

1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 Monica Moyer; Robert A. Gleason, Jr.; :
Joyce Haas; Adrienne Mitford; :
3 Joseph B. Maguire; W. Craig Williams; :
and the Republican Party of Pennsylvania, :
4 Petitioners :
 v. : No. 497 MD 2008
5 Pedro A. Cortes, Secretary of the :
Commonwealth; Association of Community :
6 Organizations for Reform Now (ACORN); :
Philadelphia ACORN; Allegheny County ACORN; :
7 Erie County ACORN; Harrisburg ACORN; :
Lehigh Valley ACORN; :
8 Southeastern PA. ACORN; Project :
Vote/Voting for America, Inc.; :
9 Citizens Services, Inc.; and all other :
ACORN Affiliates and Subsidiaries :
10 Operating in Pennsylvania, the identity :
of which are currently unknown, :
11 Respondents :

12

13 TRANSCRIPT OF PROCEEDINGS

14 Before: THE HONORABLE ROBERT SIMPSON, Judge
15 Date: October 29, 2008, 10:00 a.m.
16 Place: Commonwealth Court of Pennsylvania
 Irvis Office Building
17 Courtroom No. 1, Fifth Floor
 Harrisburg, Pennsylvania
18

19 APPEARANCES:

20 Heather S. Heidelbaugh, Esquire
 Andrew M. Miller, Esquire
21 For - Petitioners
22 Kathryn L. Simpson, Esquire
 For - Respondents ACORN, Project Vote and
23 Citizens Services
24 Albert H. Masland, Esquire
 For - Respondent Pedro A. Cortes, Secretary of
25 the Commonwealth

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1 THE COURT: Good morning.
2 Heather Heidelbaugh?
3 MS. HEIDELBAUGH: Yes, sir, Your Honor.
4 THE COURT: And Andrew Miller?
5 MR. MILLER: Yes, sir, Your Honor.
6 THE COURT: For petitioners. And Al Masland?
7 MR. MASLAND: Good morning, Your Honor.
8 THE COURT: And will you be conducting this by
9 yourself?
10 MR. MASLAND: Yes, all by myself. At least for the
11 Commonwealth.
12 THE COURT: All right. We have a hearing --
13 MS. SIMPSON: Your Honor --
14 THE COURT: -- in --
15 MS. SIMPSON: Your Honor, Kathryn Simpson. I am
16 here on behalf of the private defendants: ACORN, Project
17 Vote and Citizens Services.
18 THE COURT: All right. Simpson, good name. Good
19 name.
20 MS. SIMPSON: Yes.
21 THE COURT: We're not related though, are we?
22 MS. SIMPSON: We are not.
23 THE COURT: At least as far as we know.
24 This is the case of Moyer and various --
25 MR. MASLAND: Excuse me. I just noticed that

1 there's a bad leg on this chair. And rather than fall in the
2 middle of the proceeding, I'm going to switch chairs now.

3 THE COURT: Okay. Equipment time-out.

4 Let me try this again. This is Moyer and various
5 parties, including the Republican Party of Pennsylvania,
6 versus the Secretary of the Commonwealth and ACORN. And we
7 are scheduled for hearing on a motion for preliminary
8 injunction.

9 As a housekeeping matter, I have a motion for leave
10 to file a supplemental brief, and I have a supplemental
11 brief. That motion is granted.

12 Petitioners, how much time do you need?

13 MS. HEIDELBAUGH: I'm going to need several hours,
14 Your Honor. I'd like to make a --

15 THE COURT: What does "several hours" mean?

16 MS. HEIDELBAUGH: I'd like to make an opening
17 statement. I have a live witness. I anticipate that live
18 witness on direct would go at least an hour. Depending on
19 the pleasure of the Court in regard to openings, that may
20 bring us to the lunch hour. I'm not familiar with the
21 Court's preference as to lunch breaks, but I feel certain
22 that I will go into the afternoon.

23 THE COURT: And, Mr. Masland, how much time do you
24 need for presentation of evidence?

25 MR. MASLAND: Your Honor, we have one, possibly two

1 witnesses. One would be very brief, Douglas Hill from the
2 County Commissioners Association. Jonathan Marks is an
3 employee from the Department of State. Although I have a
4 number of exhibits to get in through him, I would anticipate
5 no more than half an hour on direct examination.

6 THE COURT: We will go until 12:30, and then I have
7 other matters scheduled actually. This is not the only dog
8 in the show today. There are other matters previously
9 scheduled involving substantial interests of citizens of the
10 Commonwealth. I will hear them at 1:30 and 3:00.

11 We can continue later this afternoon. We can
12 continue tomorrow. You're going to have to give me some
13 guidance as to what you would want to do.

14 MS. HEIDELBAUGH: I'd like to be able to put my
15 full case in, Your Honor, so if it is the Court's preference
16 that we continue tomorrow, I'm more than happy to do that.

17 THE COURT: You'll have a chance to put on your
18 whole case, but do you want to start at 3:30, 4:00 this
19 afternoon?

20 MS. HEIDELBAUGH: I'd like to start now.

21 THE COURT: No, would you like to restart at --

22 MS. HEIDELBAUGH: Yes. Anything is fine with me.
23 We can restart this afternoon.

24 THE COURT: Any preferences?

25 MS. SIMPSON: Your Honor, I have a personal medical

1 issue tomorrow that's going to take me to Indianapolis, so I
2 do have a problem with continuing tomorrow.

3 THE COURT: All right. We'll see what we can do
4 about finishing today. But there's going to be a big part of
5 the afternoon that we're not going to be able to sit here.
6 In fact, we're going to have another group in here. So
7 each -- each party may have five minutes for an opening
8 statement.

9 By "opening statement," I mean opening statement,
10 not a closing statement. In other words, I will expect you
11 to tell me what you expect to prove and highlight the issues
12 that you want me to focus on, but it's not time for a press
13 conference or just a general closing argument in exuberant,
14 descriptive rhetoric. This is the way you would do it in a
15 trial, so please proceed.

16 MS. HEIDELBAUGH: Thank you, Your Honor.

17 In light of the Court's direction, may it please
18 the Court, opposing counsel, representatives of the press and
19 guests.

20 Your Honor, my name is Heather Heidelbaugh. I
21 represent the plaintiffs. The plaintiffs before this Court
22 are voters, a candidate and a political party who represents
23 millions of voters.

24 Your Honor, we have alleged in our complaint quite
25 prolifically, attaching a number of facts, that there has

1 been a campaign by ACORN to begin and end a massive voter
2 registration fraud on the citizens of the Commonwealth. It
3 is a fraud that was planned and organized beginning in 2007.
4 It was a national plan. We have evidence of criminal
5 convictions from the past. We have evidence that the
6 organization knew that it lacked training, quality assurance,
7 management oversight. The plan was to flood the offices,
8 prevent valid voter registrations from being processed.

9 And also, we have evidence, Your Honor, that there
10 has been an absentee ballot program in which the people that
11 were invalidly registered were going to be encouraged to
12 vote.

13 I have a witness today, Anita Moncrief, a former
14 ACORN employee, who will testify about the voter registration
15 program, the lack of training, the lack of quality assurance,
16 the motivations for such a program, the knowledge, the
17 treatment of the employees who were engaged in the fraud and
18 the overall purposes and objectives of the fraud.

19 In addition, I will have affidavits from voters,
20 candidates and a political party who will discuss the
21 immediate and irreparable harm, i.e., voter dilution,
22 possibility of voter fraud based on the massive voter
23 registration. And we will request immediate and specific
24 relief in order to move this proceeding along. Based on the
25 Court's previous instructions and the time constraints, I

1 will simply close with that, Your Honor.

2 THE COURT: Mr. Masland, you may have five minutes.

3 MR. MASLAND: Your Honor, I'll permit Ms. Simpson
4 to go next. I think most of what the plaintiff has said
5 concerns her, and then I'll close if that's okay.

6 THE COURT: Ms. Simpson? In the absence of
7 objection, Ms. Simpson may go next.

8 MS. SIMPSON: Thank you, Your Honor. May it please
9 the Court, my name is Kathryn Simpson, and I represent ACORN,
10 Project Vote and Citizen Services.

11 The sheer illusory nature of the complaint here
12 really needs to be taken into account. The plaintiffs have
13 alleged a single count of common law fraud against the
14 private defendants, as I will refer to them to distinguish
15 them from the Commonwealth, alleging that perhaps and maybe
16 and if someone goes to the polls on Tuesday and votes when
17 they shouldn't, that the vote of the plaintiffs will be
18 diluted. That has not happened. This is an anticipatory
19 suit.

20 I think, as you will hear from the Commonwealth,
21 the safeguards are in place; the registrations have been
22 processed. I have witnesses who will testify as to the
23 recruitment, training, supervision and quality control and
24 interaction with the local boards of elections regarding the
25 voter cards, the registrations that were submitted as

1 collected by ACORN.

2 ACORN is one of only -- one of 18 voter
3 registration drives, or groups, throughout the Commonwealth.
4 And the testimony will be that they cooperated; they worked
5 with the department -- or the various election bureaus; they
6 worked with the district attorneys to make sure that when
7 they discovered fraud or wrongdoing, that it was reported.

8 This is not a campaign to do anything but to allow
9 those who were not registered to vote to be able to cast
10 their ballot without intimidation, without any kind of
11 harassment on Tuesday. And that's what this suit is about,
12 and we are prepared to meet the -- whatever proof the
13 plaintiffs produce. Thank you.

14 MR. MASLAND: Thank you, Your Honor, counsel.

15 The first thing I would note is that I am appearing
16 for Secretary Cortes, and I am speaking for Secretary Cortes.
17 I am not speaking to the press. I am speaking to Your Honor.
18 I note that the attorney for petitioner welcomed the members
19 of the press today. I would wish that they were not here
20 because I do not think that this should be a big media show,
21 but I hasten to say that it could. I hope it does not become
22 one.

23 And I wanted to go last, Your Honor, for the
24 specific reason that I think the media show, the circus, the
25 charade is between petitioners and ACORN. And the Secretary

1 was invited I guess we could say kicking and screaming to
2 this fight. But we should not be here because as a practical
3 matter, the Secretary has done everything that the
4 petitioners want.

5 We have a SURE system, a Statewide Uniform Registry
6 of Electors. That works. It has worked. And we will show
7 evidence that almost 90 percent of the voters in the
8 Commonwealth have already had their names entered in the
9 pollbooks and everything will be processed before election
10 day and everything will be ready for the election; the
11 system, the computerized system, has worked.

12 We will also demonstrate -- and I think I did in my
13 brief. I apologize for it being so late. But we'll
14 demonstrate that the Secretary's interpretation of the voter
15 identification requirements does comply with state law, is
16 logical, and that, in fact, the petitioners' argument that
17 somehow "appear" means to not be present just is illogical.

18 So we are complaint with state and federal law. We
19 are doing everything we have been asked to do. And as I
20 said, we really should not be part of these proceedings.

21 Thank you, Your Honor.

22 THE COURT: Please call your first witness.

23 MS. HEIDELBAUGH: I'd like to introduce an
24 affidavit to begin. It's -- I'd like to pass up to the
25 Court -- how would the Court prefer I pass up original

1 evidence?

2 THE COURT CRIER: I'll take it.

3 MS. HEIDELBAUGH: Thank you.

4 This is an affidavit of --

5 THE COURT: Actually wait. We need to have it

6 marked.

7 MS. HEIDELBAUGH: Plaintiffs' Exhibit 1.

8 THE COURT: You need to stop while she marks it.

9 MS. HEIDELBAUGH: Thank you.

10 (Exhibit No. P-1 was marked for identification.)

11 THE COURT: Do you anticipate there will be many

12 exhibits?

13 MS. HEIDELBAUGH: I do.

14 THE COURT: Are any of them premarked?

15 MS. HEIDELBAUGH: I apologize. No.

16 THE COURT: How about for respondents? Are there

17 any -- do you anticipate a number of exhibits?

18 MS. SIMPSON: I have approximately 5 or 6, and they

19 are all marked.

20 THE COURT: Mr. Masland, do you have -- do you

21 anticipate a number of exhibits?

22 MR. MASLAND: We've already marked the exhibits,

23 Your Honor. We have possibly 13. They've all been marked

24 and a copy for Your Honor as well.

25 THE COURT: How much time do you need to premark

1 them? Because I'd rather not stop and do this while we're --

2 MS. HEIDELBAUGH: I understand, Your Honor. I'll
3 mark them as I'm going. I'll do it very quickly; I promise.

4 THE COURT: All right. So I have Plaintiffs'
5 Exhibit Number 1, which is an affidavit of Mary Jo Headley.

6 MS. HEIDELBAUGH: Yes, Your Honor. And this is the
7 chief clerk of the Delaware County Voter Registration
8 Commission. And as the Court can see in paragraph 7 on page
9 2, she swears and avers that the SURE system does not work in
10 an effective manner and is not always accessible and that
11 she's unable to quickly and properly process new voter
12 registrations. She states that the SURE system was down
13 between October 10th and 13th. She said the Secretary of the
14 Commonwealth has been inactive to --

15 THE COURT: Well, before we get into the
16 contents --

17 MS. HEIDELBAUGH: Yes, sir.

18 THE COURT: -- of the affidavit, let me just make
19 sure that there's no problem with this. This is in the
20 nature of an offer of proof. I expect I'm going to see some
21 of these from the other side as well. Is there any objection
22 to my receiving this in the nature of an offer of proof?

23 MR. MASLAND: No, Your Honor.

24 MS. SIMPSON: There is from me.

25 THE COURT: What's that?

1 MS. SIMPSON: Without this witness here -- this is
2 a hearing. And we have no opportunity to cross-examine this
3 witness to find out, you know, the basics and the background
4 for this affidavit. If Ms. Headley can't be here, I don't
5 think her affidavit should be here because I can't
6 cross-examine her.

7 THE COURT: So this is a -- you're raising a
8 hearsay objection?

9 MS. SIMPSON: Exactly.

10 THE COURT: All right.

11 MS. HEIDELBAUGH: Your Honor, in Pennsylvania, the
12 jurisprudence of Pennsylvania is clear. In every injunction
13 that I've ever tried, affidavit evidence is accepted by the
14 Court in injunctions. In fact, the Secretary of the
15 Commonwealth, at the motion to expedite discovery, introduced
16 and it was accepted into evidence without objection the
17 affidavit of Robert Lee, a commissioner out of Philly.

18 So this would be quite a surprise to me. This
19 would be the only injunction that I've ever tried in which
20 affidavit evidence was not introduced, and that's the only
21 time I've ever heard that objection.

22 THE COURT: Why is it not hearsay?

23 MS. HEIDELBAUGH: Affidavit -- it's not hearsay
24 because it's an affidavit. It's sworn testimony. And in
25 Pennsylvania in an injunction, an affidavit is acceptable

1 evidence in lieu of the witness being live. It's not hearsay
2 at all because it's sworn testimony.

3 THE COURT: The objection is sustained.

4 MS. HEIDELBAUGH: No -- no affidavits are going to
5 allowed to come in?

6 THE COURT: If there's a hearsay objection,
7 out-of-court testimony is not going to be received.

8 MS. HEIDELBAUGH: Your Honor, may I be allowed --
9 would the Court be willing to reserve their ruling and for me
10 to renew my request to introduce this evidence when we
11 reconvene so that I can provide the Court the law that allows
12 these to be introduced?

13 THE COURT: That would be a great idea. I ruled on
14 this, but I'll reconsider my ruling if you give me some
15 authority. I don't know of anything in the rules of evidence
16 that allow me to receive this.

17 MS. HEIDELBAUGH: Yes, Your Honor.

18 THE COURT: I don't know of a special injunction
19 rule or an exception, so --

20 MS. HEIDELBAUGH: Yes. I'll be happy to provide --

21 THE COURT: I understand that this is in the nature
22 of an offer of proof. When we get to the permanent
23 injunction, this person is going to testify, and this is what
24 they're going to testify to. I understand what you're
25 offering it for. However, if there's a hearsay objection and

1 I'm not directed to any sort of rule of evidence that allows
2 me to receive it, I'm going to sustain the objection.

3 MS. HEIDELBAUGH: I understand, Your Honor. And I
4 will provide you with case law in which in injunction
5 practice in Pennsylvania, affidavits are admitted into
6 evidence despite a hearsay objection. I'll be happy to do
7 that. So I'll withdraw -- I'll withdraw the affidavit at
8 this time, to resubmit at a later time.

9 I call to the stand Anita Moncrief.

10 (Whereupon, Ashawnita Moncrief was sworn.)

11 THE COURT REPORTER: Could you spell your last name
12 for me?

13 THE WITNESS: M-O-N-C-R-I-E-F.

14 THE COURT REPORTER: Thank you.

15 DIRECT EXAMINATION

16 BY MS. HEIDELBAUGH:

17 Q Please state your full -- full and complete name.

18 A Ashawnita Moncrief.

19 Q Can you please spell that for the court reporter?

20 A A-S-H-A-W-N-I-T-A.

21 Q And do you go by a nickname?

22 A Anita.

23 Q Thank you. Ms. Moncrief, where are you originally
24 from?

25 A Alabama.

1 Q And where do you currently reside?

2 A In Virginia.

3 Q And I'd like to talk to you briefly about your
4 educational background. Where did you attend college?

5 A University of Alabama.

6 Q And then what years did you attend?

7 A From 1997 through 2003.

8 Q And did you graduate?

9 A No, I did not.

10 Q What was your major?

11 A Political science and history.

12 Q Did you receive any awards while you were in
13 college?

14 A I got the president's award for a 4.0 academic
15 excellence for two semesters, and I got an award by the black
16 faculty and staff for academic excellence when I was a
17 freshman.

18 Q And just real quickly, one last question, did you
19 engage in any professional development programs in college
20 regarding voter registration?

21 A Yes, I did.

22 Q Can you just briefly describe those, please?

23 A I worked with the college democrats, registering
24 voters on campus. I also was an intern here in D.C. And
25 based on my internship, I was offered a position with the

1 Organization for Security and Cooperation in Europe. And I
2 went overseas to Macedonia as an election monitor. I was
3 trained by the OSC in election monitoring and mindful
4 awareness.

5 Q Thank you. In 2005, did you begin employment with
6 an ACORN affiliate?

7 A Yes.

8 Q What was that called?

9 A Project Vote.

10 Q Can you tell the Court what Project Vote is?

11 A Project Vote is a 501(c)(3) voter registration
12 group. They do voter registration, election administration
13 and voter protection.

14 Q When did you start in 2005?

15 A October of 2005.

16 Q And can you tell us the affiliation between Project
17 Vote and ACORN?

18 A Project Vote is a sister organization of ACORN.
19 When I got there, I actually thought I was working for ACORN
20 because that was the only thing I heard about during the
21 interview. But when I got there, I realized that I was
22 working for Project Vote, and they explained to me the
23 difference between the two organizations. But as I was
24 there, I learned that there wasn't much of a difference.

25 Q Okay. Why do you say that?

1 A Because I had an ACORN e-mail address up until
2 2002. I was considered -- I'm sorry, 2007. I was considered
3 to be part of the ACORN political operations staff, and I was
4 actually a part of the strategic writing and research
5 department with the acronym SWORD, which was basically an
6 internal consulting department for ACORN political
7 operations. So a lot of the work I did, such as the census
8 work and answering some voter fraud allegations that came
9 from 2004, were actually all ACORN work. It wasn't until I'd
10 say late 2006 that I actually began doing actual development
11 work for Project Vote.

12 Q Can you describe in 2005 and then sequentially the
13 projects that you had and the entities that you worked for?

14 A Okay. Starting in 2005, I was with the strategic
15 writing and research department. I handled things such as
16 the year end, year beginning, which we call Y-U-Y-B,
17 political operations PowerPoint, which is -- basically takes
18 an account of all the political things that we've done during
19 the year and makes it look really good for the organization
20 when they come together in New Orleans every year.

21 I worked on a lot of census work, and I worked on
22 -- I'm trying to think -- provisional voting. There was a
23 provisional voting survey that was done by Project Vote, and
24 I helped out with that. I helped -- I assisted with it
25 mostly.

1 In 2006, I was pregnant at the time, and Jehmu
2 Greene came on as the national director. She realized that
3 she actually needed help with the development department,
4 even though she had about three interns. So there was some
5 discussion among the management staff, and they decided that
6 I would start helping Jehmu. So she had a talk with me, told
7 me how to process the grant checks, make the copies and what
8 to do when she wasn't there.

9 Jehmu left I'm thinking late 2006, maybe around
10 October or November. Once she left, I was basically the only
11 person really in the Project Vote office. We had people that
12 came in and out, but consistently I was there. And if I
13 wasn't there, I was working from home and I would go in and
14 make sure that everything was okay.

15 They hired Karen Gillette in the summer of 2007.
16 They let me know that I would have to come back to the office
17 full-time -- I had been working from home -- and they wanted
18 me to find a baby-sitter for my new daughter. So working
19 with Karen was actually a turning point for me because it
20 meant that I was officially out of the strategic writing and
21 research department and I was working on just Project Vote
22 development.

23 And I have to say that's when my work blossomed and
24 I worked on what we call the \$28 million budget and donor
25 list, donor cultivation, just basically anything that Karen

1 would need.

2 As we started progressing through the work, I would
3 travel with her and help assist her with trainings. And I
4 started feeling more confident and, you know, actually making
5 ideas and suggestions, so I really blossomed under her
6 supervision.

7 Q When did you leave?

8 A January 11th was my last day of 2008.

9 Q Now, you previously testified a moment ago that you
10 were involved in an investigation of 2004 voter fraud
11 allegations. Is that right?

12 A Yes.

13 Q Can you please describe to the Court what that was,
14 what your work was?

15 A Okay. There were allegations that came out of the
16 2004 voter registration drive. And my job was to actually
17 write these voter fraud briefs where I would actually -- I'm
18 sorry -- contact the district attorney offices in the states,
19 research the case.

20 There was a report by a group at the time called
21 ACVR, American Center for Voting Rights, so I had to refute a
22 lot of the claims that were presented in that report.

23 Through reading the report and doing my research, I
24 learned about ACORN employees that -- some of them single
25 moms that had been prosecuted or were being brought up on

1 charges for things they had done in, I think it was Missouri,
2 Kansas City.

3 Q Okay. During your work in investigating the
4 complaints by the ACVR and ACORN's response, did you learn
5 about the voter registration program in ACORN?

6 A Yes.

7 Q All right. And can you -- can you tell us the
8 difference between Project Vote and ACORN?

9 A Honestly, there really isn't a difference between
10 Project Vote and ACORN except for the fact that one is a
11 501(c)(3) and one is not a (c)(3). As far as the -- who does
12 the voter registration work and how things get done, their --
13 Project Vote is basically considered ACORN political
14 operations.

15 Q And what is "ACORN political operations"?

16 A ACORN political is run -- well, was formerly run by
17 Zach Polett, and it's the strategic planning arm of ACORN.
18 It looks at contested congressional districts, ballot
19 measures, initiatives like the minimum wage. And it's a way
20 to build the organization off of these types of drives.

21 So they come up with a plan; let's say minimum
22 wage. So not only are they getting signatures for minimum
23 wage, but they're also increasing membership and dues-paying
24 members to the organization.

25 Q What was the purpose of the voter registration

1 drive as you understood it at ACORN or Project Vote?

2 A At ACORN, it was about getting more members, which
3 means more money. Project Vote, there's -- actually they'd
4 say the more cards you get, the more money you get. It's in
5 the -- in the way they train the -- I'm trying to explain it;
6 the way they train the people for voter registration. It's
7 to let them know that the cards are tied to money. So the
8 more cards you get, the more money you get. If people aren't
9 producing cards, they're wasting your time, get rid of them,
10 get people who are producing.

11 Q Well, let's talk about the money, and let's break
12 it down. You said the purpose of the voter registration
13 drive for ACORN is to get more money. Let's break it down.
14 Let's talk about the organization of ACORN. Why does the
15 voter registration drive get ACORN money? Explain that.

16 A Because what they do is they look at areas that are
17 hotly contested or battleground states, like Missouri,
18 Pennsylvania, Ohio. And they know that there is a vast
19 number of people, because we do the census work -- or they do
20 the census work, that are unregistered African-American or
21 Latino voters.

22 They get -- the Project Vote side gets money from
23 certain liberal organizations or -- to run these voter
24 registration drives. I'm sorry. I'm nervous.

25 Q It's okay.

1 A And on the ACORN side, they learned their lesson
2 from minimum wage, and one of the things that they said is
3 that we couldn't use the minimum wage to build the membership
4 even more. So by building membership, those members are
5 dues-paying members. They pay I think at least \$30 a month.
6 That's to the best of my knowledge. But that's another way
7 to build power, I want to say, in the communities, but it
8 also builds the power of the organization as well.

9 Q Do ACORN donors increase donations based on voter
10 registration drives?

11 A Yes, especially in election years.

12 Q How does that work?

13 A What they do is -- let's say that there is a hotly
14 contested election. You can get -- now most of the money, of
15 course, for the voter registration program was coming through
16 Project Vote. They had a \$28 million budget. So when I talk
17 about ACORN political, I'm actually talking about Project
18 Vote as well. So I wanted to make that distinction.

19 Project Vote actually during the years that there
20 were -- like 2004, 2000, any type of presidential election
21 year especially, donations seem to increase. And there's a
22 concern of what happens after the election. So there's a
23 frenzy to build up money and resources before the election is
24 decided because after, if it doesn't go their way, there
25 could be a serious drop-off in funds.

1 Q Let's talk about the money from the individual
2 ACORN offices, and let me step back and ask a baseline
3 question. Can you briefly describe for the Court how ACORN
4 is organized and how its affiliates are organized and how
5 that sort of intersects? And then I'm going to ask you about
6 how the national is organizationally developed from national
7 to the state chapters to the city chapters and then down to
8 the local canvassers, and then I'll ask you some follow-up
9 questions.

10 A Okay. Well, ACORN is a member organization. It
11 has, of course, like you just said, the national branch. But
12 then the local offices are the ones that -- they try to be
13 self-sustaining. I know that when I was working in the D.C.
14 office, I would hear all the time, if we don't increase our
15 membership, we won't meet payroll.

16 So it was one of those things where their money in
17 the accounts for the local offices was determined by how many
18 members they had on bank drafts or that they were going out
19 in the community and collecting the money from.

20 So that was -- they would also apply for grants.
21 They would do certain programs, like the Sherwin Williams Get
22 the Lead Out or H&R Block, to raise money for the office to
23 run these campaigns.

24 Q Okay. We'll get to that in a minute. So there's a
25 national ACORN organization, correct?

1 A Correct.

2 Q And then how many affiliates do you know of, of
3 ACORN?

4 A The number changes all the time. To the best of my
5 knowledge, it's got to be at least over 170. The last number
6 I heard was 176, but that's constantly changing.

7 Q So, for instance, Project Vote would be a separate
8 corporate entity, but it would be an affiliate of ACORN,
9 correct?

10 A Correct. They call it the council of
11 organizations.

12 Q All right. And then there would be a state ACORN.
13 Is that right?

14 A Yes. It would -- I'm sorry. Go ahead.

15 Q Okay. And then there would be a city chapter,
16 right?

17 A Correct. Well, often when they say "state ACORN,"
18 it's more like we're represented in let's say Pennsylvania
19 and then they'll have three or four off-shoot offices,
20 depending on the counties or where there's the most
21 population. It's just like there's the Los Angeles ACORN,
22 which is considered to be the hub of California, but then you
23 have all these other offices there as well.

24 Q All right. Let's get back to the money. So ACORN
25 National is interested in voter registration because they get

1 more money from donors. Now, why is the state or local
2 chapter interested in the voter registration in regard to
3 money?

4 A Well, a lot of the ways that the local chapters get
5 -- they get their direction from national. When there's --
6 when we would get together, we would actually plan things as
7 to, well, if we do this here or this is the political plan
8 for Delaware, this is the political plan for Ohio. So they
9 would have these political plans already in place so the
10 local offices would know where it was going.

11 They had political directors in these offices, and
12 a lot of times they worked in conjunction with the local.
13 Because of the limited space, you would have political local
14 or national sometimes in the same office.

15 Q And does the local chapter make money on voter
16 registration?

17 A I think so, but I'm not really positive how that
18 works.

19 Q All right. And how does the canvasser -- how does
20 the ACORN canvasser make money?

21 A Now, I've seen information that states that in some
22 areas --

23 MS. SIMPSON: Objection, hearsay.

24 MS. HEIDELBAUGH: She has personal knowledge of
25 this. This is not hearsay. She has personal knowledge.

1 MS. SIMPSON: She's testifying that she has seen
2 things.

3 MS. HEIDELBAUGH: She can testify to that. If she
4 has read a document and she has personal knowledge of it,
5 that is her personal knowledge, just as if I have personal
6 knowledge of any document that I'm reading here. She's not
7 referring to a document --

8 THE COURT: Okay. She can't be just a conduit for
9 some document that's not in the testimony. So I'm sustaining
10 the objection. You may rephrase your question.

11 MS. HEIDELBAUGH: Thank you, Your Honor.

12 BY MS. HEIDELBAUGH:

13 Q I don't want you to refer to what we call hearsay.

14 THE COURT: Don't just tell us what's in a
15 document. Tell us what you know. That's what she's saying
16 to you.

17 THE WITNESS: Okay.

18 THE COURT: Please rephrase your question.

19 MS. HEIDELBAUGH: Thank you.

20 BY MS. HEIDELBAUGH:

21 Q What do you know about how canvassers are paid?

22 A Okay. What -- what I know is that there has been
23 problems over the years with how to pay the canvassers.
24 There's some states that do not allow you to pay per card.
25 And so they've actually tried to figure out a way as late as

1 2007 to pay people for -- so even with each voter
2 registration drive, they're still trying to figure out a way
3 to pay people except pay by card because that's the
4 motivation. It was always said that if you pay someone \$8 an
5 hour, you know, they might go home; but if you're paying them
6 per card, they're more likely to go out there and get, let's
7 say, 20 or 30 cards per day.

8 Q Is there a quota system?

9 A Yes.

10 Q And what is the quota system?

11 A I'm not sure exactly how many cards per day, but I
12 know that at the minimum, I've -- I'm aware of at least 20
13 cards per day.

14 Q Okay. What happens if you don't make the quota?

15 A You get fired.

16 Q Okay. Now, is there pressuring to meet the quota?

17 A They put a lot of pressure on what they call the
18 contractual -- contractual employees, the part-time,
19 temporary employees that are -- understand that they have no
20 obligation after the registration drive to be rehired. They
21 know that they're only there for that amount of time and that
22 at the end, they might be put on some other campaign; but
23 then again, their work could be reviewed and they could be
24 let go.

25 They would pressure these people to get the numbers

1 in. And they would pressure the political directors or let's
2 say -- what do they call them? I'm trying to think of the
3 name, but it's the people -- there's the head -- head
4 organizer and then there's the political person. They never
5 wanted the head organizer to be the political person because
6 they need someone to look at quality control and still
7 maintain the office as well, so they needed two separate job
8 titles.

9 Q Now, the canvassers, are they two types of people,
10 employees and independent contractors?

11 A I think so. I think that there are some that are
12 employed as political paid canvassers that are given a
13 salary. And then there's a period of time where if there
14 seems to be that they're not meeting goals for that state or
15 whatever, that they might go through a hiring frenzy of
16 hiring part-time employees to kind of fill in the gap.

17 Q And that hiring frenzy, does it have a name?

18 A That's the ramp-up period.

19 Q Is it called the ramp-up program or period?

20 A Yeah, that's what I've always heard it called. I
21 would sit in on some of the meetings that they had at the
22 political operations retreat that we had in Arkansas, and
23 they talked about the problems that were associated with this
24 period.

25 Q Let's break that down. Okay. First, what is the

1 ramp-up program or ramp-up period?

2 A That's a time where there's massive hiring, where
3 they'll put up flyers, go to community places where they can
4 find people, job banks, social services offices; basically
5 get the word out that they're hiring people to do voter
6 registration and get as many people in the door as possible.

7 Q And how are those people paid, by check or cash?

8 A Honestly I'm not sure. From what I understand, it
9 has -- there have been cash payments in the past, and there
10 are also people that are paid by check.

11 Q Okay. Now, the 28 million that you referenced
12 earlier in your testimony as a budget for Project Vote, where
13 does that money come from?

14 A Now, 28 million was the number when I left.

15 Q Okay.

16 A But that money comes from individual donors,
17 grants, family foundations and our supporting foundations,
18 ones that always support us yearly. And sometimes for big
19 registration drives, they will increase the amount that they
20 usually give.

21 Q Can you trace that money for me? How does it come
22 into the organization? Does it come into Project Vote or
23 ACORN or some other organizations?

24 A Now, it depends. Some checks would come directly
25 to the D.C. office to Project Vote. Other checks would go to

1 the Arkansas office where Zach is, where ACORN political has
2 its base. Those checks were usually copied, and I would have
3 PDF access to them. The checks that I received I would copy
4 and send them over to Little Rock for processing.

5 Q And can you describe how the money flows between
6 ACORN, Project Vote and any other organization like CCI?

7 A The money goes into accounts at CCI. CCI has
8 dozens -- dozens and dozens of accounts. Some of them are
9 Project Vote. Some of them are ACORN.

10 Q Let's stop you for a second. What is CCI?

11 A Citizens Consulting Incorporated.

12 Q And is that a --

13 THE COURT: Mr. Murphy?

14 BY MS. HEIDELBAUGH:

15 Q Is CCI an affiliate of ACORN?

16 A Correct.

17 Q What does CCI do? What is its purpose?

18 A It's basically the accounting arm for all of the
19 money, the payments, who gets what, the -- how the
20 organization operates and flows and makes sure its bills are
21 paid. All of that goes through CCI.

22 Q How do the other entities get the money?

23 A CCI makes disbursements to them either directly
24 into their account or does transfers between I guess the
25 different organizations.

1 Q Okay. So let's go back to the canvassers. How do
2 they make their money?

3 A Some of the canvassers that are political
4 organizers are on staff payroll. They are hired with the
5 understanding that -- they, of course, are usually there
6 through the whole voter registration drive. So I know that
7 they're paid salary. As far as the part-time employees, I'm
8 a little fuzzy on how that works. Like I said, I have
9 knowledge of them being paid in cash, but I know that it's
10 something that might have been from previous years and has
11 been worked on. So I can't be positive on how they're paid
12 at this point.

13 Q Okay. Are there -- are there -- to your knowledge,
14 are there canvassers that are paid per registration card in
15 cash?

16 MS. SIMPSON: Objection, leading.

17 MS. HEIDELBAUGH: I asked "to your knowledge."

18 THE COURT: Overruled.

19 THE WITNESS: To my knowledge, yes.

20 BY MS. HEIDELBAUGH:

21 Q Okay. And when you went to this meeting, there was
22 discussion regarding problems with the voter registration
23 drive. Can you give me the topics of the problems, and then
24 we'll break it down with follow-up questions. First problem
25 with voter registration drives?

1 A One of the things that they talked about was the
2 quality of people that they were getting. Some of the people
3 didn't know how to use basic office -- office systems, which
4 made it very hard for copying the registration card and
5 making sure that they were turning in accurate counts and
6 work -- work ethic issues. That was number one.

7 We always laugh and talk about the whole jive
8 turkey and paying people in crack; that's the whole ACORN
9 joke. But we did have some problems with people that had
10 other agendas.

11 Q How about -- what's the next problem?

12 A The next problem was quality control.

13 Q Describe -- what do you mean when you say "quality
14 control"?

15 A At the meeting, they talked about ways to improve
16 quality control, to make sure that these -- they were finding
17 out which cards were bad. And there was more of a consistent
18 training for whoever was going to be the quality control
19 person.

20 We were having a problem at the time with turnover.
21 Turnover is a -- is a very big problem in the organization,
22 so they wanted to make sure that training was consistent and
23 ongoing and these people understood exactly what was going
24 on. The thing about it is that it was the same complaint
25 from the previous registration drive as well.

1 Q All right. So did the individuals in the room or
2 did ACORN as an organization realize there was quality
3 control issues?

4 A Yes. And --

5 Q And from what you could see, were those issues
6 addressed?

7 A There were ideas that were brought up, and I know
8 that they were looking into ways to solve those issues. But
9 I wasn't aware of any concrete plans that came out of the
10 meeting.

11 Q All right. What were the other issues?

12 A The other issues were training. There was a
13 consistent concern about training. I even actually raised
14 the issue myself that there was a sink or swim type thing
15 going on in ACORN, where you come in and you really don't
16 understand what you're doing and they expect you to move a
17 mountain and then when you don't, they think you're stupid.

18 So I didn't say it in those words, but I was very
19 passionate about it. So I actually talked to Zach about ways
20 to improve the training department and come up with, like,
21 manuals and stuff that we could actually follow.

22 Q Now you mentioned a sink or swim mentality. Was
23 there another program at ACORN in regard to errant employees
24 who were caught doing the wrong thing?

25 A Yes.

1 Q And what was that called?

2 A Internally throwing them under the bus. You know,
3 it wasn't one of those things that management ever said to
4 me, but we all knew that's what happened.

5 Q Okay. Let's break that down. All right. So you
6 testified that there was an issue with training. Now, you
7 also testified that you were investigate -- that you worked
8 on the 2004 investigation of the voter fraud allegations that
9 were made. Was that in St. Louis?

10 A Yes.

11 Q Okay.

12 A Or Kansas City as well.

13 Q All right. And what was the organizational
14 philosophy on training versus employees who would get caught
15 doing fraudulent registrations and the throw it under the bus
16 program? Can you put all that together on how that really
17 worked?

18 A Yes. They had a training manual that you would
19 follow. It was more about -- they tell people never ask
20 someone if they're registered to vote because that's a yes or
21 no question; ask them if they voted in the last presidential
22 election; if they didn't vote, register -- register them
23 anyway, which at times can lead to duplicates.

24 It was also said that you were -- you know, send
25 them out in the field, see how they do, send them to an area

1 that they'll succeed in, like a place where they'll register
2 a few cards, get them excited about the program, and then go
3 back to the office and close the deal, and the next day,
4 they're out doing voter registrations.

5 So they had very little training. They were given
6 the information about the fraud, what would happen to them if
7 they did commit the fraud, and they had to sign a piece of
8 paper saying I have read these fraud policies and I
9 understand that I could be prosecuted. Once they sign that
10 paper, that was basically it. There was not a lot of room
11 for ongoing training when you're in the middle of a massive
12 drive.

13 Q Was there ongoing training?

14 A Not that I was aware of at the time.

15 Q Okay. Now, what happened to an employee who wasn't
16 trained who just signed the -- the paper that they had read
17 it and who was caught being engaged in fraudulent voter
18 registration? What happened? What did the organization do
19 to them?

20 A They would fully cooperate to make sure that that
21 employee was prosecuted and to put -- you know, to make sure
22 that they understood that it was that employee only, not the
23 organization. So they went after that employee intensely to
24 make sure that they took the brunt of what was going on.

25 Q And did you see that personally?

1 A Yes.

2 Q Explain what you saw.

3 A Through my research on the voter fraud brief, I saw
4 -- I saw a consistent pattern that over the voter
5 registration drives dating back to 2000, there was at least
6 seven to nine people, sometimes only four, but there were
7 ACORN employees that were always heavily prosecuted.

8 And some of them you could tell from their stories
9 weren't, I won't say the brightest people in the world, but I
10 don't really think they knew what they were getting into.
11 They did commit -- you know, they did do something wrong.
12 They made a bad judgment. But I do feel that they were
13 caught up in trying to get the money and they were worried
14 about getting fired, so it kind of concerned me a little bit.

15 Q Okay. Now, how -- link that to the throw them
16 under the bus program. What did the organization do in
17 regard to that individual employee? Did they admit that they
18 didn't train them or they had quality assurance problems, or
19 did they say it was all the employee's fault?

20 A No. They always felt that the quality assurance
21 was adequate for what they were doing and that they -- you
22 know, adults should know better. So they wouldn't give them
23 any leeway. They wouldn't understand, well, maybe they
24 weren't paying attention; maybe it's good to reinforce these
25 things over and over. It was just more they did this, they

1 were wrong, we're going to prosecute them, then we're going
2 to move on and keep registering voters.

3 Q All right. And did you see any change
4 organizationally after the St. Louis convictions?

5 A They were more concerned about attacks. They
6 wanted -- you know, like I remember in 2006, right after the
7 midterm elections, it was one of those things of do we want
8 to take credit for this or do we want to -- it could open us
9 for attacks, so maybe we should just kind of sit back and
10 don't say ACORN was pivot -- pivot -- I can't use that word.

11 Q Pivotal.

12 A Yes, in getting the democrats back in office. So
13 there was always concern of the more that they did, they
14 would open themselves up to attacks. So after that, it was
15 kind of flying under the radar a little bit.

16 Q Okay. Now, did you see the organization change in
17 any substantial way the training of their canvassers or the
18 quality assurance program after the convictions in Seattle
19 and the convictions in Kansas City and the convictions in St.
20 Louis?

21 A Now, I did see -- when I was traveling with Karen
22 Gillette, I did see that they were training. They had, like,
23 more, like, organized training for the political directors.
24 They were actually getting more in -- in classroom time than
25 before. They had set up programs to where the political

1 directors were getting what they needed.

2 As far as the canvassers, I left before they
3 started hiring the part-time canvassers. But I know they
4 were still looking for ways in 2007 to pay these canvassers
5 to where it wasn't this per card pressure. So I'm not sure
6 how that evolved.

7 Q And you talked about Project Vote getting donor
8 lists. What are donor lists?

9 A Lists from other organizations that showed the
10 name, address and amount that this person has given to that
11 organization.

12 Q And where did these donor lists come from?

13 A Political parties, some of the campaigns. What is
14 that? Organizations that did the same type of work, like
15 ACT, America Coming Together. Those -- we'd get those types
16 of lists.

17 Q Did you ever receive any donor lists from any
18 senatorial campaigns?

19 A I'm not sure.

20 Q Did you ever receive -- did ACORN or Project Vote,
21 to your knowledge, ever receive any donor lists from
22 presidential campaigns?

23 A Yes.

24 Q Which ones?

25 A Kerry, Clinton, and the Obama campaign.

1 Q And when was that?

2 A Around late 2007. I know that I got the DNC list
3 and the Kerry list around the same time, so I want to put
4 that at October of 2007. And -- but I'm not sure. And I
5 think the Obama list came in in late 2007, maybe November.

6 Q And how did that come in?

7 A It was passed on to me by Karen Gillette.

8 Q All right. And how was it passed on?

9 A It was forwarded to me and with the understanding
10 that it had come from the campaign.

11 Q Okay. What was to be done with that list?

12 A I was to take out all the duplicates and get the
13 list together for donor solicitations. We were breaking it
14 down like California, D.C., New York, like that. We were
15 also looking for telephone numbers as well.

16 Q Now, were these people that had maxed out to the
17 presidential campaign and who could then give additional
18 money to ACORN to do Get Out The Vote work?

19 A Yes.

20 MS. SIMPSON: Objection, leading.

21 THE COURT: Overruled.

22 THE WITNESS: Yes. That was part of the plan.

23 BY MS. HEIDELBAUGH:

24 Q Okay. And who hatched that plan?

25 A That was our development plan written by Karen

1 Gillette, that we were to approach maxed out presidential
2 donors.

3 Q Okay. And what were -- what was the money going to
4 go for?

5 A Voter registration.

6 Q Okay. Now, was voter registration already being
7 paid for by something else?

8 A We had other donors that were coming in, but I
9 think they were trying to still -- when I left, the
10 \$28 million budget was approaching 30 something million. So
11 it was being tweaked, and I guess additional funds or more
12 programs were being added.

13 Q Okay. Now, did you have access to the accounting
14 system?

15 A NewVision?

16 Q Yes.

17 A Yes.

18 Q Can you describe what that is?

19 A NewVision is the system that pulls up the accounts
20 so you can see what has been credited to the account,
21 deposited and what has been taken out of the account.

22 Q And is that for Project Vote, or is it for ACORN,
23 CCI? What is it?

24 A All of them. I had the Project Vote access. But
25 NewVision worked with CCI and ACORN, and they had their own

1 page in NewVision. For each -- in each local office, they
2 had their own page.

3 Q Okay. And so did you work with that for the entire
4 time you were there?

5 A Starting in 2007, late -- no, not late, but I'd say
6 mid 2007, they gave me access.

7 Q Now, when you first got into NewVision, what were
8 -- was one of your job responsibilities to reconcile
9 accounts?

10 A Yes.

11 Q And what was your first task in that regard?

12 A There was, like, a \$9 million gap in between what
13 we had in our donor system, Donor Perfect, and what was in
14 the NewVision system. So I would print out deposit records
15 going back sometimes to early 2000. And then I would match
16 them up with donor letters, information in NewVision and
17 sometimes recollection of people that used to handle that,
18 depending on how far the information was going back.

19 Q And were the accounts clear?

20 A There were still some questions because we had a
21 box of stuff we had got from the Ohio office when it closed.
22 I think it was Ohio. But there was so many, like, random
23 letters and money and checks that were never cashed that
24 there was -- at one point we felt that we had got it as good
25 as it was going to get.

1 Q Now, was there active cooperation between ACORN's
2 political wing and Project Vote?

3 A Yes.

4 Q Tell us how that worked.

5 A We -- we're considered basically the same staff.
6 Nathan Henderson James was the strategic writing and research
7 department -- he was that director. And then at the same
8 time, he was research director of Project Vote. Zach was the
9 executive director of Project Vote and the executive director
10 of ACORN political.

11 All of the organizations and the entities worked
12 together. We shared the same space. It was only starting in
13 2007 where I started to see a real division between the
14 organizations where they were like, okay, you've got an ACORN
15 address; let's give you a Project Vote e-mail address. Try
16 to -- they put a door up to keep the D.C. national side --
17 I'm sorry, the D.C. local and the national side separate from
18 Project Vote so it looked like it was two separate offices.

19 Q Okay. I want to go back to the voter registration
20 issue. Can you give me the names of the people that you
21 heard discuss ACORN's lack of internal quality controls at
22 management meetings?

23 A I remember during the staff to brief, in Arkansas,
24 Jessica Angus was one of them. I want to say Jarvis Houston.
25 He might have mentioned some of the problems with recruiting.

1 But --

2 Q How about Zach Polett or Karen Gillette?

3 A I think that Zach was aware of the issues. He
4 talked about the lack of training, and he told me that I had
5 some really good ideas and they were actually working on some
6 things to change the training department. Karen always
7 supported me and any ideas I had, so she encouraged me to
8 talk to Zach about that and the diversity in the
9 organization.

10 Q Now, was there an awareness that there were
11 duplicate registrations that were being obtained by these
12 canvassers throughout the country?

13 A Yes.

14 Q And what was the attitude about that?

15 A I have knowledge that they were striving for at one
16 time 40 percent accuracy rate. So 40 percent was okay.

17 Q Now, was there knowledge that there was, I'm going
18 to use the word a "dumping" of voter registration cards on
19 election divisions throughout the United States and in
20 Pennsylvania?

21 A Yes.

22 Q And what was the attitude of the organization on
23 the dumping of the registration cards?

24 A Well, I was told when I was working on the
25 provisional voting survey that they already had a bad opinion

1 of us because we would send so many cards over to them. So I
2 was to try to sweet talk them, make -- they said, make them
3 feel like they're really helping you, thank them a lot, and
4 if all else fails, tell them that you're doing a provisional
5 voting academic survey or something. So I wouldn't name
6 myself.

7 Q You were told to misrepresent the purpose of your
8 call?

9 MS. SIMPSON: Objection, leading, mischaracterizing
10 the prior testimony.

11 THE COURT: Sustained as to form. You may rephrase
12 it.

13 BY MS. HEIDELBAUGH:

14 Q Did the organization tell you to place calls to the
15 election divisions?

16 A Yes.

17 Q And when you placed calls to the election
18 divisions, did you always represent that you were ACORN or
19 Project Vote?

20 A No.

21 Q Who would you say you were?

22 A Sometimes I said I was doing an academic study.
23 Sometimes I mentioned voter protection. Other times I just
24 said my name is Anita and I was doing a provisional voting
25 survey, could they help me.

1 Q Okay. So there was awareness at the highest levels
2 that there was a dumping of fraudulent registrations on the
3 election divisions. Is that correct?

4 MS. SIMPSON: Objection --

5 THE COURT: Sustained as to form.

6 MS. SIMPSON: -- mischaracterizing --

7 THE COURT: Sustained as to form. You may rephrase
8 that.

9 BY MS. HEIDELBAUGH:

10 Q Was there awareness at the national ACORN --
11 national ACORN level or Project Vote that there were
12 fraudulent registrations?

13 A Yes.

14 Q And was there awareness that there was a dumping of
15 those close to the election time?

16 A Yes. But I'd like to explain that.

17 Q Yes, please.

18 A They understood that, but they never said to me
19 that they were bad cards. They just said that they were
20 upset with us because we had overburdened or overwhelmed the
21 offices, and a lot of times they didn't want to deal with us
22 after that on the telephone.

23 Q Okay. Now, were there something that was called
24 rogue offices?

25 A Rogue offices?

1 Q Rogue ACORN offices.

2 A I'm a little confused as to what you're asking.

3 Q Sure. Did Zach Polett and Karen Gillette know that
4 there were certain ACORN offices that had higher fraudulent
5 registrations?

6 MS. SIMPSON: Objection.

7 THE COURT: Overruled.

8 MS. SIMPSON: She can't testify --

9 THE COURT: You may answer.

10 THE WITNESS: I think that Zach Polett was aware
11 that there were certain offices that they had to watch more
12 closely and that there might be quality control issues in
13 certain places. If there were any quality control issues,
14 they were usually brought up between the management staff.

15 BY MS. HEIDELBAUGH:

16 Q How about -- do you know who Kathryn Barr is?

17 A Yes.

18 Q Who is she?

19 A She used to be the communication directors for
20 Project Vote.

21 Q Where is she now?

22 A She is at Rock the Vote. I think it's Kathleen,
23 though. I think it's Kathleen. I'm not sure.

24 Q I'm sorry.

25 A I just always called her Kat, but I'm not sure.

1 Q Okay. And did you have discussions with her
2 regarding fraudulent voter registration cards?

3 A No.

4 Q Okay. Now, were -- was the ACORN voter
5 registration drive in every state in the union?

6 A No.

7 Q What states? And if you can put a name to the
8 states that the drives were concentrated in, that's fine.

9 A I remember political plans for Ohio, Pennsylvania,
10 Florida. I want to say Maryland, maybe Colorado, New Mexico,
11 but I'm not sure. It was basically the states that had
12 either contested congressional seats or what were considered
13 to be battleground states.

14 Q When you use the term "battleground state," what do
15 you mean?

16 A Where it could go either way, it was really close;
17 and by coming in and registering new voters, it could change
18 the outcome of the election.

19 Q Were there established goals for the battleground
20 states for the number of registration cards that ACORN wanted
21 to obtain?

22 A Correct. That was usually contained in the
23 political plans, but sometimes they would tweak those goals
24 the closer it got to starting the registration drive.

25 Q And did those battleground states -- did the local

1 offices and the political directors submit information on an
2 ongoing basis about the numbers they were able to accumulate?

3 A Yes. They were supposed to -- that was sometimes a
4 condition on the people getting paid, if they sent their
5 batches in when they were supposed to.

6 Q And if the numbers weren't meeting quotas, what
7 would happen?

8 A They were told that they needed to start firing the
9 non-performers; if the people weren't performing, then they
10 were basically wasting the people's time and money and they
11 needed to go. Sometimes they would say, check the numbers
12 before they go out because if they're already bad, fire them
13 right there; don't let them waste your money for the day.

14 Q Did ACORN view submission of fraudulent or
15 duplicate registration cards as an impediment to their goals?
16 For instance, if they had a goal of let's say 200,000 for a
17 particular state, if they knew that a hundred thousand of
18 them were fraudulent, did that matter for their goal?

19 A I'm not sure. From what I understand, the more --
20 the concern was more about getting slammed in the press or
21 getting caught with bad registrations. It wasn't about how
22 it was affecting the numbers. It was more of, you know, oh,
23 we don't want them to attack us here. So that's more of what
24 I understand.

25 Q Okay. Were they interested in the -- in the total

1 number submitted versus the valid number of registrations?

2 Which were they more interested in?

3 A Total number. It was always to get to that end
4 goal, whether it be 56,000 or whatever.

5 Q You testified a moment ago that you would
6 personally contact state offices, state election division
7 offices. Is that correct?

8 A Correct.

9 Q Okay. And how would you characterize the nature
10 and frequency of the contacts that you made?

11 A Well, during the provisional voting survey, I was
12 making contacts either by e-mail or calls quite frequently,
13 sometimes two or three times a week. I did a little bit of
14 that for the voting fraud briefs, but it was dependent --
15 dependent on the case and whether or not the board of
16 elections had information that would help me.

17 So during that -- 2005, that was very active for
18 me, contacting the board of elections or the secretary of
19 states. After that, not as much because I started getting
20 different types of projects.

21 Q Now, in addition to the ramp-up period or program,
22 did ACORN have a program called Muscle for the Money?

23 A Yes.

24 Q Can you tell us what that is?

25 A Well, it means two different things, depending on

1 who you ask.

2 Q Okay. Well, I'm asking you, and I want you to tell
3 me the two -- the two programs that were Muscle for the
4 Money.

5 A Okay. The first one is the official program, which
6 is where they calculate the number of -- the cost for
7 registering voters, the cost for GOTV, and how close the
8 elections were in certain states. So it's basically how CSI
9 works, where they say to get this person to vote, to register
10 this person and get them to the polls, it could cost you \$17
11 and whatever cents; if you go through our program, we have
12 proven methodologies; we know how to get this done; it will
13 cost you this amount.

14 So there's actually a CSI chart that breaks down
15 how much it would cost to drive voters to the polls. And
16 they would use -- they would say give us the money, we're the
17 muscle, we'll get out there and get it done.

18 Q I want to go to the second program here, but what
19 is CSI?

20 A CSI is Citizens Services Incorporated. It does, I
21 guess, voter identification, turnout, GOTV. It's sort of a
22 consulting firm for candidates that want to use the services
23 to help with them getting elected.

24 Q Now, there was -- CSI was recently in the national
25 media, correct?

1 A Correct.

2 Q All right. And why was it in the media?

3 A Because one of the presidential people gave money
4 to it.

5 Q Okay. Which one?

6 A Obama.

7 Q And how much money was given?

8 A I've heard 880,000, but I'm not sure.

9 Q Okay. And are you aware that the original
10 indication was it was for sound and lighting equipment,
11 correct?

12 A I've been told that, yes.

13 Q Okay. Now, did CSI have sound and lighting
14 equipment?

15 A No.

16 Q What does CSI do?

17 A From -- from the way I understand it, because I
18 made the flyer for the first CSI program that they did, it
19 was voter identification, turnout, GOTV, calling voters,
20 getting them out to the polls.

21 Q Okay. What is the second, unofficial Muscle for
22 Money program?

23 A That's what I learned in the local offices. That's
24 where -- let's say the D.C. office where I was. They would
25 be given a project to go work on, even if they didn't have

1 interest in it. At the time, even after I was fired, I was
2 working with ACORN, going to barbecues, doing other stuff
3 with D.C. local.

4 They got involved with a group called the Carlyle
5 Group. They were paid by SCIU to harass a man named
6 Mr. Rubenstein, and they wanted me to go out -- the D.C.
7 local did, wanted me to go out and break up a banquet dinner,
8 protest out in front of his home. But the local -- D.C.
9 local did not have an invested interest really in messing
10 with the Carlyle Group. It was because they were paid by
11 SCIU to do this. And it was always referred to as Muscle for
12 the Money because they would go out there, intimidate these
13 people, protest.

14 They did it in front of Sherwin Williams. They did
15 it at H&R Block, where -- H&R Block was a target for years.
16 And instead of, you know, reforming the way they did the
17 rapid anticipation loans, they ended up giving money to the
18 ACORN tax sites which paid for new computers and money to run
19 these tax filing sites around the country.

20 Q Okay. Let me rephrase here. We have the official
21 Muscle for the Money program which is you give us money, we
22 go out and get out the vote. Is that right?

23 A Yes.

24 Q And then there was the unofficial Muscle for the
25 Money program, correct?

1 A Yes, where the locals were being used to kind of --
2 their protesting was used to get people to negotiate.

3 Q Okay. So let's break this down. A company would
4 be -- can I use the word "targeted"?

5 A If you want to.

6 Q Okay. And they would be protested?

7 A Yes.

8 Q And then the company would pay money to ACORN?

9 A Yes.

10 Q To get the protesting to stop?

11 A Yes.

12 Q And what did you -- what did you call that?

13 A Oh, Muscle for the Money.

14 Q And did you have any other names for it?

15 A Protection. We were very -- not to be flippant,
16 but we were just always very sarcastic about it in the
17 offices. We knew what was going on. And it's not that we
18 thought it was funny, it was just one of those things that we
19 talked about. That's why I said it like that, so you
20 understand.

21 Q So the -- so what you called the protection program
22 occurred against Sherwin Williams, Jackson Hewitt, H&R Block,
23 the Carlyle Group and any other groups?

24 A I'm trying to think. I know Money Mart, they were
25 given the loan shark of the year award. So sometimes it was

1 to help the communities; but a lot of times, especially in
2 the instance of the Carlyle Group, there was not a real
3 benefit for the office besides the money that was being given
4 to them by SCIU to do this.

5 Q Now, in regard to the voter registration program
6 versus the second, unofficial Muscle for the Money program,
7 okay, was there an organizational philosophy to try to divert
8 attention of the media away from the unofficial Money for the
9 Muscle program (sic) to the voter registration effort?

10 A I won't say official, but it was one of those
11 things where if they were going to look at something, they
12 would rather look at voter registration because there was --
13 they're used to fighting voter registration.

14 We have prepared responses that everyone was given
15 to say that voter registration fraud doesn't really happen,
16 voter IDs affect people. It was certain spiels that we were
17 all given to say.

18 And at the meeting in 2007, there was actually a
19 conversation about how you can make sure everyone was on the
20 same page of how to respond to that because those responses
21 like, oh, you don't want African Americans to vote or you
22 don't want minorities to vote or things where it's very hard
23 to come back at and they were good at fighting that.

24 Q Okay. Let's break that down. So you attended a
25 meeting in which you were instructed on a talking point. Is

1 that right?

2 A Yes.

3 Q And do I understand your testimony correctly that
4 despite the fact that you, in fact, had worked on 2004 voter
5 registration fraud issues, you were instructed to say it
6 didn't happen?

7 A The way you're putting it, but I guess what I'm
8 saying is that everyone in the organization was given a --
9 talking points as to how to respond to allegations of voter
10 fraud. But they much preferred that you run it through the
11 media. But sometimes they said that you would get -- members
12 or whoever would get caught out on camera, so they wanted to
13 make sure everybody was on the same page of what to say. So
14 they even thought about passing those out to the organization
15 as a whole, but most people in political had a copy of the
16 voter fraud talking points.

17 Q Now, was there also a talking point that if the
18 organization was accused of voter fraud registration or its
19 employees were found guilty, that the response was to be that
20 the person accusing them of that was trying to suppress the
21 vote?

22 A That was one of the talking points as far as it was
23 not really voter registration fraud, it was usually just a
24 lone employee acting alone in doing this and ACORN was going
25 to prosecute them to the fullest. And most -- of anything,

1 it had to do with employee wrongdoing, had something to say
2 in there about how we're distancing ourselves from them, they
3 did this, let's get them.

4 Q And did race play a part in this?

5 A I guess it would have to because a lot of people
6 that they were registering were Latino and African-American,
7 low income voters.

8 Q Was there an organizational talking point that
9 those who objected to voter registration fraud were to be
10 accused of voter suppression in a racial context?

11 A There was -- I'm trying to remember exactly the
12 document. It's been a couple years since I saw it, but I
13 know that it had a couple of good points to bring up about,
14 okay, this is -- this is some responses to voter fraud
15 attacks. And I remember reading some things, but I'm not
16 positive that it stated in there to bring it up as a racial
17 issue.

18 Q Did ACORN and Project Vote target particular
19 individuals or entities to solicit donations?

20 A Yes.

21 Q And which ones were those?

22 A As far as who are the donors or --

23 Q Sort of the -- you know, I think you testified
24 there was donors who had lapsed -- who had maxed out for
25 presidential race. That's one category.

1 A Oh, okay. Maxed out presidential donors. What
2 they call the billionaires club, which is, like, Herb Sandler
3 and the Rockefellers. And you've got the millionaires club,
4 where it's, I guess, like, Patricia Bowman and the Bowman
5 Foundation, Wellspring, Sykes, what we call the usual
6 suspects in the liberal world.

7 Q Okay. And did you provide me with the presidential
8 campaign of Senator Obama's donor list?

9 A Yes. As well as Kerry and Clinton.

10 Q Okay. This is a CD-Rom of that donor list. Okay.
11 Is this the donor list that was printed that you provided to
12 me?

13 A Yes.

14 MS. HEIDELBAUGH: Okay. I'd like to admit this
15 into evidence.

16 THE COURT: How is it marked?

17 MS. HEIDELBAUGH: Exhibit 1.

18 THE COURT: Well, I have an Exhibit 1.

19 MS. HEIDELBAUGH: You -- you reserved ruling on
20 that, and I withdrew it. So I thought you might want me to
21 start again.

22 THE COURT: Fine. Let me give that one back.

23 MS. HEIDELBAUGH: I can do 2 if you like.

24 THE COURT: Just as long as we don't end up with
25 two exhibits that have the same number.

1 MS. HEIDELBAUGH: I withdrew this. So this will be
2 1.

3 BY MS. HEIDELBAUGH:

4 Q How did it come --

5 THE COURT: Hang on just a second.

6 MS. HEIDELBAUGH: It's an Excel spreadsheet. It's
7 a massive document that -- it's very difficult to print, so
8 it's --

9 THE COURT: Let me just ask you to do something
10 when you mark it.

11 MS. HEIDELBAUGH: Yes, sir.

12 THE COURT: Put a date on it and put your initials
13 on it so we know who's done this.

14 MS. HEIDELBAUGH: Yes, sir. May I have my
15 co-counsel do that?

16 THE COURT: Sure. That's fine.

17 MR. MASLAND: Excuse me, Your Honor. I really
18 don't care who's on that list or who isn't on that list, but
19 are you going to have copies for counsel?

20 MS. HEIDELBAUGH: Yes, sir. Yes, sir.

21 We'll attempt to get that printed today.

22 BY MS. HEIDELBAUGH:

23 Q How did it come to your attention that the
24 presidential campaign was in contact with ACORN and Project
25 Vote?

1 A In late 2007 -- I want to say it was November -- I
2 was in the Project Vote office by myself, and I received a
3 call on the main line. I answered the call, and a caller
4 identified himself as being from the Obama campaign. And he
5 wanted to know was this the same Project Vote that Obama had
6 worked with in the '90s. I had been recently told that it
7 was. So, of course, I said yes, and I was very excited.

8 And I took his information. And I passed it on --
9 well, I sent an e-mail to Karen Gillette, Nathan Henderson
10 James, I want to say Kevin Whalen and Zach Polett -- I think
11 that was everyone I sent the e-mail to -- letting them know
12 we had been contacted and someone wanted them to get back to
13 them as soon as possible.

14 Q Okay. And what happened after that?

15 A I didn't get any official contact that they
16 contacted anyone. I was told that if there are any
17 inquiries, that they had needed to go through either Kevin or
18 Zach, mostly Kevin because he handled those type of things.

19 Q Did you get in any trouble for writing that e-mail?

20 A Well, I think that I probably shouldn't have
21 written it. It was one of those things that I should have
22 just called, and that was the feeling I got. But it wasn't
23 like anyone was being mean to me, but it was the impression.

24 Q And who gave you that impression?

25 A Karen.

1 Q Did you, yourself, work with the donor list
2 acquired from the presidential campaign?

3 A Yes. I worked with it extensively.

4 Q And what did you do with it?

5 A Well, there was a ton of duplicates because a lot
6 of people gave more than once. So to -- the list is huge.
7 So in order to break -- get the list smaller, we were trying
8 to get out the duplicates. That was really hard to do. And
9 I was just really getting frustrated because we were always
10 trying to get numbers and other stuff for these people
11 because I think we were going to set up some meetings for
12 Zach or something to do with it, and I know there also might
13 have been a mailing that was going to go out.

14 Q Okay. What is D duping?

15 A That's where you remove the duplicates.

16 Q And why were you ordered to D dupe the presidential
17 donor list?

18 A So we could use it for donor solicitations and it
19 would be more manageable because it's really not manageable
20 the way it is.

21 Q And what was done with the list?

22 A I went through and broke it up by state. I broke
23 out California donors. I also looked at celebrities and
24 Hollywood people, professors, and I broke them into separate
25 categories because, you know, there were -- people were also

1 looking for a spokesperson. We talked about Barbara
2 Streisand because her foundation gave money. We talked about
3 Bruce Springsteen. So we were trying to see who on that list
4 might -- we have contact information for that might want to
5 work with us or at least give money to us.

6 Q Who instructed you to do that?

7 A Karen.

8 Q Karen Gillette?

9 A Karen Gillette.

10 Q Okay. And did you, in fact, work with that list?

11 A I worked with that list along with another person,
12 Nicky Paxton (ph). She was my counterpart on doing this.

13 Q And so give us a brief description of the type of
14 things that you would do with that list.

15 A Okay. I would go through the list. I think that
16 when I broke out the California donors, I went through,
17 sorted them, organized them I think by last name or
18 profession. I'm not sure which one. And I would break out
19 smaller lists and send that to Karen.

20 And it was just donor cultivation. At that point,
21 before I was fired, there was not a lot that we were doing
22 with this. We were getting ready to do stuff. We had just
23 ordered a ton of stationery and a lot of glossies. They were
24 the ACORN glossies, and then we had the exact same glossies
25 with Project Vote on them. And then we were going to send

1 them out as solicitations.

2 Q And do you know if those went out?

3 A I think so, but I'm not sure.

4 Q Okay. Can you tell me again -- and if you told me
5 this, I apologize, but what is the intersection between CSI,
6 Citizens Services, Inc., and Project Vote and ACORN? How do
7 they intersect?

8 A Well, like, I know that when Karen was hired, they
9 told me that she was going to -- she was coming on but she
10 would be through CSI. I know that our main person, which I'm
11 not really sure what his title is but I always called him the
12 money man, Jeff Robinson was through CSI. And Nathan
13 Henderson James, he was the research director for Project
14 Vote. But he transferred from Project Vote's checkbook over
15 to CSI's checkbook. So the main managerial people were paid
16 through CSI. And I think that after Zach left Project Vote,
17 he's now with CSI.

18 Q Okay. But what did CSI do?

19 A Voter identification turnout. They were -- I'm not
20 really sure how they implemented it. I know I made the
21 flyers for it, and so I understand what they did. But as far
22 as how it was completely separate from ACORN, I know it was a
23 consulting agency, but I'm not sure how they implemented the
24 work that they said they were going to do without using the
25 political directors or the canvassers that they already had

1 on hand. I'm not sure.

2 Q So did they work with ACORN?

3 A Yes. All the affiliate organizations worked
4 together.

5 Q And did CSI work with Project Vote?

6 A Yes.

7 Q Okay. And does CSI receive money from outside
8 groups, including political campaigns?

9 A Yeah. From my knowledge, yes.

10 Q Okay. Now, was CSI the entity that would quote the
11 cost on the registrations?

12 A I think so, but once again, I'm not sure how they
13 implemented that.

14 Q Okay. Now, do you know whether CSI had surplus
15 money?

16 A There's a -- I don't know that for sure. There's
17 an understanding in the organization that certain -- it's
18 hard to tell which -- which accounts have what because CCI
19 (sic) is -- it's not run very well. And there's -- sometimes
20 you get paid twice. Sometimes you don't get paid at all.
21 Sometimes the accounts will show negative a hundred thousand
22 dollars, and then magically the money is in there next week.
23 So there's really no way at this point without a forensic
24 audit to tell what are the assets of any one of the ACORN
25 entities. So I couldn't give you a good answer on that.

1 Q Now, did any of the surplus, to your knowledge, go
2 overseas?

3 A To my knowledge, there may have been money that
4 went to ACORN International.

5 Q Now, if a client paid CSI, what -- what typically
6 was the services that they got for paying money to CSI? So,
7 like, for instance, when the Obama campaign paid 800 some
8 thousand dollars to CSI, what service were they to get?

9 A From the way the flyer states that I made up, they
10 would get -- let's say they would try to get a certain number
11 of people to commit. Let's say they'd hire a canvasser and
12 this canvasser is paid to get the 50 people in his area to
13 the polls. If they didn't get them to the polls by bus or
14 whatever, make sure they get an absentee ballot or somehow
15 get those people to the polls.

16 Q Let's talk about absentee ballots. Okay. Now
17 let's talk about first you've discussed that there are many
18 duplicate registrations filed. Is that right?

19 A (Nodding.)

20 Q You have to say yes or no.

21 A I'm sorry. Yes.

22 MS. SIMPSON: Your Honor, I'm going to interpose an
23 objection at this time. This is a very specific motion for
24 preliminary injunction involving --

25 THE COURT: This is a relevance objection?

1 MS. SIMPSON: Yes. For Pennsylvania --

2 THE COURT: Overruled. Overruled.

3 MS. HEIDELBAUGH: Thank you.

4 BY MS. HEIDELBAUGH:

5 Q Let's talk about absentee ballots.

6 A Yes.

7 Q Now, you testified previously that there were many
8 duplicate and fraudulent registrations that were filed with
9 the local election offices, correct?

10 A Correct.

11 Q Okay. Now, to your knowledge and in regard to what
12 you know about the ACORN register -- ACORN national offices,
13 how did the fraudulent registrations intersect with absentee
14 ballots? How did -- how did the organization deal with those
15 two things?

16 A Well, they understand -- I know that there was some
17 talk with the EA, election administration people, that there
18 was a high rate of fraud in our absentee ballots and they
19 needed to plan accordingly for that. That -- I wasn't really
20 sure what that meant.

21 And then I know as far as their voter database,
22 they had -- they have what they call the V base where they
23 would put this information in. They would contact these
24 registered voters to see if they were going to vote. If they
25 -- they would also see if they needed an absentee card. So

1 they would have numbers of let's say 295 people in this
2 county need an absentee ballot or these number of people
3 might need a ride to the polls. So it was not only voter
4 registration, it was also voter contact and following up to
5 make sure these people got to the polls.

6 Q I'm going to hand you a document.

7 A Okay.

8 Q I put a tab there for your convenience. And
9 there's a shading, Your Honor, of where I'll be referencing
10 on page 2.

11 I'm handing you a document. Do you recognize this
12 document?

13 A Yes, I do.

14 Q What is it?

15 A It's notes from a management call from 2006.

16 Q Okay. And how are you familiar with the document?

17 A I had access to it, and I turned it over to you
18 guys.

19 Q Okay. And can you tell me what it says there on
20 page 2?

21 A Starting with "JR"?

22 Q In the part that you -- did you shade this
23 document?

24 A Yes.

25 Q All right. And why did you shade it?

1 A Because it was relevant to absentee ballots.

2 Q Okay. Can you tell the Court what that references
3 there, please?

4 A What it references or read it?

5 Q I'd like you to read it, and then I'd like you to
6 explain it, if you would be so kind.

7 A "Universal absentee states give us an opportunity
8 to do an absentee touch." That was stated by Jeff Robinson.
9 Mike Slater -- Michael Slater comes back and says, History of
10 fraud in absentee balloting and we need to incorporate into
11 -- we need to incorporate into the way we design the program.
12 Jeff Robinson says, "Absentee voting works well for unlikely
13 voters in some states."

14 Q Okay. What is your understanding of that?

15 A That they are aware that there is a problem with
16 absentee ballots and they were coming up with some type of
17 plan to address that. I'm not sure based on this information
18 what type of plan that would be.

19 Q Okay. Explain to us your knowledge of how a
20 fraudulent registration can turn into a fraudulent absentee
21 ballot.

22 A Well, if one of the cards is not caught either by
23 ACORN or the board of elections, that person would be on the
24 ballots. If they did not want to present themselves in
25 person, they could get an absentee ballot very easily, vote

1 and just mail it in.

2 Q Now, is ACORN aware that absentee ballots are
3 fraudulently voted?

4 A Yes, they are aware that that happens.

5 Q Okay. And are they aware of that, in essence, in
6 relation to the fraudulent registrations that are filed by
7 ACORN?

8 A I'm not really sure how -- how they've connected
9 the dots. I know that they've said that they've had to plan
10 accordingly for it, but I'm not sure if that -- what that
11 means. So I can't tell you what management might have been
12 thinking.

13 Q Okay. That's fair. Now I want to step back a bit.
14 When a canvasser obtains a registration --

15 A Yes.

16 Q -- from an individual out in the field, can you run
17 through for the Court please what happens to that actual
18 registration in the ACORN organization?

19 A Now, I know that it's brought back to the office.
20 It's supposed to be checked by whoever is doing quality
21 control. They usually will call I think about 20 percent of
22 the person's batch. And if they do find it to be fraudulent,
23 they're supposed to call the whole batch and -- just to make
24 sure. And they're supposed to look for similar handwritings
25 and things like that. Once that --

1 Q Do you know if that was always complied with in the
2 field?

3 A I know that there have been problems with people
4 missing cards before and things slipping by and not being
5 called until it gets to the board of elections.

6 Q All right.

7 A They try to tag them and separate them, though.

8 Q Now, after that process, then do the registration
9 cards get inputted into a database?

10 A From my understanding, yes. I think that they get
11 inputted in what they call the voter contact database, and I
12 think that's used for GOTV.

13 Q Okay. GOTV is?

14 A Get Out The Vote.

15 Q Thank you. Now, is there an ACORN organizational
16 plan to contact those people that have registered?

17 A I think so, to make sure that they are -- that they
18 get on the rolls and that they stay on the rolls.

19 Q And are they called -- is there a contact plan?
20 You know, do they contact twice or four times or something
21 like that?

22 A I think they get a certain number of contacts
23 before the election day, especially if they're -- they have
24 an active APAL, the ACORN Precinct Action Leader program in
25 that state. If they have an active APAL program, they would

1 probably get more contacts.

2 Q Okay. Describe what the APAL program is.

3 A The APAL program teaches community people to be
4 leaders, to be the respected one in their community and to go
5 out and get people registered to vote. They're not paid;
6 they're volunteers. They say, you know, bring five people
7 and that person brings five people and then they bring five
8 more and -- to get the whole community involved. So precinct
9 action leaders. And they usually are put into certain areas
10 where they feel like they'll do the most good, and they use
11 those for Get Out -- Get Out The Vote as well.

12 Q And what is the Get Out The Vote effort? How many
13 contacts are made of a person who's registered through ACORN?

14 A I'm not sure. They have a -- they do have a
15 program to -- a certain number of target contacts, a number
16 of -- either by door knocking or calling. But they do have a
17 certain plan as to how many people will be contacted
18 during --

19 Q So those names are kept in an ACORN database?

20 A I think so.

21 Q Okay. Do you have that ACORN database?

22 A No.

23 Q And so if, if a fraudulent registration is obtained
24 or a duplicate, would that person then be contacted according
25 to the APAL program to vote?

1 A I think so. I think that's how the ACORN -- the
2 APAL program works. But a lot of this knowledge was gained
3 from me trying to move ahead in the organization, so there
4 are some holes in my knowledge because I wasn't fully
5 trained.

6 Q Okay. And are they also -- are these people also
7 contacted and encouraged to submit absentee ballots?

8 A If they can't make it to the polls, then yes, they
9 are definitely encouraged to submit absentee ballots.

10 Q Is there any separation between contacting those
11 who have committed fraudulent registrations to encourage them
12 to vote absentee and -- versus only contacting the valid
13 registrations?

14 A Well, I know that if they're considered to be
15 fraudulent and ACORN catches them, then they are
16 automatically separated out from that. But if they are not
17 caught until later by the board of elections, there is a
18 chance that someone could -- who registered to vote illegally
19 or registered twice could be contacted.

20 But once again, I'm not really sure how that works.
21 Or if they are found to not be on the rolls, they might be
22 contacted to figure out why, if they submitted a bad card or
23 if they just need a signature or something to get them on the
24 rolls.

25 Q I'm going to show you another document. Now I

1 talked to you a moment ago -- I'm showing you Plaintiffs'
2 Exhibit 3. Are you familiar with that document?

3 A Yes.

4 Q How are you so familiar?

5 A This is also one of the documents that I've turned
6 over to you.

7 Q Was it a document that you had?

8 A Yes. I had access to this.

9 Q Okay. And what is this document?

10 A It talks about America Votes and some notes from a
11 meeting that took place I would say.

12 Q Okay. And in regard to the cash issue, what does
13 it say there about cash under Political Money Rules?

14 A The first -- I think that's the first one?

15 Q Yes.

16 A We prefer that political money go to us in the form
17 of a vendor, which would be CSI, our for-profit business,
18 which doesn't have to report the cash because it's a
19 business, like the phone company.

20 Q What is the general purpose of ACORN?

21 A It's supposed to be to build power in the
22 communities and give people a voice that aren't otherwise
23 heard.

24 Q Okay. And I'm going to hand you another document
25 here. I've handed you Plaintiffs' Exhibit 4. Can you tell

1 us how you recognize that?

2 A This is also another document. This one was -- I
3 had access to, and I turned it over to you.

4 Q What is it?

5 A It's the notes from the east regional meeting that
6 took place after the ACORN scandal or the -- well, it's what
7 they call the ACORN transition.

8 Q What is "the ACORN scandal"?

9 A Dale Rathke, Wade Rathke -- Rathke's brother,
10 embezzled close to a million dollars from the organization.
11 And it was covered up about eight years ago, and it finally
12 was brought to light this year. And he was fired as chief
13 organizer, and now they're rebuilding the organization.

14 Q Are you part of that?

15 A The rebuilding process?

16 Q Yes.

17 A Sort of, kind of. It's kind of hard to explain.
18 But I do have people within the ACORN organization who
19 support me in my endeavors, and they do feel that bringing
20 the truth to light is very important.

21 Q You said the purpose of ACORN was for low and
22 moderate income people to speak out. Is that right?

23 A Correct.

24 Q Okay. And on this document that I've provided you,
25 what was the last thing that it says there about what's good

1 about ACORN?

2 A Allow issues to drive people to MBRSP. I'm not
3 sure what that means. Fighting capitalism. And they don't
4 speak for people, give opportunity to speak out for
5 themselves.

6 Q So one of the good things about the organization is
7 the organization doesn't speak for the people, it gives
8 people the opportunity to speak out for themselves. Is that
9 right?

10 A Correct.

11 Q And then one of the other things that's good about
12 the organization is that it fights capitalism?

13 A Correct.

14 Q And did you agree with that?

15 A No.

16 MS. HEIDELBAUGH: Just a moment, Your Honor. I'm
17 trying to go through my notes here and wrap up, Your Honor.
18 Let me make sure I hit the points that I wanted to.

19 BY MS. HEIDELBAUGH:

20 Q You talked about St. Louis. What was your specific
21 involvement with the St. Louis voter fraud convictions?

22 A I just did research for the voter fraud briefs. We
23 did them for Missouri. I think there was one for New
24 Hampshire. There's one other I can't remember. So I did a
25 lot of research and made very concise bullet points of this

1 is what happened, this is what ACORN did to rectify the
2 solution -- the situation, which usually was prosecution.

3 Q Now, did you become involved with or become
4 knowledgeable of a particular ACORN employee who was
5 convicted of voter fraud in St. Louis?

6 A Yeah. I remember reading the story about a mother
7 who was going to jail.

8 MS. SIMPSON: Objection, hearsay.

9 MS. HEIDELBAUGH: It's not offered for the truth of
10 the matter asserted. It's actually offered for the
11 motivation as to why she's here today. I'm building that
12 background.

13 THE COURT: Overruled.

14 THE WITNESS: About a mother that was prosecuted
15 and that she was going to go to jail. That was the first
16 time that I tried to speak out. I contacted a web site run
17 by the Employment Policies Institute. It's called
18 rottenacorn.org. And I tried to tell them -- this was, like,
19 in June of 2007. And I was like, there's so much that I want
20 to tell you, but I'm afraid to lose my job. He told me that
21 he couldn't make any guarantees to me and that I should find
22 another job and call him back.

23 BY MS. HEIDELBAUGH:

24 Q Why did it bother you that this woman was convicted
25 of voter registration fraud?

1 A Because I honestly didn't think that she really
2 understood that her life was going to end when she started
3 working for ACORN, that she was going to go to jail. I don't
4 think that was ever her intention and that she got caught up
5 in something that was way bigger than her. And honestly, it
6 made me think that it could happen to any employee of ACORN.

7 Q Why?

8 A Because they don't support you. Once -- if you're
9 out there on that limb, you're out there by yourself,
10 especially with something like voter registration. There's
11 other stuff that you can do to put you out on a limb. But as
12 far as voter registration is concerned, I felt like they
13 should have been standing right out there with them.
14 Especially if they weren't trained or equipped to get out
15 there in the field, they never should have been out there.

16 Q All right. So the -- if I can summarize and tell
17 me if I'm wrong, the reason you felt bad about this was
18 because the woman wasn't trained, she was then prosecuted and
19 she wasn't supported?

20 A Yeah. And she was a mom and she was going to be
21 taken away from her kids.

22 Q Was she a low to moderate income individual?

23 A Yes.

24 Q Did you find that to be hypocritical?

25 A Yes, honestly I did.

1 Q All right. And beginning -- what time -- when did
2 this occur?

3 A I found out about it I want to say -- it probably
4 would have been late 2005. I continued to look for a job,
5 but it's really hard to get out of ACORN. I applied so many
6 different places for two years and couldn't get out. And I
7 finally was to the point where I didn't know what to do. So
8 I contacted them in maybe I want to say June, but it might
9 have been May of 2007 because they were about to -- we were
10 about to start another voter registration drive.

11 Q Okay. And what were you fearful of?

12 A That there would be, like I said, seven to ten
13 people that would probably go to jail this time, maybe more.

14 Q Now, why are you coming forward? Why are you
15 testifying?

16 A Because I want the truth out. Honestly, a lot of
17 people think I have a vendetta, but even after I left ACORN,
18 I was still trying to be involved in the act because I
19 believe that the local offices do a lot of good. Local
20 offices where the people are involved and you see them every
21 day and you're there -- like, when I worked in D.C. office,
22 you would -- you'd stumble over some member, and there was
23 just this type of informal environment. And that's where a
24 lot of the work was done.

25 So I don't think ACORN is a bad organization. I

1 feel like they have gotten into a lot of areas that was not
2 -- that they weren't meant to be in. And because we're in
3 these other areas, we're losing focus of what's really wrong
4 with these communities. There's so much that needs to be
5 done, and we're over here when we should be right there. So
6 that's why I'm here, because I don't want ACORN to go away; I
7 just want it to go back to what it's supposed to be.

8 Q Now, has your name become public on the internet?

9 A Yes.

10 Q Before today?

11 A Yes.

12 Q And after your name became public, did you receive
13 any calls which caused you concern for your safety?

14 A Yes. I was contacted -- well, I've had a lot of
15 hang-ups and strange calls in the past week. I was also
16 contacted by a lady that used to work with the D.C. ACORN,
17 and she tore into me on the phone, just vicious attacks. She
18 told me that I was after Obama; I was trying to destroy
19 ACORN; I was stupid and idealistic. And she kind of made me
20 cry, but it was okay because I understood that she was just
21 mad at me.

22 I've also been contacted by employees that still
23 work at ACORN. And they've told me that there's been a lot
24 of pressure; it's really bad in the office; and that, you
25 know, they've asked -- they've been asked to tell me to back

1 off and to step down.

2 And I told them I couldn't do that. And so then I
3 was asked a bunch of leading questions like, well, what are
4 they giving you; are they offering you a job? And I said no
5 one is giving me anything and I didn't ask for anything.

6 Q How did you come to meet me?

7 A I contacted you once I heard about the lawsuit
8 because I felt like this might be a chance for the truth
9 actually to get out. I've been working previously with the
10 New York Times, and they were exposing some truths as well.

11 Q Did I contact you first?

12 A No.

13 Q And how did you find out about this lawsuit?

14 A Through one of my contacts with -- I was talking to
15 the New York Times on basically a daily -- a daily basis. So
16 when the story broke out, I knew about it, and I was talking
17 to the reporter about it as well.

18 Q Were you a confidential source for the New York
19 Times?

20 A Yes.

21 Q And who did you speak with?

22 A Stephanie Strom.

23 Q And what articles did she prepare in regard to
24 ACORN?

25 A She prepared the one on the embezzlement. There

1 was one exposing Drummond Pike as the donor that paid off the
2 debt that Wade -- I'm sorry, that Dale had created. There
3 was another one on the board working to give properties or
4 entities to Wade in order to make him go away. And I think
5 there might have been -- oh, another one about the lawsuit
6 filed in New Orleans for access to the books.

7 Q Did you intend to become public?

8 A No.

9 Q Okay. Are you concerned for your personal safety?

10 A Yes. I've -- when I was working at my other job,
11 American Rights at Work, I had someone call me and tell me I
12 needed to back off because they were trying to fire me and
13 get me to sign a confidentiality agreement that would have
14 covered them and their allies, which would have been ACORN.
15 And at the time, I was digging my heels in.

16 I told my union steward that I had received this
17 call. And she told me that I was looney and that if I kept
18 making up these things, no one would believe me in anything.
19 I was then advised to -- we modified the confidentiality
20 agreement. And I was advised if I didn't accept it, the
21 union would no longer support me and I would be out there by
22 myself.

23 Q Can you tell the Court how your employment at ACORN
24 ended?

25 A All right. In 2007, we got a Pitney-Bowes machine

1 into the office. I had been lobbying for one of these for a
2 long time because we're a big office. We didn't have any way
3 to do mail. When I got the machine, they said that -- they
4 sent me this little form to -- for some reason when they sent
5 the machine, they set it up in my name. They sent me this
6 form. And it said Purchase Power; you can put your mail,
7 your postage, your supplies all on your Purchase Power card.

8 I thought it was something through Pitney-Bowes. I
9 didn't understand that it was a Visa. When it came and I
10 realized it was a Visa, I kept it in my wallet, and I didn't
11 use it. But then I began to need money for getting back and
12 forth, and so I began to use it for a move. When I couldn't
13 get the U-Haul, I used it to pay the gas for the U-Haul. I
14 used it at Wal-mart, grocery stores for food. So I used the
15 credit card. It was in my name, so I had to sign for it.
16 For personal expenses --

17 Q Let me stop you. What was your rate of pay at that
18 point from ACORN?

19 A Twenty-five thousand, five -- I think it was almost
20 27,000.

21 Q All right. Where did you live?

22 A I was living in Baltimore at the time.

23 Q And what was the problem with your apartment?

24 A I was staying in a townhouse because that's what we
25 could afford, but the landlord wasn't taking care of the

1 townhouse. I had moved already three times in 2007. And
2 there was these rats. I'm embarrassed, but we had rats the
3 size of cats in the basement. And they would come up into
4 the kitchen at night, and I would have to use a BB gun to go
5 downstairs to get my daughter's bottle. So I needed to move
6 quickly, and I was terrified. And I didn't really know what
7 to do.

8 I went to them, and I asked them. I said, when I
9 came onboard, you told me that because of my qualifications,
10 that I might be able to get a higher salary. So I asked them
11 if that would be possible, because I really needed the money.
12 And they told me that it wasn't going to happen, everybody
13 was paid on the same scale by the council. So I made a bad
14 decision, and I started using the card. And once I started
15 using it, I kept using it for gas and food and other stuff.

16 Q How much did you charge on the card?

17 A I'm not really sure. I made a \$525 payment, I
18 think. That's when it was first alerted to the card because
19 it came back on my checking account that I had made a
20 payment. I called to get a bill, and somehow they sent the
21 bill to either Little Rock or New Orleans. And that was when
22 I was found out.

23 So they kept my final payment, which was about
24 \$1100. So what probably would have been left -- I've heard
25 3,000. I've heard 1500. But I've never been told exactly

1 how much was the end result.

2 Q All right. So it's possible you billed 3,000 to
3 the card?

4 A Correct.

5 Q All right. But you don't have a final -- you've
6 never been given an accounting?

7 A Correct.

8 Q And how much did you repay?

9 A With my final paycheck and the payment I made, it
10 would have been about \$1600.

11 Q All right. Now, have you been convicted of any
12 crime in regard to this incident?

13 A No, I haven't.

14 Q Have you ever been convicted of a crime?

15 A No.

16 Q Okay. Are you willing to repay this money?

17 A Yes, I am.

18 Q Okay. Have you asked for an accounting so that you
19 can repay it?

20 A I asked -- when I first got fired, I asked to find
21 out what was owed. And on the term memo they sent me, it
22 said "to be determined," that the amount was undecided.

23 And because I lied -- I didn't -- I was scared, so
24 when they asked me about it, I lied. And I felt really bad,
25 so I did -- kept contacting my supervisor. And I was, you

1 know, trying to let her know that I wasn't a bad person and I
2 really -- you know, the things that I did believe in and the
3 things that I do -- I did were still true but I did make a
4 bad mistake.

5 So I kept trying to contact them, and they knew
6 where I was. When I moved to my new job and I saw her, I
7 actually gave her my new card so she would know how to get in
8 touch with me.

9 Q And have you lied today?

10 A No.

11 Q Have you told the truth to the best of your
12 ability?

13 A As best as I can remember, yes.

14 Q Are you sorry about what you did with that card?

15 A I am really sorry. I've always been sorry, and
16 I've tried to let them know that I -- I'm really sorry.

17 Q Is any of your testimony today in the form of a
18 vendetta for being fired for doing something wrong?

19 A No.

20 Q Now, on the voter registration program, are you
21 aware that ACORN National says that they have to turn in all
22 registrations, even the ones they know to be fraudulent,
23 because the law requires them to do that?

24 A I've heard that several times. Yes.

25 Q Okay. Are you aware of whether the law requires an

1 organization to turn in fraudulent voter registration cards?

2 A I assume that it was because they would always say
3 that's why they separated them out and, you know, put the
4 cover letter on them because they had to turn them in.

5 Q So you don't know whether Pennsylvania law requires
6 that?

7 A No.

8 Q Okay. Now, you talked about how voter registration
9 fraud can turn into voter fraud through absentee ballots.
10 Are there other ways in which voter registration fraud can
11 turn into voter fraud?

12 A Well, I guess that if a person is registered in one
13 county and they're -- well, they're registered in two
14 counties, you can always vote in different places.

15 Q And how about multiple registrations on the books?
16 Can those be voted?

17 A Honestly I don't know. I would think that the
18 board of elections would catch it. But if they didn't,
19 there's a possibility they could vote.

20 Q Is ACORN as an organization aware that those types
21 of fraud in the voting process can take place as a result of
22 fraudulent voter registrations?

23 A I think that they are aware, but the official
24 position is that voter fraud really -- in America really
25 doesn't happen.

1 Q Are you aware that it does happen?

2 A Yes.

3 Q Are you aware that ACORN has entered into a consent
4 and settlement agreement to increase its training, its
5 quality, its management with the prosecutor in King County in
6 Seattle?

7 A Yes, I am aware.

8 Q And were you aware that that was signed by Maude
9 Hurd, the president of ACORN?

10 A Yes.

11 Q Have you ever received any information from ACORN
12 that they're aware that people are paid for votes?

13 A Paid for votes?

14 Q Absentee -- in the absentee ballot program.

15 A No.

16 Q Okay. In regard to the -- your knowledge of the
17 accounting system, was money wired into ACORN?

18 A Yes.

19 Q So it was not a check. Is that right?

20 A Yes. Sometimes, and especially into what we call
21 the vote account, which was Project Vote's designation,
22 sorry, in CCI. I would see incoming wires from the
23 Rockefeller Family Foundation. I think -- not family
24 foundation but the Rockefeller Fund. I think sometimes
25 Vanguard Charitable Endowment would also do wires. And other

1 times there would be things that would say stuff like
2 "general income," and it would just -- wasn't sure where it
3 was coming from.

4 Q Okay. Was there money that was donated in which
5 there was no source to the money?

6 A That was -- yes. That was part of that whole donor
7 reconciliation process.

8 Q Now, it's your understanding there's different tax
9 entities; some entities of ACORN are 501(c)(4) and some are
10 501(c)(3), correct?

11 A Correct.

12 Q And is it your understanding that certain of those
13 entities are not to engage in political activities?

14 A Yes.

15 Q Okay. And do the entities that are not to engage
16 in political activities, in fact, engage in political
17 activities?

18 A Yes.

19 Q And how does that happen? How does -- what
20 happens?

21 A Because there's no separation between the
22 organizations for real. So when you have the same people
23 that are working, that are -- like, I was getting paid
24 through Project Vote's checkbook, but I was working on ACORN
25 stuff. I even did PowerPoints during the midterm elections

1 for Jeffrey Robinson where they were like, okay, don't vote
2 for Albert Win (ph) or vote for this person. And they had
3 doorknob -- door hangers that they would go and put on
4 people's doors, and we turned this into a PowerPoint
5 presentation. So there was never any division between the
6 staff where you would say, okay, this is (c)(3) stuff and
7 this (c)(4) stuff. It was just -- I don't want to say
8 business as usual, but it was a lot of collaboration between
9 the organizations.

10 Q Did that cause you concern?

11 A Yes.

12 Q What did you say?

13 A I actually -- when I interviewed, I showed someone
14 my portfolio, which I had that PowerPoint in, and immediately
15 someone asked me, Project Vote did this? I said no, I did
16 that work for ACORN. And he looked at me kind of strange,
17 and he was like, I'd probably take that out of your, you
18 know, whatever. So I didn't really think anything of it at
19 the time, but the more I learned about it, I was like, okay.
20 I don't want to say -- I wouldn't say I thought I was
21 breaking the law, but I realized then that wasn't supposed to
22 happen.

23 Q And was the organization concerned about keeping
24 political activities out of the tax organization that was not
25 allowed to engage in?

1 A Yeah. They wanted to keep the -- I think the word
2 was keep the 501(c)(3) pristine and keep that clean and
3 separated from everything else because we needed that.

4 Q Did they actually do that, though?

5 A Publicly, yes, they always stated that it was two
6 different organizations.

7 Q I mean in actual practice.

8 A Oh, no.

9 Q Did anyone ever tell you, quote, let's hope we
10 don't get caught?

11 A I've heard that before.

12 Q Now, do you also have knowledge of activities that
13 you believe are not in accordance with the law that ACORN
14 engaged in?

15 A Well, there was one thing that really bothered me
16 from last year. I received an e-mail. It was called dotting
17 the Is and crossing the Ts, and it was based on an election
18 assistance commission grant that we had just gotten. And it
19 was from Nathan Henderson James and to myself and one other
20 person; I can't remember the name.

21 But it was just basically telling us, okay, guys,
22 it's reporting time again; we need to show them what we did
23 with this EAC money; so I want you to put this on
24 letterhead -- on ACORN letterhead and say something like, we
25 had a really great time working with our partner, Project

1 Vote. And the attitude of the e-mail was quotation marks,
2 you know --

3 Q What does that mean?

4 A To where we knew that it wasn't that there was any
5 type of partner organization. There might have been -- on
6 paper there might have been a partnership going on, but
7 really it was ACORN and Project Vote together.

8 Q Let's break this down. The election assistance
9 commission, the EAC --

10 A Yes.

11 Q -- what is that?

12 A I'm not really sure how it works, but I think that
13 they were giving money to Project Vote for a poll worker
14 study in Delaware and they were working with ACORN, from what
15 I understand on this. And I think Project Vote approached
16 them with the understanding that they were going to hire a
17 partner to help them in the community.

18 Q Was that work done?

19 A Yes. It was worked on, but it wasn't this whole
20 nonpartisan thing that it was made out to be to get the
21 money. It was just, hey, guys, we need to get this done for
22 Delaware because we just got this check; let's get this done;
23 let's make this report out.

24 Q So there was a government grant --

25 A Yes.

1 Q -- in which the work was misrepresented to the
2 government. Is that what you're telling me?

3 A Yes. And I didn't like the fact that I was
4 included in on that e-mail and that they -- she was told to
5 send the copies of it to me in the D.C. office, because I
6 didn't want anything to do with government grants.

7 Q Now, does ACORN and its affiliates have documents?

8 A Yes.

9 Q And do you have any knowledge of whether documents
10 are being destroyed?

11 A Yes, I do.

12 Q And what documents are being destroyed?

13 A I have knowledge that financial documents are
14 possibly being destroyed.

15 Q And how do you have that knowledge? Were you told
16 that?

17 A Yes. Well, I was -- I was told that, and I also
18 read that as well.

19 Q Okay. Does ACORN have a health and welfare and
20 pension fund for its employees?

21 A Yes.

22 Q And what is the status of that?

23 A I heard that there was money that had been taken
24 out of the health plan and that they were trying to put the
25 money back into the health plan.

1 Q And is there documents that reflect that?

2 A Yes.

3 Q Have you seen the documents?

4 A Yes.

5 Q Have you seen any documents about internal
6 investigations being conducted by ACORN employees currently?

7 A Yes.

8 Q And what do those documents reflect?

9 A I've seen court papers saying that they're trying
10 to access the financial records of CCI but they are being
11 blocked and they fear that records are being destroyed as
12 they're trying to access them.

13 Q Who is Mr. Bachmann?

14 A He's a lawyer for CCI.

15 Q And what has he been doing of late?

16 A I heard he was blacklisted now. But I know that
17 before then, he was working with the ACORN scandal, trying to
18 figure out exactly what was going on.

19 Q And has he created memorandum to the organization
20 on his investigation of the organization?

21 A Yes.

22 Q Now, is ACORN a membership organization?

23 A Yes.

24 Q How does that work?

25 A The members pay dues out of their checking account,

1 so an organizer will go out into the field, door knock, get a
2 member to sign up. The goal is to get them to enter their
3 checking account information so they can do direct debit. If
4 not, they'll come by and collect payments from the --

5 Q Let's just break this down a bit. If you were an
6 ACORN organizer and I was a member of your community and you
7 approached me, would I pay you monthly to become a member?

8 A Yes.

9 Q How much would I pay?

10 A It would depend. I've heard anywhere from ten to
11 \$30.

12 Q Would that be -- was there an encouragement by the
13 organization to have a direct deposit out of my checking
14 account?

15 A Yes.

16 Q And were there problems with those direct
17 withdrawals from checking accounts?

18 A Yes.

19 Q And what were the problems?

20 A Sometimes I would answer the phones or I would be
21 manning the faxes in the D.C. local office. I was always
22 hanging around. And I remember overhearing about members
23 that were calling in --

24 MS. SIMPSON: Objection, hearsay.

25 MS. HEIDELBAUGH: Not offered for the truth of the

1 matter asserted. Offered for the organization's lack of
2 organization in regard to keeping funds and also the
3 membership status.

4 MS. SIMPSON: It's also irrelevant. That's not why
5 we're here.

6 MS. HEIDELBAUGH: I'll move on.

7 THE COURT: Very well.

8 MS. HEIDELBAUGH: I'll move on.

9 BY MS. HEIDELBAUGH:

10 Q Have you been intimidated in regard to your coming
11 here today?

12 MS. SIMPSON: Objection, asked and answered.

13 THE COURT: Overruled.

14 THE WITNESS: Yes. I was asked to back down, and I
15 was told that they were bringing their big guns for me and,
16 you know, it would be best for everyone if I just didn't
17 testify.

18 BY MS. HEIDELBAUGH:

19 Q Are you frightened?

20 A Yes.

21 Q Why did you decide to go ahead if you're
22 frightened?

23 A Because someone needed to do it. This is a very
24 important time in ACORN's history. They're on the -- and
25 this is going to sound so stupid. But I really do feel like

1 they're ready to where they can be a really great
2 organization but there's people that are digging their heels
3 in and they're fighting the truth. And the truth is the only
4 thing that's going to make this all go away, not another
5 coverup.

6 And I don't like to be threatened. I don't like to
7 be backed into a corner. I'm not -- I don't like to be
8 afraid. I'd like to just tell the truth. And so I realized
9 I can either stay in the corner and be scared and, you know,
10 hiding at my mom's house or I can come out and get in front
11 of everybody.

12 Q This is a little out of order, but when a
13 fraudulent voter registration card is found, is there an
14 attempt in the organization to try to fix it? And if so, how
15 does that whole thing work, and can you tie in the money in
16 regard to that?

17 A From what I understand, there's a project called
18 Project -- Project Fix Error where they contact bad cards,
19 whether they be from ACORN or whoever submitted the cards.
20 They try to find out the type of information that is needed
21 to get this person on the rolls. And from what I also
22 understand, Democracy Alliance was approached or is funding
23 this project.

24 Q All right. Now, does ACORN seek additional donors
25 to fix the bad registrations that they know they already have

1 to get additional money?

2 A Well, that's what's happening. But they're saying
3 because they're getting cards from everywhere, they're not
4 just fixing ACORN's bad cards. They're fixing any bad cards
5 to make sure that these people get on the rolls.

6 MS. HEIDELBAUGH: That's all the questions that I
7 have for this witness. At this time, I would move for the
8 admission of the documents that I have presented to the
9 witness which were moved without objection, I believe, Your
10 Honor.

11 THE COURT: Any objections to Exhibits 1 through 4
12 inclusive?

13 MR. MASLAND: No, Your Honor.

14 THE COURT: They're received.

15 (Exhibits Nos. P-1 through P-4 were admitted into
16 evidence.)

17 THE COURT: All right. We're going to take a brief
18 break and continue for awhile. My normal manner of handling
19 witnesses is to take a break when we're shifting from direct
20 to cross-examination. Once a witness is on
21 cross-examination, then she can't -- and we take a break like
22 the break we're going to have to take at least for the early
23 part of the afternoon, I will prohibit her from discussing
24 her testimony, you know, with --

25 MS. HEIDELBAUGH: I understand.

1 THE COURT: -- the proponent. Do you want to take
2 a break now, or do you want to take a break -- or do you want
3 to continue and have a break in the middle of her
4 cross-examination?

5 MS. HEIDELBAUGH: I have no preference.

6 THE COURT: All right. During the testimony this
7 morning, I looked at Civil Rule of Procedure 1531 which
8 allows me to consider affidavits in the context of a
9 preliminary injunction, not a final injunction. But it
10 permits me to do so; it doesn't require me that I do so.

11 Why would I need the affidavit that you offered
12 previously? I mean, why do I need to take that testimony by
13 affidavit or that information by affidavit rather than by a
14 live witness?

15 MS. HEIDELBAUGH: Well, Your Honor, as a
16 practitioner who has done injunctions in the past, because I
17 am allowed to submit by affidavit, because my opponent
18 submitted by affidavit at the first motion, it is --

19 THE COURT: Okay. Well --

20 MS. HEIDELBAUGH: It expedites the proceeding. It
21 -- it provides for evidence. This is usually a very
22 truncated proceeding. And for me to provide to the Court all
23 the evidence that I need to provide in the limited time that
24 I have, it is -- it is usually the only mechanism that I
25 have.

1 THE COURT: So this particular witness was covered
2 by that affidavit, I want to say --

3 MS. HEIDELBAUGH: She's very important to my case,
4 Your Honor.

5 THE COURT: Who is it?

6 MS. HEIDELBAUGH: Mary Joe Headley.

7 THE COURT: And what does she do?

8 MS. HEIDELBAUGH: She's the chief clerk of the
9 Delaware County Voter Registration Commission in Delaware
10 County.

11 THE COURT: So she's working today?

12 MS. HEIDELBAUGH: Yes, sir.

13 THE COURT: It's a difficult time --

14 MS. HEIDELBAUGH: Yes, it's difficult for her to
15 get here. There's those issues. And as I've said, she's --
16 I mean, this is a sworn affidavit. This is testimony --

17 THE COURT: I will --

18 MS. HEIDELBAUGH: -- and she can be crossed on this
19 at any time during the permanent injunction phase.

20 THE COURT: If there's an affidavit from a witness
21 who is out of the area who is actually working on the
22 election --

23 MS. HEIDELBAUGH: Yes, sir.

24 THE COURT: -- then I will receive those
25 affidavits.

1 MS. HEIDELBAUGH: Thank you, sir.

2 THE COURT: So if there's another hearsay
3 objection, I'm going to overrule it.

4 MS. HEIDELBAUGH: Thank you, sir.

5 THE COURT: Anything further before the break?

6 Nothing further. We're going to take a five-minute
7 break. We'll be back here at noon.

8 (Whereupon, a RECESS was taken from 11:55 a.m.
9 until 12:04 p.m.)

10 THE COURT: I'm going to try to -- as a scheduling
11 matter, I have a 1:30 conference that has to go forward. It
12 just involves so many people that it's got to be handled. It
13 involves a number of cases on remand from the Supreme Court.

14 I'm going to continue or reschedule the 3:00 matter
15 so we can get an earlier afternoon start. I'm guessing that
16 we're going to be able to do that about 2:30 -- about 2:30,
17 so we'll take a break from 12:30 to about 2:30.

18 We may be in here. You're welcome to leave your
19 material in here, but understand there will -- there may be
20 other attorneys sitting in your seats between 1:30 and 2:30.
21 So, you know, you're going to need to at least clean some of
22 the countertops off. And if there's something that you don't
23 want to share with the world, you probably want to keep it
24 with you because there will be other people in here perhaps.

25 All right. We have completed the cross -- we've

1 completed the direct examination of Ms. Moncrief. We have
2 received four exhibits. We're about ready to start
3 cross-examination. Anything I need to address before we
4 start cross-examination?

5 Hearing nothing, you may proceed.

6 MS. SIMPSON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. SIMPSON:

9 Q Good afternoon, Ms. Moncrief.

10 A Good afternoon.

11 Q Isn't it true that you have -- your title at
12 Project Vote was as a development associate?

13 A That is true.

14 Q And you worked as a development associate from
15 2000 -- October of 2005 until your termination in January of
16 2008. Is that correct?

17 A Correct.

18 Q And the job description for development associate
19 does not include going out in the field and working with
20 organizers, does it?

21 A No, it does not.

22 Q You actually worked in an office in Washington,
23 D.C. Isn't that correct?

24 A That is correct.

25 Q And your responsibilities were to research donors,

1 track deadlines, apply for grants and the like. Is that
2 correct?

3 A No, not at first. That was not my job description
4 at first. That was only my job description from the end of
5 2006 on. Before then, I was doing other stuff.

6 Q Okay. From -- during any of your time -- and your
7 paychecks came from Project Vote, didn't they?

8 A Yes.

9 Q During any of the time that you were employed by
10 Project Vote, did you come to Pennsylvania and observe any of
11 the offices -- the ACORN offices here in Pennsylvania?

12 A I don't think I visited Pennsylvania.

13 Q Where did you visit?

14 A I went to Detroit. I went to the Miami office.
15 Where else did we go? I'm trying to remember. Then I've
16 been to Little Rock and the New -- New Orleans as well.

17 Q When did you go there?

18 A In -- let's see, Detroit and Miami were in late
19 2007 for training the political directors. And New Orleans
20 was every year because that was our organizational meetings
21 that we'd get together for. And then Little Rock was also
22 every year for our political staff briefings.

23 Q When were you physically present in an ACORN office
24 during a voter registration drive?

25 A I have not been during an active voter registration

1 drive.

2 Q Now, after you were fired from Project Vote, where
3 did you go to work?

4 A Grumman Foundation.

5 Q And how long did that last?

6 A I stayed there for three and a half months.

7 Q And then you went to American Rights at Work. Is
8 that correct?

9 A Correct.

10 Q And you worked there from the end of May until the
11 end of September. Is that correct?

12 A Correct.

13 Q You had some kind of a voluntary separation from
14 that?

15 A It's voluntary in their eyes.

16 Q Not in yours?

17 A No.

18 Q You believe you were terminated?

19 A After they hired the ACORN -- the head of the ACORN
20 wage center, when Jennifer Kern came on, yes, I received my
21 first performance evaluation saying it was dissatisfactory;
22 and then I was terminated and asked to sign a confidentiality
23 agreement.

24 Q You weren't terminated because you had absence
25 problems and attendance problems?

1 A That was the official reason given, but that was
2 not what my -- what me and my union rep thought was going on.
3 Q Where are you working now?
4 A I am not working right now.
5 Q Are you being paid for being here today?
6 A No, I'm not.
7 Q Were your expenses paid for being here today?
8 A They brought me here because they knew I couldn't
9 get here, so I guess that would be yes.
10 Q Do you know who the political director in
11 Pennsylvania was in 2008 for ACORN?
12 A No, I do not.
13 Q Do you know who the Philadelphia quality control
14 employee was?
15 A No.
16 Q Do you know how canvassers were trained in
17 Pennsylvania for 2008?
18 A I saw the training manual, but I wasn't there, so
19 no.
20 Q You're aware that when canvassers are employed,
21 they are given forms to sign that advise them about what
22 fraudulent activities are and how they can be prosecuted for
23 those, aren't you?
24 A Yes, ma'am.
25 Q And you're aware that those forms tell the employee

1 that if they violate the law, that they can be prosecuted and
2 they can go to jail --

3 A Yes.

4 Q -- is that correct? And people sign those, right?

5 A Yes.

6 Q How's that throwing somebody under the bus when
7 they do those things?

8 MS. HEIDELBAUGH: Objection, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Because I've attended a lot of these
11 political operation debrief meetings since 2005, and there is
12 a consistent echoing in the organization that the people we
13 send out for voter registration drives are not properly
14 trained; there's not ongoing training; and that there needs
15 to be better quality controls. So to me, throwing somebody
16 under the bus means throwing them out there, knowing that
17 they're not supposed to be out there in the first place and
18 then punishing them when they mess up.

19 BY MS. SIMPSON:

20 Q So that's your opinion?

21 A That's my definition of it. Yes.

22 Q Okay. Do you know -- have you attended those
23 debriefings for anyone in Pennsylvania?

24 A Not for Pennsylvania, just overall voter
25 registration.

1 Q So you don't know whether this is going on --
2 whether the workers in Pennsylvania are perfectly trained or
3 not trained at all, do you?

4 A No, I do not.

5 Q You have no specific firsthand knowledge of
6 anything going on in Pennsylvania with regard to ACORN. Is
7 that correct?

8 A Not in Pennsylvania, no.

9 Q You participated in working on some fact gathering
10 or information gathering for briefing for voter fraud
11 prosecutions. Is that your testimony?

12 A Yeah. They were vote fraud briefings that -- they
13 were ongoing cases going on at the time that they had me do
14 these briefings. And they wanted to demonstrate where in
15 each situation, that even if the case -- if it wasn't
16 completed, this is what they were doing; and if it had been
17 completed, what was the ACORN resolution. So they were
18 actually entitled voter fraud briefs.

19 Q Well, how many of those were there? How many cases
20 were there?

21 A Each state could have multiple cases. I know that
22 in St. Louis, I think that brief was two and a half pages.
23 It just depends on how many cases came out of what state I
24 was doing.

25 Q Explain to me what you mean by the word "brief."

1 A I would write a synopsis of what happened. I would
2 say 30 bogus cards were turned in in Kansas City, Missouri;
3 it was discovered by this person; the prosecutor was this
4 person; ACORN was able to go through, ferret out who did
5 this; and that person was prosecuted.

6 In the Florida case, I was actually able to give a
7 name where I showed that it was a person named Max Stuart
8 (ph). And I think ACORN had written about them before, so I
9 was just basically able to take the information and put it
10 into a brief. And each brief had a footnote of linking back
11 to the document that I researched and got it from.

12 Q When you say "brief," you're talking about a
13 synopsis. Is that correct?

14 A Correct.

15 Q And the synopsis came from official records that
16 you were provided. Is that correct?

17 A Correct, or found.

18 Q Okay. And these are records that showed that there
19 was some problem and that no harm to the system was to occur
20 and -- because everything was going to be identified, right?

21 MS. HEIDELBAUGH: Objection, Your Honor. That's
22 not in the testimony. That's an opinion of counsel.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: I'm confused about the question now.

25 THE COURT: Please rephrase.

1 BY MS. SIMPSON:

2 Q All right. These briefs, these synopses that you
3 were writing were to show what happened, what was done to
4 identify the problem and how the problem was corrected if, in
5 fact, it was corrected. Is that correct?

6 A That's correct.

7 Q And who was this provided to?

8 A It was a Project Vote voter fraud brief, so I'm
9 pretty sure it went out to funders. It might have even been
10 posted on the web site, but I'm not positive.

11 Oh, it also went to the people that were working on
12 the -- whatever active cases were still going on.

13 Q You have Exhibit 4 in front of you, do you not?

14 A Yes.

15 Q Where did you get this?

16 A Where did I get this?

17 Q Yeah.

18 A I've been in contact with members of the ACORN aid,
19 and they have provided me with documents that I may need for
20 this.

21 Q Who gave it to you?

22 A It came from a gmail account that was anonymous.

23 Q Did you solicit it?

24 A I didn't solicit it.

25 Q What did you do to cause people to know what your

1 e-mail address was and that they could feel free to send you
2 whatever they wanted to?

3 A I've always been -- I've always had the same e-mail
4 address. And I think there were some that had ideas that I
5 was one of the people that was talking to the New York Times
6 reporter. But at that time that I started receiving stuff, I
7 hadn't confirmed it with anyone except the reporter herself.
8 But she was also talking to people as well, so there might
9 have been communications with them that led -- from her that
10 let them know. But I'm not sure.

11 Q Now, you have no knowledge, no personal knowledge
12 that any canvasser in Pennsylvania was paid per registration
13 submitted, do you?

14 A No, ma'am, I do not.

15 Q And you do not have any personal information about
16 the canvassers in Pennsylvania and their work ethic, do you?

17 A No.

18 Q And you have no personal information about how the
19 voter registration cards were bundled and taken to the
20 various election bureaus, do you, in Pennsylvania?

21 A Oh, in Pennsylvania, no. No.

22 Q And you have no personal information that anyone at
23 Project Vote or ACORN labelled Pennsylvania as some kind of a
24 rogue operation, do you?

25 A Rogue? No.

1 Q Now, do you have any -- strike that. Do you have
2 any personal information or knowledge about how records were
3 kept by Pennsylvania ACORN with regard to voter registration
4 cards?

5 A No.

6 Q Now, you said that "big guns" are coming to testify
7 against you. Who's going to testify against you, Ms.
8 Moncrief?

9 A Not big guns. But some of my friends in the D.C.
10 office, of course, they called and tried to get me to back
11 down. And they told me that they were pulling out all their
12 stops on me and I needed to watch out, and they said there
13 was intense pressure on me. So that's what I was referring
14 to.

15 Q What did you think was going to happen?

16 A Well, I mean, I thought they were going to bring,
17 you know, all the members and their full legal team. So
18 that's what I thought by "big guns." When I was referring to
19 -- today, I was referring to, you know, the show of support
20 for ACORN.

21 MS. SIMPSON: I don't have any further questions.

22 THE COURT: You may inquire.

23 MR. MASLAND: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. MASLAND:

1 Q Ms. Moncrief, I can probably do this fairly
2 quickly. Based on your statements to Ms. Simpson that you
3 don't have any personal knowledge about any of the facts of
4 Pennsylvania ACORN, is it safe to say that you don't have any
5 personal knowledge or understanding of any of the laws of
6 Pennsylvania as they relate to voter registration, voter
7 fraud, absentee requests, things of that nature? Is that
8 true?

9 A Correct. I'm unfamiliar with that.

10 Q You did say that ACORN does try to catch and
11 separate out voter fraud applications?

12 A Correct.

13 Q I believe you also said -- and I just want to make
14 sure -- that regarding absentee voting, that ACORN tells
15 someone if they cannot make it to the polls, that they are
16 encouraged to vote by absentee ballot, correct?

17 A Correct.

18 Q They're not told that you should try to vote by
19 absentee if you can make it to the polls. Is that correct?

20 A No. It's usually for people that I guess if they
21 can't be there or they're invalid or whatever.

22 Q Sure.

23 A It's always the option, to make sure that they can
24 vote.

25 Q Which is the proper reason for using absentee

1 ballots.

2 MS. HEIDELBAUGH: Objection to comment.

3 THE COURT: Stricken.

4 MR. MASLAND: That's fine.

5 BY MR. MASLAND:

6 Q Finally, I believe you told Ms. Heidelbaugh that no
7 one was paid for votes in the absentee ballot program. Is
8 that correct?

9 A Yeah, to my knowledge.

10 MR. MASLAND: Thank you. No further questions.

11 THE COURT: Any redirect?

12 REDIRECT EXAMINATION

13 BY MS. HEIDELBAUGH:

14 Q Ms. Moncrief, the meetings that you would attend,
15 the national meetings, were representatives from ACORN there
16 nationally?

17 A Yes.

18 Q And did those members have authority or direction
19 over the entire nation?

20 A Well, it was not members but staff, but yes.

21 Q Staff. Okay. And so was the nation divided up in
22 terms of areas of responsibility?

23 A Correct. Sometimes they have regional people, but
24 as I left, I think they were trying to get political
25 directors for all of the major states that they were running

1 plans in.

2 Q So the meetings that you testified and the
3 documents that you produced, were there people at these
4 meetings that had responsibility not only for the northeast
5 region of the United States but for Pennsylvania?

6 A Correct. And I think Jessica Angus was over the
7 entire program. I think it was as she was transitioning out
8 of the organization.

9 Q Who's Jessica Angus?

10 A I want to say her title was field director, but we
11 never really had good staff lists.

12 Q So she would have been in charge of -- she would
13 have been in charge at the top of Pennsylvania. Is that
14 right?

15 A Well, nationally of all the offices.

16 Q And, of course, the national officers would have
17 been in charge of Pennsylvania, right?

18 A Correct.

19 Q And so the policies and procedures of the nation
20 would have applied -- of ACORN would have applied to
21 Pennsylvania, correct?

22 A Correct.

23 MS. HEIDELBAUGH: No further questions.

24 THE COURT: Anything else for this witness?

25 MS. SIMPSON: Just one follow-up question.

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RE-CROSS-EXAMINATION

BY MS. SIMPSON:

Q Ms. Moncrief, obviously you did not attend any meetings after January of 2008 of ACORN or Project Vote or any affiliated organizations. Is that correct?

MS. HEIDELBAUGH: That's contrary to her testimony. She said she remained a community member and a neighborhood organizer as a member of ACORN.

MS. SIMPSON: Well, she can tell me that.

THE COURT: Objection is overruled.

THE WITNESS: Yes. I was still an active part of D.C. local, and I still get calls today about things to do with them.

BY MS. SIMPSON:

Q Did you attend any of these meetings that Ms. Heidelbaugh referenced in her redirect, these national meetings where strategy and political directors were present and things were discussed? Did you attend any of those after January of 2008?

A No, I did not.

Q When was the last time prior to January of 2008 that you attended such a meeting?

A All staff was November. The last management meeting was probably in December of 2007. It was a meeting at Sandy Newman's (ph) office.

1 MS. SIMPSON: Thank you.

2 THE COURT: May this witness be excused?

3 MS. HEIDELBAUGH: This witness may be excused.

4 THE COURT: In the absence of objection, you may
5 step down. You're free to leave if you wish.

6 THE WITNESS: Do I leave these here?

7 THE COURT: Yes, please.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Although I have the originals.
10 Go ahead. We have seven minutes.

11 MS. HEIDELBAUGH: That was what I was going to ask
12 you, Your Honor. I'd like to hand up the Headley affidavit,
13 if I could, and mark it as Exhibit 5.

14 Five?

15 THE COURT REPORTER: Yes.

16 MS. HEIDELBAUGH: I ask that that be moved into
17 evidence, Your Honor.

18 THE COURT: It's received over a hearsay objection.
19 (Exhibit No. P-5 was admitted into evidence.)

20 MS. HEIDELBAUGH: In addition, Your Honor, I have
21 exemplified and certified copies, which I believe to be
22 admissible into evidence, of the criminal dockets for cases
23 against ACORN employees in Kansas City, Missouri, with the
24 Court documents. And I have originals and copies for
25 everybody. The -- these are all certified by the Court.

1 There's the original seal and stamp.

2 And there is information contained in each of these
3 criminal indictments and guilty pleas regarding the national
4 policy of ACORN, the activities of the individual ACORN
5 employees. And I offer them as corroborating evidence for
6 the testimony of Ms. Moncrief today.

7 THE COURT: So this is going to be Plaintiffs'
8 Exhibit 6, collectively six?

9 MS. HEIDELBAUGH: Your Honor, I would like to
10 introduce it as one exhibit. It's many parts, but yes, sir.

11 THE COURT: I understand. It hasn't been marked
12 yet?

13 MS. HEIDELBAUGH: I'll mark it right now.
14 Here's the original with the original seal.
15 (Handing.)

16 Next, Your Honor --

17 THE COURT: Hang on a second.
18 Any objection?

19 MS. SIMPSON: On the basis of relevance, yes.

20 MR. MASLAND: No objection, Your Honor.

21 THE COURT: It's received over the relevance
22 objection.

23 (Exhibit No. P-6 was admitted into evidence.)

24 MS. HEIDELBAUGH: Next, Your Honor, I would like to
25 admit into evidence on the exact same basis the criminal

1 indictments and guilty pleas of the ACORN employees in the
2 State of Washington, King County, Seattle.

3 These documents are replete with investigators'
4 notes and the information regarding the methodology of ACORN
5 and their quality -- lack of quality control and the
6 submission of fraudulent voter registration.

7 THE COURT: Any objection?

8 MS. SIMPSON: Same objection.

9 THE COURT: It's received over a relevance
10 objection. That's P-7?

11 MS. HEIDELBAUGH: Yes, Your Honor.

12 (Exhibit No. P-7 was admitted into evidence.)

13 MS. HEIDELBAUGH: The next issue is harder, Your
14 Honor. I would like to admit into evidence for purposes of a
15 preliminary injunction the King County settlement agreement
16 between King County, which is Seattle, State of Washington,
17 and ACORN.

18 I have no subpoena power. I had no right to
19 discovery. And there is no exemplified, certified copy that
20 I could obtain. I have a copy of the document. And because
21 of the relaxed rules of evidence and civil procedure in these
22 proceedings, I request that I be allowed to admit the King
23 County settlement agreement between ACORN into evidence.

24 The basis for the proffer is that it corroborates
25 the testimony of the witness; it establishes scienter of the

1 organization in regard to their knowledge of lack of quality
2 control, their dismissiveness in regard to the problem with
3 voter registration, the link between fraudulent voter
4 registration and fraudulent voting, their agreement to King
5 County to continue to be monitored; and also the argument,
6 sir, that the document, as I read it, is not limited to King
7 County in regard to ACORN's promise to reform itself and to
8 cease its practice of submitting fraudulent voter
9 registrations throughout this nation.

10 THE COURT: And this is -- this will be marked
11 as --

12 MS. HEIDELBAUGH: This would be eight.

13 THE COURT: Is there an objection to the offer of
14 proof?

15 MS. SIMPSON: Yes. Based on relevance and it's
16 just totally -- it's a criminal prosecution, as both of these
17 are. It has absolutely no relevance to this proceeding.

18 MS. HEIDELBAUGH: Your Honor --

19 THE COURT: It's received over the relevance
20 objection.

21 (Exhibit No. P-8 was admitted into evidence.)

22 MS. HEIDELBAUGH: Your Honor, just for the record,
23 if the Court pleases, this is -- this is, in essence, a
24 document involved with the prosecutorial system. But
25 clearly, as the document states on the four corners, the

1 prosecutor agreed not to prosecute the organization if they
2 agreed to these civil remedies.

3 THE COURT: You're describing Plaintiffs'
4 Exhibit 8, this settlement agreement?

5 MS. HEIDELBAUGH: Yes, sir.

6 THE COURT: Okay. I understand.

7 MS. HEIDELBAUGH: Should I keep going?

8 THE COURT: We're on a roll here.

9 MS. HEIDELBAUGH: Your Honor, I have copies of the
10 meeting of the city commissioners of Philadelphia from
11 September 10th, 2008; September 17th, 2008; September 24th,
12 2008; October 1, 2008; and October 8th, 2008.

13 The city commissioners, under professional court
14 reporting service, describe in detail the difficulty with the
15 SURE system, which is the State Uniform Registry of Electors,
16 and the juxtaposition of its unreliability and its
17 inaccessibility to checking the massive registrations that
18 have been dumped on Philadelphia by ACORN.

19 I have knowledge that in the past, the Commonwealth
20 Court has accepted upon information and belief these
21 transcripts that were transcribed by a professional court
22 reporter of these proceedings as evidence. There are not
23 sworn because people are not sworn at the meetings. And so I
24 would submit -- I'd like to submit these as evidence as well,
25 Your Honor.

1 THE COURT: Objections?

2 MS. SIMPSON: Yes, hearsay; no chance to
3 cross-examine. They are being offered for the truth of what
4 they say. And again, just totally unworthy evidence where
5 there's no right of cross-examination.

6 MS. HEIDELBAUGH: The right of cross --

7 MS. SIMPSON: Certainly --

8 THE COURT: May I examine one of these documents?

9 MS. HEIDELBAUGH: (Handing.)

10 May I address the objection?

11 THE COURT: Yes.

12 MS. HEIDELBAUGH: Your Honor, in a preliminary
13 injunction setting, with the burden to proceed at quite a
14 fast clip and the ability to subpoena these individuals to
15 come to Harrisburg, my burden becomes impossible. I was not
16 allowed to take discovery.

17 The only evidence that I can propound to the Court
18 to hopefully come to a right resolution in this matter is the
19 evidence that I have. These are -- these are official
20 proceedings. They're taken down by an official court
21 reporter.

22 The affidavits that I present, which are allowed by
23 court, are not subject to hearsay. And it's my opinion and
24 belief that in these types of proceedings, this sort of
25 evidence is allowed in on a relaxed standard.

1 THE COURT: Well, I'll receive it over the hearsay
2 objection. That would be nine.

3 MS. HEIDELBAUGH: I'd like to introduce them in
4 bulk.

5 (Exhibit No. P-9 was admitted into evidence.)

6 THE COURT: I can see my law clerk's eyes growing
7 bigger and bigger as the stack of evidence gets higher and
8 higher.

9 MS. HEIDELBAUGH: I'd like to -- I have additional
10 affidavits, Your Honor. As I understand the Court's
11 preliminary ruling on the affidavit of Mary Joe Headley, the
12 ruling was that that would be admissible because she was an
13 election administrator --

14 THE COURT: I would rather not accept material
15 that's not subject to cross-examination if I can avoid it.
16 So I want you to give me a reason why you do it other than
17 just, you know, it makes it easier for you. I need a reason
18 why this person couldn't be here or some reason why we have
19 to proceed in that fashion.

20 MS. HEIDELBAUGH: Yes, Your Honor. And I have
21 several more affidavits, and I'd ask for the kindness of the
22 Court to allow me to -- to provide to you a solid reason with
23 some case law on the admissibility of them absent the reason
24 when we -- when we reconvene.

25 THE COURT: Well, I understand that I may accept

1 them --

2 MS. HEIDELBAUGH: Yes, sir.

3 THE COURT: -- but I don't have to accept them.

4 MS. HEIDELBAUGH: Yes, sir.

5 THE COURT: That's the point.

6 MS. HEIDELBAUGH: I hear you loud and clear.

7 THE COURT: If you're going to persuade me on that,
8 you need to come up with --

9 MS. HEIDELBAUGH: I understand. And I do hear you
10 loud and clear, and I would like some time to be able to do
11 that. I know we're going to take a break here, and --

12 THE COURT: So this a good time to take a break?

13 MS. HEIDELBAUGH: If you please, sir.

14 THE COURT: All right. Anything else?

15 MR. MASLAND: I would just say, if Ms. Heidelbaugh
16 wants to share who those affidavits are with, there might be
17 a way to work things out with counsel.

18 THE COURT: Honestly, that's up to her. She didn't
19 get any discovery, so I'm not sure she is required to give
20 you any discovery before the rest of this happens. You know,
21 if you want to work it out or talk about it, it's totally up
22 to counsel.

23 We'll take a recess now. I hope to reconvene about
24 2:30, assuming that everybody is out of the courtroom from
25 the next matter. And we'll continue until we're finished

1 today.

2 MS. HEIDELBAUGH: Thank you, Your Honor.

3 THE COURT: We're in recess.

4 (Whereupon, a RECESS was taken from 12:36 p.m.
5 until 2:36 p.m.)

6 THE COURT: All right. When we took a break for
7 lunch -- it's about 2:35 now. When we took a break for lunch
8 at about 12:35, we were still on the petitioners' side of the
9 case, and we had moved through Plaintiffs' Exhibit 9. So you
10 may continue.

11 MS. HEIDELBAUGH: Thank you, Your Honor. I should
12 be able to wrap this up very quickly.

13 Consistent with a rendition of what happened before
14 we took the break, I believe that the Court asked me pursuant
15 to Pennsylvania Rules of Civil Procedure 1531, which the
16 Court has discretion to accept evidence by affidavits, asked
17 me to proffer the reason why particular affiants who I had
18 intended to submit their testimony by affidavit could not
19 appear.

20 I have reached out through myself and others to try
21 to contact the affiants, and for each one I have the basis.

22 All right. For the first affiant, Joyce Haas,
23 who's the vice chairman of the Republican Committee that I
24 have an affidavit, she's a party official. And she is not
25 able to attend here today. She has one car. Her husband has

1 it. And there's snow, and she cannot be here.

2 THE COURT: I understand.

3 MS. HEIDELBAUGH: Okay. The next witness is Monica
4 Moyer. She is a voter. She has children in school. She
5 never would have been able to be here. She's a stay-at-home
6 mom.

7 THE COURT: Okay.

8 MS. HEIDELBAUGH: And her affidavit was for the
9 purpose of having a voter testify that she did not want her
10 vote diluted by a vote that was improper.

11 In regard to Craig Williams, Craig Williams is a
12 candidate. He had his one and only debate for Congress
13 today. He would not have been able to show up. And that was
14 it.

15 THE COURT: All right. Now, understand I'll accept
16 affidavits from those people over a hearsay objection, which
17 I assume is going to be coming.

18 (Exhibits Nos. P-10 through P-12 were admitted into
19 evidence.)

20 MS. SIMPSON: I so object.

21 THE COURT: But you can mark them starting at
22 Plaintiffs' Exhibit 10.

23 MS. HEIDELBAUGH: Plaintiffs' Exhibit 10 is the
24 affidavit of Joyce Haas. And the Court has been very
25 indulgent with me, and I apologize to the Court. I do not

1 have a copy for opposing counsel of a signed affidavit, but I
2 have a copy of non-signed affidavits. And I'm happy to
3 personally at the close of these proceedings make copies so
4 that they have the signature.

5 THE COURT: All right. I understand.

6 MS. HEIDELBAUGH: Exhibit 12 is the original --

7 THE COURT: 11 you mean?

8 MS. HEIDELBAUGH: I'm sorry, 11. I need a little
9 help with my math. The affidavit of Craig Williams. I have
10 one signed original, and I will get you copies.

11 MR. MASLAND: I thought --

12 MS. SIMPSON: Moyer is 11, according to your
13 chronology.

14 MS. HEIDELBAUGH: Moyer is 11, so this is 12.

15 THE COURT: Okay.

16 MS. HEIDELBAUGH: Exhibit 11.

17 MS. SIMPSON: Yes.

18 MS. HEIDELBAUGH: Moyer.

19 MS. SIMPSON: Yes.

20 MS. HEIDELBAUGH: Here's the original. Signature.

21 THE COURT: All right.

22 MS. HEIDELBAUGH: Your Honor, I handed up to the
23 Court Exhibit 9, which was the city commissioners of
24 Philadelphia transcripts. An October 15th transcript was not
25 included, so I would like to include in Exhibit 9

1 October 15th. And I have copies for everyone.

2 THE COURT: Any objection?

3 MS. SIMPSON: No.

4 THE COURT: In the absence of objection, it's
5 permitted.

6 The 15th? Is that the date, October 15th?

7 MR. MILLER: Yes.

8 MS. HEIDELBAUGH: And lastly, Your Honor, the Court
9 made a reference in jest to the work of the poor law clerks
10 this evening. And -- and so I thought it might be helpful to
11 provide to the Court and opposing counsel those portions of
12 the Philadelphia transcripts, which clearly are the bulk of
13 the reading material, that we thought were important.

14 So what I have prepared here is a handwritten
15 document that cites the date of the commissioners' meeting
16 and the pages that we think are important.

17 THE COURT: So it's a summary? It's a summary of
18 the --

19 MS. HEIDELBAUGH: It is just a citation of what we
20 think is important. And, therefore, we think -- the other
21 pages we're not relying on for our case.

22 THE COURT: So this is going to be marked as 13?

23 MS. HEIDELBAUGH: Yes, sir.

24 THE COURT: Thank you. That's received.

25 (Exhibit No. P-13 was admitted into evidence.)

1 MS. HEIDELBAUGH: One moment, please.

2 THE COURT: There you go, Steve. You can watch the
3 Phillies game tonight. You won't have to read all this.

4 MS. HEIDELBAUGH: Your Honor, at this point, the
5 plaintiff rests.

6 THE COURT: Very well.

7 Ms. Simpson, you may call your first witness.

8 MS. SIMPSON: Thank you. Krista Holub.
9 (Whereupon, Krista Holub was sworn.)

10 THE COURT CRIER: Spell your name for the reporter,
11 please.

12 THE WITNESS: K-R-I-S-T-A, H-O-L-U-B, as in
13 brother.

14 DIRECT EXAMINATION

15 BY MS. SIMPSON:

16 Q Ms. Holub, where do you reside?

17 A In Philadelphia, Pennsylvania.

18 Q And are you employed?

19 A Yes.

20 Q Who is your employer?

21 A ACORN.

22 Q What is your position?

23 A I'm the Pennsylvania ACORN political director.

24 Q How long have you held that position?

25 A I've been employed with ACORN since January of

1 2005.

2 Q And how long have you been the Pennsylvania
3 political director?

4 A Since 2006.

5 Q Okay. What are your duties as the Pennsylvania
6 political director?

7 A My duties are to oversee the voter registration
8 programs for Pennsylvania, to manage the staff.

9 Q Okay. How many offices does ACORN have in
10 Pennsylvania?

11 A We have four physical offices.

12 Q Where are they located?

13 A In Pittsburgh, Harrisburg, Allentown and
14 Philadelphia.

15 Q And you had -- you were the supervisor of all those
16 offices. Is that correct?

17 A For the voter registration.

18 Q For the voter registration portion?

19 A Uh-huh.

20 Q Could you tell us about your education, educational
21 background? Did you go to college?

22 A I did go to college. I graduated with a degree
23 from the University of Iowa.

24 Q And after graduation, did you have any employment
25 other than ACORN?

1 A Yes. I -- previously coming to ACORN, I was
2 employed by Imis (ph) Action Network to do a Get Out The Vote
3 program.

4 Q Now, as part of your responsibility as the
5 political director in Pennsylvania, can you describe to us
6 who staffed the various offices with regard to the voter
7 registration program?

8 A Sure. The field staff, as we call it, was
9 comprised of political organizers who would hire, train and
10 supervise voter registration canvassers. Parallel to that,
11 we had the organizing call center staff with an organizing
12 call -- call director who managed a group of callers.

13 Q And was that for quality control purposes?

14 A It was for quality control purposes.

15 Q And could you explain the -- specifically, were you
16 trained -- how were you trained to do this voter registration
17 program?

18 A I had intensive training. Again, we did a voter
19 registration program in 2006 as well, so I gained a lot of
20 experience during that program. In my capacity this year, I
21 was in a political director training program that consisted
22 of training for all the political directors that was held in
23 Detroit. I believe that was last fall.

24 We also have ongoing trainings quarterly as part of
25 the -- as part of the overall operation and have weekly

1 training calls where we were able to highlight struggles that
2 we were having as managers and receive feedback and support.

3 Q The -- are you acquainted with the training that
4 the people who are in the field, the canvassers who are
5 actually going out and seeking people to register to vote,
6 were given?

7 A Yes. I have firsthand experience with that.

8 Q Okay. Could you describe to the Court what the
9 training -- first of all, how you got prospective employees,
10 what the program was with regard to them and how they were
11 trained?

12 A Sure. So ACORN has a recruitment program that
13 recruits people from the neighborhoods where we were going to
14 be doing voter registration. So the recruitment is largely
15 word of mouth, where we talk to people about what issues they
16 are concerned about, ask them if they're looking for
17 employment and would like to help assist people to get
18 registered to vote.

19 Those people are then invited to an interview
20 process. The interview process, it starts by going over just
21 an overview of what ACORN is, what the organization's purpose
22 in doing voter registration assistance is. We go over the
23 job requirements for the position, what canvassers will
24 expect on a day-to-day basis, what their duties and
25 responsibilities are.

1 We go over what constitutes a complete card
2 according to the boards of elections, how to assist voters to
3 complete cards. We go over the legal requirements for voter
4 registration, for example, who's able to register in the
5 State of Pennsylvania and so forth. We also during that
6 training have a very explicit discussion about what voter
7 registration fraud is and what the consequences of voter
8 registration fraud are.

9 That's sort of the talking part of the interview.
10 And then at that point, we actually practice with everyone
11 who comes to the interview; we call it role-playing. And
12 each prospective employee does a role-play, and we assess
13 them if they're able to engage people in conversation and to
14 assist people to register to vote.

15 At that time in the interview process, the people
16 who are successful with the two first parts are invited to do
17 a field test. The field test consists of them actually going
18 into the field and assisting people to fill out a voter
19 registration application like they would be expected to do
20 when we hire them.

21 We, at the end of the field test, make an
22 assessment of those three categories and make hiring
23 decisions based on that.

24 Q After individuals are hired, do they have any
25 additional training?

1 A They do have additional training. We have both
2 in-office training and in-the-field training. So the
3 in-the-office training is an hour every day. It's a
4 half-hour at the beginning of the shift where every day we
5 talk about what a complete card is. Canvassers have the
6 option to talk about what problems they were experiencing the
7 day before. And again, we do role-plays every day so they
8 are practicing.

9 And then in-the-field training component, every
10 canvasser's supervisor is in the field with them during the
11 time that they're in the field. So, you know, during a
12 shift, the supervisor will be checking in with canvassers in
13 the field and taking some time to work with individuals who
14 are identified as needing retraining or additional assistance
15 if it's deemed necessary.

16 Q I'm going to show you a document that has been
17 marked as Private Defendants' Exhibit A. Can you tell us
18 what this is?

19 A Sure. This is one of the documents that is used
20 during the interview process to describe more about the
21 organization as well as the job description for the voter
22 registration canvassers.

23 Q Could you take a look at the second page?

24 A Uh-huh.

25 Q Right in the middle there, there are -- there are a

1 list of standards. Do you see that?

2 A Yes.

3 Q Could you explain what those -- what that means,
4 not necessarily read them, but tell us what those -- what a
5 canvasser is expected to do?

6 A Sure. I mean, like any position that one might
7 hold, there's professional standards. So these are what it
8 takes to do the job.

9 Q How long are canvassers permitted to work each day?

10 A Each day it's a six-hour shift. It's four hours in
11 the field at a minimum.

12 Q And if a canvasser does not meet the performance
13 standards, what happens to them?

14 A We do retraining with people who aren't able to
15 meet standards and make evaluations on their performance over
16 the course of days and weeks based -- you know, to determine
17 how we can retrain them and so forth.

18 Q How are the canvassers paid?

19 A Canvassers are paid by an hourly rate. So it's a
20 six-hour shift per day, and we pay by the hour.

21 Q How much are they paid?

22 A \$8 an hour. Though, we did raise the salary.

23 Q You raised the hourly rate at some point?

24 A Yes.

25 Q To what?

1 A To \$10 an hour.

2 Q And was it necessary that a canvasser -- in order
3 to keep their job, a canvasser had to achieve these standards
4 on a daily basis as far as the number is concerned, or was
5 there some other way of evaluating them?

6 A These were the standards. And I mean, we worked
7 with canvassers on a day-to-day basis to do retrains. You
8 know, I think if you look at someone's performance from
9 day-to-day, one day a canvasser might bring in 13
10 applications. The next day they might bring in 22
11 applications. The next day it might be 18. So I think it's
12 hard to evaluate on a day-to-day basis because there were
13 inconsistencies.

14 Q Now, was it -- did you require that the canvassers
15 fill out an employment application?

16 A Yes.

17 Q Okay. I'm going to show you a document that has
18 been marked as Private Defendants' Exhibit B. Do you
19 recognize this document?

20 A Yes, I do.

21 Q Can you tell us what this is?

22 A Sure. This is the part-time employment application
23 that every canvasser would fill out during the interview
24 process.

25 Q And I'm going to show you a document identified as

1 Private Defendants' Exhibit C. Can you tell me what this is?

2 A This is the voter registration training
3 certificate. During the interview process, each canvasser
4 signs one of these, acknowledging that they were trained on
5 the following things: How to fill out a voter registration
6 application; how to, to the best extent possible, fill it out
7 completely and accurately; who was eligible to vote; the laws
8 and regulations and the consequences of breaching those.

9 Q Are these the items that are covered in the
10 interview?

11 A Yes, they are.

12 Q Now I'm going to show you Private Defendants'
13 Exhibit D. Do you recognize this?

14 A Yes.

15 Q What is this?

16 A This is what we call the fraud policy. Again,
17 during the interview session, every potential employee must
18 sign one of these, acknowledging that they understand what
19 the fraudulent activity would be and the consequences of that
20 fraudulent activity.

21 Q Now, approximately how many people were hired as
22 canvassers in Philadelphia?

23 A In -- across Pennsylvania, we hired over 1100
24 canvassers. I don't know the exact Philadelphia number.

25 Q Okay. The canvassers were out in the field; they

1 had -- what were they provided as far as what was supposed to
2 be completed by those who were seeking to register to vote?

3 A What were they provided to assist them?

4 Q No. What -- when they went out for their shift,
5 what did they take with them?

6 A Every canvasser was given an assignment to -- where
7 they would go that day. They were given a clipboard that
8 included more information about the organization. It
9 included a batch of voter registration applications, and it
10 was also -- often included flyers to give people regarding
11 the job.

12 Q What were the canvassers trained to do with the
13 actual applications, the blank applications?

14 A The canvassers were trained to approach the person
15 and assist them to get registered to vote. However, they're
16 not allowed to, according to our internal regulations, write
17 on the voter registration card. So they would hand the
18 clipboard over to the applicant and sort of walk them through
19 line by line what information was necessary to fill out the
20 card completely and accurately.

21 Q And what happened with these cards that people
22 filled out?

23 A So at the end of the shift, we would do a checkout
24 procedure with all the canvassers. So each canvasser at that
25 time wrote their name and address on each application that

1 they had collected during their shift and put it into what we
2 call a batch. So they signed a piece of paper that
3 acknowledged their performance for the day, and they
4 acknowledged that they had collected the voter registration
5 cards.

6 Q And they -- their name was also on the voter
7 registration card. Is that correct?

8 A Yes.

9 Q I show you what has been marked as Private
10 Defendants' Exhibit E, and tell us what this is.

11 A This is a copy of the worker batch sheet. So
12 you'll see at the top portion, it says "Canvasser Section."
13 This is what each canvasser filled out for their work product
14 for the day. In the middle section, you'll see what says "PO
15 Section." This is where the supervisor looked over and
16 reviewed the applications that the canvasser collected and
17 signed off on them. And then the bottom portion is where it
18 says "OCC Call Center Section." This is a record of the
19 quality control that we did on the batch.

20 Q Now, sometimes when these voter registration cards
21 came in, there were problems with them. Is that correct?

22 A That is correct.

23 Q What types of problems were found?

24 A We would find everything from a card without a date
25 of birth on it, the applicant failed to select a party or put

1 a signature.

2 Q What would happen when you had missing information?

3 A If we had missing information, according to the
4 boards of elections, we did not fill in that missing
5 information. We were only able to tell the applicant over
6 the phone when we spoke to them that they had failed to
7 include a piece of information and they would need to follow
8 up with the board of elections.

9 Q Was it the practice to call people who had
10 completed voter registration cards?

11 A It was a practice to call every single application
12 that we had a phone number for.

13 Q Okay. What if you didn't have a phone number?

14 A If we didn't have a phone number, if we were able
15 to do an address check to see some sort of verification, we
16 would.

17 Q And you then called the person?

18 A If we could find a phone number, yes.

19 Q If you could find a phone number. What is a
20 performance investigation?

21 A A performance investigation is when either the
22 direct supervisor of the canvasser or the call center would
23 identify a discrepancy on the card. We would immediately
24 open an investigation on the canvasser to investigate further
25 why there was a discrepancy and to be able to take action

1 with the canvasser to do a retrain or a termination if
2 necessary.

3 Q What kind of discrepancies are you talking about?

4 A There -- you know, we have standards for phone
5 numbers. So if there was a low number of phone numbers or a
6 high number of disconnected phone numbers, that would elicit
7 an investigation. If we talked to the actual person whose
8 name was on the application and they verified that there was
9 an incorrect piece of information, if the date of birth was
10 wrong or if the applicant said no, I did not intend to
11 register to vote, we would open an investigation. There's a
12 lot -- you know, there's various reasons to open
13 investigations.

14 Q Okay. I'm going to show you what's marked as
15 Private Defendants' Exhibit F. Is this the sheet that was
16 filled out when you had a performance investigation?

17 A Yes, it is.

18 Q Once the applications -- the voter registration
19 applications were reviewed and examined by the call center
20 and quality control, what happened with them?

21 A At that time, we would sort the cards to deliver
22 them to the board of elections. We would sort them into
23 three distinct piles: One with applications that we believed
24 to be complete; one pile for applications that we knew to be
25 missing a pertinent piece of information, such as a date of

1 birth; and then a third pile, which would be problematic card
2 if -- or batch of cards that we would want to flag for the
3 board of elections to let them know that our investigation
4 had discovered something suspicious. And we would ask them
5 to further investigate.

6 Q I'm going to show you what has been marked as
7 Private Defendants' Exhibit G. What is this?

8 A This is the problematic card cover sheet. This is
9 what we would use to deliver cards to the board of elections
10 that we had found discrepancies on or had a suspicion on.

11 Q And was there a fourth category of voter
12 registration cards in Philadelphia?

13 A There was. In Philadelphia, based on a joint
14 agreement with the Philadelphia Board of Elections, we would
15 deliver cards directly to the district attorney of
16 Philadelphia when we spoke with the applicant whose
17 information was on the card and they distinctly told us that
18 it was not their intention to register to vote and their
19 information was not correct.

20 Q Did you have that arrangement with your other
21 offices?

22 A We did not.

23 Q But you did identify for the boards of election
24 those applications that your own quality control had failed
25 to completely verify. Is that correct?

1 A That is correct.

2 Q Are you aware of whether or not there are any
3 criminal charges or indictments against any current or former
4 ACORN employees in Pennsylvania?

5 A I am aware, and we have participated fully with the
6 district attorney in Delaware County and Dauphin County.

7 Q What other organizations were engaged in voter
8 registration in Pennsylvania for calendar year 2008?

9 MS. HEIDELBAUGH: Objection, irrelevant.

10 MS. SIMPSON: We have a lawsuit and a motion for
11 preliminary injunction against ACORN, and there were many
12 other organizations doing similar things and providing
13 information. If we're going to use gross statistics about
14 how many bad voter registration cards were submitted, I think
15 we need to know how many other entities were out there
16 soliciting people to register to vote.

17 MS. HEIDELBAUGH: Your Honor, that is not in
18 controversy in this case. Plaintiffs have not alleged that,
19 and it has absolutely no relevance to the acts that ACORN has
20 been accused of in regard to fraudulent registrations.

21 THE COURT: I guess it goes to remedy, sort of the
22 connect between the -- your proof and effectiveness of the
23 remedy. So I'm going to overrule the objection.

24 MS. HEIDELBAUGH: Your Honor, may I place a second
25 objection on a different basis? The second objection would

1 be a lack of foundational testimony to establish that this
2 witness has this information and is not guessing.

3 THE COURT: Well, that objection is sustained.

4 You may follow-up with that.

5 MS. SIMPSON: Okay.

6 BY MS. SIMPSON:

7 Q What knowledge do you have of other voter
8 registration drives within the Commonwealth?

9 A I have knowledge that there are many other voter
10 registration drives. I know that we have been in the field
11 and talked to other canvassing organizations who are
12 collecting voter registration applications. The voters --
13 Citizen Voters Project, Progressive Future. I think in total
14 just in Philadelphia there are about 14 to 18 other
15 organizations on the ground.

16 MS. HEIDELBAUGH: Your Honor, that response I don't
17 object to. But any further inquiry, any further response I
18 would object to on the basis of hearsay and would be offered
19 for the truth of the matter asserted.

20 THE COURT: I'll have to hear what the questions
21 are.

22 BY MS. SIMPSON:

23 Q Was there any program in place within the ACORN
24 offices to determine whether or not your canvassers were
25 submitting duplicate registrations, in other words,

1 registrations for people who were already registered to vote?

2 A Yes. There were checks for duplicates. And again,
3 I just want to point out that we -- when we verified that it
4 was somebody re-registering, we're still obliged to deliver
5 it to the boards of elections.

6 Q So aside from the voter registration cards that you
7 sent to the district attorney in Philadelphia, every other
8 registration form that your canvassers brought in was sent to
9 the boards of election. Is that correct?

10 A That is correct.

11 Q And it's your -- it was your understanding that
12 that was a requirement?

13 A We were obligated to do that. We communicated that
14 obligation to the boards of election in all the counties that
15 we worked in. And I attempted to sit down with each and
16 every one of those boards of elections to discuss those --
17 you know, that obligation. And that's the reason we had a
18 different situation in Philadelphia because of the
19 partnership with the board of election.

20 Q Prior to --

21 THE COURT: May I ask some questions?

22 MS. SIMPSON: Sure.

23 THE COURT: What's the source of this obligation?

24 THE WITNESS: Because it is not our decision to
25 determine which voter registration forms are -- are

1 legitimate or not legitimate. That's the boards of
2 elections' job to do that. And so our obligation to collect
3 voter registration applications then is to the citizens, to
4 deliver them to the board of elections, and the board of
5 elections decides who is eligible to be added to the rolls.

6 THE COURT: How does this obligation to these
7 registrants arise?

8 THE WITNESS: Because we're assisting them in
9 filling out the voter registration form.

10 THE COURT: Do you tell them that you have an
11 obligation to them to deliver that, even if you think it's
12 duplicative?

13 THE WITNESS: Yes. Many people register -- fill
14 out a duplicate voter registration application. I spent time
15 in the streets, and people don't always understand if they're
16 registered or not. We can't stop a person from filling out
17 two voter registration applications.

18 THE COURT: But you have an express understanding
19 with these people that you're going to deliver this, even if
20 you find out that it's duplicative?

21 THE WITNESS: Yes. Unless if we talk to them on
22 the phone and they say they did not intend to register to
23 vote.

24 BY MS. SIMPSON:

25 Q Are you aware of what your duplication or

1 duplicative submissions were? Do you know what the
2 percentage was?

3 A We don't know that. And quite frankly, the boards
4 of elections aren't done completing the voter registration
5 process, and so they -- nobody knows at this time.

6 THE COURT: I'm going to ask my court reporter to
7 mark my questions so I can find them.

8 BY MS. SIMPSON:

9 Q Prior -- strike that. What -- how often were these
10 batches of voter registration cards delivered to the local
11 boards of election?

12 A At least once a week. In Philadelphia, we deliver
13 them twice a week.

14 Q In Philadelphia, how -- how large were the groups
15 when you delivered them twice a week? How many cards were in
16 each delivery?

17 A Between a thousand and 2,000 cards each delivery.

18 Q What about in Delaware County?

19 A In Delaware County, it would be more in the range
20 of 400.

21 Q Once a week?

22 A Once a week.

23 Q Okay. Prior to delivering the cards to the -- to
24 the boards of elections, was -- was there any duplication?
25 Did you copy these? Did you keep records? I mean, how did

1 you do that?

2 A Before delivering them to board of elections, we
3 would scan every application that we collected.

4 Q And what happened to those documents that were
5 scanned?

6 A The scans were uploaded onto a server.

7 Q And have they been cataloged or chronicled in any
8 way?

9 A To my knowledge, some of them have, but not all of
10 them.

11 Q Is it possible for you to go to a database and get
12 a list of each and every person for whom a voter registration
13 card was submitted in Pennsylvania?

14 A No.

15 Q Why? Why do you say that so quickly? No one
16 has -- has cataloged this information?

17 MS. HEIDELBAUGH: Objection, leading and
18 mischaracterization of her prior testimony.

19 THE COURT: Overruled.

20 THE WITNESS: The process to catalog them is
21 flawed, and we don't have a complete catalog.

22 BY MS. SIMPSON:

23 Q What -- what would have to be done in order to
24 generate a list of everyone for whom a voter registration
25 card was submitted to a board of elections?

1 A We would have to go to the cities where we did
2 voter registration, print off a copy of every application
3 that was scanned and saved.

4 Q And how many applications were there?

5 A Over 140,000.

6 Q What kind of information do these applications
7 contain?

8 A It includes all of the -- you know, full name,
9 address, ID number or last four numbers of the Social
10 Security, date of birth. It also includes membership
11 information and our independent verification efforts.

12 Q And when you say "ID number," that's a driver's
13 license number?

14 A Pennsylvania, yeah.

15 Q What is your understanding about any type of
16 confidentiality regarding any of these -- this material on
17 the forms that you have downloaded?

18 A It's my understanding that the state ID and last
19 four digits of the Social Security as well as the date of
20 birth are confidential information. And, of course, our
21 membership information and independent verification would be
22 confidential.

23 Q So what would have to be done before -- if you were
24 ordered to turn over these records, what would have to be
25 done with each and every one of these pieces of paper?

1 A Again, once we were able to print them off --
2 individually off the computer, we'd have to, you know, take a
3 black marker and cross out all of that information.

4 Q Now that voter registration has -- the deadline has
5 passed, are you working personally as far as getting out the
6 vote?

7 A Yes, I am.

8 Q Is that a partisan program?

9 A No, it's not.

10 Q Where do you obtain information about prospective
11 voters?

12 A We have a voter file that includes information on
13 voters.

14 Q Is this the ACORN -- those who ACORN registered to
15 vote?

16 A No. It's from the Pennsylvania state voter file.

17 Q So there is -- is there such a list of ACORN
18 registered voters?

19 A No, there's not a list of ACORN registered voters.

20 Q Have you had feedback from the various boards of
21 education -- or boards of election indicating who they --
22 they approved or that they actually registered to vote from
23 the ACORN submissions?

24 A No, we have not. We have requested that
25 information from the boards of elections, though, but have

1 not been given it.

2 Q Just -- and I apologize if I have asked this
3 question before and just don't remember it. If a -- if a
4 canvasser committed an act that you -- that was denominated
5 as fraudulent, improper, what happened to that person?

6 A We would terminate a person if we're able to verify
7 that we thought it was fraudulent or the applicant said that
8 they did not fill out that information.

9 Q Was that done?

10 A Yes.

11 MS. SIMPSON: I have no other questions.

12 THE COURT: You may inquire.

13 CROSS-EXAMINATION

14 BY MS. HEIDELBAUGH:

15 Q Good afternoon.

16 A Hi.

17 Q Hi. It's Holb (ph)?

18 A Holub.

19 Q Holub. Okay. So there's an A in there somewhere I
20 missed?

21 A No. It's H-O-L-U-B, as in bravo.

22 Q Holub. Got it. Thank you. Ms. Holub, we haven't
23 met before today. My name is Heather Heidelbaugh. Nice to
24 meet you. I think I'm going to start at the end of your
25 testimony and work backwards. Okay?

1 A Okay.

2 Q All right. Now, you produced various blank forms
3 here today as exhibits. Is that right?

4 A Yes.

5 Q Okay. But you didn't give us any signed or filled
6 out copies, did you?

7 A I did not.

8 Q Okay. And you know that the FBI is investigating
9 ACORN as we speak?

10 A I've not been contacted by the FBI.

11 Q That's not my question. Do you know that the FBI
12 is investigating the ACORN as we speak?

13 MS. SIMPSON: Objection. The question is not
14 clear. Investigating Pennsylvania, for which this witness
15 would have firsthand information, or investigating generally?

16 THE COURT: Well, the witness hasn't complained
17 about the question, so I don't think that you can complain
18 that you're confused. The objection is overruled.

19 THE WITNESS: Well, I am confused by the question
20 because I don't understand if you're asking if I've read
21 about it in the newspaper or --

22 BY MS. HEIDELBAUGH:

23 Q Have you read about it in the newspaper?

24 A Yes.

25 Q Have you been talked to about it with --

1 A No.

2 Q No one has discussed it with you?

3 A The FBI has not contacted me. No.

4 Q No, has anyone at ACORN discussed the FBI
5 investigation with you?

6 A Again, I'm not sure what your question is.

7 Q Let me stop you.

8 A When I --

9 Q Let me stop you. You remember you're under oath
10 today?

11 A Uh-huh. I'm trying to answer your questions.

12 Q Okay. Now, has anyone -- very simple. Has anyone
13 at ACORN discussed with you the FBI's investigation of ACORN?

14 A When I first read about it in the newspaper, I
15 contacted Brian Miller to ask if he had been contacted
16 regarding Pennsylvania. He said no, and I believe that he
17 sent -- or we sent a letter to the FBI requesting information
18 about it. I've not heard anything back.

19 Q That's the only discussion you've had with anyone
20 at ACORN regarding the FBI?

21 A Yes.

22 Q Are you aware that four prosecuting attorneys in
23 the Commonwealth are investigating ACORN voter registration
24 fraud?

25 A I am aware of -- can you tell me which four,

1 because --

2 Q I can tell you. Allegheny County. That's
3 Pittsburgh.

4 A Uh-huh.

5 Q Delaware, Dauphin and Philly.

6 A Yes, I'm aware of those.

7 Q All right. So you know that the organization that
8 you work for is being criminally investigated by the FBI and
9 by four prosecuting attorneys in the Commonwealth of
10 Pennsylvania, correct?

11 MS. SIMPSON: Objection, mischaracterizes her
12 testimony.

13 THE COURT: Overruled.

14 THE WITNESS: What I understand is that -- and I've
15 been working with the district attorney's office to
16 investigate canvassers. The FBI has not indicated that
17 they're investigating ACORN to me, and that's what I know.

18 BY MS. HEIDELBAUGH:

19 Q So to answer my question, we need to -- we're going
20 to need move quickly here, so you need to concentrate on my
21 question and answer my question. Okay? You can answer any
22 question you want from Ms. Simpson.

23 You are aware there's four criminal pending
24 investigations in the Commonwealth of Pennsylvania, correct?

25 A Again, as to who?

1 Q ACORN.

2 A It was my belief that they were investigating
3 canvassers, per my conversations with the district
4 attorney --

5 Q That worked for ACORN?

6 A Former employees of ACORN who we terminated based
7 on our investigations.

8 Q And did you bring any of their paperwork here to
9 court today?

10 A No, I did not.

11 Q And how many investigators are being -- how many
12 canvassers are being investigated?

13 A Unfortunately the detectives have not shared that
14 number with me.

15 Q Have you been -- have the detectives asked you for
16 any information?

17 A Yes.

18 Q And what information have they asked you for --
19 did they ask from you?

20 A I mean, we've had ongoing conversations about --

21 Q No, what information, what documents did they ask
22 you for?

23 A Our training documents, our fraud policies, our
24 signed employee applications, our investigations.

25 Q Did you bring the investigations with you today?

1 A No, ma'am.

2 Q Why?

3 A I didn't know they were required.

4 Q Did Ms. Simpson ask you to bring those today?

5 A I'm -- no.

6 Q She did not?

7 A No.

8 Q Okay. So you know that ACORN is being investigated

9 by four prosecutors for voter registration fraud. You have

10 given those investigators -- those criminal prosecutors

11 investigation files, but you did not bring them here with you

12 today. And the suit is about ACORN voter registration fraud.

13 Is that correct?

14 A So I think that --

15 Q Is that correct, ma'am?

16 A The point is --

17 Q Yes or no?

18 A -- I'm not sure what --

19 THE COURT CRIER: Let her finish her answer.

20 THE COURT: Give her a moment to respond to you.

21 THE WITNESS: I'm not sure what I would have

22 brought because the detectives have not shared all their

23 investigations with me.

24 BY MS. HEIDELBAUGH:

25 Q No, I want to know what you gave to them. What

1 investigation files did you give to them?

2 MS. SIMPSON: Asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: I gave them our training policy, our
5 fraud statement, gave them investigations that we had done on
6 Jemar Barksdale and Luis Torres-Serrano as well as those two
7 gentlemen's employee packets.

8 BY MS. HEIDELBAUGH:

9 Q Any other employees?

10 A I did not give authorities any other employees.

11 Q Did anyone else at ACORN?

12 A They may have.

13 Q Who? Who at ACORN would have given Pennsylvania
14 state prosecuting authorities information?

15 A I believe that the -- whoever you said, the
16 investigators were talking with Brian Miller, who is one of
17 our attorneys.

18 Q And what did Brian give them?

19 A I don't know. I believe probably similar documents
20 that we provided for the other two gentlemen.

21 Q Okay. And you didn't bring any of those documents
22 either?

23 A No, I did not.

24 Q Okay. Now, what law requires you to turn in every
25 registration that you, you ACORN, receive?

1 A Under legal advice, we believe we're obligated to
2 deliver all the applications that we collect to the boards of
3 elections. And we set that out in writing before our voter
4 registration program began and asked to meet with the boards
5 of elections regarding that policy. And I did, in fact, meet
6 with the boards of elections in every county that we staged a
7 drive out of, with the exception of Delaware County.

8 Q And we're going to be here a long time if you don't
9 answer my questions.

10 THE COURT: No, just ask your question, counsel.

11 BY MS. HEIDELBAUGH:

12 Q What law requires you to turn in every application,
13 every voter registration application, even if you believe
14 it's fraudulent or a duplication?

15 A I'm not a lawyer, ma'am. I'm sorry. I cannot
16 answer that question for you.

17 Q So you relied on the advice of an ACORN lawyer?

18 A Yes, ma'am.

19 Q And who -- who was that?

20 A I believe Brian Miller.

21 Q And where does Brian Miller work?

22 A His base office, I believe, is in Massachusetts,
23 but I cannot confirm that. I'm not a hundred percent sure on
24 that.

25 Q Is he a licensed Pennsylvania lawyer?

1 A I can't confirm or deny that.

2 Q Now, you don't fire all canvassers who turn in
3 duplicates, do you?

4 A We do retrainings with our canvassers. People are
5 so excited to get registered to vote in this election that we
6 needed to train people on when to help people call the boards
7 of elections to determine if they were registered before
8 filling out, you know, multiple voter registration
9 applications. But again, an applicant who wants to fill out
10 another application because they didn't receive their card
11 from the boards of elections, we can't stop them from doing
12 that.

13 Q That's not my question. You do not fire every
14 canvasser that works for ACORN who submits duplicate voter
15 registrations, do you?

16 A We don't know when there's duplicate voter
17 registration applications collected in every case. We don't
18 have that information.

19 Q So is the answer that I'm correct, you do not fire
20 every canvasser who turns in duplicate registrations?

21 A We would have no way of knowing who to fire, so the
22 answer would be no.

23 Q So you don't know who turn s in duplicates?

24 A When the boards of elections alerts us to it, we
25 work with them to terminate people. But otherwise, we don't

1 know duplicates from a new registration.

2 Q I thought you said you had a quality assurance
3 program and you checked for duplicates?

4 A We do have a quality assurance program and check
5 for duplicates. But by no means would we be able to identify
6 every voter registration application as if it were or were
7 not a duplicate because that is a system the boards of
8 elections have.

9 Q Is it true that your canvassers don't ask an
10 individual if they've registered to vote before?

11 A I'm sorry. I'm confused about the way you asked me
12 that question.

13 Q Let me rephrase it. Do you train your canvassers
14 to ask an individual, have you registered to vote previously
15 or are you registered to vote?

16 A We do train them to ask those two questions. Yes.

17 Q Okay. You testified that you met with each and
18 every board of elections in the Commonwealth of Pennsylvania.
19 Is that what I understood?

20 A No, you misunderstood. Where we were staging voter
21 registration drives out of.

22 Q How many boards of elections did you -- officials
23 did you -- what counties -- how many counties did you meet
24 with?

25 A Philadelphia, Lehigh, Dauphin and Allegheny and

1 Montgomery.

2 Q Philadelphia, Lehigh?

3 A Dauphin, Montgomery and Allegheny.

4 Q Are those the only counties in which you conducted
5 registrations?

6 A We also did a drive in Delaware but were not able
7 to meet with them.

8 Q Any other county you conducted a drive?

9 A No.

10 Q It's my understanding from press reports that ACORN
11 receives the voter registrations and then sends them to a
12 third-party vendor. Do you know who Maude Hurd is?

13 A I do.

14 Q Who is she?

15 A She's the ACORN president.

16 Q Okay. And who's Bertha Lewis?

17 A She's the ACORN chief organizer.

18 Q Okay. And is it correct that ACORN sends all of
19 the voter registration applications to a third-party database
20 to input all of the information from those voter
21 registrations?

22 A What we do in Pennsylvania is upload them to a
23 server. I don't know when and how that information is then
24 transferred to the vendor because I'm not responsible for
25 that. In Pennsylvania, that's not something we do.

1 Q Okay. When you say we upload it to a server, who's
2 "we"?

3 A The quality control manager, the organizing call
4 center manager.

5 Q And what is that database called?

6 A FTP server.

7 Q Okay. Let's say that you're a canvasser, and let's
8 say I'm a registration, I'm going to register to vote.

9 A Uh-huh.

10 Q Now, do you tell me that you're going to turn in my
11 personal information to a third party?

12 A When someone fills out a voter registration
13 application, we tell them we will deliver it to the boards of
14 elections and they'll receive their voter registration card
15 in a matter of weeks.

16 Q Let me ask it again. When I fill out a voter
17 registration application, do you tell me that you, ACORN,
18 intend to turn it in -- my private information in to a third
19 party?

20 A What do you mean by "a third party"?

21 Q A third-party vendor that -- according to the press
22 reports from your national organization, you receive the
23 information from the voter registration application; you
24 input it into a database; and that's inputted by a
25 third-party vendor?

1 A No.

2 Q Okay. So you agree with me you do not tell the
3 individual registrant that a third party is going to see
4 their private information, correct?

5 A Correct.

6 Q All right. And you've already admitted on the
7 stand that you provide a third party with private driver's
8 license information, date of birth and the last four numbers
9 of their Social Security number, correct?

10 A When you say "I," I personally don't, no.

11 Q Well, you're the director, right?

12 A Right.

13 Q And you're responsible for all the canvassers?

14 A I am responsible for the canvassers, yes.

15 Q Okay. And you're responsible for the voter
16 registration drive in Pennsylvania, correct?

17 A Correct.

18 Q Okay. So do you believe you have violated the
19 confidentiality of about 140,000 voter registration
20 applicants in Pennsylvania?

21 A Can you rephrase the question? I don't understand.

22 Q Sure. Do you believe that you have violated the
23 confidentiality of approximately 140,000 voter registration
24 applicants by obtaining their personal information and
25 submitting it to a third-party vendor without their consent

1 or knowledge?

2 A I'm sorry. Again, was that a rephrased question,
3 or was that the same question? Because I -- I'm not sure how
4 to answer your question.

5 Q Do you understand that you have violated the
6 confidentiality of approximately 140,000 voter registration
7 applicants by providing their personal data to a third-party
8 vendor?

9 MS. SIMPSON: Objection. It's a legal conclusion.

10 THE COURT: Well --

11 MS. HEIDELBAUGH: She talked about confidentiality,
12 Your Honor.

13 THE COURT: I don't know that this helps me really
14 to solve the problem that I have with this case today, so I
15 have a question about relevancy.

16 MS. HEIDELBAUGH: Here's the relevancy. I'm going
17 to ask for a copy of the voter registrations that they have
18 submitted so that we can check to determine -- that's in my
19 relief and all my papers. And the response is going to be --
20 this is on the direct -- that they're -- it's going to be too
21 burdensome because they're going to have to excise with a
22 black marker, as they testified, all the confidentiality
23 information. They've already provided it to a third party.
24 It's not confidential anymore.

25 THE COURT: All right. I understand. Go ahead.

1 BY MS. HEIDELBAUGH:

2 Q So you would agree with me that you violated the
3 confidentiality of about 140,000 people, right?

4 A I don't know what "violated the confidentiality"
5 legally means, though.

6 Q Okay. Well, you know that ACORN gets all that data
7 into a database and then uses that data to contact those
8 voters two times, three times, four times to get -- for Get
9 Out The Vote efforts?

10 A No, that's incorrect.

11 Q Are you testifying under oath that ACORN doesn't
12 use that information from those voter registration
13 applications in any regard?

14 A We use the information to do quality control on the
15 applications. That is done before a databasing process that
16 you're talking about.

17 Q Are you testifying, ma'am, that ACORN does not use
18 that information for any other purpose once it's in their
19 database?

20 A I have not used that information. I'm not sure how
21 else it's used.

22 Q Do you know if it's used for other purposes?

23 A I do not know.

24 Q Do you know if it's used for fundraising?

25 A I do not know.

1 Q Do you know if it's used for member lists?

2 A What do you mean by "member lists"?

3 Q Well, you testified just moments ago to Ms. Simpson
4 that not only is this a voter registration application, it's
5 an ACORN membership application, correct?

6 A Yes. But we have a membership database where the
7 information would be kept, not in the data file.

8 Q So you use the information they give you for voter
9 registration, and you use it for ACORN membership, right?

10 A If they sign and agree to be an ACORN member, then
11 they become an ACORN member.

12 Q Do you have any personal knowledge of whether those
13 lists are sold to third parties?

14 A I do not have any knowledge.

15 Q Have you inquired about the process of obtaining a
16 copy of the lists of 140,000 registrants?

17 A Yes.

18 Q Okay. And how long would it take to get it?

19 A I don't know. It's undetermined.

20 Q You didn't inquire about that?

21 A I did ask, and there's no answer.

22 Q Who did you ask?

23 A I asked Brian Miller.

24 Q The lawyer?

25 A Yes.

1 Q And what did he tell you?

2 A He said he didn't know.

3 Q Okay. And did you ask the IT people at ACORN?

4 A The IT people take care of our e-mail. They don't
5 take care of a database.

6 Q Who takes care of the database?

7 A I don't know actually.

8 Q Who has control of the database?

9 A Well, I believe there is somebody in the Little
10 Rock office who manages the database.

11 Q And who's that?

12 A I believe his name is Andy Burns (ph), but I could
13 be incorrect on that.

14 Q What's his title?

15 A I don't know.

16 Q So all the information from Pennsylvania is down in
17 Little Rock?

18 A No. We have information saved on our hard drives.

19 Q Here in Pennsylvania?

20 A Correct.

21 Q And where's that hard drive?

22 A In the various offices.

23 Q So the five offices that you mentioned?

24 A Yes.

25 Q Okay. Now, you said -- I tried to write this down

1 as best I could -- the process to catalog them is flawed and
2 we do not have a complete catalog. What is flawed?

3 A The example is that sometimes if a name is
4 mistyped, for example, it would be -- it would not match the
5 actual application that we submitted to the board of
6 elections.

7 Q If you wanted to get a copy of the people that had
8 registered, what would you do?

9 A I would talk to the Department of State or the
10 local county boards of elections.

11 Q No, the people that registered through ACORN.

12 A I would look on our computers for the saved scans.

13 Q For the saved scans?

14 A Uh-huh.

15 Q Okay. Now, you said you scan every application.
16 Where are those scans? Is that what you're talking about?

17 A Yes.

18 Q So there's an actual -- like a Xerox but only in
19 the computer of each application?

20 A Yes.

21 Q Okay. Now, since you were working with
22 Philadelphia, are you aware of the Philadelphia
23 commissioners' complaints as evidenced in their
24 commissioners' meetings of the tremendous amount of
25 registrations that you've given to Philadelphia?

1 A When you reference "complaints," can you be more
2 specific?

3 Q Are you aware of the commissioners' complaints?

4 A I'm aware of some of the commissioners' complaints.
5 I'm not sure which ones you're referring to.

6 Q Okay. On October 1st, 2008, are you aware that
7 Mr. Bob Lee indicated at the meeting that there were 58,000
8 duplicates that had been filed?

9 A I read the information that you had submitted in
10 preparation for today, so yes, I am aware of that.

11 Q Are you aware that each registration, despite the
12 fact that it's a duplicate, has to be touched and processed
13 by an election official?

14 A Yes.

15 Q Are you aware that that costs money?

16 A Yes.

17 Q Are you aware that if the board of elections has to
18 deal with 58,000 fraudulent duplicate registrations, that the
19 possibility exists that valid registrations will not be
20 processed?

21 A Well, I take issue with you saying "fraudulent
22 duplicates" because, again, my experience with helping people
23 register to vote is that many people in good faith filled out
24 a duplicate application because they're excited about voting
25 this year.

1 Q Do you think that 58,000 aren't mistakes?

2 A I have no way of knowing how many are mistakes and
3 how many are people not understanding the process of getting
4 registered to vote.

5 Q But you certainly do understand -- since you're the
6 director of voting registration and, you know, you've done
7 this for a number of years and you're college educated, you
8 understand that if there's a -- a number of 58,000
9 duplicates, that a valid registration may not be processed.
10 You understand that, right?

11 A I have confidence in the board of elections and the
12 Department of State that they will get all the applications
13 processed.

14 Q But we're not talking about the Department of
15 State. We're talking about the City of Philadelphia.

16 A So it's my understanding that the board of
17 elections in Philly has said that they will get all the
18 applications processed before election day.

19 Q Who said that to you?

20 A I believe it was in the testimony that I read.

21 Q Well, the last testimony that I read was that they
22 were 27,000 behind. Were you aware of that?

23 A I read that. And that is a concern, yes.

24 Q Okay. So you are concerned that a valid
25 registration will not be processed because there's too many

1 duplicates. You understand that. Is that right?

2 A I don't think they're being processed because
3 there's too many duplicates. I think as part of, you know,
4 every four years, there's lots of excitement about getting
5 registered to vote, to be able to participate in the election
6 and there's, you know, a huge upswing in the number of people
7 who fill out applications.

8 Q Do you understand the role that you personally have
9 played in stressing the system by filing duplicate
10 registrations to the tune of 58,000 in one county alone?

11 MS. SIMPSON: Objection. There's no testimony --

12 THE COURT: Sustained as to form.

13 BY MS. HEIDELBAUGH:

14 Q Do you understand that -- the harm that can befall
15 a voter if they can't be registered because of the 58,000
16 duplicates that you've filed?

17 MS. SIMPSON: Objection. There's no foundation.

18 THE COURT: Sustained as to form. You may rephrase
19 it.

20 MS. HEIDELBAUGH: I did file an affidavit with a
21 voter that is concerned about the situation.

22 BY MS. HEIDELBAUGH:

23 Q Are you concerned that people who validly
24 registered to vote will not be able to vote because of the
25 58,000 duplicates your organization placed in Philly alone?

1 MS. SIMPSON: Objection as to form in that there's
2 no foundation that ACORN produced 58,000 duplicate
3 registrations.

4 THE COURT: Overruled.

5 MS. HEIDELBAUGH: It's right here.

6 THE COURT: Overruled.

7 MS. SIMPSON: Where?

8 MS. HEIDELBAUGH: October 1, 2008, page 41.

9 THE COURT: I've overruled the objection, counsel.
10 Let's get to the answer.

11 Let me ask my court reporter to read the question
12 back.

13 THE COURT REPORTER: Sure.

14 "Question, are you concerned that people who
15 validly registered to vote will not be able to vote because
16 of the 58,000 duplicates your organization placed in Philly
17 alone?"

18 THE WITNESS: The board of elections, as I
19 understand it, is confident that they will get every one
20 processed before election day. So --

21 MS. HEIDELBAUGH: I would ask the Court for
22 assistance in having the witness answer the question.

23 THE COURT: I think I understand your position.
24 Why don't you move on?

25 MS. HEIDELBAUGH: Thank you.

1 BY MS. HEIDELBAUGH:

2 Q I believe I took down your testimony correctly when
3 you stated that ACORN tells a registrant that you -- that
4 ACORN is going to take their registration and deliver it to
5 the board of elections. Is that what you said?

6 A Yes.

7 Q That's not exactly true, is it?

8 A I beg your pardon?

9 Q Well, you don't take it immediately from ACORN to
10 the county board of elections. You take it back to ACORN,
11 and you input data, right?

12 A Did I say "immediately"?

13 Q Is that what you do?

14 A We tell the applicants who we assist in filling out
15 the voter registration application that we will deliver it to
16 the board of elections and they'll receive their voter
17 registration card from the board of elections.

18 Q Now, you recognize that your organization, ACORN,
19 has quality control problems, correct?

20 A What do you mean by "quality control problems"?

21 Q You recognize that you cannot determine what are
22 duplicates and what are not?

23 A In some cases, we are able to identify duplicates.
24 In not every case can we identify a card if an applicant is
25 somebody who has filled out a duplicate application or if

1 it's a new application.

2 Q Were you ever provided a copy -- since you're the
3 director of voter registration, were you ever provided a copy
4 of the settlement and compliance agreement that ACORN
5 National entered into with Washington State, King County?

6 A No, ma'am.

7 Q Were you aware of it?

8 A Yes, ma'am.

9 Q How were you made aware of it?

10 A I know that we've referenced it in meetings.
11 That's how I'm aware of it.

12 Q Who referenced it?

13 A Brian Miller.

14 Q Did he say that it applied elsewhere outside of
15 Washington?

16 A I'm not sure if that question was asked of him at
17 the time.

18 Q And did he -- did he indicate that this applied to
19 the whole organization throughout the nation?

20 A I'm not sure what's in there, so I'm not sure if he
21 would have implied that the scope is for national or not.

22 Q Now, each local office has their own manager,
23 correct?

24 A Yes.

25 Q Okay. And do you have -- did you have any issues

1 in this 2007/2008 with any of the managers of any of your
2 local operations?

3 A What do you mean by "issues"?

4 Q Any issues with the voter registration drive.

5 A I mean, there were times when people would need to
6 take a sick day. If you would consider that an issue, then I
7 would say yes.

8 Q Did you have quality control officers in each of
9 the organizations?

10 A Yes.

11 Q Okay. And have any of those people been involved
12 in the criminal investigations in Pennsylvania?

13 A Yes.

14 Q Who?

15 A Kira Gardner-Marshall gave a statement to the
16 Delaware County district attorneys regarding Jemar Barksdale.

17 Q And did ACORN National management review your
18 operations?

19 A Yes.

20 Q How often?

21 A At least weekly.

22 Q And did they review quality control forms?

23 A Yes.

24 Q And where are your quality control forms for
25 Pennsylvania?

1 A On the computer.

2 Q So those are accessible?

3 A Yes.

4 Q Is there sign-in for trainings?

5 A The training sign-in is the exhibits that you saw,
6 the employee application, the signed training certificate and
7 fraud statement.

8 Q Did -- the individuals who were being investigated
9 for criminality, did they sign those forms?

10 A I believe, yes.

11 Q So despite the fact that they signed those forms,
12 they still engaged in criminality?

13 A Yes.

14 Q And does ACORN have available for Pennsylvania
15 filled out problematic card cover sheets, performance
16 investigation sheets, worker batch sheets for all of the
17 various counties that are being criminally investigated?

18 A Do we have some filled out for each county? Yes.

19 Q No, do we -- do you have them for all the counties
20 that are being criminally investigated?

21 A That were filled out by who?

22 Q Your local ACORN affiliates.

23 A I'm sorry. I'm confused.

24 Q That's okay. There's four counties that are being
25 criminally investigated, right?

1 A Uh-huh.

2 Q Okay. So for those four counties, does ACORN have
3 all the paperwork that you've handed up in blank to the
4 Court?

5 A Yes.

6 Q And is that readily accessible?

7 A If you mean "readily," we'd have to go to those
8 cities and get it.

9 Q Did you supply it already to the criminal
10 authorities?

11 A In some instances, yes, that I've already
12 described.

13 Q Now, you have a form where you put aside all the
14 suspect registrations, right?

15 A We have an investigation form. Is that what you're
16 referring to?

17 Q I don't know what you call it. But you -- you've
18 testified that you segregate the suspect registrations,
19 right?

20 A When we deliver them to the board of elections?

21 Q Uh-huh.

22 A Yes.

23 Q So do you have a document that lists the suspect
24 registrations?

25 A Yes.

1 Q And where's that?

2 A Also on the computer.

3 Q Okay. And how hard would that be to get?

4 A You know, again, we have hundreds of these employee
5 documents and so forth, so we would just have to search the
6 computer to get them, which --

7 Q Are you saying that you have hundreds of suspect
8 voter registration forms?

9 A No, I'm saying hundreds of employee packets and
10 investigations and problematic cards combined, so --

11 Q How many -- how many total problematic cards did
12 you find?

13 A I don't know that off the top of my head.

14 Q How many do you think?

15 A I'm not going to guess.

16 Q You have no idea?

17 A No.

18 Q You don't have a record of that?

19 A No.

20 Q Did you search for it before you came here today?

21 A Yes.

22 Q You did?

23 A Yes.

24 Q But you don't remember?

25 A No.

1 Q Are you aware that ACORN agreed to county and state
2 oversight of its operations in exchange for not being
3 criminally prosecuted as an organization in Washington State?

4 A I didn't know what it was in exchange for, but I do
5 know that we entered into an agreement.

6 Q Did you know that Maude Hurd agreed to this
7 statement, "ACORN agrees that submission of registrations
8 that have been fraudulently collected by an ACORN employee
9 and not reviewed pursuant to the quality control procedures
10 or willfully turning in fraudulent cards may constitute
11 grounds for criminal prosecution of ACORN as a corporate
12 entity"?

13 A I hadn't seen that she said that, but I believe
14 you.

15 Q Have you notified the State of Washington of the
16 criminal prosecutions in Pennsylvania?

17 A I have not.

18 Q Do you know of anybody who has?

19 A No.

20 Q Now, you hire your employees for six hours a day.
21 Is that right?

22 A Yes. Their shift is six hours.

23 Q Why not eight?

24 A We decided that six hours would be the shift.

25 Q Do they get benefits?

1 A Our full-time employees do, yes.

2 Q Do -- the canvassers who were hired for six hours,
3 do they get benefits?

4 A No, ma'am.

5 Q Do you hire them only for six hours so you don't
6 have to pay them benefits?

7 A No, ma'am.

8 Q Were you here for Ms. Moncrief's testimony?

9 A I was.

10 Q Were you aware that she testified that she had been
11 intimidate -- called and intimidated in regard to her
12 testimony today?

13 A Was I aware of that?

14 Q Yeah, did you hear her say that?

15 A I did hear her say that.

16 Q And you wouldn't countenance that behavior in any
17 way, would you? You wouldn't agree with that behavior?

18 A Thank you. No, I would not agree with it.

19 Q And if you found out about that, you would -- you
20 would try to prevent that, right?

21 A Yes.

22 Q Now, do you know of any destruction of documents
23 going on in ACORN?

24 A No, I do not.

25 Q And you wouldn't -- you wouldn't allow that to

1 happen either, would you?

2 A That's correct.

3 Q Okay. Have you been in all of the Pennsylvania
4 offices?

5 A I have been.

6 Q Okay. And you haven't obviously met the 1100
7 canvassers, all of them. There's only one of you, right?

8 A That's correct.

9 Q And you didn't train all of them?

10 A I did not train every one of them.

11 Q And are all of them paid by check or some of them
12 paid by cash?

13 A They're all paid by check.

14 Q Is there anybody in a ramp-up program who's paid by
15 cash?

16 A No, ma'am.

17 Q Do you pay for registrations by cash?

18 A No, ma'am.

19 Q And you would not be able to state -- since you
20 didn't follow 1100 canvassers around, you wouldn't be able to
21 state whether anybody offered a dollar or a cigarette for a
22 registration, would you?

23 A If the canvasser is not following policies and
24 procedures, it was unknown to me. So if they were doing
25 that, I would not know.

1 Q You know that happens, though, right?

2 A I did not know that happens.

3 Q You haven't heard about that in the press?

4 A I do not believe the testimony of the press is what
5 was happening in my operation.

6 Q Well, you've heard -- have you heard ACORN
7 employees state on the news that they paid people a dollar, a
8 cigarette for a registration?

9 A In Pennsylvania, no, I haven't heard that.

10 Q Okay. Now, did you ever go to the national
11 meetings?

12 A Yes.

13 Q Okay. And are you familiar with the Money Mart
14 activities in Pennsylvania?

15 A I know that there was a campaign that involved
16 Money Mart. I'm not up-to-date on the particulars of it.

17 Q And what was that campaign?

18 A I'm not sure what the campaign was. My
19 understanding was that it was in -- on the organizing -- the
20 organizers were working to stop places like Money Mart from
21 doing rip-offs.

22 Q Okay. Well, you understand that ACORN is involved
23 in protesting corporations --

24 A Yes.

25 Q -- and then they get a donation from the

1 corporation, they stop protesting. You understand that,
2 right?

3 MS. SIMPSON: Objection because this is well beyond
4 the scope of the direct.

5 THE COURT: True. Sustained.

6 BY MS. HEIDELBAUGH:

7 Q What was your target for registrations in
8 Pennsylvania for '07/'08?

9 A Our target goal?

10 Q Yes.

11 A 190,000.

12 Q So you fell short of your goal?

13 A Yes, ma'am.

14 Q And was there a quota for individual canvassers per
15 day or per week?

16 A No, there was not a quota. We have professional
17 job standards that we went over earlier.

18 Q And what was the goal for each canvasser?

19 A Can I read it?

20 Q Sure.

21 A Twenty to 25 valid voter registration applications;
22 very few incomplete applications, two percent or less; at
23 least 19 to 24 phone numbers, which is 85 percent or more; 15
24 new provisional members, 60 percent or more; e-mails and cell
25 phones, 20 percent more; 6-hour shifts, 4 hours in the field;

1 and 5 recruitment contacts for work.

2 Q So 20 to 25 registrations per day is the goal?

3 A Yes.

4 Q But it is not a quota?

5 A Yes.

6 Q If they miss the goal, what happens to them?

7 A We would do retrainings with them and work with
8 them both in the office and in the field. If people were
9 consistently unable to perform the standards of the job, then
10 they would either be terminated for poor performance or they
11 decided this wasn't the job for them.

12 Q Well, what if somebody works six hours, all day
13 long, walking up and down the street, and asks people, Are
14 you registered, and every single one they asked said, I'm
15 already registered, and they couldn't turn in 20 to 25? Is
16 that poor performance?

17 A Well, we have measures to stop that from happening.
18 So part of the manager's job is to develop sites where we
19 know there's people who are not yet registered. The manager
20 goes out to test the site essentially to see if that's a
21 place where everyone is already saying they're registered or
22 not eligible to register.

23 Q And where is that information contained?

24 A It's in the political organizer training manual.

25 Q Political organizer?

1 A Uh-huh. It's the manager of the canvassers.

2 Q Who does the voter registration drive, Project Vote
3 or ACORN?

4 A I work for ACORN. We are doing voter registration
5 in the state, with a collaboration with Project Vote, but
6 they're different entities.

7 Q So ACORN can't get involved in political
8 activities, can they?

9 A Members of ACORN can do political activities.

10 Q That's not my question.

11 A Then I don't understand your question.

12 Q ACORN can't get involved in political activities,
13 can they?

14 A Again, if voter registration is a political
15 activity, then -- I mean, it is getting people to vote, which
16 is part of the electoral project.

17 Q Do you know -- do you know if ACORN can get
18 involved in political activities?

19 A I think I don't understand what you mean by
20 "political activities." If could you define that for me.

21 Q Get Out The Vote.

22 A We do Get Out The Vote operations.

23 Q You can do that?

24 A Uh-huh.

25 Q Can you coordinate with campaigns?

1 A No, we do not coordinate with campaigns.

2 Q Can you receive donor lists?

3 A I'm not sure.

4 Q Now, you don't call every voter registration
5 application, do you?

6 A Every voter registration application that has a
7 phone number we call.

8 Q So you don't call everyone. Is that correct?

9 A If it didn't have a phone number, we can't call it.
10 That's right.

11 Q Well, do you call everyone that has a voter
12 telephone number?

13 A Yes.

14 Q And what document reflects that?

15 A The voter registration application.

16 Q You'll have a notation on there that they were
17 called?

18 A (Nodding.)

19 Q And is there a notation who called them?

20 A Yes, ma'am.

21 Q And is it initials?

22 A Yes.

23 Q And do you have a master list of initials?

24 A No.

25 Q So how do you know whose initials are whose?

1 A For the callers?

2 Q Sure.

3 A I'm not aware of a case where we would have
4 multiple similar initials. But if that was the case, I'm
5 sure the managers figure out a way to make the distinction.

6 Q Are you aware of Philadelphia's concern about
7 fictitious registrations on ACORN applications?

8 A Yes.

9 Q What is -- what is the problem?

10 A I -- the conversations that I've had with the
11 Philadelphia Board of Elections was regarding addresses that
12 were returned mail, had returned mail.

13 Q How many?

14 A I don't know how many.

15 Q And what did you do about that?

16 A We implemented a couple of things. One was working
17 with the board of elections to get a list of all the streets
18 in Philadelphia so that we could independently verify if it
19 was an address that existed or didn't exist. We also would
20 do online searches for addresses if we had a concern about
21 the address that was on the application.

22 Q You were asked a question about other organizations
23 that did voter registrations. Are you aware that
24 Philadelphia stated in the meeting of September 10th that the
25 only organization that submitted fraudulent addresses was

1 ACORN?

2 A I was not aware of that.

3 Q Are you aware that they turned over 400 to the
4 district attorney?

5 A I wasn't aware of the number. They had indicated
6 they had turned some over, which, again, we had also
7 delivered some directly to the district attorney --
8 attorney's office. And I think that, you know, I'd be
9 interested in working with the board of elections on those
10 applications. I have actually asked the Philadelphia Board
11 of Elections to share those with me so that we could work
12 together to go forward.

13 Q If your job is voter registration, how is it that
14 you don't know how many fraudulent voter registrations your
15 organization submitted?

16 A Because the board of elections is the -- it's their
17 job to investigate the applications. We can do -- you know,
18 spend money, hundreds of dollars every year to do our own
19 quality control process. But it's the board of elections who
20 decides, you know, if they're incomplete or if they're
21 returned from the post office or if the applicant has filed a
22 complaint.

23 Q Have you written them a letter asking them for the
24 numbers?

25 A We wrote them a letter asking them for numbers. I

1 believe it was over the summer when we first started talking
2 about these issues.

3 Q Well -- but you didn't submit most of them until
4 the very end. Have you asked these -- have you asked these
5 counties how many fraudulent voter registrations ACORN has
6 submitted since you don't know yourself?

7 A Can you clarify that, we didn't turn it in until
8 the end of the --

9 Q Well, registration ended October 6th, right?

10 A Right. But we were turning applications in twice a
11 week since January to the Philadelphia Board of Elections.
12 So I'm not sure --

13 Q Wouldn't you agree with me that the bulk of
14 registrations that you turned in was in September and October
15 -- August, September, October?

16 A I actually don't think that's correct. I think --

17 Q Do you know?

18 A We had a very large operation earlier in the year,
19 so again, there are only three days in October that we
20 collected voter registration applications. So I think that
21 September and probably earlier in the spring were our biggest
22 times.

23 Q But you hold them, and then you turn them in bulk,
24 don't you?

25 A No, we don't.

1 Q You receive them; you take them back to the ACORN
2 office, input the data into your database. Then you flag
3 them for good registration and bad registrations; and you
4 collect them. And then you send them to the board of -- you
5 give them to the board of elections, correct?

6 A Twice a week.

7 Q Right?

8 A Yes.

9 MS. HEIDELBAUGH: No further questions.

10 MR. MASLAND: No questions, Your Honor.

11 THE COURT: Let me ask a few questions before I
12 invite redirect.

13 EXAMINATION

14 BY THE COURT:

15 Q ACORN gets a registration, voter registration in,
16 and you check if it's a duplicate of a registration already
17 received by ACORN?

18 A We have implemented a process to do that, to be
19 able to tell if there's a canvasser, for example, who is
20 doing that. The other means that we have to find out if it's
21 a duplicate is to ask the person on the phone when we talk to
22 them, is this the first application that you filled out?
23 And, you know, sometimes people know; sometimes people don't
24 know.

25 If, in fact, the person says no, I filled out

1 multiple, we encourage them to not fill out any more and to
2 call the board of elections to get their voter registration
3 card. And we also would discipline the canvasser either by
4 doing a retrain with the canvasser or if it warrants, to
5 actually terminate the canvasser for just collecting
6 duplicate registrations because that's not our mission. Our
7 mission is to get more people get on the rolls.

8 Q You testified that there -- that you would sort the
9 applications into three groups in most places, complete
10 applications, applications that were missing some piece of
11 information and problematic applications. And then I guess
12 in Philadelphia, there's another group as well that may get
13 turned over to the district attorney. I'm not sure I
14 understood this part of the testimony. You have a
15 problematic card cover sheet?

16 A Yes.

17 Q One of these is filled out for each one of the
18 problematic registrations?

19 A In some cases, yes. In some cases, we put more
20 than one application on the same problematic card. We would
21 put this together with the actual cards and deliver it.

22 Q Now, do you have a list of the voter registrations
23 that you have identified as being problematic?

24 A I don't have a list that's readily available.
25 Again, we -- we could look through the scans of the

1 problematic card cover sheets that we use to deliver to the
2 boards of elections to determine --

3 Q So every -- every registration that you deem
4 problematic would appear on a problematic card cover sheet?

5 A Yes.

6 Q Are there -- is there any sort of individual list
7 or separate list from that?

8 A No.

9 Q Where are the problematic card cover sheets kept?

10 A On the hard drives on our computers.

11 Q On which computers?

12 A Every office has an organizing call center
13 computer.

14 Q Do you spend most of your time in the Philadelphia
15 office?

16 A Yes, sir.

17 Q Are you familiar with the problematic card cover
18 sheets on the Philadelphia hard drive?

19 A Yes, sir.

20 Q How would they be accessed?

21 A Go on our very slow computer and bring them up and
22 print them.

23 THE COURT: All right. I understand.

24 You may inquire if you have any redirect.

25 MS. SIMPSON: Just a few questions, Your Honor.

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REDIRECT EXAMINATION

BY MS. SIMPSON:

Q Just so we're perfectly clear here, what's -- what has been scanned and what is in -- the voter registration cards that have been scanned and that are on the hard drives of the local office computers, those are the voter registration applications that were collected by the canvassers. Is that correct?

A Correct.

Q There's been no feedback to ACORN about which of these voter registration applications have been accepted into the system and individuals issued voter registration cards, has there?

A No, there's not been any.

Q The relationship between -- that you -- from what you know, the third-party vendor is an independent contractor who's just doing pretty much a clerical function for ACORN inputting these documents into a database. Is that correct?

A Correct.

MS. SIMPSON: I have no other questions.

THE COURT: Any further questions for this witness?

MS. HEIDELBAUGH: I have no recross.

THE COURT: May this witness be excused?

MS. SIMPSON: As far as I'm concerned.

THE COURT: You may step down. You're free to

1 leave if you wish.

2 Please call your next -- well, let me just find
3 out. Becky, do you need a break?

4 THE COURT REPORTER: Five minutes would be great.

5 THE COURT: All right. We'll take a brief
6 five-minute recess.

7 (Whereupon, a RECESS was taken from 4:09 p.m. until
8 4:24 p.m.)

9 THE COURT: Ms. Simpson, you may call your next
10 witness.

11 MS. SIMPSON: Kira Gardner-Marshall.

12 (Whereupon, Kira Gardner-Marshall was sworn.)

13 THE COURT CRIER: Please spell your name for the
14 reporter.

15 THE WITNESS: K-I-R-A, G-A-R-D-N-E-R, hyphen,
16 M-A-R-S-H-A-L-L.

17 THE COURT REPORTER: Thank you.

18 DIRECT EXAMINATION

19 BY MS. SIMPSON:

20 Q Good afternoon.

21 A Good afternoon.

22 Q Ms. Marshall -- Ms. Gardner Marshall --

23 A Thank you.

24 Q -- by whom are you employed?

25 A ACORN.

1 Q What is your current responsibility?

2 A Currently I am working at our Orlando office. I am
3 the data manager for their Get Out The Vote efforts in
4 Orlando, specifically Orange County, Orlando, Florida.

5 MS. HEIDELBAUGH: Your Honor, I'd like an offer of
6 proof.

7 MS. SIMPSON: Ms. Gardner-Marshall was the quality
8 control call center in Philadelphia.

9 THE WITNESS: I'm sorry. She asked me about my
10 current position.

11 BY MS. SIMPSON:

12 Q You were, in fact, the quality control manager in
13 Philadelphia. Is that correct?

14 A That is correct.

15 Q How long did you work in that position?

16 A From the end of December of 2007 until the closing
17 on October 4th -- 6th; I'm sorry. It was October 6th. I
18 believe that's when the closing was.

19 Q What is your educational background?

20 A I hold a B of A in sculpture. I have completed
21 half of my master's in art history at the University of
22 Glasgow. And I have been a Philadelphia public school
23 teacher as well as a social worker.

24 Q Now, what were your duties at the Philadelphia
25 ACORN office?

1 A I ran the organizing call center and quality
2 control department. And basically I oversaw all the
3 processing of our voter registration applications after they
4 were collected from the canvassers. I oversaw the staff that
5 called all of our applications that contained phone numbers,
6 and then I also was responsible for getting all the
7 applications ready for the board of elections and delivering
8 them personally.

9 Q Okay. The quality control process, what was --
10 what was it that the quality control employees were looking
11 for?

12 A We were looking for any kind of suspicious
13 activity. That could include, you know, similar handwriting.
14 It could include information that just didn't seem quite
15 right, like, for example, maybe the last four digits of the
16 Social Security number being 1234. We were also, you know,
17 calling people just to make sure that they, in fact, did fill
18 out the application. So that was pretty much the extent of
19 it.

20 Q What were the canvassers directed to do with regard
21 to who filled out the voter registration card or application?

22 A The voter registration application could only be
23 filled out by the applicant. You could not have, you know, a
24 mother fill it out for her daughter or, you know, a spouse
25 fill it out.

1 Q And a canvasser couldn't fill it out?

2 A Correct.

3 Q So you looked to see if there were similarities in
4 the forms as far as the handwriting was concerned?

5 A That's correct. I have been very minimally trained
6 on, you know, catching similarities in handwriting as far as
7 the way letters are formed, numbers, things that are alike.

8 Q When you found some irregularity, what did you do?

9 A I would fill out -- I or my call center staff would
10 fill out our performance investigation form, which I believe
11 was submitted as an exhibit.

12 Q And if you -- I'm sorry. They're not in front of
13 you.

14 THE COURT REPORTER: They're right here.

15 BY MS. SIMPSON:

16 Q Just take a look at F.

17 A That's Exhibit F. Yes, this sheet was filled out
18 by the person that discovered the suspicious activity. And
19 as you can see, it would be filled in with the date that the
20 investigation was opened, the name of the person who is
21 filling out the form, the name of the canvasser that
22 collected the voter registration application that was in
23 question and the reason for the investigation.

24 Q And what was done with these forms?

25 A I would take this form along with the entire batch

1 of applications that were collected that day by that
2 canvasser. And I would discuss it with that canvasser's
3 manager, and we would figure out together the course of
4 disciplinary action that would take place.

5 Q Despite the fact that you had questions or concerns
6 about this particular voter application -- voter registration
7 application, was it still submitted to the board of
8 elections?

9 A That is correct, unless, of course, we spoke with
10 someone that said, I did not fill out that application. In
11 that case, we would take that application directly to the
12 Philadelphia district attorney's office, as per our agreement
13 with the board of elections.

14 Q And you bundled these in different groups. Is that
15 correct?

16 A That is correct.

17 Q And what were the groups that you -- how did you
18 bundle the voter registration applications?

19 A And I'm assuming that this is for drop-off at the
20 board of elections.

21 Q Yes.

22 A There were complete, incomplete, problematic; and
23 then later on we added an additional category of illegible
24 cards.

25 Q And you had a group of fraudulent -- of those where

1 you verified that the name of the person on the voter
2 registration form told you they had not filled that out?

3 A Right. But those did not go to the board of
4 elections. They went straight to the district attorney's
5 office.

6 Q Okay. Now, what happened if the voter registration
7 form did not have a phone number? How did you contact the
8 person?

9 A Well, in that case, we were unable to contact the
10 person. However, I would personally sit down at the computer
11 and use different -- different web sites to see if I could
12 find a record for that person at that address. And also we
13 would use the Philadelphia Ward Division database to just,
14 you know, check to see if it was a valid address.

15 Q Did you have interaction with the canvassers
16 themselves?

17 A If there were -- if there was an extreme case of
18 fraud, I would assist the canvasser's manager in talking with
19 them about their termination. I would kind of lay out how we
20 determined that applications were fraudulent or suspicious,
21 and that was my main interaction with the canvassers. But
22 other than that, you know, basically I dealt with their
23 managers.

24 Q Were you ever involved with retraining of
25 canvassers?

1 A No, I was not.

2 Q Okay. Did you ever -- did you participate in the
3 training of your employees?

4 A Absolutely. I trained them personally.

5 Q And what did you train the call center employees
6 on?

7 A I trained them on the order of the call. Basically
8 our calls involved the caller asking the applicant to verify
9 two items on the applications. Usually it was the address
10 and the date of birth. And then also I trained the callers
11 how to spot similarities in handwriting, how to, you know,
12 kind of think about information that they're seeing and see
13 if it makes sense.

14 Q What happened if there was incomplete information
15 on the applications?

16 A When we spoke to the person on the phone, if there
17 was a phone number included, we would just let them know, you
18 know, your application is incomplete and please look for a
19 letter from the board of elections, because the board of
20 elections had informed us that they would be sending these
21 people a letter stating that their application was incomplete
22 and they would have to resubmit the information.

23 Q You didn't just take information over the phone
24 from them and fill in -- and fill in the missing application?

25 A Absolutely not.

1 Q I'm sorry, missing information.

2 A Yeah. That's not allowed. It's -- it's illegal.
3 You can't write anything on the application itself.

4 Q Okay. Did you get any feedback from the
5 Philadelphia Board of Education -- there I go again; Board of
6 Elections regarding the voter registration applications you
7 were submitting on behalf of these voter registrants?

8 A Very minimal. When -- I can think of a few
9 occasions where the board of elections had identified
10 canvassers that they felt were handing in fraudulent
11 applications. And in all the cases that they mentioned to
12 me, that canvasser already had investigations written up on
13 them, and they had already been terminated by the time the
14 board of elections pointed them -- these cards out to us.

15 And also, I would like to say that the cards that
16 they pointed out to us, we had actually flagged to them using
17 our problematic card cover sheets.

18 Q The -- what was the process for delivering the
19 voter registration cards to the board of election?

20 A Okay. Once the cards were called through, we would
21 scan them. And after that, they would be sorted. And then
22 they would be taken to the board of elections. It was about
23 anywhere from a 4- to 7-day turnaround from the date that the
24 applicant had filled out the cards.

25 Q And was there generally a uniform number of cards

1 submitted every time you went to the board of elections?

2 A Generally that number would range in between 500 to
3 maybe 1500, depending on if I was doing -- if I was visiting
4 them, you know, two or three times during that week.

5 Q And there were times where you went three times a
6 week?

7 A Yes. And actually the very last week of our drive,
8 we went every single day just so they wouldn't be
9 overwhelmed.

10 Q Okay. When you went every single day, do you have
11 a recollection of how many voter registration cards you took
12 each day?

13 A Anywhere between 800 to 1200.

14 Q Each day of the last week?

15 A That's correct.

16 Q How long had you had those cards in your office and
17 in the call center?

18 A A matter -- the last week?

19 Q Yes.

20 A It was a matter of two days, because I had my staff
21 working extra hours in order to just expedite, you know, how
22 quickly these were being processed because we knew the board
23 of elections was, you know, going to be quite busy. So we --
24 we just really wanted to make sure that we made things as
25 easy for them as possible. And, yeah, it was about 2 to

1 3 days at that point.

2 Q And did anyone at the board -- the board of
3 elections, bureau of elections, ever communicate back to you
4 about what your percentage of success was as far as these
5 voter registration applications, how many of these
6 applications ended up with registered voters?

7 A Never. The only feedback that I got for them --
8 from them number-wise was the number of completes,
9 incompletes and out-of-counties that were dropped off. And I
10 only received those numbers up until about June, and then
11 they decided that they would not provide those numbers for me
12 anymore.

13 Q Okay. What did you do with regard to investigating
14 whether or not the voter registration application you had was
15 a duplicate?

16 A Basically the only way we really had to check on
17 that was asking the person on the phone when we contacted
18 them. And, you know, we would look through scans
19 periodically. It's amazing how good your memory gets when
20 you're looking through voter registration cards.

21 There have been instances where we recognize names.
22 And we went back in our scans, and we found, hey, this
23 person, you know, filled out a voter registration application
24 maybe three weeks ago. And in that case, we would take one
25 of our problematic card cover sheets and fill it out and let

1 the board of elections know that, you know, this is a
2 duplicate application.

3 Q Have you been interviewed by any law enforcement
4 officials regarding any investigation of any ACORN employees?

5 A Yes, I have. The Delaware County detectives spoke
6 with me -- I believe it was about a week and a half ago -- in
7 regards to Jemar Barksdale and I believe another canvasser by
8 the name of Irene Council (ph). And that's -- that's the
9 only occasion that I've been interviewed.

10 Q Did you give a written statement to them?

11 A I did.

12 Q Did you provide any documents to them?

13 A I did.

14 Q What documents did you provide?

15 A I provided our problematic card cover sheet,
16 Exhibit G, and our performance investigation, Exhibit F, that
17 we had on record for them. Oh, I also provided them with the
18 scans of the voter registration cards that those canvassers
19 had brought in.

20 Q Did you -- was your responsibility solely
21 Philadelphia County?

22 A Up until April, I was overseeing all the counties.
23 But in April, our operation picked up a little bit. And I
24 personally trained my best staff member. I promoted her to
25 be my assistant. And she then began overseeing the suburban

1 areas, and I focused my attention on Philadelphia County.

2 Q Would the suburban areas include Pittsburgh,
3 Dauphin -- or Allegheny County, Dauphin and Montgomery and
4 Delaware?

5 A It included Montgomery and Delaware. Yeah.

6 Q And there was another person, another call center
7 manager in the Pittsburgh office -- is that correct -- or in
8 the Allegheny County office?

9 A Yes, that is correct.

10 Q And there was someone else in the Dauphin County
11 office. Is that correct?

12 A That's correct.

13 MS. SIMPSON: I have no other questions.

14 THE COURT: You may inquire.

15 CROSS-EXAMINATION

16 BY MS. HEIDELBAUGH:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Ms. Gardner-Marshall?

20 A Mrs. Gardner-Marshall.

21 Q Mrs. Gardner-Marshall. Thank you. You were the
22 quality control officer for ACORN in Philadelphia?

23 A That is correct.

24 Q Are you aware that you, as a citizen, can use the
25 SURE system in the Philadelphia election division?

1 A I was not aware of -- that I was able to use the
2 board of elections database system.

3 Q Did you ever check -- did you ever check your
4 registrations against the database system?

5 A To my knowledge, I was not able to do that.

6 Q Did you ask?

7 A No, I did not.

8 Q Do you know of any ACORN office that used the
9 available system in the board of elections -- county board of
10 elections to check the registrations?

11 A I only know what occurred in my office. I
12 really -- I don't know what occurred in other offices.

13 Q So you don't know what quality control systems
14 occurred in any office other than Philadelphia?

15 A I was trained in the Detroit, Michigan office. And
16 they pretty much have a board of elections that does let them
17 go to their office and search through their database. Our
18 board of elections would not let us do that.

19 Q My question is --

20 A Okay.

21 Q -- do you know about the quality control measures
22 in any ACORN office other than Philly?

23 A Yes. I know our national proceedings, but that was
24 never part of our national proceedings as quality control
25 departments.

1 Q Okay. I've asked three bad questions in a row.
2 Let me try to ask one good one. Do you know about the
3 quality control measures in any ACORN offices in Pennsylvania
4 from 2007 through 2008 other than Philadelphia?

5 A No.

6 Q So you cannot testify here today what quality
7 control measures took place in those other offices, correct?

8 A No, I cannot.

9 Q All right. Now, it's my understanding from your
10 predecessor's testimony and from your testimony that when a
11 registration application was filled out, it was returned to
12 ACORN and that was put into a database, correct?

13 A That's correct.

14 Q Now, if it's in an ACORN database, you could check
15 for dupes, right?

16 A Yes.

17 Q Yet even though you could check for dupes, you,
18 ACORN, turned in 58,000 worth of dupes to Philadelphia,
19 right?

20 MS. SIMPSON: Objection, assumes facts not in the
21 record.

22 MS. HEIDELBAUGH: It is in the record.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: I'd just like to say that since we
25 did have, you know, such a massive operation going on, to

1 look through every single solitary scan and compare it to a
2 voter registration application that you're holding in your
3 hand, it would have been almost impossible.

4 In addition to that, we felt that people would be
5 honest with us when we're holding our conversation with them
6 on the phone and we asked them, Have you registered to vote
7 before? We -- we just felt that the people that we were
8 asking these questions to would answer it honestly.

9 BY MS. HEIDELBAUGH:

10 Q So your quality control measure in large part was
11 on the honesty of people?

12 A Yes.

13 Q Your quality control system in ACORN was not based
14 on your own database and your ability to check your own
15 duplications?

16 A We would check for duplicates if we had a suspicion
17 that a card was a duplicate card. In addition to that, yes,
18 we did rely on the honesty of people to just tell us if they
19 were already registered.

20 Q Wasn't it possible, ma'am, for ACORN to put into
21 their database all of the registrations in alphabetical order
22 and then to determine if there was 72 Reggie Johnsons at 111
23 Race Street?

24 A I don't know if that was possible -- if that was a
25 thing that we could have done with that data. I don't know

1 if it was possible to do that.

2 Q You don't know think it's technologically possible
3 in America to do that?

4 A I absolutely believe that it is technologically
5 possible in America to do that, yes.

6 Q But ACORN didn't do it?

7 A We did not.

8 Q What is the law that requires duplicate
9 registrations, fraudulent registrations, incomplete
10 registrations to be filed with the election division?

11 A I do not know the exact law. I was instructed in
12 all of my trainings that we turn in everything, no matter
13 what it is. You know, even applications for individuals that
14 filled it out and they were ineligible because of their age,
15 we handed those in as well.

16 Q Despite the fact that you were told by your counsel
17 or someone else to turn in every registration, not knowing
18 whether there was a law that required you to do that, isn't
19 it true, Mrs. Gardner-Marshall, that the reason why every
20 registration was turned in by ACORN was to inflate the
21 numbers so the donors would continue to donate to ACORN?

22 A That is not true at all.

23 Q What information do you have?

24 A We never turned in applications with the idea or
25 hope that we would procure more money from our donors. We

1 did this activity to encourage people to vote and encourage
2 people that in the past really didn't have a voice of -- a
3 voice in elections to really get out there and make an impact
4 on this election and really let their voices be heard.

5 Q Would you --

6 A We never --

7 Q Would you agree with me that 58,000 duplicates in
8 one county alone can bog down the system?

9 A I -- I haven't heard that figure from the board of
10 elections. I -- you know, I don't know--

11 Q Well, you know you have massive duplicates, don't
12 you?

13 A I know we have duplications.

14 Q And how many?

15 A I was never given a number.

16 Q Well, ma'am, you're the -- you're the director of
17 quality control for ACORN, correct?

18 A That is correct.

19 Q How many incompletes did you have in '07/'08?

20 A How many incomplete applications? I do not know
21 the number of that.

22 Q How many completes?

23 A I don't remember the exact number of completes.

24 Q How many fraudulents?

25 A We have had approximately -- approximately 200

1 fraudulent applications that were turned into the district
2 attorney's office of Philadelphia.

3 Q How many fraudulents in your whole system?

4 A In our whole system nationally?

5 Q No, in Philadelphia. You're only --

6 A Well, I just said 200.

7 Q That was the total number of fraudulents?

8 A That we confirmed, yes, as fraudulent applications.

9 Q So there might be more?

10 A Well, I mean, I can only go by what we were able to
11 verify through our systems of calling and our systems of
12 looking up information through various web sites.

13 Q Press reports indicate that there's much more
14 applications that were turned over to the U.S. attorney in
15 Philadelphia. Are those press reports incorrect?

16 A I have no knowledge of that.

17 Q Okay. Have you heard the number 1500?

18 A No, I have not.

19 Q Now, how many -- how many people were in your
20 quality control center in Philadelphia?

21 A I had ten employees.

22 Q So ten employees checked how many registrations?

23 A Let's see. I believe that in Philadelphia, we
24 brought in close to 80,000 applications --

25 Q Okay.

1 A -- between the end of December of 2007 and October.
2 So every single one of those applications has crossed through
3 the hands of our quality control representatives.

4 Q Okay. So let me lay out this scenario.

5 A Okay.

6 Q You have -- you have ten working at one time?

7 A Through two shifts of the day. Usually a shift of
8 six people and then a shift of four people.

9 Q Okay. So you have six people during the day?

10 A Uh-huh.

11 Q And you have each of those looking through a number
12 of registrations, right?

13 A Right.

14 Q How many per day?

15 A Per day we would have -- I would like to point out
16 that we go through the applications three times. And so I
17 would say that maybe we would have up to about five or six
18 hundred applications go through our quality control office
19 per day.

20 Q So each -- each quality control person, if there's
21 six, has about a hundred. Is that right?

22 A Correct.

23 Q So if one person registered six times and that
24 registration went to each of the six, they wouldn't able to
25 catch it, as you testified to that an individual person can

1 check -- can catch a duplicate, right?

2 A You know, there have been quite a few times when,
3 you know, someone sees a name and they think to themselves,
4 jeez, that looks really familiar to me. And we look back,
5 and we do find a duplicate application.

6 Q I understand that, but that's not what I'm asking.

7 A I apologize.

8 Q That's okay. You testified to that, that a single
9 quality control person can single -- singularly remember that
10 they have seen Reggie Johnson at 123 Race Street. You
11 testified to that.

12 A That's correct.

13 Q What I'm asking you is quite different. What I'm
14 asking you is if Reggie Johnson has registered multiple
15 times, isn't it possible, ma'am -- because not one single
16 person is checking those registrations; multiple people are.
17 In fact, ten are. And they're checking hundreds a day, and
18 they're checking them day after day. And there's no single
19 database in which you check all your duplicates. Isn't it
20 literally impossible for a single person to know if there's
21 duplicates because you have a number of quality control
22 people over a number of days?

23 A That's correct.

24 MS. HEIDELBAUGH: All right.

25 THE COURT: Can you make sure the witness has

1 water?

2 THE WITNESS: Thank you.

3 BY MS. HEIDELBAUGH:

4 Q Did you bring any of the paperwork that you turned
5 over to the criminal authorities with you today?

6 A I have no paperwork with us.

7 Q No, did you bring any paperwork that you turned
8 over to the criminal authorities with you today?

9 A No. I have no paperwork with me today.

10 Q Were you asked to bring that paperwork?

11 A I was not.

12 Q Okay. And you're -- you're not saying that all
13 canvassers that are involved in duplications or incomplete
14 registrations or even none extreme, because you used the word
15 "extreme," they're not all fired, right; they're retrained?

16 A I would like to point out that very, very often
17 canvassers were completely unaware if a person was already
18 registered because of the fact that, you know, maybe the
19 person just -- they didn't share it with the canvasser or
20 very often people forget that they're registered.

21 I spoke with a gentleman, you know, during our last
22 couple of days that said that he registered because the last
23 time he voted was for Dukakis. I believe I was in second
24 grade when Dukakis ran, so, you know --

25 Q That was a great race.

1 A -- I don't really remember. However, you know,
2 that was a quite a long time ago. Who knows if he's still
3 registered? And he didn't know --

4 Q So ACORN knows; ACORN knows that people don't know
5 if they're registered. So when you just told me that you
6 rely on the honesty and veracity of people as your quality
7 control measure, you're -- you're -- you're -- you have a
8 disconnect because you know that people can't remember but
9 your quality control is based on their memory, isn't it?

10 MS. SIMPSON: Objection, argumentative.

11 THE COURT: Sustained as to form.

12 BY MS. HEIDELBAUGH:

13 Q Isn't your quality control based on people's memory
14 when, in fact, you know they don't have a good memory?

15 A That's not correct. It's not based on memory.
16 It's based on a conversation that we have with the applicant,
17 and it's also based on comparative handwritings.

18 Q Now wait a minute. It's based on a conversation
19 with the applicant, and you just admitted that the applicant
20 doesn't remember. Isn't that right?

21 A Right.

22 Q Okay. And you haven't been trained to be a
23 handwriting expert, correct?

24 A I have not been trained to be a handwriting expert.
25 However, I'm sure that you can sit down and look at five

1 applications and if maybe two or three of them are in the
2 same handwriting, you could probably spot some similar
3 handwriting. I'm sure that that's something that could you
4 do.

5 Q Did your quality control people have that training?

6 A Yes. I did it with them personally.

7 Q You trained people in handwriting?

8 A Well, I trained them about, you know, looking at
9 letters, looking at numbers, seeing if they could spot how
10 the number or letter begins and ends, how the letter is
11 formed. I'm sure that any one of us sitting here today could
12 take a look at ten samples of handwriting. And if there are
13 three that are vaguely similar, I'm sure that most of us
14 could pick that up.

15 Q So that process --

16 A It's not a hard thing.

17 Q So that process for the quality control is when the
18 situation -- which has happened many times with ACORN, is
19 when the ACORN canvasser takes the telephone book and just
20 starts filling out applications in their own hand, right?

21 MS. SIMPSON: Objection, lack of foundation.

22 THE COURT: Sustained. You may rephrase it.

23 BY MS. HEIDELBAUGH:

24 Q Are you aware of situations in which an ACORN
25 canvasser fills out registrations in their own hand?

1 A Yes, I am aware of situations where an ACORN
2 canvasser has done that.

3 Q That's what you're looking for, right?

4 A We're looking for that. And, you know, we're also
5 taking into consideration the conversations that we have with
6 people, databases online that we can search for a record of a
7 person being at an address.

8 Q So when -- so if -- if the canvasser turns in 20
9 applications, how -- what is the quality control measure to
10 ensure that one quality control person sees all 20 on that
11 day of that canvasser?

12 A The applications are handed in to us in batches.
13 That batch is never -- the cards in that batch are never
14 separated from each other until the point that they are
15 sorted for the board of elections. So I instruct my staff to
16 take the cards and place them on the desk one by one and just
17 do a general go-around to see if there are any similar
18 handwritings within that batch.

19 Q And how many instances of that did you have?

20 A I do not have a number off the top of my head about
21 that number of instances, but there have been instances.

22 Q And what did you do with those?

23 A We then filled out the performance investigation
24 sheet. And I would consult with that person's manager, and
25 they would be terminated.

1 Q And what happened to the registrations?

2 A They were handed in -- well, they were handed in to
3 board of elections generally with a problematic card cover,
4 unless we had spoken to one of the people that were -- that
5 the application was for and they said, I never filled out
6 that application, because we had a thinking that, you know,
7 basically if we handed an application in to the district
8 attorney's office, that application would not be processed.

9 In the event that a canvasser did fill out a card
10 for someone who genuinely did want to be registered to vote,
11 we wanted to give that person the opportunity to be
12 registered to vote. So we did alert the board of elections
13 to the fact that we felt that the handwriting was similar.

14 Q Okay. So there are -- there were instances in
15 which -- where you had similarity in handwriting and you did
16 turn them in to the board?

17 A Yes. And we alerted them to the fact that we felt
18 that they were in similar handwriting.

19 Q Now, did you ever have situations, on another
20 topic, in which you had no phone number and you checked out
21 whether -- for instance, that the address was a shelter, how
22 many people were actually servicing that shelter or living
23 temporarily at that shelter?

24 A I'm sorry. Can you repeat that?

25 Q Sure. Do you have any circumstances in which you

1 had two or three hundred people registered at a certain
2 address but only 30 or 40 people could live there, something
3 like that?

4 A You know, generally -- you know, we do have a lot
5 of shelters in Philadelphia. And I am not aware of the bed
6 count for those shelters. So, you know, we really never had
7 a situation that we noticed where, you know, it was
8 impossible for X amount of people to be registered at a
9 particular address. So --

10 Q Could you -- could you call the shelter and ask for
11 the bed count?

12 A That's absolutely something that could be done; but
13 most shelters in Philadelphia -- I mean, it would really be
14 immaterial because, I mean, shelters in Philadelphia have
15 such a very high turnover. I mean, they have new people in
16 and out every day. So getting a bed count number would not
17 really be definitive of how many people could stay in a
18 shelter.

19 Q Okay. And you said that in an extreme case of
20 fraud, you would fire the canvasser. Is that right?

21 A No. All cases of fraud, the canvasser was
22 terminated.

23 Q Okay. So I've got your testimony wrong?

24 A No, you misunderstand my testimony.

25 Q Okay. Okay.

1 A My testimony was I would assist in speaking with
2 the canvasser in extreme cases of fraud. If it was, you
3 know, something where maybe two cards were in the same
4 handwriting, then I would just leave that up to the manager
5 to speak with the canvasser about and terminate him or her.

6 If it was a case of fraud where I felt that I
7 wanted to tell the person, you know, I checked out this
8 information, I spoke to person X, Y and Z and they said this,
9 and, you know, I couldn't verify any of this information, I
10 wanted to let that person know that, you know, they're not
11 getting away with anything, I know that they committed fraud.

12 Q How many employees were terminated for fraud?

13 A About -- this is an approximate number. I would
14 say about 220.

15 Q Two hundred and twenty employees?

16 A Uh-huh.

17 Q Do you have files for all of those employees?

18 A Yes, we do.

19 Q Do you have investigations?

20 A Yes, we do.

21 Q And that's from 2007 to 2008?

22 A Correct.

23 Q And did some of their cards go to the board of
24 elections?

25 A Yes, they did. And they were accompanied by a

1 problematic card cover, alerting the board of elections to
2 the fact that we suspected that these applications were
3 fraudulent.

4 Q Does ACORN do background checks on employees?

5 A I was not involved with hiring for the canvass, so
6 I am unaware of, you know, what kind of background checks
7 they do and things of the like.

8 Q What evidence is created when an ACORN quality
9 control person takes a registration and performs a
10 verification that it's a real registration? What documents
11 are created?

12 A On the bottom of the voter registration
13 application, we have our quality control results, which is
14 filled out with the person's initials, the date that they
15 called and the response that they got and also whether or not
16 they filled out an investigation on that particular card and
17 also whether or not the person wants to be a member of ACORN.

18 Q And do you -- do you know what the database is that
19 all that information goes into?

20 A No, I don't. The only thing that I am familiar
21 with is scanning the documents and uploading them onto our
22 FTP server. After that, that's kind of the end of my
23 process.

24 Q And are you still in that office?

25 A I will be going back to that office when I complete

1 the voter -- the GOTV program in Orlando, which will end on
2 election day, of course.

3 Q Okay. So if you wanted to pull down all the
4 information from your computer, you could do that --

5 A Yes.

6 Q -- in Philly? Okay.

7 And I think you testified that you knew the board
8 of elections was quite busy, right?

9 A Of course. It's a major city. So, you know,
10 it's --

11 Q Did you ever recommend to anyone that ACORN
12 institute a practice of checking for duplicates?

13 A I'm sorry. Can you repeat that?

14 Q Did you ever recommend to anyone that ACORN
15 institute a process for checking duplicates so that duplicate
16 registrations would not burden the system?

17 A I have never suggested that to anyone.

18 Q Now, you stated that -- you testified that in June,
19 Philly would not provide you with numbers anymore. Is that
20 right?

21 A Yeah.

22 Q And did you know that there was -- was no
23 commissioner meetings between June to August?

24 A I was unaware of that. But that shouldn't stop
25 them from, you know, providing me with the number of -- you

1 know, the applications that I submitted the week before.
2 They never provided me with any kind of numbers as to who did
3 or did not get on the rolls, so that would be immaterial.

4 Q And did you bring your written statement today in
5 the criminal investigation?

6 A I did not, but I'd be happy to e-mail it to you.

7 Q That would be great. Did you bring any of the
8 written documents on Jemar Barksdale or Irene Council?

9 A I did not. I was not instructed to.

10 Q Are there any criminal investigations of employees
11 that you can name today?

12 A Not off the top of my head. I apologize.

13 Q How many are there total?

14 A Off the top of my head, I would not know that
15 information.

16 Q Approximately.

17 A I really don't wish to make a guess at that. I
18 would really have to go through and sit down and --

19 Q Well, how many counties are you working with on the
20 criminal investigations?

21 A Personally I have only worked with Delaware County
22 on an investigation. Philadelphia has never contacted me
23 about an investigation. I'd be happy to assist them with
24 anything if they needed to, but Delaware County is the only
25 one.

1 Q Okay. Is it more than those two?

2 A In Delaware County?

3 Q Yes.

4 A No.

5 Q Just those two?

6 A Just those two.

7 Q What is your definition of "fraud"?

8 MS. SIMPSON: Objection, relevance.

9 MS. HEIDELBAUGH: I'll rephrase.

10 BY MS. HEIDELBAUGH:

11 Q You indicated there were only 200 fraudulent cards,

12 correct?

13 A Yes.

14 Q So what was the fraud in those cards?

15 A Those cases of fraud involved, you know, ridiculous

16 information, someone filling out a card in the name of, you

17 know, Joe Schmoe at, you know, 142 Driveby Boulevard. That's

18 obviously fraudulent. And they also involved any kind of

19 case where we would call someone and they said, I absolutely

20 did not fill out that card.

21 Q Did you -- did you check date of births to see if

22 they were 18 and they were allowed to vote?

23 A Absolutely.

24 Q Were you aware that 702 registrations were

25 submitted by ACORN to Philly that were too young to vote?

1 A I was not aware of that.

2 Q Were you aware that 700 were submitted where they
3 forgot to put a date of birth on the form?

4 A Well, that's just an incomplete card. I mean, it's
5 just something that was missed. And --

6 Q It can't be processed, though, without a date of
7 birth, right?

8 A Okay. Well, yes, it can be processed because the
9 board of elections is supposed to send a letter to that
10 person stating, You did not fill out this piece of
11 information, and we need this piece of information in order
12 for you to be registered.

13 Q And that creates more work for the board, right?

14 A Correct.

15 Q Yeah. So if -- if they don't put in a date of
16 birth, your canvasser could have caught that, right?

17 A I suppose that would be something our canvasser
18 could catch.

19 Q And there were 2300 cards where there were
20 signature issues?

21 A I was unaware of that number.

22 Q 5600 for invalid addresses?

23 A Again, that number -- the board of elections would
24 not share numbers with us. So, of course, I -- I'm not aware
25 of these issues that you're bringing up.

1 Q Uh-huh. And there were 6300 that were rejected
2 because the HAVA ID number didn't match the mailing notice
3 that was sent out; it was undeliverable. Are you aware of
4 that?

5 A Again, the board of elections would not share
6 numbers with us.

7 MS. HEIDELBAUGH: That's all I have.

8 MS. SIMPSON: I have nothing.

9 THE COURT: Hang on a second.

10 THE WITNESS: Oh, I'm sorry.

11 MR. MASLAND: Nothing, sir.

12 THE COURT: May this witness be excused?

13 MS. SIMPSON: Yes, Your Honor.

14 THE COURT: You may step down. You're free to
15 leave if you wish.

16 THE WITNESS: Thank you.

17 THE COURT: Do you have another witness?

18 MS. SIMPSON: I do not. I would move for the
19 admission of --

20 THE COURT: A through G. A through G?

21 MS. SIMPSON: A through G.

22 MS. HEIDELBAUGH: I have no objection to the blank
23 forms.

24 THE COURT: They're received.

25 (Private Defendants' Exhibits A through G were

1 admitted into evidence.)

2 MS. SIMPSON: Private defendants rest.

3 THE COURT: Becky, these are yours.

4 Bear with me a second.

5 MR. MASLAND: Your Honor, I'd like to actually
6 begin a little bit in reverse with our declarations. I have
7 two witnesses. One will be short. And I have 20 exhibits.

8 Of those exhibits, I have nine declarations to
9 present. They're marked Commonwealth/Respondent's 12 through
10 20. And on the same basis as Ms. Headley's was admitted, I
11 would submit that these should also be admitted and
12 considered by the Court.

13 They're declarations from voter registration
14 administrators in the following counties. Exhibit 12 is from
15 Robert Lee, Jr., voter registration administrator in
16 Philadelphia County; 13, Deborah Olivieri, director of
17 elections, Berks County, a county of the third class.
18 Fourteen is Monica -- or, excuse me, Stacy Sterner, chief
19 clerk and director of elections in Lehigh County; 15, Monica
20 Dutko, director of elections, Adams County; 16, Laura Watts,
21 director of elections, Susquehanna County; 17, Penny Brown,
22 director of elections, Cumberland County; 18, Joyce McKinley,
23 director of elections, Centre County. Nineteen is Sharon
24 Drayer, director of elections, Erie County; and 20 is from
25 Marion Medalis, deputy director of voter registration for

1 Lackawanna County.

2 THE COURT: So these are people that are --

3 MR. MASLAND: These are people that --

4 THE COURT: -- employed in the election -- the
5 county election bureaus and are actually working on the
6 election. They'll be received.

7 (Commonwealth/Respondent's Exhibits Nos. 12 through
8 20 were admitted into evidence.)

9 MR. MASLAND: Yes, Your Honor. These people are
10 all quite busy. In fact, most of the declarations are
11 similar, admittedly, and most of them begin talking about the
12 pressing nature of their duties. I'll comment on those
13 later.

14 Our first witness is Douglas Hill.

15 (Whereupon, Douglas Hill was sworn.)

16 THE COURT CRIER: Spell your name for the reporter,
17 please.

18 THE WITNESS: Douglas Hill, H-I-L-L.

19 DIRECT EXAMINATION

20 BY MR. MASLAND:

21 Q Thank you, Mr. Hill. Can you tell the Court where
22 you work and what you do?

23 A I'm the executive director of the County
24 Commissioners Association of Pennsylvania.

25 Q And how long have you been in that position?

1 A Twenty-four years.

2 MS. HEIDELBAUGH: Objection, Your Honor, offer of
3 proof?

4 MR. MASLAND: Your Honor, Mr. Hill is intimately
5 familiar with the SURE system. He's familiar with the
6 election process. He works with the department. He works
7 with the counties on a regular basis to ensure that they are
8 capable of pulling off an election.

9 He has testified any number of times, many times
10 before the House State Government Committee, the Senate State
11 Government Committee specifically on these issues. And I'm
12 going to ask him questions about what he's familiar with with
13 respect to the SURE system, which is the Statewide Uniform
14 Registry of Electors.

15 THE COURT: All right. He's to -- he's going to
16 testify about the adequacy of the SURE system?

17 MR. MASLAND: Yes, and his familiarity with it.

18 THE COURT: All right.

19 MR. MASLAND: I would suggest that he knows at
20 least as much about that as Ms. Moncrief knew about the
21 subjects she testified about.

22 THE COURT: I'm not sure what that has to do with
23 the offer of proof, but --

24 MR. MASLAND: Yes. Probably nothing. So I'll
25 proceed.

1 BY MR. MASLAND:

2 Q Mr. Hill, getting right to the point, are you
3 familiar with the implementation of the SURE system?

4 A Yes, I am.

5 Q When did you first become familiar with the SURE
6 system?

7 A Well, actually our interests in a statewide
8 database predated the SURE system. And by way of
9 explanation, our association represents all 67 counties in
10 the Commonwealth. Our voting membership includes the three
11 commissioners, the chief clerk and solicitor of each county
12 or their counterparts in home rule counties and the City of
13 Philadelphia.

14 As part of their policy-making process, as early as
15 1996, they recognized that technology might afford them an
16 opportunity to have means to better maintain their election
17 rolls. And they adopted a resolution suggesting that a
18 statewide database be developed to help us interface with
19 various state agencies and other counties to facilitate that
20 recordkeeping.

21 Moving from there, we were supporters of
22 legislation that ultimately became Act 3 in Pennsylvania that
23 required the creation of the SURE system.

24 Q That was Act 3 of 2002?

25 A Right. Right. And we also were involved in

1 discussions with the department prior to that date and
2 ongoing after that date on the parameters of the system,
3 issues that we thought needed to be addressed and so on.

4 Q When you say you were involved with the department,
5 how were you involved? In what capacity and what type of
6 activities?

7 A I, as the executive director of the County
8 Commissioners Association, was charged with assuring that the
9 counties' interests were being represented as the department
10 developed the system.

11 The department obviously under the law had
12 responsibility for procurement, assist in the determination
13 of the vendor, development of the security of the system and
14 software and so on.

15 Our charge from our members was to assure that the
16 data that was going to be available was the information we
17 needed and it was going to be implemented in a fashion that
18 met our needs over time.

19 Q Were you -- would you consider yourself a liaison
20 with the department and the counties?

21 A Yes.

22 Q Did you meet with the department on a regular
23 basis?

24 A On a regular basis, yes.

25 Q And with the counties, I presume?

1 A With the counties as well, yes.

2 Q What was the initial reaction to the SURE system by
3 the counties?

4 A The initial reaction was skepticism. There was
5 concern that the initial system was not robust enough to meet
6 our needs. And particularly for the counties that already
7 had in place their own election management systems, the
8 software available through the SURE system didn't allow
9 customized reports that we were used to doing and didn't have
10 some of the other utilities that we were used to with our own
11 systems.

12 Now, the department made an initial determination
13 to roll it out just to four counties initially. My
14 recollection is Bucks, Adams, Butler, and I don't recall
15 the fourth. I think --

16 Q Cumberland?

17 A Okay. That might be it. And those counties were
18 permitted to run the SURE system side by side with their
19 existing systems. And then they had a quality assurance team
20 put in place in conjunction with the department to work out
21 bugs over time, to develop features over time and essentially
22 to grow the system.

23 I think there was a really -- a realization very
24 early on that there were processes that we couldn't
25 anticipate with just bringing a new vendor that we had to

1 experience over time and that certainly there were going to
2 be volume issues.

3 We were running a software that was going to have
4 to run through data lines from the counties directly into the
5 servers that the state was maintaining. We were very much
6 concerned that the largest counties, in particular
7 Philadelphia, would cause strain on the system. And so we
8 recognized the need for time to grow the system both in terms
9 of utilities, usability and then also capacity.

10 Q Are you familiar with the phases that the system
11 was rolled out in?

12 A Yes. And that culminated in 2006 with the -- I
13 think it was called Go Live, where we rolled in the remainder
14 of the counties. And 2006 voter registration was conducted
15 exclusively on the SURE system.

16 Q Now, the initial reaction was one of skepticism
17 during this phase-in process and the ultimate Go Live. What
18 were the reactions of the counties?

19 A Well, among the things that we saw early were
20 occasional system crashes. We had problems from time to time
21 with the system hanging on cross-checks on the data. The
22 SURE team put in place help desk protocols. Numbers were
23 assigned to particular issues. And as they were resolved,
24 they were checked off the list.

25 The product was developed -- continued to be

1 developed over time. The platform has not yet changed to my
2 understanding, but the software itself has had significant
3 modifications over time to meet those two particular issues.
4 One is the robustness of the system, and the second is the
5 capacity of the system.

6 Q Are you aware of problems during the implementation
7 up until today?

8 A Until today, the system, from my communications
9 with the counties -- and that includes communications both
10 with commissioners and --

11 MS. HEIDELBAUGH: Objection, Your Honor. This is
12 hearsay being offered for the truth of the matter asserted.

13 MR. MASLAND: I just asked if he was aware of
14 problems with the system, Your Honor, and how he's aware of
15 those problems.

16 MS. HEIDELBAUGH: I disagree, Your Honor.

17 THE COURT: The real question is, why are you
18 offering this? Why are you getting into this?

19 MR. MASLAND: Well, I think that the fundamental
20 argument that plaintiff is making here is that the system
21 doesn't work and that there are irreparable problems with the
22 system. To the extent that Mr. Hill is aware of problems and
23 those problems have been worked through, I think that's
24 relevant for Your Honor to consider.

25 THE COURT: I think the issue is how would he know

1 that unless somebody from the Commonwealth told him.

2 MR. MASLAND: Well, he said he's been a liaison
3 between the counties and the Commonwealth, that he's
4 familiar -- he talks -- I'll ask some more questions on that.

5 BY MR. MASLAND:

6 Q Mr. Hill, regarding the SURE system, you converse
7 with the counties?

8 A I converse with the counties, both with county
9 commissioners and county election directors.

10 MS. HEIDELBAUGH: Same objection.

11 BY MR. MASLAND:

12 Q Is that on a regular basis --

13 THE COURT: Your hearsay objection is overruled
14 based on his past question. He just said he's conversing
15 with these people; that's all he said.

16 MS. HEIDELBAUGH: I don't -- the reason I objected,
17 Your Honor, was to prevent the wording of the hearsay
18 response and put the Court on notice, because I believe that
19 the question is calling for a hearsay response. But I
20 apologize if I was too eager.

21 THE COURT: Go ahead.

22 BY MR. MASLAND:

23 Q Are you aware of any recent problems with the
24 system?

25 A We've been apprised from time to time that there

1 are individual counties that have had difficulties. Those
2 counties' problems were resolved primarily by rebooting the
3 system or some similar, nominal technology fix.

4 We were apprised that there were, I think, two days
5 when the system --

6 MS. HEIDELBAUGH: Same objection, Your Honor. This
7 is just a tricky way of getting around the hearsay objection.

8 MR. MASLAND: Okay. Your Honor, it's already been
9 mentioned that there have been problems with the system.
10 Mr. Marks will be testifying more fully about that. Let me
11 just ask a few more questions.

12 BY MR. MASLAND:

13 Q Mr. Hill, the counties were initially skeptical
14 about this system. You characterized their attitude as
15 skeptical. You heard me mention the declarations from nine
16 different counties. Are you familiar with what -- are you
17 aware of what the counties' impression of the system is at
18 this point in time?

19 MS. HEIDELBAUGH: Same objection.

20 MR. MASLAND: Is he aware, Your Honor?

21 THE COURT: You know, I'm trying to -- I'm trying
22 to be balanced here. Counsel for petitioner submitted a lot
23 of information that really wasn't subject to
24 cross-examination. Some of it was hearsay.

25 We do, however, have somebody here who's a live

1 witness, would be subject to cross-examination under normal
2 circumstances. But he's going to tell me stuff that somebody
3 else told him, so that's sort of a problem.

4 I guess you're getting to the point where Mr. Hill
5 and the county commissioners don't have a problem with SURE
6 now or they don't have any objections to SURE, they think
7 it's working fine. I think guess that's what your offer of
8 proof is going to be. But I don't think you can base this
9 just on what the various election boards or county
10 commissioners have told him.

11 I mean, if he's been using the system and not
12 having problems with it, then that would be helpful to know
13 that. But since we do have a live witness here, I think we
14 need to make sure that everybody has an opportunity to
15 inquire into the evidence you're bringing forth from the live
16 witness.

17 BY MR. MASLAND:

18 Q Mr. Hill, have you testified in the past about the
19 counties' level of preparedness for elections, primaries and
20 general elections?

21 A I testified in front of the House State Government
22 Committee in the spring. Yes.

23 MR. MASLAND: Okay.

24 THE COURT: Are you qualifying -- are you
25 qualifying him as an expert?

1 MR. MASLAND: No. No.

2 BY MR. MASLAND:

3 Q And do you have, based on your knowledge and
4 discussions, an impression as to whether the counties are
5 prepared for this election?

6 A It's our belief that they are. We have --

7 MS. HEIDELBAUGH: I'm going to object. This is
8 opinion testimony.

9 THE COURT: Sustained.

10 BY MR. MASLAND:

11 Q Mr. Hill, let me ask -- you've testified about your
12 familiarity with the SURE system and familiarity with it from
13 its inception to today. What is your impression of the SURE
14 system today?

15 MS. HEIDELBAUGH: Objection, Your Honor, asking for
16 an opinion.

17 THE COURT: That -- I don't know how you can go
18 there unless you qualify him as an expert. You know, you put
19 in all sorts of affidavits.

20 MR. MASLAND: Yes.

21 THE COURT: Is he adding something that's not in
22 the affidavits?

23 MR. MASLAND: Well, Your Honor, I propose that he
24 would provide the umbrella, if you will, to those affidavits;
25 that he is familiar with those counties; he's familiar with

1 the folks in the counties; he's talked to them. He's
2 testified, admittedly not in court but before legislative
3 committees, about the level of preparedness.

4 And I think he should be able to testify about his
5 judgment of their level of preparedness based on his
6 experience over the past 20 years.

7 THE COURT: What other witness do you have?

8 MR. MASLAND: I have a witness who will drill down
9 a lot of these issues more -- more -- you know, in more
10 detail than Mr. Hill. Mr. Hill -- I'm almost finished with
11 Mr. Hill. If you're not going to let me proceed any further
12 with this line of questioning, then -- then I'll sit down,
13 let him be cross-examined and call Mr. Marks.

14 THE COURT: The gentleman sat here all day, and I
15 don't want to make him feel like he's been turned away --

16 MR. MASLAND: And that's why I'm trying to get more
17 questions here.

18 THE COURT: -- without purpose here. But I don't
19 think this is the witness that can get you where you want to
20 go. I'm willing to accept the affidavits from the people
21 that are out in the field right now, but I'm not sure this
22 witness can get you where you want to go.

23 MR. MASLAND: It was my feeling that since he was
24 involved with the system from the legislative days to the
25 present and has worked with the counties on this, that he

1 would be able to do that. If you don't feel that, I'm not
2 going to push it.

3 THE COURT: I've worked with the SURE system.

4 MR. MASLAND: I'm not going to push it.

5 THE COURT: I've worked with the SURE system. You
6 know, we do election law in our court all the time.

7 MR. MASLAND: Sure.

8 THE COURT: So I don't know that I'm familiar as he
9 is about the overall scheme of things, but I have -- I know
10 what we're talking about.

11 MR. MASLAND: Very good. Well, no more questions.
12 My apologies, Mr. Hill.

13 You may cross-examine.

14 MS. HEIDELBAUGH: No questions.

15 MS. SIMPSON: No questions.

16 THE COURT: Good call. Good call.

17 All right. You know, I'm sorry. Where are you
18 located?

19 THE WITNESS: Harrisburg.

20 THE COURT: So it wasn't too far of a drive?

21 THE WITNESS: Not at all.

22 THE COURT: Thank you for coming in.

23 MR. MASLAND: Commonwealth calls Jonathan Marks.

24 (Whereupon, Jonathan Marks was sworn.)

25 DIRECT EXAMINATION

1 BY MR. MASLAND:

2 Q Please state your full name for the record, please,
3 and spell it.

4 A Jonathan Marks, M-A-R-K-S.

5 Q Mr. Marks, what is your current position?

6 A I'm the chief of the division of SURE, or Statewide
7 Uniform Registry of Electors.

8 Q And just to take a step back, how long have you
9 been employed with the Department of State?

10 A With the Department of State, about 15 years. I
11 believe it was 1993.

12 Q And when you started, where did you work and what
13 were your responsibilities?

14 A I started with the corporation bureau as a clerk 2.
15 And over the years -- actually I was a clerk 2 and then a
16 legal assistant 1 in the corporation bureau until 2002 at
17 which time I accepted a position as legal assistant 2 in the
18 office of chief counsel, primarily working with the election
19 bureau.

20 Q And how long were you in the Bureau of Commissions,
21 Elections and Legislation?

22 A Actually I'm still in the -- technically in the
23 bureau --

24 Q That's correct.

25 A -- in different capacities. I served as legal

1 assistant from September of 2002 until August of 2004 at
2 which time I accepted a position of chief of the division of
3 elections and precinct data as it was known at that point.
4 And then earlier this year, April 28th, I took over the
5 position that I'm currently in.

6 Q Just to take a step back, when you were chief of
7 the division of elections and precinct data, what does that
8 position entail? What do you oversee?

9 A I oversaw pretty much general administration of
10 elections at the state level. That would include nomination
11 petition filings for candidates, the certification of the
12 those candidate names to the counties, the maintenance of
13 records regarding nomination petition filing; also any
14 memoranda or guidance that we may have provided to the
15 counties in regard to any number of general election
16 administration issues that they may have asked about or
17 inquired about.

18 Q When did you formally start as chief with SURE?

19 A The official date was April 28th.

20 Q Okay. Now, did you work with the SURE system
21 before that date in your previous capacity?

22 A I did not work directly with the SURE system. But
23 I did work with the SURE office because both are related to
24 voter registration and elections. And, of course, a matter
25 of policy discussions arose regarding how the election

1 process and how the SURE voter registration process would
2 work together. So I was familiar with the SURE system from a
3 distance up until recently.

4 Q Could you describe for the Court just briefly the
5 general role of the SURE system and what it does?

6 A Generally the SURE system is -- as the law
7 requires, is to provide essentially a statewide registration
8 log as opposed to having 67 individual registration logs.
9 It's statewide. It's integrated. Counties can transmit data
10 to and from each other, and it -- ultimately its purpose is
11 to maintain a more accurate list of registered voters.

12 Q So prior to SURE, there were basically 67 different
13 systems?

14 A That's correct.

15 Q Okay. When the SURE system was instituted and
16 still today, are there concerns from counties about not
17 having their old system?

18 A Yes.

19 Q What would -- what's the difference between the
20 SURE system and the old system in terms of processing?

21 A Well, in terms of the process -- and each county
22 had, you know, their own -- a different system. Some were
23 very similar, but the difference really is the functionality.

24 The single county systems essentially housed the
25 records for that county. And many of the systems could check

1 for duplicates within the county, but there was no ability at
2 that point in time to check outside of the county lines
3 without working, you know, manually or in concert with the
4 county directly.

5 Q You've been in contact with Philadelphia County
6 over the years, I'm sure?

7 A Uh-huh. Yes.

8 Q In terms of processing time, is there a difference
9 in processing time that they experience now and what they
10 experienced under their old system?

11 A Yes.

12 MS. HEIDELBAUGH: Your Honor, I'm going to object
13 based on the foundation requirements that have been laid.
14 It's my understanding from the testimony that he's been the
15 director of the SURE system since April, and the question was
16 just framed and then reframed as, I'm sure you've been in
17 contact with Philly on the SURE system over the last couple
18 of years. So I'm not sure that question is going to
19 foundationally survive.

20 MR. MASLAND: I can rephrase the question.

21 THE COURT: All right.

22 BY MR. MASLAND:

23 Q I'll let you get your water.

24 A Excuse me a second.

25 Q You mentioned briefly a difference between the

1 systems the counties had and the SURE system is one of
2 duplicates. How does the duplicate check affect the
3 processing time of applications?

4 A Well, the duplicate -- duplicate check affects the
5 processing time because it affects the business process
6 itself. And the current duplicate check process is
7 two-tiered.

8 There is a duplicate check that is done by a
9 county. After they data enter a record, they press a
10 function key which first checks -- the first time you press
11 it, it checks date of birth versus last -- and last name and
12 checks statewide to see if any duplicates show up. And the
13 second is first and last name only. So you have to do both.
14 The system essentially compels you to check for duplicates.

15 Q Something the counties were not able to do before.
16 Is that correct?

17 A I don't believe that they -- that -- I couldn't
18 speak to every single county's election management system,
19 but they certainly could not check at a statewide level with
20 their systems because they just weren't connected.

21 Q Can you generally describe the volume of work that
22 SURE -- SURE has been experiencing over the past several
23 months?

24 A Yes. It's -- it's unprecedented. It seems like
25 every presidential election, at least based on the

1 statistical information that I've looked at over -- for the
2 last 20, 30 years, seems like there's a new record every
3 presidential election in terms of voter registration.

4 Turnout numbers maybe were a little higher in the
5 '60s, but they're starting to go back up, I think. But
6 certainly the volume of registrations processed has gone up
7 significantly since even 2004, and that was -- that was
8 unprecedented in 2004.

9 Q Has this put a strain on the SURE system?

10 A It has. Admittedly, the system -- like any other
11 computer system at peak times when it's dealing with a large
12 amount of data, it does put stress on the system. And it
13 groans a little bit from time to time.

14 MS. HEIDELBAUGH: I didn't hear the witness. I
15 apologize.

16 THE WITNESS: I'm sorry. It groans a little bit
17 from time to time.

18 BY MR. MASLAND:

19 Q I'm going to ask you to take a look at
20 Commonwealth/Respondent's Exhibit Number 1.

21 This is the Judge's.

22 Could you identify that exhibit for the record?

23 A This is a -- this is a spreadsheet provided by the
24 chief of our Bureau of Management and Information Systems,
25 our IT department essentially, regarding some of the

1 significant issues experienced within the SURE system since
2 the beginning of September.

3 Q I draw your attention to really the first two
4 items. Could you explain what that means, "regularly planned
5 database optimization"?

6 A The regularly planned database optimization is
7 essentially a weekly job. It's -- if you have a PC, it would
8 be like running defrag. It's a weekly job that you run in
9 the database to make sure that the database continues to be
10 fine-tuned and runs.

11 Q Okay. The incident on September 20th, could you
12 explain that to the Court, please?

13 A The incident on September 20th, what -- what
14 happened is the data -- database optimization job, which runs
15 in the middle of the night Friday into Saturday -- I think it
16 runs from 1:00 a.m. to approximately 3:00 a.m. on Saturday
17 morning.

18 If a user session happens to be open during that
19 time or multiple user sessions happen to be open at that time
20 -- during that time, the optimization job will run through
21 tables within the database. And if it identifies that
22 there's an active user, it will stop so that it doesn't
23 interfere with whatever that user is doing. And it sits
24 there and pretty much idles until it's freed up.

25 And what occurred on -- on that particular morning,

1 additional users came in first thing in the morning, working
2 overtime. They logged onto the system, and it was extremely
3 slow because this optimization job was still idling.

4 We had to go in, free it up, let the optimization
5 job run to conclusion, and then performance picked up --
6 picked back up as normal. And since then, we've been
7 reminding -- number one, reminding everyone to log off,
8 especially on Friday night before they go home. And we
9 actually go in to see if any active sessions are on at about
10 12:30 a.m. If they -- if they are, we notified the counties
11 that we will -- we will kill those sessions, for lack of a
12 better term, so that the optimization job can run.

13 Q I believe you took a look at the affidavit of Mary
14 Jo Headley from Delaware County, correct?

15 A I did, yes.

16 Q And she notes in paragraph 8 that between
17 October 10th and 13th, the staff only had intermittent access
18 to the SURE system. I draw your attention to that time
19 period on Exhibit 1. And could you describe what in
20 particular happened on October 10th or the 13th or whatever?

21 A Okay. Without going into a great deal of technical
22 detail, basically what occurred is there was blocking in the
23 system. And "blocking" would mean within those tables, the
24 database tables, there are pages of files and if a particular
25 user is running a job, perhaps a large query against the

1 entire database, it will -- and somebody else tries to access
2 that record, it will lock up pages within that table. It
3 creates a block, and we have to go in and release the block.
4 And that's what occurred on October 10th.

5 October 10th was by far the worst experience during
6 this time period because it lasted for several hours. It
7 didn't necessarily affect all users within the system, but it
8 did affect a large number of them.

9 So statistically -- we also monitor statistics to
10 see how counties are progressing on a day-to-day basis. And
11 we saw 20 -- an average about 26,000 applications processed.
12 In the few days leading up to that period, it dropped to
13 about 15,000 and then went back up above 20,000. So there
14 was clearly a drop on that day because it was a significant
15 amount of time.

16 Q They were still processing, though?

17 A Yes. Yes.

18 Q So the system was -- as it says here, was up but
19 some users experienced slowness?

20 A Right.

21 Q What about October 13th, which is shaded on this
22 exhibit, and October 15th, the same -- same thing?

23 A Essentially the same thing. Our response time was
24 quicker because we knew exactly which -- which places to
25 look. We were able to identify patterns with the first

1 experience, so we knew exactly how to troubleshoot the issue.

2 And after October 10th, we started monitoring the
3 system on pretty much 24/7, had more eyes looking at it. And
4 if we saw any trouble brewing, we'd make sure we could free
5 it up so counties could continue to process. And they did.

6 Q So October 10th, the first time this occurred,
7 about how long was the blockage?

8 A It lasted -- it was -- it was pretty much ongoing
9 for a six-hour period, six- or seven-hour period. On the
10 13th and the 15th, the blockages that did occur affected a
11 smaller number of users, and they were brief. They were
12 minutes or an hour; two hours I think may be the longest
13 period of time.

14 Q Now how many users are there for the SURE system?

15 A Currently there are over 400 users.

16 Q Okay. Do you know what the peak number of users
17 has been in recent weeks or months?

18 A I think in the days after the close of
19 registration, we peaked at about -- at a given moment in time
20 around 350 users, maybe a little more.

21 Q Now, these --

22 A Not all 400 users are on at all times.

23 Q The items here, October 10th, 13th, 15th, they
24 would be main or significant events. Is that correct?

25 A Yes.

1 Q Have you experienced any minor events or delays?

2 A Yes. Periodically we experience minor delays. It
3 usually affects maybe one county. If it's a network problem,
4 for example, we have to get on the phone with Verizon and go
5 through that protocol.

6 But in terms of the database itself or the
7 environment itself, the one that was happening -- happening
8 fairly frequently and it affected about 10 to 12 users a day
9 was an issue with a particular application server within the
10 environment. Our IT folks call it "the server farm."

11 But one of the servers, application 14 server, a
12 pop-up message was coming up. When a user walked away, tried
13 to log back on, it would indicate that the user already had a
14 session and would not prevent them -- or would not allow them
15 to get into the system. They'd call the help desk. The help
16 desk would reset the password, and the problem was solved.

17 Q Okay. Throughout these problems, minor or major or
18 significant, the system was still able to process
19 applications?

20 A Yes. And let me be clear. I consider them all
21 significant from where I'm sitting because I want it to be
22 perfect and work all the time. But I'm also a realist and
23 understand that it's not going to be perfect.

24 Q I'm going to ask you to turn your attention to what
25 is marked as Commonwealth's Exhibit 2. Now, it's a lengthy

1 exhibit, and I certainly don't want to go through page by
2 page at this late hour. But could you explain for the Court
3 what this, in essence, is?

4 A This is the SURE job aid essentially, which
5 outlines the HAVA verification process, the checking of the
6 driver's license numbers and Social Security numbers through
7 the SURE system.

8 Q How does that process work, in short?

9 A Essentially the process works with another push of
10 a function key. After the county has entered the applicant's
11 information, has done the two duplicate checks, the third
12 part of the business process is to press, I believe it's the
13 F7 key which will run the HAVA verification process, which
14 essentially takes the information provided by the voter, runs
15 it through the interface we have with PennDOT, which runs it
16 through AMVA -- and don't ask me to give you the exact
17 meaning of the acronym. But it's essentially the vendor that
18 works with the Social Security Administration to check the
19 data against the Social Security Administration's database.
20 Obviously the driver's license numbers are checked against
21 PennDOT's database. And it returns the results, either a
22 match or no match.

23 Q Now, the duplicate check and the HAVA check, are
24 they required by the system?

25 A Yes. The system is essentially designed to compel

1 the user to go through those three steps: The first
2 duplicate check, the second duplicate check and then the HAVA
3 verification step.

4 Q And for further explanation, if you look back on
5 Exhibit 1, on October 11th and October 12th, it says, "SSN
6 side of the HAVA check was down." Could you explain that?

7 A Over the weekend of Columbus Day, the Social
8 Security Administration had a building shut down, which
9 essentially meant that their database was inaccessible. As a
10 result, we had to hold -- the counties could continue
11 processing voter registration applications, but the HAVA
12 verifications were held in queue until the system came back
13 live. I believe it was Monday morning at which time we sent
14 them through. We had to throttle them back.

15 We worked with the AMVA and the Social Security
16 Administration to make sure that we weren't sending them all
17 at once and shutting their system down. So we throttled it
18 back, and slowed -- slowly but surely, we caught up. I think
19 within a day and a half, we moved all the backlog of the HAVA
20 verification.

21 Q So did those applications that were in the queue
22 eventually go through this check?

23 A Yes.

24 Q I'm going to ask you to turn your attention now to
25 Exhibit 3. Can you identify that for the record, please?

1 A This is the most recent spreadsheet regarding the
2 status of pollbook printing for the 67 counties.

3 MS. HEIDELBAUGH: I didn't hear you.

4 THE WITNESS: I'm sorry. The status for pollbook
5 printing.

6 BY MR. MASLAND:

7 Q Where it says "PBs printed" at the heading at the
8 top, would that be pollbooks printed?

9 A Right. That would actually be -- counties would be
10 more accurate; 43 counties.

11 Q Okay. I was looking in the -- okay. I see.

12 A Counties with pollbooks complete, 43; and counties
13 with pollbooks in process, 11.

14 Q Now, that was as of yesterday at 10:00 p.m.?

15 A Correct.

16 Q Do you know whether that number has changed at all
17 at this point?

18 A I believe it has. I haven't gotten any absolute
19 numbers yet. I'm sure I will by the end of the evening.

20 Q But aside from the 43 that are complete, 11 in
21 process, can you explain the numbers -- the other numbers
22 that appear on the right-hand column?

23 A The other numbers there are the total number of
24 registered voters in SURE. The second line item there are
25 the counties that have printed pollbooks, how much of the --

1 how many of those registered voters those pollbooks
2 represent.

3 Q And what does that -- what are those numbers?

4 A The first number, total registered voters,
5 8,755,978. And the number of those voters represented by the
6 printed pollbooks, 7,577,582.

7 Q And the percentage is?

8 A 87 percent.

9 Q Are you familiar with the schedule for the printing
10 of the pollbooks for the remainder of the counties?

11 A I am.

12 Q And when you --

13 A If you ask me a specific county, I may not be able
14 to give you an exact date. But many of the counties --
15 Warren County I think may be the last one. Some counties
16 pretty much schedule theirs right before the end of -- or
17 right -- right before they distribute the pollbooks to the
18 election districts. So Friday, Saturday some of them even
19 have scheduled.

20 Q That's the latest counties would be printing
21 pollbooks this week?

22 A Yes, based on my recollection of the schedule and
23 what they've indicated to us. And, of course, those are
24 fluid. They have issues that may arise that may cause them
25 to change their schedule. But I think the latest would be

1 Saturday, and that might be one or two counties.

2 Q Now, are you aware of how many counties -- or let
3 me ask it this way. Are counties required to certify their
4 voter registration statistics to the department?

5 A They are, yes.

6 Q How many counties have done that at this point?

7 A I believe the number was 40 had done it by
8 yesterday. And probably during the day, a number of other
9 counties have submitted their official reports.

10 Q Do you have any reason to expect that there will
11 not be any county -- or there will be any counties that will
12 be unable to certify?

13 A I have no reason to expect that.

14 Q Have any counties told you that they won't be able
15 to certify?

16 A No.

17 Q Are you in touch with the counties regarding these
18 problems? I mean counties like Delaware, for instance; do
19 they notify you when they're having problems?

20 A They'll notify if -- if it's -- if it's an error
21 message that they're receiving or something, they may not
22 necessarily notify me, but they will notify the help desk.
23 If the help desk cannot resolve whatever the issue is, then
24 it will be escalated up to us. And by "us," I mean the folks
25 that work in the division of SURE for our -- for us to

1 provide a resolution, whatever it is.

2 Q Did Mary Jo Headley call you about any of the
3 problems that she mentions in this affidavit?

4 A No, she didn't. She hasn't called me recently
5 regarding any of those problems. And I think maybe the last
6 communication I had with her was regarding the -- cleaning up
7 some of the pending files that were in the system in Delaware
8 County.

9 Q Now, over the last week or so, have you been in
10 contact with the counties to determine if they're having any
11 problems; and if so, have you encountered any unique problems
12 or unusual problems?

13 A Yes. Yeah. We actually ask the help desk to reach
14 out to counties, try to get an idea what the backlog is, find
15 out which counties may -- may believe that they need help or
16 may be in trouble or find out if there's some county out
17 there that needs us to give them anything or supply them with
18 anything. And there were two counties that did -- that did
19 ask for our help, and we provided it.

20 Q Okay. What were those counties, for the record?

21 A Chester and Northampton County.

22 Q Philadelphia did not ask for any help?

23 A Right.

24 MS. HEIDELBAUGH: I didn't hear the second part.

25 THE WITNESS: Chester and Northampton. I

1 apologize.

2 BY MR. MASLAND:

3 Q Philadelphia did not ask for any help?

4 A Philadelphia did not ask for any help.

5 Q Nor Allegheny?

6 A No.

7 Q What did Chester and Northampton specifically ask
8 you to do?

9 A They specifically asked us to get them some
10 additional pieces of equipment, scanners. And we had also
11 put out in August at the conference kind of a trial data
12 entry of applications through the SURE portal. Those that
13 were received by the department, we would enter them into the
14 portal, send the application -- then send the applications on
15 to the county.

16 All they'd have to do then is finalize the
17 applications, which would mean check for duplicates, do the
18 HAVA verification. They'd have to attach -- scan and attach
19 the signature to the record, pretty much finish the process.
20 But they wouldn't have to necessarily do the data entry.

21 And we had already been -- Chester was interested
22 in that back in August, so we had already been doing some of
23 those that were received in the department. We offered, if
24 it would help them out, to have them ship to us any of their
25 backlog. And we would have folks here at the department do

1 that process for them, and we'd send them back. And I
2 believe we did 1500 applications for Chester and 2,000 for
3 Northampton.

4 Q Was that last week?

5 A Yes.

6 Q Okay.

7 A That was primarily last week. I think Chester we
8 may have actually received them by the Friday of the week
9 before.

10 Q And just to clarify it for the Court, I believe you
11 mentioned that some of these applications would come to the
12 department. Why would that happen?

13 A The statute actually allows -- or it compels the
14 Secretary of the Commonwealth if he receives an application,
15 a voter registration application, to forward it on to the
16 county. We have for many years received applications.

17 We've tried to work with the large registration
18 drives to make sure that they're working directly with the
19 county, because ultimately all it does is delay the
20 transmission of the documents. But if -- if they come into
21 the department, we are required then to forward them on to
22 the appropriate county.

23 Q Now, one of the questions or one of the concerns
24 that Ms. Headley raised is that there have not been any
25 significant changes or improvements to the SURE system. Can

1 you address that concern?

2 A I guess it would depend ultimately on what time
3 period she's referring to. Within the last few months,
4 perhaps not. But since its inception and even last year --
5 in fact, last year I believe the department did the hardware
6 hardening project, which essentially made the server farm
7 more robust to -- in anticipation of the additional volume
8 that we would receive during the presidential election.

9 We also have a going forward plan to finalize the
10 -- what has been termed "the SURE rehosting," which would
11 change the platform that Mr. Hill testified about. The
12 system still uses the original platform it was built on,
13 which is Microsoft Access. It's going to be upgraded to SQL.
14 So it will have a new platform, which will make it even more
15 robust and coincidentally will resolve the majority of these
16 blocking issues that crop up from time to time.

17 Q Now, this concern about the platform, how long has
18 that been considered by the department and why was it not
19 done now?

20 A Well, it's been considered by the department I
21 think probably for a couple of years. I couldn't give you an
22 exact date. But the original Go Live schedule would have had
23 it implemented in September. But I think the decision was
24 made not to go live in September because we weren't happy
25 with testing and performance of the rehosted database. And

1 we were also getting feedback from many of the counties that
2 that was not the most opportune time to go forward with the
3 rehosting process. There would be retraining issues, and
4 they felt that that wasn't the best time to move forward. So
5 all that was taken in -- into consideration when the
6 department made its decision.

7 Q I apologize for not having an exhibit, but are you
8 aware of approximately how many applications have been
9 processed in SURE in 2008?

10 A In 2008, I believe it's over two and a half
11 million, probably approaching three million, if you go all
12 the way back to January 1st. And that would include new
13 applications, change applications, any of those things,
14 change of name, whatever it happens to be, PennDOT change of
15 address.

16 Q I'm going to switch gears slightly and go to the
17 voter identification issue and ask you to look at
18 Commonwealth Exhibit Number 4. Could you describe or
19 identify that document for the record, please?

20 A This is essentially the document -- the job aid for
21 SURE regarding the identification requirements and how
22 they're processing information.

23 Q Now, this job aid, I guess similar to Exhibit
24 Number 2 with HAVA check, is this something that the users
25 follow?

1 A Yes.

2 Q And what -- what exactly is this? If you could
3 describe this show ID requirement. How does that work?

4 A Well, essentially the database is built -- or was
5 rebuilt -- these were some of the software changes we've
6 referenced before. But it was rebuilt to meet the mandates
7 of both state and federal law regarding the identification
8 requirements and to make it easier for counties to identify
9 those individuals who have to either show ID or provide a
10 copy of ID with their voter reg application, voter
11 registration application, or absentee ballot application or
12 absentee ballot in order to vote absentee.

13 So this process kind of outlines how that works in
14 the system. And the simple explanation, it's a flagging
15 system. Essentially it flags new voters. And by "new
16 voter," it would mean -- in terms of state law, it would mean
17 anyone who has registered for the first time in the state, in
18 the county or has moved to another county or even another
19 precinct within the county.

20 The federal requirement would be essentially the
21 same group of people if they registered by mail, so either
22 someone who registered by mail or someone who registered
23 through a registration drive.

24 Q Now, you say that it's a flag. Where does this
25 flag appear?

1 A The flag appears on the applicant's record within
2 the SURE system.

3 Q Will it also appear in the pollbook?

4 A Yes. Yes. The reports that are printed then,
5 including the pollbooks, would show which voters have to show
6 ID. I believe on the pollbook it's actually a watermark
7 underneath where the person signs -- the voter signs their
8 name that says "must show ID" to indicate to the poll workers
9 that that individual should show identification.

10 The HAVA, Help America Vote Act flag, the federal
11 flag actually says "must vote in person." It's a bit of a
12 misnomer, but if you read through this, you'd probably
13 understand why that terminology was used particularly. But
14 basically that identifies for the county which ones meet the
15 HAVA requirement of having to show ID and, you know, whether
16 they vote in person or absentee ballot.

17 Q Mr. Marks, I'm going to ask you to look at the
18 third page on the declaration of Robert Lee, Jr. You do not
19 have this. Are you familiar with that document? Have you
20 seen that before?

21 A Yes. I've seen -- the top of this document is
22 actually a copy of what would be your standard SURE pollbook.

23 Q I believe that is one that they use for training
24 purposes, but could you briefly point out the flags that
25 appear on the pollbook such as you just discussed with the

1 SURE ID -- show ID check?

2 A The very last voter on this particular pollbook,
3 where they would sign their name, there's a watermark for the
4 benefit of the poll worker that says "ID required."

5 Q Okay. Now, as you look at that, it appears to be
6 -- there appears to be a signature line there. Is that
7 correct?

8 A Yes. Correct.

9 Q The person signing would be on the opposite side of
10 you, facing you as I am now?

11 A Right.

12 Q Looking down at this upside-down document. Is that
13 correct?

14 A Right. That's correct.

15 Q So the poll worker is in your position and sees
16 this flag?

17 A Right.

18 Q And requires the ID?

19 A Correct. Yes.

20 Q What happens then after that?

21 A Well, once the ID is presented, the poll worker
22 would have to indicate that the identification was presented,
23 and then they would sign the voter in by flipping the
24 pollbook around so that they could sign on the signature
25 line.

1 Q I ask you to look at Commonwealth's --
2 Commonwealth/Respondent's Exhibit Number 5. Can you identify
3 that for the record?

4 A This is a memorandum from April 13th of 2004. This
5 would have been essentially the communication that was sent
6 to the different SURE counties about the identification
7 requirement. And you'll note that -- that it references
8 what -- the process for phase 1 SURE counties, phase 2 and 3,
9 as we were kind of in the midst -- the department was in the
10 midst of deploying SURE throughout the Commonwealth at that
11 time.

12 Q What was the purpose of this memo, if you were
13 involved with this? Were you involved in the preparation of
14 this memo?

15 A I was -- I was not the primary crafter of the memo,
16 but I did see the memo at the time that it was drafted. I
17 had proofread the memo as a legal assistant.

18 MS. HEIDELBAUGH: I'm going to object to the
19 question then based on that foundation, as to what the
20 purpose was.

21 BY MR. MASLAND:

22 Q Let me just ask this. Has this memo been rescinded
23 since April 13th, 2004?

24 A No, I do not believe so.

25 Q It's still in effect?

1 A Correct.

2 Q Is this memo something that you would have worked
3 with in your former position in the Bureau of Commissions,
4 Elections and Legislation?

5 A Yes.

6 Q And it's something that you work with in your
7 current position?

8 A Correct.

9 Q So you're familiar with what's contained in this
10 memo?

11 A Yes.

12 Q In essence, because there will undoubtedly be
13 plenty of argument on this, what was the purpose of this
14 memo?

15 A Well, the purpose of this memo --

16 MS. HEIDELBAUGH: I'm going to, for the record,
17 refresh my objection based on foundation as to the purpose.

18 THE COURT: Overruled. Overruled.

19 THE WITNESS: The purpose of this memo primarily
20 was to notify counties in 2004 what the current -- how each
21 of those different groups of counties could comply with the
22 requirements of the Help America Vote Act.

23 When you said "rescinded," it hasn't been
24 rescinded, but it has been improved upon because the system
25 now has this functionality built into it for all 67 counties.

1 There's no requirement to get a list for a particular county
2 that they can use to check. The list is contained in the
3 system. Any county can access it.

4 BY MR. MASLAND:

5 Q I'd ask you to turn your attention to page 2 of the
6 document. The bulk of that, the second full paragraph, talks
7 about the key differences between the requirements of Section
8 303(b) of HAVA and Section 1210 of the Election Code as
9 amended by Act 50. And then it lists all those. I'm not
10 going to ask you to go through them. But in summary, what's
11 the difference between HAVA and Section 1210?

12 A The primary --

13 MS. HEIDELBAUGH: Objection, calling for a legal
14 conclusion.

15 THE COURT: Yeah, I'm afraid I'm going to have to
16 read this myself.

17 MR. MASLAND: That's fine. Well, let me ask a
18 question about that, though, if I may, Your Honor.

19 BY MR. MASLAND:

20 Q The policy set forth in this section, is that still
21 the policy of the department?

22 A Yes.

23 Q And that has been the policy since 2004?

24 A Correct.

25 Q And I'll turn your attention to the first paragraph

1 on page 1 where it talks about the effective date. Why --
2 why did this memo need to come out on April 13th, 2004?

3 A I believe the effective date for that HAVA
4 requirement was the first federal election after January 1st,
5 2004.

6 Q So this would have been -- the April 27th election
7 was the first election that it really mattered?

8 A Yes.

9 Q The interplay between those two laws?

10 A Right.

11 MR. MASLAND: Thank you.

12 THE COURT: Are you finished with that document?

13 MR. MASLAND: Yes, I am.

14 THE COURT: Before we go into another document, I'm
15 going to take a brief recess. It's about 6:10 now. We'll
16 reconvene about 6:20.

17 MR. MASLAND: Thank you.

18 (Whereupon, a RECESS was taken from 6:10 p.m. until
19 6:20 p.m.)

20 THE COURT: Go ahead.

21 BY MR. MASLAND:

22 Q Mr. Marks, I had asked you to turn your attention
23 to Commonwealth/Respondent's Exhibit Number 6. Please
24 identify that for the record.

25 A This is the county election administration

1 preparation checklist. This is a tool that we provided to
2 the counties first prior to the primary. Then we amended it
3 slightly and sent it out again in August of this year. It's
4 also posted on our web site.

5 Q Did you prepare this document?

6 A Yes, I did. The bulk of it, yes.

7 MR. MASLAND: Looking at -- Your Honor, did I give
8 you one that's written on? If I did, I apologize.

9 THE COURT: Other than the marking of the number of
10 the exhibit.

11 MR. MASLAND: Okay. Good.

12 BY MR. MASLAND:

13 Q I'd ask you to turn your attention to the bottom of
14 page 2 and the top of page 3, dealing with voter
15 identification, specifically I guess the top of page 3.

16 A These are bullet points regarding provisional
17 balloting and voter identification. That particular bullet
18 reminds the county to verify that first-time voters who did
19 not submit a proper form of identification with their
20 registration and have applied for an absentee ballot are
21 aware of the requirements of HAVA regarding submission of the
22 form of identification.

23 And then it goes on to explain that it's not
24 applicable to certain groups, including uniform and overseas
25 voters and voters who are covered under the voting

1 accessibility for the elderly.

2 Q Is this document shared with the counties before
3 every election?

4 A It is now, yes. The first time that this
5 particular document was shared with them was prior to the
6 primary. It was sent out again in August. We discussed it
7 at the annual election officials conference, and this will
8 probably be part of the ongoing election tools. As I said,
9 we have posted this on our web page in the election
10 administration tool -- on the election administration tools
11 link, with a number of other helpful information.

12 Q The allegations made that the Commonwealth does not
13 give enough directions to the counties -- I believe Ms.
14 Headley even said that in her affidavit -- can you relate to
15 the Court how many memos you've sent out through the SURE
16 system, how many the Bureau of Commissions, Elections and
17 Legislation have sent out this year alone?

18 A I couldn't give you an exact number. The --
19 probably the SURE office sends out between the various
20 maintenance memos, you know, Social Security Administration,
21 that stuff, party editions, I'd say easily over a hundred.

22 The division of commissions and elections probably
23 sent out between 30 and 40 prior to the primary and will
24 likely send out close to that number, maybe a little lower.
25 To be honest with you, most counties complain that we send

1 them too many memoranda.

2 Q I'd ask you to turn your attention to Commonwealth
3 Exhibits -- I'll just give you all three at the same time --
4 7, 8 and 9 and ask you to, first of all, start with 7. In
5 terms of the department's outreach to prepare voters, could
6 you identify Exhibit Number 7?

7 A Exhibit 7 is a copy of the -- of the first
8 instruction page on the state voter registration mail
9 application.

10 Q There's a circle --

11 A It's a trifold form, and this is the first.

12 Q There's a circled section on there. Did you circle
13 that section when you prepared this document?

14 A I did, yes.

15 Q Why did you circle that section?

16 A Well, I circled this section to identify this
17 particular item, to highlight it.

18 Q Regarding voter identification?

19 A Regarding voter identification, yes.

20 Q If you could look at Exhibit Number 8. Could you
21 identify that, please?

22 A Exhibit Number 8 is a screen shot of the voting by
23 absentee ballot page on our votespa web site. That's the
24 voter services web site.

25 Q And again, you circled that portion of the page?

1 A Correct. Yes.

2 Q And why did you do that?

3 A This -- this particular paragraph that is circled
4 discusses the requirements regarding identification as they
5 relate to absentee ballot.

6 Q Okay. And Commonwealth's Exhibit Number 9, please
7 identify that and describe it.

8 A This is a screen shot, again, of the guide for
9 first-time voters page on the votespa site. And the
10 paragraph that is circled about in the middle of the page
11 discusses, again, voting identification requirements, and it
12 cross-references the absentee balloting provisions.

13 Q Votespa.com, is that the department's web page?

14 A That's -- yes. That's the official voter
15 education, voter services web site.

16 Q I'll ask you to look at Commonwealth/Respondent's
17 Exhibits 10 and 11 now. First of all, 10, can you identify
18 that, please?

19 A This is a press release issued by Secretary Cortes,
20 reminding them about the absentee ballots --

21 Q And when was --

22 A -- the absentee ballot deadline.

23 Q And when was that issued?

24 A This was issued -- this particular one was issued
25 prior to the primary on April 17th of 2008.

1 Q And the second full paragraph, does it address the
2 issue of identification?

3 A Yes, it does. It reminds first-time absentee
4 voters they must include a copy of an approved form of
5 identification if they did not do so with their request for
6 application.

7 Q And Commonwealth's Exhibit Number 11, can you
8 identify that, please?

9 A Exhibit Number 11 appears to be another -- another
10 similar press release that was issued October 24th.

11 Q And at the bottom of page 1, does that address the
12 issue of identification?

13 A Yes, it does.

14 Q In the same way as it was addressed in April?

15 A You're at the bottom of --

16 Q Uh-huh.

17 A "Pennsylvanians who are voting for the first time
18 or are voting for the first time in a precinct are required
19 to provide a copy of one form of identification with their
20 application or absentee ballot." Yes.

21 Q Now, is that interpretation stricter than the
22 department's interpretation on provisional identification?

23 A Is it stricter than the department's interpretation
24 or --

25 Q As far as everyone needing to provide -- let me ask

1 this --

2 A I would say --

3 Q -- going back to the HAVA check.

4 A Yes. In an overabundance of caution, I think the
5 idea here is if you're unsure, provide it; don't take the
6 risk.

7 MR. MASLAND: Okay. Just a couple other questions
8 very quickly, Your Honor.

9 BY MR. MASLAND:

10 Q There have been some questions about the
11 provisional ballots being available in the polling places on
12 election day. Are you familiar with the formula that the
13 department has recommended to the counties?

14 A Yes. I believe that formula was five percent of
15 the registered voters within a particular district.

16 Q Of the turnout or of the registered voters?

17 A Of the registered voters. Actually we did -- we
18 did calculate with an 80 percent turnout. And that includes
19 all registered voters, active and those that are inactive,
20 because they're currently in that rather lengthy national
21 voter registration act process and being placed in an active
22 status and then eventually being cancelled if they do not
23 respond to the notices.

24 Q What is the history of the percentage of
25 provisional ballots used in precincts?

1 A I don't believe we've cracked the one percent on a
2 statewide. It's usually a fraction of one percent --

3 Q So five percent --

4 A -- in terms of how many actually end up being cast.

5 Q I'd ask you to turn your attention back to Exhibit
6 Number 3 for the last question. This was the exhibit dealing
7 with the printing of pollbooks, and the --

8 A That's correct.

9 Q The time at the top of that is 10:00 p.m.
10 yesterday. During the break, were you able to ascertain what
11 the current status of the printing of pollbooks is?

12 A Yes. As of late this afternoon, the status was 50
13 counties had completed pollbook printing. And I believe --
14 I'm sorry. I forget now what the number that -- that was in
15 process, but we're probably right around 60 counties that
16 have either printed or are in the process of printing at this
17 moment.

18 MR. MASLAND: Thank you. No further questions.

19 MS. HEIDELBAUGH: Mr. Marks, that was almost a
20 Saturday Night Live moment.

21 THE WITNESS: Yes. I was cringing as I was
22 imagining you taking a header into that lectern.

23 MS. HEIDELBAUGH: I've done it before.

24 CROSS-EXAMINATION

25 BY MS. HEIDELBAUGH:

1 Q Mr. Marks, it's nice to meet you. I've never
2 spoken to you before. My name is Heather Heidelbaugh.

3 A Hi, Heather.

4 Q You would agree with me that the SURE system as of
5 today has reliability problems?

6 A I guess it would depend on -- on how you define
7 "reliability" and from what perspective. But it is -- it has
8 not yet met my over-demanding standards. As I said before, I
9 want it to be perfect.

10 Q I'm not talking about the system being accessible.
11 I'm talking about reliability.

12 A Reliability? There are intermittent issues
13 regarding reliability, yes.

14 Q Okay. And what are those?

15 A Those would be the same issues that I discussed
16 regarding the blocking that occurred between the 10th and the
17 14th and some of the isolated issues regarding the
18 application 14 errors.

19 I can point out that the help desk receives calls
20 probably on a daily basis; onesy-twosy type calls. Somebody
21 gets a particular error message. They have to log back on,
22 and it goes away. It would be just like any person's
23 experience with a computer or a large database.

24 Q Yeah, I'm not talking about access. I'm not --

25 A It's reliable if that's your question.

1 Q No. I'm talking about reliability.

2 A Yes, it's reliable.

3 Q Now, were you working with the SURE system in 2004?

4 A I was not working directly with the SURE system in
5 2004.

6 Q Okay. I'm going to hand you -- this is a very
7 lengthy report, and I just was able to access it. I don't
8 have a copy, but I'll show the Court a copy.

9 Are you familiar with the Statewide Uniform
10 Registry of Electors In-Process Quality Assurance Review that
11 was done in 2004?

12 A Yes.

13 Q Have you ever read it?

14 A I have read it.

15 Q What does it say?

16 A At that point in time, there were a number of
17 recommendations made regarding the environment and what kind
18 of improvements needed to be made to the environment. I have
19 not read it recently. It was something I read back in April
20 in preparation for taking over this position, so --

21 Q And you recall that reliability of the SURE system
22 was a huge problem as --

23 A It was.

24 Q As talked about in this 2004 report?

25 A Correct. And that's why the department embarked on

1 the hardware hardening project that was completed last year.

2 Q Well, the hardware hardening project didn't have
3 anything to do with the software reliability, did it?

4 A The software reliability, no.

5 Q Right. So really since 2004 when this audit was
6 done, which was required by the state and was performed,
7 there have been no corrections of the software reliability
8 problems as -- as referenced throughout this January 30, 2004
9 report, correct?

10 A I believe there have been corrections to the
11 software. I could not cite them.

12 Q You don't know?

13 A I was not in this position during that entire
14 period, but I'm certain someone in the department could
15 testify to that.

16 Q But you're here today.

17 A It's not the most --

18 Q You're here today.

19 A Yeah. On that particular issue, regarding going
20 back to 2004 and what's happened between now and then, I
21 couldn't fill in all the gaps on that.

22 Q I understand that. Okay. You've only been in the
23 position since April. But -- but you are the witness that
24 the secretary has put up as a witness who has information
25 about this system?

1 A Right.

2 Q And as I understand it, in 2004 when there was an
3 audit performed by the state, that this report indicated that
4 there was huge reliability problems, correct?

5 A I don't know that I would say "huge reliability
6 problems," but there were reliability problems. Yes.

7 Q Okay. And there has been no fix of those
8 reliability problems in the ensuing four years, correct?

9 A I believe there have actually.

10 Q Okay. What evidence do you have?

11 A Again, I am not -- I know that after -- there was a
12 purpose for doing that. That wasn't a useless exercise.
13 Obviously the recommendations that were made, the vast
14 majority of them were acted upon. I'm just not the most
15 qualified person to testify on specific details about what
16 improvements were made to the software.

17 Q I understand --

18 A But enhancements have been made to the system, and
19 enhancements will continue to be made to the system.

20 Q I understand. I'm not criticizing you.

21 A I don't believe you are criticizing me.

22 Q I'm not.

23 A I'm just trying to be clear that I may not be able
24 to tell you which specific enhancements were made between '04
25 and '08.

1 Q I understand that.

2 A But I know enhancements have been made.

3 Q Are you able to provide this Court under oath with
4 any solid information on the -- the changes on the
5 reliability end of the SURE system? Do you have any concrete
6 information?

7 A I do not have concrete information.

8 Q Okay. So in terms of most of your testimony today,
9 as I understood it, your testimony as -- as brought forward
10 in direct has to do with the ability of users to access the
11 SURE system, correct?

12 A Uh-huh. Yes.

13 Q And you were not asked about reliability of the
14 data inside the system, correct?

15 THE COURT: Can you hold on for a second?

16 MS. HEIDELBAUGH: Yes, sir.

17 THE COURT: Can you ask those folks to have their
18 chat outside, please?

19 THE COURT CRIER: From now on, can we please hold
20 the in-and-out of the courtroom and chats outside, please?

21 THE COURT: Could you take a good running start on
22 this again, please?

23 MS. HEIDELBAUGH: Uh-huh.

24 THE COURT: Thank you.

25 BY MS. HEIDELBAUGH:

1 Q It's my understanding, sir, to repeat, that the
2 direct examination dealt principally with access issues: Is
3 the SURE system up, can data be obtained?

4 A That's correct.

5 Q That was your direct testimony, correct?

6 A That is correct.

7 Q All right. And your direct testimony today did not
8 deal with the quality of the data that's in the SURE system,
9 which is the reliability issues, correct?

10 A That's correct, not directly.

11 Q Okay. And that's because you've been in this
12 position a short period of time and you don't know, correct?

13 A I -- I wasn't aware that the complaint dealt with
14 reliability of the data.

15 Q Okay.

16 A I thought we were talking about the accessibility
17 of the system and whether the data in the system was
18 accessible at all times. That's my recollection of the
19 complaint.

20 Q Well, you are aware, sir, that there are -- that
21 there are complaints since 2004 to present about the
22 reliability of the data in the system, correct?

23 A I'm not aware of any recent ones, no. But I am,
24 again, familiar with that document. I have read it.

25 Q Okay. Well, if there were complaints about

1 reliability in 2004 and there have been no changes to
2 reliability that you can testify to, then there hasn't been
3 any improvement on the reliability end, to your knowledge.
4 Is that correct?

5 A To my personal knowledge, no --

6 Q Your personal knowledge.

7 A -- I could not cite what those improvements were.

8 Q Okay. So when a user goes into the SURE system, as
9 I have, there are times in which data can be requested and
10 the data that is received can change per request. The same
11 request can be asked, and different answers can be received.
12 And that's part of the reliability problem, isn't it?

13 A You're talking about the fine-tuning of the
14 querying within the system.

15 Q I'm talking about the data received --

16 A Yes.

17 Q -- by the -- by the requester.

18 A The data received --

19 Q You type in "Robert A. Smith" three times, and no
20 Robert A. Smith will come up. You type in "Robert A. Smith"
21 a fourth time; Robert A. Smith will pop up. Are you aware of
22 that?

23 A I'm not aware of any specific instances recently,
24 no.

25 Q But that has been an historical problem of SURE,

1 hasn't it?

2 A I believe it was at that point in time, yes, 2004.

3 Q So when the election division is checking
4 registrations, the data that they have to check it against
5 has to be accurate, correct?

6 A Correct.

7 Q And if there's reliability problems, then the
8 checking process can be internal -- inherently flawed,
9 correct?

10 A If there's reliability problems with the data, yes.

11 Q Now, your experience, as you testified to on
12 direct, has been lengthy with the State, in the Commonwealth,
13 in the Department of -- Bureau of Elections, correct?

14 A Correct.

15 Q And I didn't understand --

16 A Again, a matter of perception. Six years.

17 Q Oh, I'm sorry.

18 A Depending on how you define "lengthy."

19 Q The point that I'm trying to make sure, sir, is
20 that you are not a computer professional. Is that right?

21 A I'm not a computer professional.

22 Q Okay. You don't have a degree in computers?

23 A No, I do not.

24 Q You're not a software engineer?

25 A No, I'm not.

1 Q You don't write software language?

2 A No.

3 Q You don't do programming?

4 A Nope.

5 Q You're not part of the IT department and never have
6 been?

7 A That is correct.

8 Q You're an administrator?

9 A Correct.

10 Q All right. And your testimony regarding being a
11 legal assistant -- I don't know this information, so I'm just
12 asking. Are you a lawyer?

13 A I am not an attorney, no.

14 Q Okay. Are you a paralegal?

15 A I'm not a paralegal.

16 Q Have you had any legal training?

17 A I have not had any formal legal training.

18 Q So on-the-job legal training?

19 A That's correct.

20 Q Okay. So when you were a legal assistant, that was
21 on-the-job legal training about election laws. Is that
22 right?

23 A That's correct.

24 Q Okay. Now, the other area that I want to talk to
25 you about today is the instructions on the absentee ballot

1 itself and the -- the absentee ballot and the instructions.

2 Nowhere on that absentee ballot does it say to the
3 voter to supply identification if you're a first-time voter,
4 does it?

5 A Not on the absentee ballot, no.

6 Q Okay. And when you said under your direct
7 testimony over -- in an overabundance of caution that you
8 have issued a number of directives to the county, if you
9 really wanted to engage in an overabundance of caution,
10 wouldn't it be rather simple to put on the absentee ballot
11 itself and in the instructions for the absentee ballot you
12 must supply identification if you're a first-time voter?

13 A Yeah, I believe we actually crafted additional,
14 supplemental instructions that the county could use. But the
15 county would ultimately insert a slip in that if some
16 additional document was --

17 Q Why doesn't the Secretary of State -- why doesn't
18 the state put that right on the ballot itself?

19 A The absentee ballots are actually prescribed by
20 law, if I'm not mistaken, the form of it.

21 Q So are you saying there's a law that -- I'll hand
22 you a copy of the absentee ballot.

23 MR. MASLAND: This is the application.

24 MS. HEIDELBAUGH: Application.

25 THE WITNESS: You're talking about the application.

1 Oh.

2 BY MS. HEIDELBAUGH:

3 Q The application --

4 A Oh, the application would be prescribed by the
5 secretary, yes. I'm sorry. You were referring to the
6 ballot.

7 Q I apologize.

8 A That's okay.

9 Q Let's take both. Let's do both, one at a time.
10 That's the -- I've handed you the application.

11 A Yes.

12 Q Does anywhere on there say a first-time absentee
13 voter must supply identification?

14 A Not on this -- on this application.

15 Q And why not?

16 A Why it doesn't -- to be honest, after this
17 experience, I'm sure we will discuss adding a -- another page
18 to the application. This is really a copy of the card form,
19 which is considerably smaller than this. That is primarily
20 used by the counties. The other side has mailing information
21 on it.

22 Q So you could do it?

23 A We could squeeze it on there. I'm sure we could.

24 Q So that's something you're -- you would be willing
25 to do?

1 A I'd be willing to do it, yes.

2 Q Okay. Now, on the actual ballot, the absentee
3 ballot, does it say, first-time voter, you have to supply
4 identification?

5 A Not on the ballot, no.

6 Q Why not?

7 A Well, the ballot -- as I said, the ballot is
8 essentially prescribed by law. It has to be primarily in the
9 form of a paper ballot or a ballot card used with an
10 electronic voting system. And only certain information can
11 be provided on there. I'm not saying -- as you pointed out,
12 I'm not an attorney. I'm not saying that it couldn't be
13 added, but typically we leave it at what the law requires.

14 Q All right. So the law clearly requires ID for
15 first-time absentee ballot voters?

16 A If you're referring to the federal law, yes.

17 Q Yes. Okay. And --

18 A If you register by mail.

19 Q Right. And so you know of no law that prohibits
20 that sort of instruction to the first-time absentee ballot
21 voter?

22 A I'm -- I'm not aware of it, no.

23 Q Okay. And that would be something that your office
24 would certainly be willing to consider to change?

25 A If -- yeah. If we can put in a fourth or fifth

1 location to make it easier, absolutely.

2 Q Now, you're here to testify on behalf of the
3 defendant, the Secretary of the Commonwealth. Do I
4 understand it correctly that the Secretary of the
5 Commonwealth does not want fraud in the process?

6 A That is correct. Yes.

7 Q Okay. And so I assume that the secretary is
8 concerned about the fraudulent voter registration problem
9 with ACORN. Is that right?

10 A The secretary's concerned about any allegations of
11 fraud --

12 Q Okay. And what --

13 A -- or voter disenfranchisement.

14 Q Well, there's -- you have no evidence of voter
15 disenfranchisement, do you?

16 A I don't, no.

17 Q No. Okay.

18 A I'm just saying, this is all taken very seriously.

19 Q And what is the secretary doing in regard to the
20 ACORN -- ACORN fraudulent voter registration problem? It is
21 widely reported in the press, the FBI investigation and the
22 four pending prosecutions.

23 A What is the secretary doing?

24 Q Yes.

25 A Within his authority, he's essentially instructing

1 the county boards of elections or -- I don't know that he's
2 personally doing it, but we've told counties that they can
3 turn any of that evidence over to their district attorney's
4 office --

5 Q What I'd like to know --

6 A -- which has the authority --

7 Q Yeah, I'd like to know --

8 A -- to prosecute --

9 Q -- since you've worked --

10 MR. MASLAND: If she could let him finish answering
11 the question, that would help.

12 THE COURT: Yes.

13 MS. HEIDELBAUGH: I apologize.

14 BY MS. HEIDELBAUGH:

15 Q Since you work in the department and you work at
16 the -- do you work for the secretary?

17 A I do, yes.

18 Q What is he -- what has he personally done in regard
19 to this ACORN issue?

20 A I couldn't give you a list of what he's -- what
21 he's personally done. But I --

22 Q Can you state one single thing?

23 A No, I couldn't state a single thing off the top of
24 my head.

25 Q You admit obviously per the exhibit that you have

1 provided that the SURE system was down on a number of
2 occasions?

3 A I wouldn't say it was down. But it was certainly
4 running slow, and many users were -- were unable to access it
5 at certain times of the day. Yes.

6 Q Do you know who Robert Lee is?

7 A I do, yes.

8 Q Are you aware that he called the SURE system a
9 system designed for Mayberry, not Philadelphia?

10 A That sounds like Bobby. Yes.

11 Q And he's one of the people that you were asked to
12 review his affidavit that said there was nothing wrong with
13 the system?

14 A I was asked to review his affidavit actually --

15 MR. MASLAND: He did not --

16 THE WITNESS: -- regarding the pollbook. I don't
17 think I read his affidavit, if I recall correctly.

18 BY MS. HEIDELBAUGH:

19 Q You did not read the affidavit of Bob Lee?

20 A No, I -- my recollection is that I was presented
21 with a copy of the pollbook from Philadelphia that would have
22 been included with the affidavit, if you're referencing my
23 testimony.

24 Q I was, sir.

25 A I could be wrong. It's been a long day, so...

1 Q I understand, sir. And there certainly is a
2 recognition by the secretary's office and you that there
3 needs to be a software update for the SURE system since it
4 was originally started in 2002. Is that right?

5 A Yes. I believe that it's been our position that we
6 will continue to enhance the system.

7 Q And it was -- it was going to be implemented in
8 September of this year, but there were so many complaints
9 that you decided not to -- not to go live with it, correct?

10 A Yes. That was the rehosting, which basically would
11 have changed the basic platform that it's built on from --

12 Q Why couldn't that --

13 A -- Access to SQL.

14 Q Why couldn't that have been done six months earlier
15 so it didn't interfere with this process?

16 A I'll be honest, I was not in the decision-making
17 process regarding the timing. I would imagine there were
18 probably a number of issues, budget constraints. You know,
19 this is state government, so it's complex, as I'm sure you
20 can imagine.

21 Q Would you admit to me that the placement of
22 thousands of duplicate registrations into the system has
23 stressed the SURE system?

24 A I think -- yes. Any large volume, unprecedented --
25 unprecedented number of applications would stress the system.

1 It would stress any system. And we've -- we've worked
2 through it, and I think the system has performed well
3 overall.

4 Q Now, you talked about provisional ballots. And it
5 was your -- was it your determination -- did you have the
6 final say that the provisional ballots that will be supplied
7 at each polling place are going to be five percent of the
8 current existing registered voters?

9 A I did not have the final say.

10 Q Who was that?

11 A I believe -- and I don't even know that the
12 department has the final say. That's a recommendation.
13 There's no specific statutory formula. But that is a
14 recommendation made by the department -- ultimately I guess
15 it would be the Secretary of the Commonwealth -- regarding
16 what we believe would be proper preparation for the election.

17 Q Because as I understood the process -- and please
18 tell me if I'm wrong. As I understood the process, there was
19 a recommendation that's issued by the secretary to each
20 individual county. And I thought that the way that it worked
21 was that each individual election division director, he or
22 she decides how many provisional ballots. I did not think it
23 was a directive that must be fired by the -- followed by the
24 secretary. Is that your understanding?

25 A Yes. If you're -- if you're talking about who has

1 the authority to make the decision as to how many provisional
2 ballots are distributed, then yes, it would be the county
3 board of elections that would have that authority.

4 Q Okay. And so when you say there's going to be
5 enough provisional ballots and that the recommendation was
6 five percent, that's only a guideline?

7 A That's correct.

8 Q Every individual county --

9 A That is our recommendation.

10 Q As I understand it, every individual county
11 election division director decides how many provisional
12 ballots shall be at each precinct, correct?

13 A Correct. Yes.

14 Q In fact, are you aware in the year 2004 in
15 Allegheny County, that the judge of elections, Mark -- I
16 mean, the elections division director, Mark Wolosik, only
17 provided 13 provisional ballots at each of 1,347 precincts,
18 which was clearly not enough, and there were riots in the
19 polling place because there weren't enough provisional
20 ballots? Were you aware of that?

21 A I wasn't aware of the riot part. That --

22 Q Were you aware --

23 A -- might be a little more colorful. And I was
24 aware that there was a shortage of provisional ballots --

25 Q Were you aware than an election --

1 THE COURT: Just --

2 MS. HEIDELBAUGH: I'm sorry. I'm sorry.

3 THE COURT: Take your time.

4 MS. HEIDELBAUGH: I'm sorry. You're right. You're
5 right. I apologize many times. I'm sorry.

6 THE COURT: Let him finish what he's saying.

7 MS. HEIDELBAUGH: I'm sorry.

8 THE WITNESS: But ultimately this -- these are kind
9 of why these recommendations are made. We base this on
10 experience. And I'd be willing to bet that Allegheny -- I
11 have not seen the survey conducted by the elections division
12 yet, but I'd be willing to bet Allegheny is providing a heck
13 of a lot more provisional ballots now than they did in 2004.

14 BY MS. HEIDELBAUGH:

15 Q And are you aware that in Allegheny County, in
16 Oakland, during the 2004 election, because of the failure to
17 have enough -- not have enough provisional ballots, that the
18 judge of elections allowed voters to vote on the machines;
19 the judge of election was ultimately put into custody; the
20 election machine was actually impounded; and there was an
21 order of court directing that the voting at that precinct
22 stop because of the complete chaos that occurred in those --
23 in that -- in those precincts in Oakland?

24 A I'm -- I do -- I can't remember in great detail,
25 but yes, I remember there were issues regarding provisional

1 BY MS. SIMPSON:

2 Q Mr. Marks, the information on the web site and as
3 provided to the counties for the upcoming election clearly
4 require that for first-time voters voting by absentee ballot,
5 unless they fall into one of the exemptions --

6 A Correct.

7 Q -- are required to provide identification. Is that
8 correct?

9 A That's correct.

10 Q So with their ballot, they must enclose a photocopy
11 of some sort of photo identification. Is that correct?

12 A We actually prefer -- if you look at the
13 instructions on our web site and on the form, I think we
14 prefer that they provide it at the front end of the process
15 with the application. It's easier. There's no chance of
16 confusing or getting confused and putting it in with the
17 secrecy envelope, which would actually invalidate the ballot.
18 But yes, the idea is that -- to notify the voter that they
19 would be required to provide identification if they're voting
20 for the first time.

21 Q Okay. And with regard to the duplicate voter
22 registration applications, if -- if there were a -- an
23 18-year old who decided or was approached or decided to mail
24 in a voter registration application and filled out the
25 application fully and completely but then days later passed

1 their driving exam and filled out this same application at
2 PennDOT, that would be a duplicate application, right?

3 A Yes.

4 Q And there's no -- there's no fraud or problem. I
5 mean, that's what the system is designed to check, that --
6 that Mr. Teenager, who is a first-time voter, registered by
7 mail and also coincidentally registered at PennDOT, correct?

8 A Yes.

9 Q I mean, that's --

10 A Yeah, if it were inadvertently done. I guess it
11 would really go to the intent of the individual. You do have
12 the option of not registering at PennDOT.

13 Q Right. But there are many innocent reasons why
14 people fill out voter registration forms when they are
15 already are a registered voter. Is that correct?

16 A Yeah. There's a variety of reasons, including
17 forgetfulness, which I think was cited earlier.

18 Q Forgetfulness, lack of understanding of what the
19 regulations are, failure to vote for a long time --

20 A Right.

21 Q -- changes of name and the like?

22 A Right.

23 Q With regard to candidates and political parties,
24 does the SURE system provide information to those individuals
25 who request it lists of voter registrations?

1 A Yes. The department provides a full voter export,
2 which is essentially a statewide list of all registered
3 voters within the Commonwealth. And we also just recently
4 within the past month have decided to ease the burden on the
5 counties a little bit and provide a list of absentee voters,
6 those who requested an absentee ballot on a statewide level
7 as opposed to making the parties go to each of the 67
8 counties.

9 Q So that type -- that information about who is
10 registered to vote is readily available. Is that correct?

11 A It is, yes.

12 Q I believe you testified that the statute compels
13 the secretary to forward voter registration applications that
14 he receives to the various counties. Is that correct?

15 A That's correct.

16 Q And what if those voter registration materials --
17 that the form is not fully completed? Do they still forward
18 that to the county?

19 A Yes. That's correct.

20 Q And are you aware of any law or regulation in
21 Pennsylvania that requires any third-party registration
22 agency or system or campaign to similarly forward
23 applications, even if they are not complete or contain
24 incorrect information to --

25 A I'm not aware of any law that compels a third party

1 to forward registrations on. I know there are laws that
2 prohibit individuals from preventing someone from registering
3 to vote or throwing hurdles in their way. But I'm not aware
4 of a specific law, other than the one that relates to the
5 Secretary of Commonwealth.

6 Q And that law requires the secretary to forward
7 those applications no matter what they look like, no matter
8 what information they --

9 A Right. It does not require any review necessarily
10 by the Secretary of the Commonwealth or any of his designees.

11 Q Okay. I know you indicated that you had not read
12 Mr. Lee's declaration. But do you agree with his statement
13 that Philadelphia's ability to conduct a fair election is not
14 jeopardized, as the petitioners claim; in conjunction with
15 the Department of State, Philadelphia County is ready and
16 able to administer a fair and honest election this year?

17 A I agree that they're ready and able, yes.

18 Q And do you agree that every county in this
19 Commonwealth is ready to --

20 A I'm --

21 Q -- offer -- or provide a full and fair election
22 this year?

23 A I believe that's the case, yes.

24 MS. SIMPSON: Thank you. I have no further
25 questions.

1 THE COURT: Any redirect?

2 MR. MASLAND: No questions, Your Honor.

3 THE COURT: Are we finished with this witness?

4 MS. SIMPSON: Yes.

5 THE COURT: You may step down, and you're free to
6 leave if you wish.

7 I'm not sure what documents you have up there.

8 THE WITNESS: These are actually copies of
9 exhibits.

10 THE COURT REPORTER: You can leave them here.
11 Thank you.

12 THE WITNESS: Thank you.

13 MR. MASLAND: Your Honor, at this time, I have no
14 additional documents. I'd move for the admission of
15 Commonwealth/Respondent's 1 through 20.

16 THE COURT: The only question I had is the copies
17 that I have don't seem to be marked properly. Do you have
18 them tagged?

19 THE COURT REPORTER: Yes. I have the originals.
20 They're stickered and everything.

21 THE COURT: All right. So we have Commonwealth's
22 Exhibits 1 through 21? Let me just check here.

23 MR. MASLAND: One through 20.

24 THE COURT: Any objection to Exhibits 1 through 20?

25 MS. HEIDELBAUGH: Just for the record, since my

1 affidavits were objected to by counsel for ACORN, I just want
2 to place an objection on the record, the same objection.

3 THE COURT: All right. They're going to be
4 received over your hearsay objection. So those are
5 affidavits -- those are Exhibits 12 through 20. They're
6 received over your objection. And Exhibits 1 through 11 are
7 received without objection.

8 (Commonwealth/Respondent's Exhibits Nos. 1 through
9 20 were admitted into evidence.)

10 MR. MASLAND: I have two brief witnesses that --

11 THE COURT: Just give me a second here. I need to
12 catch up with all my rulings.

13 Okay. You have some other witnesses?

14 MR. MASLAND: Yes, Rebecca Halton.

15 MS. HEIDELBAUGH: Offer of proof?

16 MR. MASLAND: Rebecca is our assistant press
17 secretary, and she will speak to the issue raised by
18 plaintiff as to what the secretary has been doing or speaking
19 out or saying about the issue of voter fraud.

20 MS. HEIDELBAUGH: I'm just going to object. That's
21 a collateral issue. This witness wasn't disclosed when we
22 all disclosed who our witnesses are. I think this is an
23 attempt to minimize the PR implications from the previous
24 testimony of --

25 THE COURT: You raised it.

1 MS. HEIDELBAUGH: Yes, I did.

2 THE COURT: You raised it.

3 MS. HEIDELBAUGH: And I got --

4 THE COURT: So I'm going to decline your objection
5 based on relevance.

6 I didn't catch the last name.

7 MR. MASLAND: Halton, H-A-L-T-O-N.

8 (Whereupon, Rebecca Halton was sworn.)

9 THE WITNESS: So I'm in the hot seat now.

10 THE COURT: Let me ask my court officer just to
11 make sure that we have all the used water cups out of there.
12 Give these witnesses a clean --

13 MR. MASLAND: Hopefully she won't be parched by the
14 time we're done.

15 THE WITNESS: Or dead.

16 DIRECT EXAMINATION

17 BY MS. MASLAND:

18 Q Ms. Halton, could you state your title and how long
19 you've been with the department?

20 A Yes. I am the deputy press secretary for the
21 Pennsylvania Department of State. I have been in this
22 position since March 17th, 2008, and I've been with the
23 Commonwealth since January of 2006.

24 Q Where were you before you came to the department?

25 A Prior to the Department of State, I was in the

1 Governor's Office of Communications. And prior to that, I
2 was in the Office of Communications at the Department of
3 Labor and Industry.

4 Q Okay. Did you go to college?

5 A Yes.

6 Q Where and when you did graduate?

7 A I am a 2005 graduate of Messiah College with a
8 bachelor's in English.

9 Q Thank you. Now, are you familiar with the recent
10 allegations regarding voter fraud involving ACORN and
11 potentially others?

12 A Yes, I am.

13 Q Are you familiar with pronouncements or actions
14 that the secretary has taken with respect to those
15 allegations?

16 A Yes, I am.

17 Q Could you relate them to the Court, please?

18 MS. HEIDELBAUGH: I'm going to object on the basis
19 of hearsay. This --

20 MR. MASLAND: Let --

21 THE WITNESS: Am I allowed to say something?

22 THE COURT: No. Hang on.

23 The hearsay objection is overruled. Go ahead.

24 BY MR. MASLAND:

25 Q Have you prepared any press releases on this issue?

1 A Yes. I've personally drafted press releases. I've
2 also assisted with drafting and editing testimony given by
3 the secretary and other executive staff members of his
4 department, including Deputy Secretary for Administration
5 Harry Van Sickle, under whose deputation falls the Bureau of
6 Commissions, Elections and Legislations.

7 I've also helped prepare marketing materials and
8 other public means of informing voters and different advocacy
9 and election-related organizations. I've also personally
10 been in the room as Secretary Cortes directly and personally
11 spoke with members of the media about this issue. And I
12 think that about covers it.

13 Q What has the secretary advised people to do?

14 A He has advised --

15 MS. HEIDELBAUGH: Objection, Your Honor, hearsay
16 offered for the truth of the matter asserted.

17 THE COURT: I'm going to receive it for the limited
18 purpose of establishing the course of conduct of the
19 Secretary of Commonwealth, who's a party to this action.

20 THE WITNESS: Well, as a spokesperson for the
21 department and for Secretary Cortes, I can say that he has
22 encouraged every individual, organization, group, however
23 you'd like to put it, anybody who comes into contact with the
24 suspicion of or a substantiated claim of voter fraud of any
25 kind is to report it directly to the appropriate law

1 enforcement agency.

2 Within that, Secretary -- and the department
3 acknowledges that the department itself is not one of those
4 law enforcement agencies; and, therefore, we encourage people
5 to report it to directly to a district attorney, to the U.S.
6 Attorney if necessary, the Pennsylvania Attorney General.
7 And this is all information that we've made available to the
8 public, and the secretary is directly quoted in press
9 releases and other informational materials and interviews.

10 MR. MASLAND: Thank you. No further questions.

11 THE COURT: Hang on. Hang on.

12 THE WITNESS: Sorry.

13 THE COURT: The other lawyers get a chance to ask
14 questions.

15 THE WITNESS: I'm new to this.

16 CROSS-EXAMINATION

17 BY MS. HEIDELBAUGH:

18 Q Your job is to have your boss get in the press, in
19 the light most favorable; and that's -- that's a good day for
20 you, right?

21 A No. That's actually not part of my job
22 description, believe it or not.

23 Q Okay. And did you set up some interviews with
24 Mr. Masland out in the hallway today?

25 A Yes, I did, because my job is to help facilitate

1 opportunities for the department to share its information,
2 whether that's through an interview or a media advisory or a
3 press release. That's my job.

4 Q And what has the secretary said, since my hearsay
5 objection was overruled, specifically about ACORN?

6 A Well, that I can only speak to from a press report
7 that I'm aware of.

8 Q I'm not asking you about that. I want to know --

9 A What he has specifically said about --

10 Q I want to know, since you're on the stand, what has
11 the secretary specifically said about ACORN?

12 A I can't attribute any specific statements to -- or
13 -- to ACORN as an organization that --

14 MS. HEIDELBAUGH: Thank you. No further questions.

15 THE WITNESS: -- I can think of.

16 THE COURT: Ms. Simpson?

17 MS. SIMPSON: Nothing. Thank you.

18 THE WITNESS: Okay.

19 THE COURT: Any redirect?

20 MR. MASLAND: No, Your Honor.

21 THE COURT: You're free to step down.

22 THE WITNESS: Thank you.

23 MR. MASLAND: I have one final witness as a result
24 of cross-examination of Mr. Marks. I'd like to call the
25 former director of the SURE system, Timothy Ruppert.

1 (Whereupon, Timothy Ruppert was sworn.)
2 MS. HEIDELBAUGH: Offer of proof?
3 THE COURT: What's the last name again?
4 MR. MASLAND: Ruppert, R-U-P-P-E-R-T.
5 Mr. Ruppert will be able to address the specific issue
6 about reliability and software changes raised by Ms.
7 Heidelbaugh as a result of the 2004 quality assurance review.
8 THE COURT: All right. Go ahead.
9 DIRECT EXAMINATION
10 BY MR. MASLAND:
11 Q Mr. Ruppert, what is your current title?
12 A I'm the director of MIS at the Department of State.
13 Q And how long have you been that director?
14 A Since November of 2007.
15 Q Before that, what was your position?
16 A I was the project manager for the SURE office.
17 Q How long did you hold that position?
18 A From February 2004.
19 THE COURT: Okay. Just hang on a second. Can
20 everybody hear him?
21 MS. HEIDELBAUGH: I cannot.
22 THE COURT: Counsel? I'm having difficulty hearing
23 him, too.
24 Mr. Ruppert, Mr. Ruppert, take it easy. Slow down.
25 Speak up so that we can hear what you have to say.

1 THE WITNESS: Okay.

2 THE COURT: Hopefully it's going to be a short
3 session here.

4 MR. MASLAND: And let me back up because I know
5 this is the concern of petitioners.

6 BY MR. MASLAND:

7 Q Relate to the Court briefly your educational
8 experience.

9 A I have a bachelor of science degree in computer
10 science. I've basically been in computer science all of my
11 career. Previously coming to the Commonwealth, I was with
12 Microsoft for about three years, working at the Office of
13 Administration.

14 Q And you came to the Commonwealth from Microsoft?

15 A Yes, that's correct.

16 Q Where was your college degree?

17 A Shippensburg University.

18 Q Are you familiar with the 2004 quality assurance
19 review that was conducted for the department?

20 A Yes.

21 Q Are you familiar with the recommendations of that
22 review?

23 A Generally, yes.

24 Q Has the department taken any action -- did you, as
25 the project manager for SURE, take any action as a result of

1 that quality assurance review?

2 A Yes. We've done many updates to the software as
3 well as hardware to the environment over the last four years
4 in regards to the info center report. I believe there's only
5 one outstanding item that has not been addressed.

6 Q What is that?

7 A That's the one item that they had noted was
8 using -- changing the software from Microsoft Access to some
9 newer technology. We're in the processing of doing that now.

10 Q Okay. Based on your experience with the SURE
11 system, is it reliable?

12 A Yes.

13 MR. MASLAND: Thank you. No further questions.

14 MS. HEIDELBAUGH: I object. I'm going to object.

15 MR. MASLAND: If I didn't ask it, she would.

16 THE COURT: Hang on. Hang on. That was in the
17 nature of an opinion. Do you want to voir dire him on
18 qualifications before I accept that opinion?

19 MS. HEIDELBAUGH: I object. There was no
20 foundational -- there was no foundation laid to -- to make
21 him an expert. I would be able to voir dire him after the
22 foundation was laid.

23 THE COURT: I felt that there was a sufficient
24 foundation made, but I didn't know that we were going to be
25 getting into an opinion.

1 Do you want to voir dire him on his qualifications?

2 MS. HEIDELBAUGH: I'd rather just cross and hold --

3 reserve my objection, and then perhaps the Court can rule on

4 whether it's admissible.

5 THE COURT: All right. Well, at this point, I'm

6 overruling your objection. I felt he was qualified to

7 express an opinion.

8 MS. HEIDELBAUGH: All right.

9 THE COURT: Otherwise --

10 MS. HEIDELBAUGH: I can voir dire.

11 THE COURT: Otherwise, I'll give you voir dire on

12 his qualifications.

13 MS. HEIDELBAUGH: I'll voir dire.

14 CROSS-EXAMINATION (As to Qualifications)

15 BY MS. HEIDELBAUGH:

16 Q Hello.

17 A Hello.

18 Q Your first name, please?

19 A Timothy.

20 Q Ruppert?

21 A Yes.

22 Q When did you get called today to testify?

23 A About 20 minutes ago.

24 Q And who called you?

25 A Larry Boyle.

1 Q Who?

2 A Larry Boyle.

3 THE COURT: Qualifications, please. We'll get into
4 the rest of your examination later.

5 MS. HEIDELBAUGH: I understand. I'm trying to get
6 a context here.

7 THE COURT: Qualifications is the context.

8 BY MS. HEIDELBAUGH:

9 Q You graduated from college. Is that right?

10 A Yes.

11 Q And you have a degree in what?

12 A Computer science information technology.

13 Q What year did you graduate?

14 A December 1990.

15 Q Where did you work after that?

16 A A medical software company. It was called Keystone
17 Medical Systems.

18 Q Now, computer science information technology, are
19 -- are you a computer software engineer?

20 A You could say that.

21 Q Do you have an engineering degree?

22 A No, I do not.

23 Q Do you -- do you have a degree in computer software
24 design?

25 A No, I do not.

1 Q Okay. So you have -- you went to Shippensburg,
2 right?

3 A That's correct.

4 Q And your degree is out of which college?

5 A Bachelor of science. It's a science college.

6 Q Science. Have you ever wrote -- have you ever
7 written software?

8 A Yes.

9 Q What?

10 A Various conversion programs for the medical
11 software company that I worked for.

12 Q Is that software program similar to this -- the
13 SURE database?

14 A No, it is not.

15 Q Have you ever written software that's similar to
16 the SURE database?

17 A No, I would say I have not.

18 Q Have you ever seen the code for the SURE -- you
19 know, the code language for the SURE database?

20 A Code from the perspective of the software, no; from
21 the database, yes.

22 Q Explain that.

23 A There's two pieces to the way the SURE software
24 works. There's a front end, which is basically the access,
25 user interface. It also contains the business -- some of the

1 business logic.

2 And then the database contains where the data is
3 and also contains what we call stored procedures that allow
4 updates to be completed, if we're doing retrieval. Again,
5 another layer of business logic is built into the database.

6 Q And which code are you familiar with?

7 A More of the SQL database, the back end.

8 Q The back end?

9 A Yes, that's the database --

10 Q The data stored product?

11 A Yes.

12 Q And what document gave you access to that code?

13 A I'm sorry. I don't understand your question.

14 Q Is that confidential? Isn't the code confidential?

15 A I'm not sure I understand your question.

16 Q You actually have written code that you can see and
17 that you can manipulate?

18 A From the SURE's perspective, I've not written code
19 for it. I've seen the code. Just the database.

20 Q And you have seen the code?

21 A For the database only.

22 Q And it's not confidential?

23 A Not at this point. It is not.

24 Q Okay. And what is the document that gave you the
25 right to see that?

1 A We purchased the software from Accenture I'm going
2 to say a year ago. We had also created an enterprise license
3 that gave us access to be able to view the code in the
4 database.

5 Q Have you rewritten --

6 A Excuse me. Let me rephrase. View the database
7 itself. Prior to that enterprise license agreement, we were
8 not able to even see the database.

9 Q Right. And have you been able to change any of the
10 code?

11 A Not personally.

12 Q Okay. And has any of the work that you've done
13 been on reliability?

14 A From the -- from the office's perspective? I need
15 you to ask the question a little differently. When you're
16 asking me have I changed the code, I'm assuming you're asking
17 me personally.

18 Q Oh, yeah.

19 A As opposed to the department.

20 Q No, you personally.

21 A Okay. I have not made any changes to the code in
22 any way, shape or form.

23 Q So you have no knowledge about the changes to the
24 code, correct?

25 A Just from a requirements perspective, I do.

1 Q Okay. You haven't done it yourself?

2 A Correct.

3 Q You don't know what the changes have been, correct?

4 A Correct.

5 Q And you don't know how it affected reliability?

6 A I just know what the end result is based on our
7 requirements.

8 Q Sir, you don't know how it affected reliability?

9 A From the perspective of the code, I can't answer
10 that.

11 MS. HEIDELBAUGH: Okay. I don't think he is
12 qualified. The --

13 THE COURT: Overruled.

14 MS. HEIDELBAUGH: Okay.

15 THE COURT: Do you have questions on regular
16 cross-examination?

17 MS. HEIDELBAUGH: Is he -- he's finished?

18 THE COURT: I gather; he sat down.

19 CROSS-EXAMINATION

20 BY MS. HEIDELBAUGH:

21 Q Do you have any complaints on reliability with the
22 SURE system?

23 A We have concerns about issues with the SURE system
24 from a functionality perspective. Yes.

25 Q On reliability --

1 A Reliability, not that I'm aware of.

2 Q Okay. Well, what are the concerns?

3 A There's a -- there's a variety of different user
4 interfaces that they'd like to have done. From a reporting
5 standpoint, there's been a variety of requests that they ask
6 for; give me some flexibility, can I do this with a report,
7 can I get this information. Some folks have asked for
8 different types of reports to be created that we don't have
9 available today. Screen colors, things of that nature.

10 Q Well, I'm really -- my concerns are not about
11 access with your -- your testimony -- my concern is not about
12 screen color. My concern is about reliability. And I asked
13 you if there was any complaints with reliability, and you
14 said there are some concerns with -- what was the word you
15 used?

16 A Just basically the functionality of the software,
17 how it appears to the user.

18 Q So under oath, you know of no complaints with
19 reliability of the SURE system?

20 A That's correct.

21 MS. HEIDELBAUGH: No further questions.

22 MS. SIMPSON: No.

23 MR. MASLAND: Just one clarification.

24 REDIRECT EXAMINATION

25 BY MR. MASLAND:

1 Q I believe it was obvious, but when you were saying
2 they ask for this or they ask for that, are you referring to
3 the county users?

4 A Yes, I am.

5 MR. MASLAND: Thank you. That's all.

6 THE COURT: Anything else for this witness?

7 You may step down. You're free to leave if you
8 wish.

9 THE WITNESS: Thank you.

10 THE COURT: Anything else from the Commonwealth?

11 MR. MASLAND: We have nothing further, Your Honor.
12 I believe our exhibits have been admitted, and we would rest.

13 THE COURT: Any rebuttal?

14 MS. HEIDELBAUGH: No.

15 THE COURT: Are we closing the record here?

16 MS. HEIDELBAUGH: Yes.

17 THE COURT: Anything else to come into the record?

18 MS. HEIDELBAUGH: The petitioner has closed the
19 record.

20 THE COURT: Anything else?

21 MS. SIMPSON: No.

22 THE COURT: All right. The record is closed.

23 How much time do you want for argument?

24 MS. HEIDELBAUGH: Ten minutes.

25 THE COURT: Can you live with ten minutes each or

1 less?

2 MR. MASLAND: I can live with less.

3 MS. SIMPSON: I can live with less, much less.

4 THE COURT: Okay. Let her fly.

5 MS. HEIDELBAUGH: May it please the Court. Since I
6 was prevented from giving my opening, I will give -- I will
7 give my closing. Thank you very much, Your Honor.

8 Two hundred and twenty-two years ago, Benjamin
9 Franklin stated upon signing the Declaration of Independence
10 from England, when asked, well, doctor, what have we got, a
11 republic or a monarchy, he said, a republic if you can keep
12 it.

13 This great experiment that we live in, the
14 Commonwealth of Pennsylvania, that is the birthplace of
15 democracy, requires that the voting process be clean and free
16 from fraud.

17 As the founders of this nation stated when they
18 signed the Declaration, publicly declaring their fealty to
19 democracy, they incorporated into the document their
20 knowledge of the risk they took. And they said in the
21 Declaration of Independence, we mutually pledge to each other
22 our lives, our fortune and our sacred honor. And at that
23 time, they did pledge their lives. And they pledged their
24 lives so that we could have a democracy. And the -- and the
25 cornerstone or the keystone of democracy is the right to vote

1 and a free, fair and open election.

2 My clients presented this case to this Court and
3 beg this Court's intervention to keep this experiment of
4 Democracy in this great Commonwealth alive by drawing
5 attention to and pleading with this Court for relief from
6 oppression. And the oppression of which I speak, Your Honor,
7 is the oppression of voter registration fraud oppression.

8 When voter registration fraud occurs, for which we
9 have a bounty of evidence we have presented, the democracy is
10 oppressed. The oppression occurs when fraudulent
11 registrations flood county election divisions and the
12 election workers are oppressed with too many registrations to
13 process.

14 The SURE system becomes oppressed because it can't
15 handle the crush of fraudulent and duplicate registrations.
16 The voters become oppressed because valid registrations can't
17 be processed. The candidates become oppressed because the
18 valid voter can't vote because he isn't properly registered.

19 The validly registered voter is oppressed because
20 his valid vote is diluted by an invalid vote. The candidate
21 is oppressed because invalid registrations are on the books,
22 allowing for the possibility of absentee ballot fraud,
23 multi-county voting and manipulation of the system with
24 multiple registrations.

25 ACORN is an organization with a proven record of

1 voter fraud oppression. Whenever they are caught red-handed
2 by prosecutorial authorities, they have two well-planned and
3 well-documented responses.

4 First, they throw the particular employee under the
5 bus and feign organizational knowledge. Secondly, they
6 attempt to divert the focus on their -- of their oppression
7 by adopting a slogan without meaning, voter suppression.

8 My clients, who are voters, a candidate and a
9 political organization representing millions of voters, like
10 the founders, realized that standing up for democracy has its
11 risks. Luckily for them they do not risk their lives, but
12 they risk being called voter suppressors by actual fraud
13 oppressors. We refuse to take the bait, Your Honor. We
14 stand before the Court with the confidence of one who has
15 right on their side.

16 The Secretary of the Commonwealth, Pedro Cortes,
17 has expressed indignation in regard to the issues presented
18 in the complaints of the voters, the candidate and the party
19 whom I represent. Yet according to Mr. Marks and according
20 to his own press secretary, he has not uttered -- uttered a
21 single utterance in indignation against the oppressor of the
22 system.

23 Your Honor, we respectfully ask that the Court take
24 action and do so with haste. As to the secretary, we beg
25 that the system -- ensure that the SURE system is up

1 constantly between now and election time so that all the
2 registrations in the remainder of the counties can check the
3 date -- check the registrants.

4 We request that the secretary require that all
5 election officials in all counties require that first-time
6 voters by absentee ballot require identification.

7 And we also request that the secretary direct that
8 each election division have sufficient numbers of provisional
9 ballots because of the fraud of ACORN so that all people are
10 allowed to vote but fraudulent registrations and fraudulent
11 voting does not take place.

12 As to the ACORN defendants, Your Honor, we ask that
13 the Court enjoin the ACORN defendants from all attempts to
14 encourage voters, if they have a for voter contact provision,
15 who have submitted false or duplicate registrations from
16 voting and attempting to vote in the 2008 general election.

17 We ask that the Court enjoin the ACORN defendants
18 and require them to provide to us, the plaintiffs, the lists
19 of registrations that they have obtained in Pennsylvania and
20 segregate them as to their own lists that indicate that those
21 registrations are fraudulent.

22 We ask that ACORN fund public service announcements
23 immediately to educate all first-time voters about the
24 requirements to present identification and not to vote
25 fraudulently.

1 We ask ACORN to comply with the King County
2 settlement and compliance agreement. An item that I did not
3 include in my papers, but which I orally amend, I ask that
4 this Court order that ACORN not destroy any evidence as this
5 matter may proceed.

6 Thank you, Your Honor.

7 MS. SIMPSON: Your Honor, the plaintiffs have
8 submitted Exhibit 9 and for the convenience of the Court and
9 your law clerk have helpfully provided some citations to the
10 record. I would also like to recommend to Your Honor and
11 your law clerk that you take a look at the September 17th
12 transcript, pages 32 through 52; the September 24th
13 transcript, pages 53, 57, 58 and 59; the October 1st
14 transcript, page 52; and the October 15th transcript, pages
15 36 through 42, page 54 and page 58 through 60.

16 I believe that when the Court reads these pages,
17 you will find that the statistics that have been thrown
18 around -- and I really mean thrown around -- in this
19 courtroom are -- as to ACORN are as to the entire number of
20 registrations. And the problems that Philadelphia
21 identified, not from ACORN, not from any one particularly
22 identified entity but generally from the registrations they
23 were receiving, the 58,000, that number of fraudulent was not
24 ACORN's. It was, as you will see in the transcript,
25 attributed to all agencies that were submitting information.

1 The plaintiffs come here seeking an extraordinary
2 remedy, which is a preliminary injunction, based on not one
3 iota of evidence of voter fraud in Pennsylvania. What we
4 heard was the exegesis of a former employee who testified
5 about things that happened in 2005, 2006. But she has never
6 been to Pennsylvania. She has never been to a -- an office
7 here in Pennsylvania. She has never observed the training,
8 the counselling, the work, the checking, the verification of
9 the registrations that were received.

10 Once those registrations were received, they were
11 appropriately bundled. The bureaus of elections were alerted
12 to the information that is -- was not able to be verified,
13 that was questionable. It wasn't that all these documents
14 were mixed up and thrown at the elections departments. They
15 were very carefully segregated. And believing that every
16 voter application that they received had to be turned over,
17 they faithfully carried out that duty.

18 I believe when you look at the transcript from the
19 Philadelphia commissioners, the -- specifically the
20 October 15th transcript, you will find a full description of
21 what the Philadelphia Elections Bureau did, how they did it
22 and how they were able to find that some of the questionable
23 or alerted or segregated applications contained, in fact,
24 100 percent good information and they issued voter
25 registration cards, because they were actually better than

1 our people. They had the equipment. They were able to do
2 this.

3 And you will see a statistic there that through the
4 6th of October, Philadelphia had received 298,037 voter
5 registration applications and had found 14,673 of them to be
6 not valid for some reason, whether they were duplicates,
7 whether there were problems, whether they couldn't find the
8 people, whether they got returns; a rejection rate of under
9 five percent. This isn't a huge problem.

10 We have not one iota of proof here that someone is
11 going to show up at the polls on Tuesday and get -- and pull
12 that lever on that machine and vote fraudulently.

13 If that happens, if a person shows up, it is -- and
14 does so, it is not because of necessarily what ACORN did.
15 It's not necessarily what PennDOT did in Motor Voter. It has
16 to do with the boards of election or the -- the actual poll
17 workers not doing what they're told to do, and they are
18 specifically instructed what to do.

19 Your Honor doesn't need me to stand here and tell
20 you what the requirements are for a preliminary objection --
21 or a preliminary injunction. We have filed a brief. And I
22 do have an extra copy here if the Court would want one.
23 There are multiple copies filed with the Prothonotary.

24 THE COURT: I have one already.

25 MS. SIMPSON: Okay. Good. I will rest on my -- on

1 my brief for the legal arguments. But I believe the Court
2 has heard here that ACORN has gone to the ends required of
3 them. They have people -- they had people checking these
4 voter registration materials. They tried in every which way
5 to make sure what they were sending to the various elections
6 departments were appropriately segregated so that those
7 applications that should have been red-flagged were
8 red-flagged right from the start.

9 We do not have a database that will just generate
10 out a list of all the people whose names we sent. You have
11 heard that those are contained on a -- on hard drives in the
12 offices all over the Commonwealth. It would require a
13 herculean effort to print those out, to provide those. And
14 those don't have any connection because they are not
15 identified as people who successfully registered to vote.
16 They are merely those whose applications were sent to the
17 various boards of election. And for what end? What's anyone
18 going to do with this information?

19 And I would suggest to you that the remedies for an
20 imagined ill are well beyond what is reasonable. And, in
21 fact, what the plaintiffs are trying to do is bootstrap
22 cases, criminal cases, and try those criminal cases here
23 based on rumor, innuendo, press -- press information and the
24 like.

25 There is not one scintilla of evidence that there

1 is any voter registration fraud here. There's not one
2 scintilla of evidence that there is voter fraud going on
3 here. And without that, without even a suggestion that
4 that's going on here, a preliminary injunction cannot be
5 granted. And with regard to the legal arguments, I rest on
6 the brief. Thank you.

7 MR. MASLAND: Your Honor, Ms. Simpson, and Ms.
8 Heidelbaugh, let me do a couple little housekeeping things
9 for -- to assist your -- your clerk.

10 First of all, there's been a lot of questions about
11 whether there's a legal obligation to turn things over. And
12 I don't think there's anything really clear in the law, but I
13 would just point out a couple sections that the clerk might
14 want to look at in 25 Pa. C.S.A., Section 1708 and 1711.

15 Arguably, there might be some connection there,
16 although it's not -- not a clean fit.

17 Then also to assist your clerk, I would suggest
18 after a long day like today, he really needs a good break, so
19 I would encourage him to read the whole transcript because it
20 will be enjoyable. It will be the best thing you've read in
21 a long time. Philadelphia may not be Mayberry, but it's
22 probably closer to a sitcom. And if you listen to the city
23 commissioners -- I'd love to listen to them. But if you read
24 the city commissioners' transcripts, they really are quite
25 enjoyable.

1 But with all seriousness, I would point out that on
2 the October 1st, 2008 transcript, pay particular attention to
3 page 28 with respect to voter ID. And the same issue, voter
4 ID, is dealt with on October 8th; I believe pages 12 to 16.

5 The quote about Mayberry is on page 34 of the
6 October 15th edition. And Bob Lee does go on in the next
7 sentence to say, "They made a lot of improvements." And he
8 goes on. I mean, he still criticized it. No question about
9 it. As Mr. Marks said, "That sounds like Bobby." Bobby Lee
10 is one of those people.

11 We've heard a lot of sound and fury today, but I
12 would suggest with respect to the secretary and with respect
13 to the SURE system, it has really signified very little. You
14 will note that I made no objections today. I tried very hard
15 not to object, even during Jon Marks' cross-examination. I
16 did not because I wanted to project what I think is the
17 secretary's goal, and that is transparency. We were here to
18 present facts. We were here to present what we are doing.
19 If the other side wants to take issue with that, fine, but we
20 want to tell you what we've been doing.

21 At the end of the day, it may sound more like the
22 dry, Joe Friday kind of material as opposed to something
23 that's really exciting as maybe Ms. Moncrief's testimony
24 might have been. What we presented is not likely to be on
25 CNN as compared to that.

1 But I would ask you to focus not on all of the
2 smoke and not on what is not known or what is conjecture but
3 to focus on what is known, to focus on how we have been
4 preparing, as demonstrated I think through our exhibits and
5 affidavits.

6 This really reminds -- this case and plaintiffs'
7 argument reminds me of the experience I used to have when I
8 would put toys together for my children the night before
9 Christmas. And I'd get the instructions out, and I'd look at
10 them. And I'd follow those instructions.

11 I remember putting a big wheel together for my son.
12 And at the end of the night, after -- at two in the morning
13 when I finished, I looked in the box and there were still
14 parts there. But I went over here with the big wheel, and it
15 worked. I checked the pedals. It worked fine. You know, I
16 didn't think, even as a lawyer, that my son would fall off
17 and I'd have a lawsuit on my hands. I said, this will
18 probably work. But there was still things in the box.

19 Plaintiff is staying look at the box, look at this
20 2004 report, look at all these other things that might be
21 there. What I would suggest is look at the big wheel. And
22 we have a big wheel. And it is a big challenge, and there
23 are big risks. And there's been a big stress on the system,
24 but it has performed.

25 In the time -- from the time that we came here this

1 morning until we left, the number of counties that have
2 printed their pollbooks went from 43 to 50. By the time the
3 Court is ready to issue an order, the number of counties that
4 have printed their pollbooks will be close -- very close to
5 the 67. And certainly by the end of the week, that's where
6 it will be.

7 I would suggest that there should be some comfort
8 in the fact that the secretary and the department has been
9 working very carefully on this. Yes, problems happen.
10 Computers happen. There will be logouts. There will be
11 problems like that, but they are minor. The significant
12 ones -- there were only a few in October -- have not
13 presented -- prevented the processing of the voter
14 registration forms.

15 On the issue of voter identification, I think I've
16 handled that sufficiently in the brief. I won't take any
17 more of your time on that. I think "appear" means appear.

18 And although there have been some allegations about
19 absentee voting, always having to -- you know, the first-time
20 requirement for voters to show ID having to apply to absentee
21 voters as well, I think I adequately addressed that in the
22 brief and you'll see the distinction.

23 Provisional ballots, again, I think that that was
24 addressed. We will have enough there, or we're recommending
25 that we'll have enough there. And I guess that really gets

1 to the point, as Your Honor may be familiar from yesterday's
2 case, if you will, the Commonwealth only has so much
3 authority to dictate things to the -- to the county boards of
4 elections.

5 If you look at Section 2621 of the Election Code,
6 25 P.S. 2621, it lays out the secretary's powers. Section
7 2642 lays out the county boards' powers. And it's -- it is a
8 symbiotic relationship. We can't just dictate to them that
9 you must have 2,000 provisional ballots on hand just in case.
10 We can't dictate that. I guess we could, but they don't have
11 to follow it. And that's pretty clear from the Election
12 Code.

13 So I would just suggest in closing that as -- as
14 Ms. Heidelbaugh mentioned, the secretary took umbrage at the
15 attacks on the department. And that's what he took umbrage
16 at, the attacks on the department. Not the attacks on ACORN.
17 The attacks on the department and the counties because, in
18 essence, what this case is all about is fomenting fear on the
19 part of the public and getting them to question whether or
20 not their votes will count next Tuesday, getting them to
21 question whether or not people are prepared and whether this
22 is going to be a fair election.

23 I would suggest in all sincerity that it will be a
24 fair election; that the Commonwealth has done everything it
25 can; the secretary has done everything he can.

1 Thank you, Your Honor.

2 THE COURT: Do you want me to schedule a hearing on
3 a final injunction, permanent injunction? I mean, this is
4 the preliminary injunction.

5 MR. MASLAND: No.

6 THE COURT: We're supposed to have another hearing.

7 MS. HEIDELBAUGH: I understand, Your Honor, and I
8 would like to reserve my response in regard to --

9 THE COURT: Until you see what I do with the
10 preliminary?

11 All right. So I didn't really get a response from
12 anybody about that, so I'll figure out what to do then. I'm
13 not going to get a lot done --

14 MS. HEIDELBAUGH: Well, on the record, Your Honor,
15 on the record, I reserve -- if you allow, I reserve my right
16 to answer that question after I receive this Court's order on
17 my request for preliminary injunction.

18 THE COURT: I'm not going to get a lot more done on
19 the case tonight, so don't expect me to rule on this tonight.
20 I'll rule on it as soon as I can.

21 Thank you very much. It was an interesting day.
22 And you'll hear from me soon. We are adjourned.

23 (Whereupon, the proceedings adjourned at 7:41 p.m.)

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1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by me
3 on the proceedings of the above cause and that this copy is a
4 correct transcript of the same.

5

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7 DATED: October 31, 2008

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Rebecca Toner, RPR

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