actual
4 voter fraud. So that's what that report focused on.

5 Q. Okay. Again, we'll get to the substance of that
6 once we talk through your qualifications. The next
7 publication up, Election Day Registration, A Study of
8 Voter Fraud Allegations and Findings on Voter Roll
9 Security. What was the research question in that
10 publication?

11 A. The research question there was again a focused
12 examination of data on what the incidence of voter
13 fraud was at the time the six states that had
14 election day registration.

15 Q. Okay. And then I'd like to go back to page
16 three of this CV, under journal articles, the second
17 item, Modeling Problems in the Voter ID Voter Turnout
18 Debate. What was the research question in that
19 publication?

20 A. At that time there had been no peer-reviewed
21 published research, statistical research, that
22 attempted to measure an impact of voter ID laws on
23 turnout, and so that article noted that the findings
24 of unpublished research were --- appeared to be very
25 sensitive to statistical design. So the research

1 question there was, are there problems with the
2 statistical research designs of the research that
3 existed at that time. So that was kind of a
4 technical paper about research design that was being
5 used to try to detect an impact of voter ID laws on
6 turnout.

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

10 A. The basic conclusions were that the statistical
11 tools and the data that we have, we as meaning
12 political scientists, that we have, that we use to
13 study things like the impact of rules on behavior on
14 turnout, that they were not --- at point they were
15 not really sufficient to detect something that might
16 be considered a marginal impact. So marginal meaning
17 one, two, three percent, say suppressive effect of
18 one particular rule, that the data that we typically
19 use and the tools were not kind of up to the job at
20 that point and that we recommended instead that what
21 researchers should look at at this point were survey
22 data on --- that attempted to measure how many people
23 don't have the ID. That that would be more useful to
24 policymakers than the kind of statistical studies
25 that were just beginning to be done, given the

1 newness of these laws and the problems with the kinds
2 of data that we use, which in this case it referred
3 to the current population survey data.

4 Q. Then I'd like you to go to the first item under
5 books, The Myth of Voter Fraud. Can you describe to
6 us that book?

7 A. Yes, that book is I guess you would say the
8 culmination of the research that I had done beginning
9 after the 2000 presidential election. So it
10 reflected almost ten years of research and
11 incorporated the findings and the work from the other
12 studies you've asked me about. And that book,
13 therefore, looks at, again, the question of the
14 incidence of voter fraud. There really are sort of
15 two parts, the incidence of voter fraud and the
16 measurement of that, and then an explanation of the
17 uses of voter fraud allegations and why those
18 allegations have merit --- not merit, but why they
19 have influence in the public policy debate on
20 election reform.

21 Q. Now, the book was published by the Cornell
22 University Press. Is there something significant
23 about the fact that it was published by Cornell
24 University?

25 A. Well, as academics we strive to publish in

1 university presses because there's a peer-review
2 process involved. So a book is peer-reviewed before
3 it's accepted for publication. And there's also ---
4 in this case Cornell has an internal peer-review
5 board that also reviewed the peer-reviews that came
6 in. So it's a mark of quality of the book in the
7 academic community when it's published by a
8 university press.

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

10 A. Exactly.

11 Q. Now, have you also provided testimony on the
12 issue of voter fraud?

13 A. Yes.

14 Q. And if we could look in your --- one of the ---
15 I'm now looking at your report and one of the cases
16 that you have referred to is Jones versus Deininger.
17 Can you just describe for the Court what your
18 involvement with the case Jones --- well, what the
19 case is and what your involvement is?

20 JUDGE SIMPSON:

21 What page are you looking at?

22 ATTORNEY CLARKE:

23 Your Honor, I am looking at the report
24 which I can mark right now.

25 (Petitioners' Exhibit 50 marked for

1 identification.)

2 JUDGE SIMPSON:

3 And what page are we looking at?

4 ATTORNEY CLARKE:

5 On page one of your report --- so for
6 the record, we've just marked as Exhibit 50 an expert
7 report prepared by Doctor Minnite.

8 BY ATTORNEY CLARKE:

9 Q. On page one of your report, Doctor Minnite, you
10 refer to testimony that you've provided --- or that
11 you provided in the case Jones versus Deininger. Do
12 you see that?

13 A. Yes.

14 Q. And what was the issue in Jones versus
15 Deininger?

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

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

19 A. Yes.

20 Q. Now, why is that not on your CV?

21 A. I didn't put it there because I haven't actually
22 testified at the hearing. I provided the expert
23 report and there was a little bit of confusion on my
24 part about whether I should put it on or not. And so
25 being aware of all of the kinds of inflated things

1 people sometimes put on their CVs, I want to be very
2 cautious. So I didn't actually list it because I
3 haven't testified in person, but I have provided the
4 expert report.

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

7 A. It was a question again about the incidence of
8 voter fraud.

9 Q. In a particular area?

10 A. Well, it incorporated the findings from my book,
11 as much of this report does, and it also highlighted
12 one of the case studies in the book where I did, I
13 guess you would say, extra research on voter fraud in
14 Milwaukee and Wisconsin. So it was talking about
15 Wisconsin specifically that way.

16 Q. Now, had you also been qualified --- you were
17 qualified as an expert in a case, the Democratic
18 National Committee versus the Republican National
19 Committee?

20 A. Yes.

21 Q. And I will just point you to page one of your
22 report, paragraph one. What was the issue in that
23 case?

24 A. The issue in that case was a consent agreement
25 between the Democratic party and the Republican party

1 here, and that is overseen by federal court in New
2 Jersey. And the Republican party went into court to
3 ask to be released of that consent decree, so that
4 was the litigation.

5 Q. What was the nature of your testimony in that
6 case?

7 A. Well, one of the claims that was being made by
8 the Republican party was that they needed to have
9 poll watchers at the poles to observe for fraud. So
10 the question to me was, is that a reasonable concern,
11 what does your research on voter fraud say about the
12 incidence of voter fraud.

13 Q. And for that testimony did you do additional
14 research or did you draw on the research that you had
15 already done?

16 A. It was all drawn on the research that I had
17 already done.

18 Q. And then you also testified in a case called
19 ACORN versus Bysiewicz?

20 A. Bysiewicz (corrects pronunciation).

21 Q. Bysiewicz. And that again is testimony that's
22 referred to on page one of your report. What was the
23 issue in that case?

24 A. The issue in that case was that Plaintiffs were
25 suing the State of Connecticut over their voter

1 registration deadline cutoff, which when the trial
2 began was 15 days. And they were arguing violations
3 of equal protection with that deadline. And so the
4 case --- the question to me again was around the
5 incidence of voter fraud, because the argument was
6 that the deadline was necessary so that election
7 workers could check all the records and so forth and
8 they had to prevent fraud. They needed the deadline
9 to prevent fraud, so again, the question was what
10 does the research say about the incidence of voter
11 fraud.

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

13 A. Yes.

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

17 JUDGE SIMPSON:

18 Are we on the CV now?

19 ATTORNEY CLARKE:

20 Yes.

21 JUDGE SIMPSON:

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

23 ATTORNEY CLARKE:

24 Sorry, Your Honor. We are on page
25 eight. If you could keep scrolling down. Okay.

1 BY ATTORNEY CLARKE:

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

3 But anyway, at the top of page nine we have a
4 reference to U.S. Senate Committee on Rules and
5 Administration?

6 A. Yes.

7 Q. What was the nature of the testimony that you
8 gave before the Senate?

9 A. Well, that item there refers to written
10 testimony. So in that case I submitted only written
11 testimony. I didn't appear before the Senate
12 Committee. And the nature, again, was the question
13 of voter fraud and the uses of voter fraud
14 allegations to suppress voting.

15 Q. And did you do additional research to prepare
16 that testimony?

17 A. No. I mean, it was all based on again the
18 research I was doing and continuing to do that
19 resulted in the publication of my book.

20 Q. And immediately under the reference to the
21 Senate testimony there's a reference to House
22 testimony --- testimony before a committee of the
23 House of Representatives. What was the nature of
24 that testimony?

25 A. That testimony was very similar to the testimony

1 before the Senate committee, so it was on the same
2 question, same subject and drawing on the same
3 materials. In that case I did testify in person in
4 front of that subcommittee.

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

7 A. Yes.

8 Q. And are there any courses that you teach that
9 incorporate the subject matter of the research that
10 you've done on voter fraud?

11 A. Yes, for a number of years I taught a senior
12 thesis writing seminar, which was a two semester
13 seminar for seniors in political science, and I used
14 the academic debates on voter fraud in the 19th
15 century to try to teach the students about what an
16 academic debate is, because it's particularly useful
17 in the way that it unfolded in the journals and in
18 the materials that academics produced back and forth
19 about the question of voter fraud. So we use that
20 and they read a lot of --- a lot --- they read a
21 number of articles and excerpts from books about that
22 debate.

23 Q. I'd like to ask you about one more item on your
24 CV, which is page ten, under consultantships.
25 There's a reference to the New York City Charter

1 Commission Revision Commission. Now, were you
2 invited to testify before the Charter Revision
3 Commission?

4 A. Yes.

5 Q. And could you explain what that was?

6 A. Yes, Mayor Bloomberg convened that commission to
7 look at features of the city charter. Some of them
8 dealt with elections, and the commission asked me to
9 prepare a white paper report on how to think about
10 voter participation and how to think about the
11 connection between the rules that organize and
12 regulate elections and voter participation.

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

16 A. Well, in general, they bear very much on voter
17 participation. So we could summarize the history of
18 struggles for the right to vote in terms of changing
19 the rules that make it easier to provide wide access
20 to the ballot.

21 Q. And when you were providing information to the
22 commission, were there types of rules that prevented
23 people from voting?

24 A. Well, Mayor Bloomberg had a particular interest
25 in non-partisan elections, so some of what I

1 discussed in that paper dealt with that. So
2 non-partisan elections really again --- you can think
3 of a set of rules that organize how candidates are
4 presented to voters, what kinds of choices they have,
5 what kinds of mobilizing vehicles might be involved
6 in organizing voters into the electorate under
7 non-partisan elections versus partisan elections.

8 Q. And did you reach any general conclusions in
9 that paper about the nature of administrative hurdles
10 and the affect of administrative hurdles on people's
11 participation in the election?

12 A. Yes, the framework that is accepted I think is
13 probably a consensus among scholars, for looking at
14 the impact of rules on turnout reflects a kind of
15 cross benefit approach. And so when you say hurdles,
16 we would think of them in terms of cost to voters,
17 things that voters have to do in order to participate
18 in elections. And given that generally
19 qualifications are simple, to be a citizen you have
20 to reside where you say you reside, you have to be 18
21 years old and so forth, the rules then --- the
22 bureaucratic rules for administering elections can
23 get in the way of people being able to exercise their
24 vote. So that's the framework that I have in all of
25 my work and it was also in this paper. Although this

1 paper for the Charter Revision Commission wasn't
2 about --- specifically about voter fraud, but it was
3 about electoral rules and how to think about how
4 rules actually channel voting.

5 Q. And just so I understand, if there is --- was it
6 your framework that the more administrative hurdles
7 you have the more voter participation is going to be
8 reduced?

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

20 ATTORNEY CLARKE:

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

24 JUDGE SIMPSON:

25 Do you have any questions on voir dire?

1 ATTORNEY CAWLEY:

2 I have no questions as to the expertise
3 of the witness.

4 JUDGE SIMPSON:

5 You may express an opinion.

6 ATTORNEY CAWLEY:

7 I do have an objection to the
8 testimony, however, based on the stipulation that is
9 before the Court that the existence of voter fraud in
10 Pennsylvania is not a factual matter in dispute and
11 is, therefore, irrelevant.

12 JUDGE SIMPSON:

13 Your objection --- your relevance
14 objection is overruled. Please proceed.

15 DIRECT EXAMINATION

16 BY ATTORNEY CLARKE:

17 Q. Doctor Minnite, what prompted you to begin to do
18 the research into the question of the incidence of
19 voter fraud?

20 A. Well, I can distinctly remember what prompted
21 me. I was teaching Introduction to American
22 Government to my students, my college students, when
23 the 2000 election occurred and that was an
24 opportunity to look at what some people might call
25 the sausage making process of election

1 administration. And we were just simply fascinated
2 by what was revealed about election administration
3 and about also the court treatments and proceedings
4 of that case. And after that case, of course, there
5 was a move in Congress to do something about the
6 problems that we had seen in Florida, and I followed
7 that very closely and watched how it turned away from
8 what seemed to be the problems of election
9 administration.

10 And so I began the research on why reforms that
11 would make it easier to vote have been knocked down
12 with allegations about voter fraud. And so I
13 assumed there was research on voter fraud and the
14 more that I looked into it the more that I
15 discovered, in fact, there were no academic
16 treatments of the question of voter fraud in
17 American elections today, in contemporary elections.
18 I mentioned the 19th century research, but there was
19 nothing. So it became a subject of great interest
20 to me for that reason. I didn't understand why no
21 one had looked at it and yet why it had so much
22 salience in these debates over election reform.

23 Q. And when you say that in 2000 instead of
24 focusing on administration of elections people turned
25 away from that, what do you mean? What was it about

1 the fact that people turned away from election
2 administrations that peaked your interest?

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

24 But instead the Justice Department began an
25 initiative to look at voter fraud and they said

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

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

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

24 Q. And let's talk about the data sources that you
25 used. And we're kind of going to walk through this

1 chronologically because your publications added more
2 and more research as you went along culminating in
3 your book. So what I'd like to do is start with the
4 data sources that you used for your initial
5 publications in 2003.

6 A. Well, I'm trying to be a good academic. As I
7 said, I reviewed all of the academic literature I
8 could find on this. And finding nothing really
9 useful for my research question I then began to look
10 into data sets and I have some facility of the
11 quantitative data. I know a lot about census data,
12 for example, and court data and so forth. And I
13 couldn't find any data sets, criminal justice data
14 sets that I would be familiar with that had records
15 of cases of voter fraud, so, you know, not finding
16 anything --- and not finding anything, in that
17 respect.

18 So I began with reviews of news reports and
19 there's an approach in the social sciences called
20 event analysis or event history analysis, which is
21 primarily based on news reports of an event, and we
22 do that when we don't have the kind of other data
23 that we might think would be better and where we
24 think that the event would be newsworthy. In other
25 words, there's a reason to believe it would be in

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

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

13 A. Well, for the Securing the Vote report, which is
14 really the first report I did, there I did it in 12
15 states. I selected 12 states that represented all of
16 the regions of the United States including
17 Pennsylvania was one of those states. And I searched
18 from the period 1992 to 2002 and I surfaced, I think
19 it was --- I don't remember because for six states it
20 was --- I remember it was 4,000 articles that I
21 looked at, but this was bigger.

22 So I looked at those, you know, the news reports
23 for those states. But I did do other kinds of
24 searches on national news databases. I also
25 searched the LexisNexis databases for the court

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

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

7 A. Yes. You mean for that report?

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

9 A. Yes, so the news reports would point to some
10 cases that seemed to be salient that would --- you
11 know, they look like bigger cases, and for that
12 report, I selected what I thought were the biggest,
13 worst cases of election fraud. And I should point
14 out and I think probably will talk about this later,
15 but in this report I hadn't fully worked out my
16 definition of voter fraud. I was looking more
17 broadly at what I would call election fraud.

18 So in that case I looked at several cases of
19 what I think from that review of that time period
20 were the worst cases of kind of election fraud, and
21 that included a 1997 primary in Miami for a mayor's
22 race. It included the 2000 presidential election in
23 Saint Louis. It included a congressional race in
24 Orange County in California in 1996. So those were
25 ones where --- that really stood out as cases that

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

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

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

25 And then I also had --- I looked at --- it's not

1 database, maybe I'll wait until you ask me more
2 about the other sources.

3 Q. Okay.

4 A. That was the primary quantitative database.

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

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

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

13 A. Well, this is a table reporting just one year,
14 fiscal --- federal fiscal year 2005. So in my book I
15 report a trend line actually, but this one is just
16 capturing what was the most recent year I had at the
17 time when I was doing this work, federal fiscal year
18 2005.

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

22 A. Yes.

23 Q. That related to election fraud?

24 A. Yes.

25 Q. And let's go for a minute now to your definition

1 of election fraud. Why did you think it was
2 important to distinguish voter fraud from other kinds
3 of election fraud?

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

1 those actors and think about what part of the process
2 they could corrupt.

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

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

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

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

1 ballot box stuffing is about adding ballots to the
2 count. Other issues might be ---.

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

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

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

18 A. Right.

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

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

23 Q. And going back to the chart, which is on page
24 17, is this the number of election fraud violations
25 an example of why it's important to distinguish

1 between fraud by voters and --- where voters have
2 access as compared to fraud where other participants
3 in the process have access?

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

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

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

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

21 A. Yes. As I mentioned, I believe it was in March
22 of 2001 the U.S. --- the Attorney General announced
23 in a press conference that the Justice Department was
24 going to create what's called the Ballot Access and
25 Voting Integrity Initiative at the Justice

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

16 Q. Okay. And then as a result of the DOJ's Ballot
17 Access and Voter Integrity Initiative, were there
18 reports then issued about how many instances of voter
19 fraud they actually found after the training?

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

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

6 Q. But you ultimately obtained it?

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

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

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

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

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

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

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

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

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

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

21 A. That's right.

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

25 A. Well, I actually investigated all 95 of those

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

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

18 A. Yes.

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

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

1 Q. Okay.

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

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

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

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

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

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

5 A. That's right.

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

7 A. Yes.

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

10 A. Yes.

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

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

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

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

13 A. Yes.

14 Q. And they used their own names?

15 A. Yes.

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

18 A. Yes.

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

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

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

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

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

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

22 A. No.

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

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

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

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

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

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

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

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

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

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

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

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

1 allegations about voter fraud. It was very much in
2 the news. There had been elections where there were
3 problems, and so I went to these places and talked to
4 as many people as I could and so that included
5 Milwaukee looking at the 2004 election. It included
6 Seattle, Washington State where there was a contested
7 gubernatorial election in 2004 and allegations of
8 voter fraud had been made. It included the 2000
9 presidential election in Saint Louis. I went to
10 Saint Louis and I interviewed the U.S. Attorney in
11 Wisconsin. I interviewed many lawyers who
12 represented voters. I interviewed two voters in
13 Milwaukee. I interviewed a Congressman. I
14 interviewed advocates who were working on voter
15 registration drives. I interviewed lawyers, I think
16 I mentioned.

17 So that was another source of data and
18 information. Also, I interviewed the head --- the
19 executive director of the Milwaukee Board of
20 Elections for a very long time because that was a
21 very problematic election with respect to election
22 administration and I wanted to understand how these
23 what you might call irregularities happened. What
24 happened? How did it happen? And so that was very
25 useful to get that perspective as well.

1 Q. And in general, what were the irregularities,
2 what did you determine were the cause of the
3 irregularities that you discussed in Milwaukee?

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

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

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

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

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

5 A. I think so.

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

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

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

15 A. Yes.

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

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

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

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

1 been advanced?

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

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

19 A. That's correct.

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

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

1 discount a way of looking at crime that we accept for
2 other kinds of crime. That is to say that the law
3 enforcement effort against it that, in a sense,
4 produces the data of non-fraud, not --- you know,
5 fraud not happening, is somehow discounted because
6 it's claimed voter fraud is some kind of special
7 crime that is meant to be concealed as if all crime
8 isn't meant to be concealed. All crime is meant to
9 be concealed, but we find it, we investigate it, we
10 prosecute it, and we use data on crime rates to get a
11 sense of the magnitude of the problem.

12 So every way I looked at this --- and I do have
13 a kind of legalistic definition of voter fraud,
14 because I include that issue of intent. And that is
15 consistent with the way fraud as a concept is dealt
16 with in American law. Every way I looked at it, I
17 just couldn't find the kind of evidence of it that
18 said to me this is a problem that we should be
19 legislating against, especially --- and it was my
20 hope that there would be some, you know, rational
21 treatment of the kinds of problems we have with
22 election administration, and that the focus would be
23 on the right problems and not on this one.

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

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

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

1 was dealt with, in that he had to do some community
2 service. He had to give a speech to his class about
3 what he did.

4 Now, that was a case where he knew he wasn't
5 allowed to do that and he attempted to impersonate
6 his father. So I would call that a case of voter
7 fraud for that reason.

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

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

17 A. Yes.

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

21 A. Yes. I used, again, the database from the
22 Administrative Office of U.S. Courts ---

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

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

25 Q. --- page 17 ---

1 A. Yes.

2 Q. --- of your report?

3 A. Uh-huh (yes).

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

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

23 So I looked at the kinds of --- I guess we might
24 call in a way sort of white collar fraud that
25 involved committing an act that you might commit if

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

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

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

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

12 A. That's right.

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

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

1 have to believe that there was a major effort on the
2 part of the U.S. Justice Department to find it. So
3 some people say, well, law enforcement statistics
4 should be discounted because prosecutors don't try to
5 find it, they don't look for it, they don't prosecute
6 it, they don't go after it. And of course, that
7 could be the case in some cases.

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

11 A. Exactly, yes.

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

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

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

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

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

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

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

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

19 A. The only thing it would prevent is
20 impersonation.

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

23 A. Well, I do discuss it in --- yes, in my
24 research.

25 Q. So ---.

1 A. It's a form of what you might call individual
2 fraud versus, say, organized fraud involving
3 conspiracies of election officials and so forth.

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

6 A. Yes.

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

11 A. Yes.

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

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

18 Q. And what is the nature of the information that
19 is put out about voter fraud?

20 A. Well, allegations could be made that simply are
21 not true. And I can give you an example from my
22 book, and it's an example from a book called Stealing
23 Elections written by John Fund that was released just
24 before the 2004 election. And in that book, he
25 states that at least eight of the 9/11 hijackers

1 could have been registered to vote. And this is a
2 person who was, at the time, a columnist for The Wall
3 Street Journal and wrote a lot about voter fraud and
4 helped to create the impression that it was a big,
5 big problem.

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

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

1 Virginia or Florida. We contacted the state
2 elections people in Virginia. They couldn't confirm
3 it either.

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

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

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

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

18 A. Oh, yes. That's the nature of the beast,
19 because to make an allegation gets the attention of
20 the media. To sit down and try to investigate it, I
21 can tell you, is very tedious. It's very difficult.
22 It takes a very long time to find out exactly what
23 happened. And when the answer is, well, the election
24 workers, you know, screwed up, they made a mistake,
25 that does not make it in to the media, so you're left

1 hanging with these allegations where there's no ---
2 you know, there's no follow-up. And that's, I think,
3 just the nature of the way these stories sort of
4 play, have played, in the press. It's why I could do
5 the original analysis I did of my event history
6 analysis by looking for mentions of voter fraud.
7 It's much harder to take these cases and track them.
8 I did that again. It's in the book with a report
9 that was put out by something called the American
10 Center for Voting Rights that claimed to be this
11 complete record of all this voter fraud in the 2004
12 election. And again, it took many months, many calls
13 to election officials, a lot of research looking into
14 court cases and, you know, talking to lawyers and so
15 forth to actually run down every single allegation.

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

1 there's election cheating, election fraud and people
2 kind of shake their head and, you know ---. But
3 they don't actually look at the data or they're not
4 able to do the kind of work that I, in my craziness,
5 did.

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

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

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

23 A. Yes.

24 Q. And what facts did you consider important in
25 Pennsylvania?

1 A. Well, I was given documents related to this
2 litigation. For example, the stipulation by the
3 state regarding that they don't know of any cases of
4 voter fraud and so forth.

5 ATTORNEY CLARKE:

6 What was the exhibit number, the trial
7 exhibit number? Would you put 15 up?

8 BY ATTORNEY CLARKE:

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

11 A. Yes.

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

14 A. What was important was that when I did my public
15 records request to Attorneys General and Secretaries
16 of State, I often got back letters that said
17 something like this that --- where they said we have
18 no investigation, there's no prosecutions. And these
19 were the chief law enforcement officers of the state
20 or the chief elections officials of the state saying
21 this. And I took that at its face value, that they
22 were in a position to know and that they were putting
23 in writing that they didn't have any cases of voter
24 fraud. So that was significant to me for that
25 reason.

1 Q. Okay. And in addition to the concessions in
2 this stipulation, were there other pieces of
3 information that you felt were important in
4 considering whether there is in-person voter fraud in
5 Pennsylvania?

6 A. Yes. I also reviewed a statement --- I believe
7 it is on the website of the County Commissioners
8 Association of Pennsylvania.

9 Q. Could you just stop for one second?

10 A. Sure.

11 ATTORNEY CLARKE:

12 I'm marking as Exhibit 51, a document
13 from the County Commissioners Association of
14 Pennsylvania.

15 (Petitioners' Exhibit 51 marked for
16 identification.)

17 BY ATTORNEY CLARKE:

18 Q. Is Exhibit 51 the document that you were just
19 beginning to testify about?

20 A. Yes.

21 Q. And what was it about the document, Exhibit 51,
22 that you felt was significant?

23 A. I was drawn to paragraph four.

24 Q. Okay. That's the one that begins administration
25 of elections generally?

1 A. Yes.

2 Q. And what was it about that paragraph that you
3 felt was significant?

4 A. Well, this, again, was an authoritative
5 statement to me by someone who I believe should know
6 that, where he says but we find no evidence
7 substantiated by a search of case records and
8 anecdotal information from the counties that it is an
9 issue, referring to fraudulent voting.

10 Q. Okay. And who is the author of this document?
11 I mean, what organization was the author?

12 A. This is from Douglas E. Hill, Executive
13 Director, County Commissioners Association of
14 Pennsylvania.

15 Q. And you thought that the fact he was from the
16 County Commissioners Association was important?

17 A. Yes.

18 Q. And what do you understand the County
19 Commissioners Association to be?

20 A. That these are the people who essentially
21 administer elections at the local level.

22 Q. Okay. And in reaching your conclusions about
23 Pennsylvania, which we'll get to, are there any other
24 pieces of information that you considered?

25 A. Yes. You shared with me the result of your

1 subpoenaed records of each county District Attorney
2 in Pennsylvania. And as I understand it, those
3 requests that you made to those District Attorneys
4 were modeled on the letter that I sent because I gave
5 that to you, the letter that I sent when I did my
6 mailing to every county District Attorney. And so
7 you shared the results of --- of the responses to
8 your request for information about violations of
9 various election laws related to voting fraud in
10 Pennsylvania from the county DAs.

11 Q. And so you relied --- we sent subpoenas to all
12 of the county DAs which, using your language, asked
13 for all records of election fraud of different types?

14 A. Right. Citing the statutes, violations of
15 various statutes.

16 Q. And the results of that were --- what were the
17 result of that?

18 A. The results of that were at the time when I
19 wrote this report, I believe you had 37 or 38
20 responses, and none of them were reporting cases of
21 voting fraud.

22 Q. Now, was there any other information from
23 Pennsylvania that you relied on to reach your
24 conclusions about the incidence of the voter fraud in
25 Pennsylvania?

1 A. Not for this report. As I mentioned, I had
2 included Pennsylvania in my 2003 report when I did
3 the news analysis.

4 Q. And as a result of the research that you've done
5 for your book and then also the research specifically
6 for this case, have you reached an opinion about the
7 prevalence of in-person voter fraud in Pennsylvania?

8 A. Well, I feel pretty confident that this --- that
9 I would --- it would be consistent with my findings
10 that it's exceeding rare in Pennsylvania.

11 Q. And do you hold that opinion with a reasonable
12 degree of certainty?

13 A. Yes.

14 Q. And I'm sorry. The opinion is again?

15 A. That voter fraud is exceedingly rare in
16 Pennsylvania.

17 Q. Now, I asked you earlier about ways in which
18 supporters of voter ID laws articulate or justify the
19 law, and you described for us a process. Have you
20 seen a similar process in Pennsylvania about the
21 justifications for photo ID laws?

22 A. Well, I see that in the --- I infer that from
23 the stipulation that --- because there is no evidence
24 of voter fraud in Pennsylvania, and officials agreed
25 to that, that the purpose of the law is more of a

1 general election integrity measure.

2 Q. Okay. And as we said before, where a --- well,
3 strike that.

4 Now, we also talked about sort of this use of
5 misinformation, disinformation, lack of information
6 as a way to justify voter fraud. And what I'd like
7 to do is show you an exhibit that was marked
8 yesterday. That was Exhibit 46.

9 ATTORNEY CLARKE:

10 Your Honor, would you like another
11 copy?

12 JUDGE SIMPSON:

13 No. I have it here. I'll take a
14 minute to find it.

15 ATTORNEY CLARKE:

16 Okay.

17 JUDGE SIMPSON:

18 Go ahead.

19 BY ATTORNEY CLARKE:

20 Q. Doctor Minnite, have you seen Exhibit 46 before?

21 A. Yes.

22 Q. And Exhibit 46 is an Interrogatory answer that
23 is an answer to a question that we posed to the
24 Respondents. And the question was what is the
25 justification for the photo ID law. And what I want

1 to do is ask you to go through the specific averments
2 in the answer to Interrogatory One, and ask you to
3 show us what --- we'll ask you specific questions.
4 So when we get to the actual answer, it begins with
5 Respondents answer that requiring a photo ID improves
6 the security and integrity of elections in
7 Pennsylvania. Do you see that?

8 A. Yes.

9 Q. And is that consistent with other places you've
10 seen that in the absence of fraud, there is a
11 justification advanced about the security and
12 integrity of elections?

13 A. Yes.

14 Q. And does that --- what have you observed when
15 that argument is made?

16 A. Well, people like to talk about how you need an
17 ID to buy a beer and you need an ID to get on a plane
18 and so forth, as if those things are the same as
19 voting rights. So I found that a very misleading
20 argument for the public to understand that. In other
21 words, we have to degrade voting rights to the point
22 of buying a beer in order to justify a voter ID
23 requirement.

24 Q. I really have a question more about your
25 research and that is where you thought --- when

1 you're making arguments about security and integrity,
2 does this follow a pattern that you've seen about
3 talking about voter fraud in a different way?

4 A. Yes. I think there's a move away from the
5 specific issue of voter fraud and the lack of
6 empirical evidence of it to a more general
7 discussion.

8 Q. And is this another way of talking about voter
9 fraud?

10 A. Yes, because ultimately, a voter ID only
11 prevents voter impersonation. So it's --- what I say
12 in the report, it's kind a veiled anti-voter fraud
13 argument to simply say we're concerned about election
14 integrity and, therefore, we need a voter ID. It's a
15 little bit of a slight of hand, because all --- if
16 we're concerned about election integrity, for
17 example, I would argue we should be spending a lot of
18 time and money figuring out why people's votes don't
19 get counted when there are administrative rules,
20 because that's bigger problem that impacts the
21 integrity of elections. You can't have integrity ---
22 in a democracy, you can't have integrity of elections
23 if everybody who wants to vote doesn't get their vote
24 counted.

25 Q. Okay. If you go to the next sentence,

1 Respondents are aware of reports indicating that
2 lists of registered voters contain the names of
3 persons who are deceased, no longer residents of
4 Pennsylvania or no longer residents of the location
5 at what their names --- at which their names appear
6 on list of registered voters. Is this justification
7 for the law consistent with the pattern that you've
8 seen?

9 A. Yes. To point to what may be errors in voter
10 registration lists, that actually may have little to
11 no bearing on actual commission of voter fraud is
12 then to create the impression that people are going
13 to take advantage of some of these problems and
14 commit voter fraud.

15 Q. So when you talk about lists of registration
16 lists, it doesn't have anything to do with voter
17 fraud? I'm overstating it.

18 A. Yeah. I mean, we want accurate voter
19 registration lists, so I'm completely in favor of
20 totally accurate voter registration lists. But there
21 are a lot of reasons why there could be names on
22 voter registration lists of people who recently are
23 deceased, for example, or who recently moved because
24 we don't have live computer systems and, you know, we
25 don't have tracking of individuals that requires them

1 to report to authorities when they move in to a new
2 place or, you know, their family has to notify
3 election officials within 24 hours of their death to
4 get them off the list.

5 So there are reasons why there could be some
6 inaccuracies on voter registration lists. And, in
7 fact, federal law, the National Voter Registration
8 Act controls when you can purge names from the list.
9 So the simple fact that there are some names on the
10 voter registration lists of people who may have been
11 recently deceased and they have yet to be removed to
12 me is not a surprising thing and it really doesn't,
13 again, bear so much on the question of whether
14 people are going to be motivated to commit voter
15 fraud that way.

16 Q. Okay. And then I have another --- the next
17 sentence is Respondents are aware of reports
18 indicating that votes have been cast in the name of
19 registered electors who are deceased, no longer
20 residing in Pennsylvania or who no longer reside in
21 the jurisdiction where the vote is cast. Do you see
22 that?

23 A. Yes.

24 Q. And is that kind of allegation of reports
25 consistent with the kind of justifications that

1 you've seen?

2 A. Yes.

3 Q. And does it tell you that there's in-person
4 voter fraud?

5 A. No.

6 Q. And does it tell you whether or not --- well,
7 would a photo ID law solve the problem that is raised
8 in that sentence?

9 A. Well, this refers to --- the reason I answer ---
10 I could answer so quickly is because I've seen this
11 so many times. And each time the explanation is
12 essentially human error has created this impression
13 that somebody who died cast a ballot. There is a
14 misrecording of the vote, there is a clerical error.
15 There have been a few cases, and I can cite to a few
16 cases, in Washington in which a few elderly, I think
17 it was four, elderly voters turned in the absentee
18 --- or the mail-in ballots, the absentee ballots, of
19 their very recently deceased partners of 50 years,
20 and you know, with the statement it was very
21 important to my wife that, you know, she cast her
22 ballot. And technically, of course, you can't do
23 that. You certainly can't send in the ballot for
24 someone else. But also the person had just died, so
25 in the records it would look like they died and then

1 they voted. So there are better explanations, much
2 better explanations, for this kind of allegation.
3 But here it is presented to create the impression
4 that that kind of problem, in fact, is voter fraud,
5 and it's very rare that it actually is. The much
6 better explanation, if you do the research on these
7 cases, is that it's a form of clerical error. And I
8 think here even in this case in the deposition that I
9 read of Mr. Harlow, there had been an investigation
10 of a handful of voters in Pennsylvania that looked
11 like this type of problem, a date of death and a date
12 of voting, it didn't match up right. And that upon
13 investigation by the counties, all of that was found
14 to be clerical error. So that is more the typical
15 outcome when you investigate this kind of problem.
16 That's the better explanation than dead people are
17 voting or that people are voting in the names of dead
18 people.

19 Q. You raised the issue of absentee ballots in ---
20 as your last example, and that's the last point I
21 want to get to you to --- with you. Have you looked
22 at the level of fraud in absentee ballots?

23 A. Across all of the research I've done, I have
24 certainly investigated cases of absentee ballot
25 fraud. I would say that I haven't had the same laser

1 focus on absentee ballot fraud as I have with what we
2 might be calling voter impersonation fraud, in terms
3 of counting things up, how many cases are there in
4 the same way. You would note, of course, that in the
5 data you showed before from the Ballot Access and
6 Voting Integrity Initiative, none of them --- none of
7 those cases of voters being convicted or pleading
8 guilty to fraud involved an absentee ballot. But in
9 all of this research, I have looked at cases of
10 absentee ballot fraud.

11 Q. And so you've actually found cases of absentee
12 ballot fraud?

13 A. Yes.

14 Q. And can you give us an example of absent ---
15 have there been absentee ballot fraud here in
16 Pennsylvania?

17 A. Well, I think there's a well-known case here in
18 Pennsylvania that resulted in litigation. And the
19 case is called Marks v. Stinson. And that was a case
20 of absentee ballot fraud scheme in Philadelphia. And
21 I believe it was a special Senate election in
22 Philadelphia.

23 Q. And do you know what happened in that case?

24 A. Well, I read the court records, I'd also looked
25 at news reports and I've read a few journal articles,

1 law journal articles, about it.

2 Q. And what happened in that case?

3 A. And in that --- that was essentially a case in
4 which voters were coerced into voting a certain way
5 through the mishandling, misuse and abuse of absentee
6 ballot laws by a candidate and his campaign workers,
7 who obtained these ballots in ways, I believe,
8 violated the law, who then coerced voters to vote a
9 particular way, who told voters don't date them and
10 so forth and turn them in. And there appeared to be
11 some collusion between, what I would call, election
12 officials in Philadelphia and the campaign. I don't
13 believe anyone was criminally prosecuted among the
14 election officials. But working together to,
15 essentially, abuse the absentee ballot rules and
16 coerce voters to turn their ballots over in favor of
17 this particular candidate.

18 Q. So this example of real fraud, would that have
19 been captured by the photo ID law in this case?

20 A. I don't believe it would.

21 ATTORNEY CLARKE:

22 I have no further questions.

23 JUDGE SIMPSON:

24 Who will cross examine?

25 ATTORNEY CAWLEY:

1 I will, Your Honor.

2 JUDGE SIMPSON:

3 Do you want to proceed or do you want
4 to break for lunch?

5 ATTORNEY CAWLEY:

6 I actually won't be that long.

7 JUDGE SIMPSON:

8 Okay. I notice people are sort of
9 nodding off in the courtroom.

10 ATTORNEY CAWLEY:

11 I'm more concerned about you, Your
12 Honor, if you would like to take a break.

13 A. As a college professor, I'm used to that,
14 so ---.

15 JUDGE SIMPSON:

16 When I see them nodding off, that makes
17 me feel drowsy. But let me just say in the
18 courtroom, don't do that. Stay alert. You know
19 what? Let's stand up for a second. Okay. Back to
20 work.

21 CROSS EXAMINATION

22 BY ATTORNEY CAWLEY:

23 Q. Hello.

24 A. Hello.

25 Q. You state in your report that there are certain

1 types of election-related fraud that has occurred
2 throughout the history of the country; right?

3 A. Yes.

4 Q. So you talk about politicians and, perhaps,
5 police packing in fraudulently-registered voters
6 where there's a hotly-contested election; right?

7 A. Yes. And I cite to two examples. And the most
8 recent of that one that I could find was Richard
9 Hatch's election in Gary, Indiana in 1966.

10 Q. Okay. And you cite on page 58 of your report to
11 buying votes and recycling voters; right?

12 A. Yes.

13 Q. And when you say recycling voters, do I
14 understand that correctly to mean that voters are
15 voting more than once?

16 A. In the 19th century, they were called repeaters.

17 Q. Okay. So basically shopped around to different
18 polling stations?

19 A. Yes. Well, that's the allegation. And I would
20 go back to my discussion before about the 19 --- the
21 literature on the 19th century. I'm willing to
22 believe it. Some scholars are still sort of debating
23 the extent of that kind of fraud even in the 19th
24 century, which I think we think of as, you know, many
25 corrupt elections at that time.

1 Q. Sure. And just to add one other example, I
2 believe from the same time period, paying opponents
3 to stay home from the polls.

4 A. Yes.

5 Q. Does that fall under that category?

6 A. Yes.

7 Q. Okay.

8 A. There was some research on that from the early
9 20th century, an article by Gary Cox and Morgan
10 Kousser in New York State.

11 Q. I understand your testimony is that those are
12 types of election-related conduct that a photo ID law
13 wouldn't apply to; right?

14 A. Well, I don't --- I mean, those are forms of
15 fraud that we don't see very much at all. But I
16 mean, in terms of the terminology, again I talk about
17 election fraud, I would include those sorts of ---
18 those types of fraud as election fraud because they
19 often involve the involvement of officials, whether
20 they were elected officials, politicians and so
21 forth, so people who had the power to create
22 conspiracies to organize people to do that.

23 Q. Right. Well, certainly, since you brought up
24 that point, somebody who's being taken around to a
25 number of polling places knows that they're doing

1 something illegally; right?

2 A. It may not always be the case.

3 Q. And somebody who accepts money not to vote, can
4 we assume that they're participating and they know
5 individually that that's improper?

6 A. Well, actually maybe it's a bit of an academic
7 issue. But the question of giving money to people to
8 vote or not vote raises some questions about whether
9 it's fraud at all, because people may have voted in a
10 particular way anyway or they may have stayed home
11 anyway, so to give them money to do something, we may
12 not actually be coercing them. So it's a little bit
13 hard to figure out what the voter's role is in that
14 situation.

15 Q. Well, with regard to the types of
16 election-related conduct that I just went over, you
17 don't dispute, do you, that a state has a legitimate
18 or an important interest in making sure that doesn't
19 happen?

20 A. No, I don't dispute that.

21 Q. Okay. I'd like to focus just on your background
22 for a moment. Your formal education, if I read your
23 CV correctly, does not include specific training in
24 election administration, does it?

25 A. I don't know what you mean by training.

1 Q. Well, did you get any degree or take courses
2 that were specifically geared toward election
3 administration?

4 A. No, actually, there are no degrees in election
5 administration.

6 Q. Okay.

7 A. And it's actually very interesting now that I'm
8 in a public policy department versus political
9 science department that that whole field of public
10 administration excludes election administration. And
11 I would also say that this interest in election
12 administration was stimulated by the election in
13 Florida in 2000 and it's kind of an emerging field
14 now. There are many more people, particularly in law
15 schools, who are finding a lot of interest in their
16 courses on election law and administration.

17 Q. I'll switch from the education aspect to your
18 employment history. Were you ever employed in
19 election administration?

20 A. No.

21 Q. Did you ever work as a poll worker?

22 A. No.

23 Q. Okay. So when we talk about just in-person
24 voter fraud meaning impersonating another voter, is
25 it fair to say that not all scholars agree with your

1 conclusions that voter IDs are unnecessary because
2 there's no voter fraud or very little voter fraud?

3 A. I don't know, you know, if I would say that
4 there's nobody who agrees with that full statement
5 about --- you know, each part of that statement, that
6 there is no voter fraud and, therefore, we don't need
7 IDs.

8 Q. Maybe I can break down the question then.

9 A. Okay.

10 Q. Are you aware of scholars who believe that
11 whatever the prevalence of voter fraud that photo ID
12 requirements are a good idea?

13 A. I've never had someone debate me on that issue.
14 I wouldn't doubt that there are some scholars who
15 might feel that way, but not based on their own work,
16 because I haven't seen any academic work that would
17 support that argument.

18 Q. Are you familiar with Professor Robert Pastor of
19 American University?

20 A. Yes.

21 Q. And he's with the --- he's the director of
22 Center for Democracy and Election Management at
23 American University?

24 A. Yes. Or he was.

25 Q. Are you familiar with his work on the

1 Carter-Baker Commission?

2 A. Yes.

3 Q. Have you read the Carter-Baker report, the
4 report of that commission?

5 A. Yes.

6 Q. Is it safe to say that that's among the
7 literature that's sort of required reading in the
8 field of voter fraud?

9 A. No.

10 Q. No? Will you take seriously somebody who
11 engaged in a debate with you on voter fraud who had
12 not read the Carter-Baker report?

13 A. Yes.

14 Q. Okay. And why do you say that?

15 A. That was a blue ribbon commission with a lot of
16 well-known people on it, and the scholarly work on it
17 was not in the depth that I put into my
18 investigation, so ---.

19 Q. So you're saying it included people who had not
20 done extensive research of the kind that you
21 described today?

22 A. They hadn't done really their own research.
23 They were reporting on some of the literature, so
24 bibliographies were produced of some literature, but
25 it wasn't always certainly focused on election fraud

1 because that really wasn't a major part of that
2 report. It was included, but, sorry, the commission
3 was looking more broadly of problems with elections.

4 Q. Why don't I show you so that in case you
5 disagree with me on some aspect of this, you can
6 point it out?

7 ATTORNEY CAWLEY:

8 And we'll just mark this as
9 Respondents' Five.

10 (Respondents' Exhibit Five marked for
11 identification.)

12 BY ATTORNEY CAWLEY:

13 Q. So take a moment. I know it's a big exhibit.
14 But if you've seen it before, you can use it to
15 refresh your memory.

16 A. Okay.

17 WITNESS REVIEWS EXHIBIT

18 BY ATTORNEY CAWLEY:

19 Q. Have you had a moment to look it over?

20 A. Yes. Do you want me to look at something
21 specific or ---?

22 Q. I wanted to wait until you had a ---

23 A. Okay.

24 Q. --- chance to look at it. So what you were
25 saying there, just the last thing you said was that

1 it contains different sections and not all of them
2 pertain to voter fraud; right?

3 A. Yes.

4 Q. Okay. So I would refer you specifically to page
5 18. And do you see where in the second paragraph on
6 the page it says, there is no evidence of extensive
7 fraud in U.S. elections or multiple voting but both
8 occur and it could affect the outcome of a close
9 election?

10 A. Yes.

11 Q. Do you disagree with that statement?

12 A. No, I don't. I don't disagree, but it's a very
13 hypothetical statement.

14 Q. Okay. And then I believe sort of switching the
15 focus, the next sentence says the electoral system
16 cannot inspire public confidence if no safeguards
17 exist to deter or detect fraud or to confirm the
18 identity of voters. Do you take issue with that
19 statement?

20 A. No.

21 Q. And finally in that same paragraph, photo IDs
22 currently are needed to board a plane, enter federal
23 buildings and cash a check. Voting is equally
24 important. Now, I would have a question about that
25 statement and how you feel about that, because you

1 just referred in your testimony to degrading voting
2 rights to the level of buying a beer. But so do you
3 take issue with this statement by the Carter-Baker
4 Commission?

5 A. Yes. I think it is what I was saying before, I
6 think it has kind of created a misunderstanding, a
7 public misunderstanding about voting rights and at
8 what point government can interfere with voting
9 rights. So we don't have a right to buy a beer. So
10 we think that we can regulate alcohol because it has
11 social impact, personal impact and so forth, but we
12 treat voting rights a little differently than that.

13 Q. But don't you read that statement possibly to
14 say that they're not degrading voting rights to the
15 level of beer, they're simply saying that if beer
16 requires a certain barrier to entry then voting
17 should have at least that barrier as well?

18 A. No, I think it's the other way around. So I
19 realize I'm working against kind of public
20 understanding of this, which is to make people think
21 it's the same thing. But it's not the same thing, so
22 if you keep saying --- you know, in public you keep
23 saying voting is the same thing as buying a beer,
24 people start to think about it that way. But, in
25 fact, when the question is where do you draw the line

1 for government regulation of a right, you have a
2 different set of questions and interests at play. So
3 we're not debating, you know, whether you can buy a
4 beer or not buy a beer with or without an ID. We've
5 already said, in a sense, the bar is low for
6 government here. Government can make you show an ID
7 to buy a beer. But when we're talking about voting
8 rights, the bar actually should be higher and we
9 should --- we have to take more into consideration
10 about how that regulation is actually going to affect
11 the exercise of that right. So I've always been
12 puzzled about that. I understand why it seems to
13 make sense, but I think if you think about it, it
14 actually isn't correct to make that analogy.

15 Q. On page two of your report, you indicate a
16 number of things that you reviewed in the course of
17 reaching your conclusions, and you include the
18 transcript of the Pennsylvania House State Government
19 Committee from March 21st, 2011; correct?

20 A. I'm just looking here.

21 Q. I believe it's the first item listed.

22 A. Oh, yes.

23 Q. So you reviewed the transcript of the
24 proceedings from that day?

25 A. Yes.

1 Q. So did you review the testimony of Hans von
2 Spakovsky?

3 A. Yes.

4 ATTORNEY CAWLEY:

5 And I realize that's a mouthful, so I
6 will provide the spelling of that name to our court
7 reporter at the conclusion today.

8 BY ATTORNEY CAWLEY:

9 Q. So Mr. von Spakovksy reaches a different
10 conclusion than you do, not only about the necessity
11 of voter ID, but also the prevalence of fraud?

12 A. Yes.

13 Q. Okay. And I judge from the look on your face
14 that you are familiar with Mr. von Spakovsky and his
15 work?

16 A. Yes. I certainly don't know him personally, but
17 I've read --- I think I've probably read everything
18 he's written regarding voter fraud.

19 Q. Okay. And you're aware that he is a former
20 Commissioner on the Federal Election Commission?

21 A. Not on the Federal Election Commission, I don't
22 think.

23 Q. Okay.

24 A. He's --- let me see. He was appointed, I
25 believe; right? But I don't remember whether his

1 appointment was actually --- his nomination was
2 actually confirmed. I don't recall.

3 Q. Okay. Do you recall what his testimony was that
4 day?

5 A. I recall that thinking that it was exactly what
6 he's been saying in other places. I don't know if I
7 could remember the details of his testimony here
8 without looking at it.

9 ATTORNEY CAWLEY:

10 I'll hand you what we can mark as
11 Respondents' Six.

12 (Respondents' Exhibit Six marked for
13 identification.)

14 BY ATTORNEY CAWLEY:

15 Q. Now, I'll refer you to the top of the second
16 page. The first page is a cover sheet, and the top
17 of the second page.

18 A. Uh-huh (yes).

19 Q. And do you see where he indicates that he was a
20 Commissioner for two years on the Federal Election
21 Commission?

22 A. Okay. Thank you for correcting that. I
23 couldn't remember which thing he was nominated to
24 that he didn't actually receive.

25 Q. And were you aware that he --- as he indicates

1 in that same paragraph, that he worked in elections
2 administrations in Atlanta and in Virginia?

3 A. I believe he was on the board there. I don't
4 think he was an election administrator.

5 Q. So are you familiar with the testimony that he
6 gave that day about incidents of voter fraud?

7 A. Well, as I said, I did read it. I mean, I did
8 read the transcript, and I didn't see anything that I
9 hadn't seen before in his writings.

10 Q. And you explained your disagreement with his
11 testimony before that House Committee in the same way
12 that you answered questions for Counsel today,
13 that ---?

14 A. Which is ---.

15 ATTORNEY CLARKE:

16 Objection.

17 JUDGE SIMPSON:

18 I'll sustain as to form. I don't
19 understand the question.

20 ATTORNEY CAWLEY:

21 Okay.

22 BY ATTORNEY CAWLEY:

23 Q. So the reasons why you disagree with his
24 description of the incidents in here is because there
25 are other explanations for them other than in-person

1 voter fraud?

2 A. Well, I would --- you know, I wouldn't --- I
3 would want to go through each --- we could go through
4 each one, if you want, and I could talk about what I
5 would object to. But in general, he has made claims
6 about voter fraud that upon investigation are not
7 correct. And, in fact, I've written a rebuttal to
8 one claim that he's made a lot about voter fraud in
9 Brooklyn in 1982 in a particular case that he tends
10 to cite a lot. So I did a lot of research to
11 investigate it and wrote kind of a rebuttal, not
12 published, but on widely-read election list. So I
13 don't want to give you a ---.

14 Q. That's okay.

15 A. Okay.

16 Q. I won't ask you about --- I'm not actually --- I
17 didn't intend to go through his testimony. I just
18 wanted to point out that he is someone in the field
19 who believes there is voter --- in-person voter
20 fraud; right?

21 A. No. He's not an academic.

22 Q. Okay. Do you ---?

23 A. And he doesn't do the kind of research that he
24 should do before making these sorts of claims. He's
25 not an academic. He's a lawyer. And he is employed

1 by the Heritage Foundation, so he works for a
2 foundation and he produces analyses for them. But he
3 has no standing as an academic. He's never produced
4 any academic research.

5 Q. Okay. I'll switch the focus of my questions,
6 rather than going through the particulars of his
7 report. I wanted to talk about some of the points
8 you made during your Direct Examination. First, you
9 relied in part on the stipulation of the parties in
10 this case; right?

11 A. Yes.

12 Q. And do you understand that this case is all
13 about an Act of the General Assembly; right?

14 A. Yes.

15 Q. So legislative creation?

16 A. Yes.

17 Q. And do you realize that none of the parties are
18 in the legislature?

19 A. Yes.

20 Q. And none of the parties to that stipulation
21 could speak for the people in the legislature; do you
22 understand that?

23 ATTORNEY CLARKE:

24 Objection. The stipulation says what
25 it says, including the fact that there is no ---

1 well, it says what it says.

2 ATTORNEY CAWLEY:

3 And the witness was asked on
4 Direct ---.

5 JUDGE SIMPSON:

6 The objection to the form or relevance,
7 those objections are overruled. So you may answer
8 the question.

9 A. Could you restate that question?

10 BY ATTORNEY CAWLEY:

11 Q. Sure. The last question was, do you understand
12 that the parties to this litigation and to this
13 stipulation are not speaking for members of the
14 legislature?

15 A. I don't know. I mean, if you're telling me
16 that, I believe you.

17 Q. I'll represent that.

18 A. I don't know exactly what the relationship is.

19 Q. Because we need your --- I need your
20 understanding of this. Okay. But you understand
21 that the people named as the parties, the Respondents
22 in this case, are not legislators?

23 A. Well, I thought the parties where the
24 Commonwealth of Pennsylvania, the Governor and the
25 Secretary of the Commonwealth.

1 Q. And did you assume in reaching your conclusions
2 based on the stipulation that that included the
3 legislature?

4 A. Well, it's the state government. I don't know
5 if I thought about whether the legislature was not a
6 part of the state government.

7 Q. Okay. And with regard to your analysis of the
8 Interrogatory responses, you don't know for sure that
9 when we have votes cast by, quote, unquote, deceased
10 voters that some or even many of them were not
11 attributable to voter impersonation, do you?

12 A. Well, I reported on what Mr. Harlow said about
13 the office's investigation of a list of names of
14 people who had been produced through a search for
15 potentially --- for those sorts of cases, people who
16 were deceased prior to a vote being cast in their
17 name. So I understood that to say that when those
18 things were investigated, that particular set of
19 names that were produced in this case, that they were
20 clerical errors. That's, I believe, what he said.
21 They were attributable.

22 Q. Okay. And you're referring specifically to the
23 instances identified by Mr. Harlow; right?

24 A. Yes.

25 Q. Okay. And you were --- but what you said about

1 the Interrogatory responses are that they're cast a
2 certain way when there's a more likely explanation?

3 A. Oh, I see. Yes.

4 Q. And that's what I'm asking you about.

5 A. Okay.

6 Q. And I'm not even saying that it's likely that
7 deceased voters are always attributable to voter
8 impersonation. But do we know for sure whether that
9 occurs or doesn't occur, that votes are cast on
10 behalf of somebody who's no longer with us?

11 A. No. We have a few cases of that, which I did
12 mention, cases from the 2004 gubernatorial election
13 in Washington, for example, which has to be the most
14 extensively studied election in history. There's a
15 whole room of documents on that. And there were ---
16 I believe, the Court found there four --- I think it
17 was four individuals, who essentially had turned in
18 the absentee ballot for their deceased spouse. So
19 that's a case of a person sending in a ballot for
20 someone who was deceased. So I recognize that there
21 could be some number. But the way that I do my work
22 and make inferences and reasonable --- try to draw
23 reasonable conclusions from the actual evidence that
24 I see. And I have seen many, many cases of an
25 allegation being made and then an investigation

1 looking and saying, oh, we realize. And if you think
2 about it, it's not unreasonable to expect there to be
3 some amount of human error in election
4 administration, because we have human error in
5 everything that we do. All administrative records
6 have --- reflect some kind of human error. For
7 example, in the --- which I cite in my report, errors
8 in the U.S. Postal Service database, errors in the
9 Social Security Death Index, which were actually
10 startling to me when I read the concern about the
11 number of people on average --- on an average basis
12 who are entered into the death index who are not
13 dead.

14 Q. That is startling.

15 A. So I don't mean to cast dispersions on very
16 hardworking government officials, but we're human and
17 we make --- and we all make these kinds of mistakes
18 and they're bound to be reflected in all
19 administrative records, including election records.
20 We want them not to have any, but they're likely to
21 have some. And that's kind of a suspicion about
22 voter fraud that very often turns out to be clerical
23 error.

24 Q. And you're sort of --- that's a good lead into
25 another topic that I wanted to ask you about, which

1 is just simply the limits of a database, such as the
2 voter registration database in Pennsylvania. Would
3 you agree or do you understand that in Pennsylvania
4 there's no way to tell from the state's database
5 whether there are Pennsylvania voters who are
6 registering in other states?

7 A. I haven't explicitly investigated the mechanisms
8 of the state's voter registration database, so I
9 don't want to present myself as an expert on the
10 state database in Pennsylvania. I don't know. I
11 haven't done that. That might have been something if
12 there had been more time, I have been able to
13 investigate a little bit better.

14 Q. Okay. You do say in your report at page 11,
15 paragraph 23 --- first of all, the heading is voter
16 fraud is rare.

17 A. Let me see. Did you say 23?

18 Q. It's page 11, paragraph 23.

19 A. Okay. Yes.

20 Q. And I think you've made this point clear, but in
21 case it was only clear in my mind, you're not saying
22 in-person voter fraud never ever happens, you're just
23 saying it's rare; right?

24 A. Yes, that's correct.

25 Q. And in this paragraph, you talk about how

1 there's no officially compiled national or statewide
2 statistics that are reliably reporting incidents of
3 voter fraud?

4 A. That's correct.

5 Q. And that's sort of what I was getting into, is
6 that a state, such as Pennsylvania, doesn't
7 necessarily know which Pennsylvanians are also
8 registered in a state. Are you saying that's
9 something that you haven't encountered in your
10 research either here or in other states?

11 A. Well, for the most part right now, we still
12 have, in a sense, 50 electoral systems reflecting the
13 50 states. So we have sort of 50 administrative
14 systems, as well. That's a big improvement over
15 where it was ten years ago. And I think, in fact,
16 Pennsylvania is a state that had a kind of
17 decentralized election administration. If you look
18 at all the states and you kind of put them on a
19 range, Pennsylvania would be on the side of sort of
20 decentralized election administration. So it's an
21 improvement to have the state databases pulled
22 together, you know, with the help of tax dollars.

23 But what you're asking me is it wouldn't
24 necessarily raise a concern about voter fraud to
25 know that a person was showing up on two state

1 databases. And I can give you one example, which is
2 I moved recently from New York to New Jersey, and
3 being a good citizen, I sent in a cancellation to my
4 voter registration in New York City. I think I'm
5 still registered there. I attempted to register in
6 New Jersey when I changed my driver's license. And
7 you know, three, four weeks later, I'm still not
8 registered here. That's little concerning to me.
9 But nevertheless, there could be a point in time in
10 which I'm showing up on both states' voter
11 registration databases because one side hasn't
12 cancelled it yet and the other side has added me in.
13 So simply having that doesn't necessarily raise a
14 concern that all of that means that's going to turn
15 into voter fraud.

16 Q. Right. If you look at the Carter-Baker report
17 at the top of page 12?

18 A. Okay.

19 Q. And doesn't it talk about that, this phenomena,
20 where there's nine million people who moved to
21 another state or abroad each year?

22 A. Yes.

23 Q. And what it goes on to say is that there's --- I
24 believe the heading is Interoperability Among States.
25 So there's a disconnect between one state's registry

1 database and another state's; right?

2 A. There very likely is because of these high rates
3 of mobility of Americans.

4 Q. And it cites --- the commission cites to news
5 reports about 140,000 voters in Florida who were
6 apparently registered in four other states. So isn't
7 this the kind of thing that can happen when you have
8 that decentralized election administration?

9 A. Well, I think the general point that you can
10 have people registered in two states at some point in
11 time, I agree with you. I want to look at that
12 particular report because I want to look at the
13 footnote. Because this is the kind of thing I would
14 investigate and often find that it was the result of
15 some mismatching of data, not to say that there
16 aren't --- again, not to say that there aren't some
17 number of people who are very likely showing up on
18 two states because they moved, and election
19 administration can't capture the move fast enough.

20 Q. Right. And so you would --- you know, depending
21 on what that footnote says, you might look into that
22 to see if it's even true, because it cites to news
23 reports. But I don't think we have a dispute here,
24 and I'll move on from it. But with decentralized
25 registries of registered voters, there's not always

1 communication between the various states and you can
2 have people registered in more than one state?

3 A. Yes.

4 Q. Okay. And I am with you when you say that that
5 doesn't necessarily indicate anything about in-person
6 voter fraud, but doesn't it present the opportunity?

7 A. Well, if you raise the question of opportunity,
8 then you have to go back to the argument about
9 motive.

10 Q. Sure. And I'm getting there.

11 A. Okay.

12 Q. So isn't there --- just having --- I'll back up.
13 When I go in, in Pennsylvania, to vote, all I have to
14 do is tell them my name. They find my name in the
15 poll book, and I sign my signature. So are you
16 familiar --- is that the process you understand?

17 A. Yes.

18 Q. Okay. So if my name is in a poll book in more
19 than one place, the opportunity is at least there.
20 We'll get into whether I have the motivation.

21 A. Or the means.

22 Q. Or the means. But we're going to assume that my
23 --- you know, because of these things that the
24 Carter-Baker Commission and you have talked about,
25 I'm in more than one place. That's an opportunity?

1 A. Well, it's an opportunity, I suppose, but it
2 makes no sense.

3 Q. Okay. Well, I'm getting to that. I just want
4 to establish that having my name in more than one
5 registry is at least an opportunity for me to vote in
6 more than one place?

7 A. Yes.

8 Q. Okay. And also conversely, even if it's --- if
9 I'm not the one doing it, if my name is in more than
10 one place, there's nothing to stop other people from
11 saying I don't think that person's showing up, I'm
12 going to go ahead and write their vote in. It's that
13 opportunity as well, isn't it?

14 A. Well, I guess I object to presenting opportunity
15 as if there's no context whatsoever. It's like, you
16 know, martians landing on earth. I mean, maybe that
17 could happen, I don't know. But the context seems to
18 me to be very important.

19 Q. Sure.

20 A. And the context includes both a motivation and
21 the understanding of what the penalties are, if you
22 break that rule. And those things seem to really
23 work against people even seeing this as an
24 opportunity. So to even see it --- I mean, it would
25 not occur to me to try to go vote in New York City

1 after voting here. It wouldn't occur to me. Not
2 because I am a law-abiding citizen, but I wouldn't
3 even think about the fact that they hadn't cancelled
4 my registration. We assume these systems do what we
5 expect them to do.

6 Q. And it wouldn't occur to you, personally, to
7 sign the name for somebody else whose signature you
8 see there?

9 A. Right.

10 Q. Okay. But it occurred to that high school
11 student you talked about, didn't it?

12 A. Yes.

13 Q. And all I'm saying is when all you have to do is
14 sign the signature --- and you're saying it depends
15 on the context. We'll talk about the motivations.
16 But on page 16 and 17 of your report, and 17 includes
17 one of the tables that was discussed, you talk about
18 the motivations by comparing in-person voter fraud to
19 Social Security fraud, false claims, counterfeiting,
20 postal, internet and wire fraud and tax evasion;
21 right?

22 A. Right.

23 Q. Don't several of these have a monetary incentive
24 to do them in the first place?

25 A. Yes.

1 Q. So tax evasion, I might stand to gain monetarily
2 by engaging in tax evasion; right?

3 A. Yeah, I would think so.

4 Q. And I think postal, internet and wire fraud, I
5 mean, there we're talking about scams conducted
6 through various communications; right?

7 A. Yes.

8 Q. And I don't know how many, but I would assume
9 that a lot of those involve stealing from another
10 person, scamming them out of money?

11 A. Could be.

12 Q. And there's no money involved in casting a vote.
13 You don't have any monetary incentive to do that;
14 right?

15 A. Not usually.

16 Q. And by the same rationale, the enforcement by
17 criminal justice agencies is going to go a lot more
18 to where a lot of money is being taken away from
19 people than where there's no money changing hands;
20 right?

21 A. Well, I don't know. You know, I wouldn't make a
22 judgment about what the priorities are for law
23 enforcement. I know that the claim that it's not a
24 priority is never backed up with any evidence of
25 that. And, in fact, one of the things I cite in this

1 report is a state law in Minnesota that requires
2 District Attorneys to follow up. And yet, there is
3 no voter fraud there either, relatively speaking.
4 You know, there's no evidence. So I don't want to
5 assume that law enforcement doesn't take it seriously
6 without some evidence that they're --- you know, it's
7 usurping their duties.

8 Q. Do you understand that in Pennsylvania
9 prosecutors have --- whether it's the DA or the
10 Attorney General, have discretion on which crimes to
11 prosecute?

12 A. Certainly, all prosecutors have discretion.

13 ATTORNEY CAWLEY:

14 Those are all the questions I have.

15 Thank you.

16 A. You're welcome.

17 JUDGE SIMPSON:

18 Any Redirect?

19 ATTORNEY CLARKE:

20 Just a few questions, Your Honor.

21 JUDGE SIMPSON:

22 I'll hold you to that now.

23 ATTORNEY CLARKE:

24 I promise.

25 REDIRECT EXAMINATION

1 BY ATTORNEY CLARKE:

2 Q. Doctor Minnite, you spent a bit of time in Mr.
3 Cawley's examination talking about the fact that
4 people might be registered in more than one state.
5 Now, a voter ID --- a photo ID law wouldn't help that
6 situation, would it?

7 A. No.

8 Q. Now, we talked about whether there is an
9 incentive to prosecute and whether or not there's an
10 incentive to prosecute, particularly, voter fraud.
11 And, in fact, we had evidence that you described
12 earlier that at one time the Department of Justice
13 made it a top priority to prosecute voter fraud?

14 A. Yes.

15 Q. And that was a situation where after 197 million
16 votes were cast, they were able to find --- there
17 were 26 indictments?

18 A. Yes.

19 Q. So, in fact, we have not only --- do we not have
20 any evidence that there's not incentive to prosecute,
21 but we have evidence that there is incentive to
22 prosecute?

23 A. Yes.

24 Q. We talked about the Carter-Baker report.

25 A. Yes.

1 Q. And I want to get you to page 18. There were a
2 couple of other things about this report that I
3 wanted to see if you were aware of. One is in the
4 middle of the paragraph of page 18, the one that
5 starts the voter identification requirements. You
6 see that in the recommendation, the Carter-Baker
7 report says states are encouraged to allow an
8 expansive list of acceptable IDs, including those
9 without a photograph, such as utility bills or
10 government checks. Do you see that?

11 A. Yes.

12 Q. And do you recall that that was an important
13 part of the recommendations and conclusions of that
14 report?

15 A. Yes.

16 Q. I want to go down a little bit to the next
17 paragraph that starts our commission.

18 A. Yes.

19 Q. And you see it says our commission is concerned
20 that the different approaches to identification cards
21 might prove to be a serious impediment to voting. Do
22 you see that?

23 A. Yes.

24 Q. And do you recall that that was one of the very
25 serious issues addressed by the Carter-Baker report?

1 A. Yes.

2 Q. If you go to the next page, page 19?

3 A. Uh-huh (yes).

4 Q. And the paragraph at the bottom of the page, do
5 you recall that there was a recommendation by the
6 Carter-Baker report that an ID requirement be phased
7 in over several election periods?

8 A. Yes.

9 Q. On the next page, page 20, really getting to an
10 issue that we just talked about, you see in the first
11 full paragraph where the authors write, the
12 introduction of voter ID requirements has raised
13 concerns that they may present a barrier to voting,
14 particularly by traditionally marginalized groups,
15 such as the poor and minorities, some of who may lack
16 a government-issued photo ID. They may also create
17 obstacles for highly-mobile groups of citizens. Do
18 you see that?

19 A. Yes.

20 Q. And do you recall that that was one of the
21 concerns that was addressed and raised in the
22 Carter-Baker report?

23 A. Yes. And I think I would just add that it's
24 important in reading this report to read a rebuttal,
25 if you will, by one of the commissioners, Spencer

1 Overton, who took issue with a number of even these
2 kinds of recommendations regarding photo ID. So
3 there wasn't complete agreement even on the
4 commission about what their final report said.

5 Q. And then you see with the report, itself, the
6 last point on this report, the last line of the first
7 paragraph, I'm going to read the sentence, as
8 explained in section 4.1, the commission recommends
9 that states play an affirmative role in reaching out
10 with mobile offices to individuals who do not have a
11 driver's license or other government-issued photo ID
12 to help them to register to vote and obtain an ID.
13 Do you remember that the recommendation that the
14 states --- any state have mobile offices to go out
15 and help people get IDs was a part of the
16 consideration in this report?

17 A. Yes.

18 Q. Now, you --- finally, you just talked --- you
19 were asked about the general allegations in
20 Interrogatory One, which was Exhibit 46. And you
21 talked about some --- you talked about the fact that
22 Mr. Harlow had investigated the reports of dead
23 people voting and found that they were all election
24 --- I mean, that they were all administrative errors.

25 A. Well, he actually stated in his deposition not

1 that he so much investigated it, but that another
2 person there in the office had sent the information
3 out to the counties and had them investigate it and
4 report back.

5 Q. Okay. And Mr. Harlow is an employee of the
6 Department of State; is that right?

7 A. That's my understanding.

8 ATTORNEY CLARKE:

9 Okay. I have no further questions.

10 ATTORNEY CAWLEY:

11 I have nothing further, Your Honor.

12 JUDGE SIMPSON:

13 You may step down. Thank you. Thank
14 you for your time.

15 ATTORNEY CLARKE:

16 Your Honor, we move for the admission
17 of the exhibits that we just marked.

18 JUDGE SIMPSON:

19 You have Exhibits 49, which is the CV,
20 50, which is the report, 51, which is the County
21 Commissioners Association Statement.

22 ATTORNEY CLARKE:

23 Thank you, Your Honor.

24 JUDGE SIMPSON:

25 In the absence of objection, they're

1 received.

2 ATTORNEY CLARKE:

3 Thank you.

4 JUDGE SIMPSON:

5 Are you going to be calling another
6 witness?

7 ATTORNEY CLARKE:

8 No, Your Honor.

9 JUDGE SIMPSON:

10 Are you going to be calling another
11 witness?

12 ATTORNEY CAWLEY:

13 No, Your Honor.

14 JUDGE SIMPSON:

15 I think we have some housekeeping
16 matters to deal with. But folks, you're not going to
17 hear anything --- I don't think you're going to hear
18 any more evidence, at least in the sense of a live
19 witness. You are welcome to stay and watch what we
20 do. It will be real boring, but you know, you're
21 welcome to stay. We work in public. But I don't
22 think there'll be anything interesting for you here.

23 I need to hand these, your two
24 exhibits, the Respondents' exhibits down. I have
25 like little Post-Its on here, but they don't have

1 exhibit tags on here, and I need them. I'm also
2 going to need --- if you want it in evidence, I'm
3 going to need Respondents' Two ---

4 ATTORNEY CAWLEY:

5 Yes.

6 JUDGE SIMPSON:

7 --- which is that list. He read, you
8 know, some of the contents, ---

9 ATTORNEY CAWLEY:

10 Yes.

11 JUDGE SIMPSON:

12 --- so I mean, if you want it, fine.
13 If you don't want it, that's your call.

14 ATTORNEY CAWLEY:

15 I do, Your Honor. On that point, I may
16 have it with me. In the event that I cannot locate
17 it right now, may I provide it this afternoon or
18 tomorrow morning to the Court?

19 JUDGE SIMPSON:

20 Tomorrow morning is fine.

21 ATTORNEY CAWLEY:

22 Okay.

23 JUDGE SIMPSON:

24 So you're not calling a witness either?

25 ATTORNEY CAWLEY:

1 That's correct.

2 JUDGE SIMPSON:

3 Do you rest?

4 ATTORNEY GERSCH:

5 We do.

6 JUDGE SIMPSON:

7 And you're moving Five and Six?

8 ATTORNEY CAWLEY:

9 I'm moving --- yes, Your Honor.

10 JUDGE SIMPSON:

11 Any objection?

12 ATTORNEY CLARKE:

13 Your Honor, we object to the
14 legislative testimony given by Hans von Spakovsky.

15 JUDGE SIMPSON:

16 Why?

17 ATTORNEY CLARKE:

18 It's hearsay.

19 ATTORNEY CAWLEY:

20 It's the same ---.

21 JUDGE SIMPSON:

22 But your witness read it and relied
23 upon it and reported her opinions. So, quite
24 frankly, just about anything she listed will come
25 into evidence.

1 ATTORNEY CLARKE:

2 It was ---.

3 JUDGE SIMPSON:

4 I mean, in fact, shouldn't it have been
5 offered into evidence?

6 ATTORNEY CAWLEY:

7 It's also the same basis as the County
8 Commissioner reports that Petitioners have just
9 offered.

10 ATTORNEY CLARKE:

11 This came in as --- this was used as
12 impeachment of the witness.

13 JUDGE SIMPSON:

14 Yeah.

15 ATTORNEY CLARKE:

16 But it wasn't --- the witness said she
17 had read it, but she didn't rely on this exhibit. It
18 wasn't part of her --- it wasn't part of her
19 testimony.

20 JUDGE SIMPSON:

21 It's listed in her report. Wasn't that
22 part of the testimony I just heard, that it's ---?

23 ATTORNEY CAWLEY:

24 She indicated in her testimony that she
25 reviewed --- and in her report that she reviewed that

1 testimony as part of drafting her report.

2 JUDGE SIMPSON:

3 Yeah, it's on page two.

4 ATTORNEY CLARKE:

5 Okay.

6 JUDGE SIMPSON:

7 So you know, the objection is
8 overruled. So it's received over your objection.

9 ATTORNEY CLARKE:

10 Okay. Thank you, Your Honor.

11 JUDGE SIMPSON:

12 Is there anything else that's hanging
13 out there that I need to address?

14 ATTORNEY WALCZAK:

15 Just a question about what time you
16 would like us to start tomorrow?

17 JUDGE SIMPSON:

18 What time would you like?

19 ATTORNEY WALCZAK:

20 My preference would be ten o'clock.

21 JUDGE SIMPSON:

22 Do you want to do 10:00? Is that all
23 right?

24 ATTORNEY CAWLEY:

25 That sound great.

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JUDGE SIMPSON:

Okay. 10:00 it is. Okay. Then we ---
if there's nothing else that you need from me, then
we will adjourn until ten o'clock tomorrow morning.

MR. TURNER:

Commonwealth Court is now adjourned.

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HEARING CONCLUDED AT 1:56 P.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken
stenographically by me, and thereafter reduced to
typewriting by me or under my direction; and that
this transcript is a true and accurate record to the
best of my ability.

Made Amato