



Date: December 8, 2022

Case: In Re: Rudolph W. Giuliani



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DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

- - - - - X

In the Matter of,	Board Docket No.
RUDOLPH GIULIANI,	22-BD-027
Respondent.	Disciplinary Docket No.
A Temporarily Suspended Member	2020-D253
of the Bar of the District of	Vol. 4
Columbia Court of Appeals.	:
Bar Number: 237255	:

- - - - - X

Thursday, December 8, 2022

CONTINUED VIRTUAL HEARING OF
RUDOLPH GIULIANI

Reported by
Kim M. Brantley, C.S.R.

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1 Continued virtual hearing, taken via Zoom,
2 commencing at 11:01 a.m., before the Ad Hoc
3 Hearing Committee, and before Kim M. Brantley, a
4 Court Reporter and Notary Public in and for the
5 District of Columbia, when were present on behalf
6 of the respective parties:
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1 APPEARANCES:
2 Ad Hoc Hearing Committee:
3 ROBERT C. BERNIUS, ESQUIRE
4 Chair
5 MS. CAROLYN HAYNESWORTH-MURRELL
6 Public Member
7 JAY BROZOST, ESQUIRE
8 Attorney Member
9
10 On behalf of the DC Attorney Disciplinary
11 System:
12 HAMILTON P. FOX, III, ESQUIRE
13 Disciplinary Counsel
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15 Assistant Disciplinary Counsel
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22

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1 APPEARANCES CONTINUED:
2 On behalf of Respondent:
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4 HON. BARRY KAMINS, (RET.) ESQUIRE
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10 ALSO PRESENT:
11 AZADEH MATINPOUR, Paralegal
12 DC Disciplinary Counsel
13
14 JOHN ESPOSITO, Esquire
15 Aidala Bertuna & Kamins, PC
16
17 JON ORTIZ, ESQUIRE
18 DC Disciplinary Counsel Expert Witness
19
20 JIM PHALEN, ESQUIRE
21 MEGHAN BORRAZAS, Staff
22 Office of the Executive Attorney

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1 I N D E X
2 CLOSING STATEMENTS: PAGE:
3 By Mr. Fox 1032, 1129
4 By Mr. Leventhal 1091
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1 P R O C E E D I N G S
2 CHAIRMAN BERNIUS: Good morning,
3 everybody. Before we begin, the respondent has
4 filed a memo, legal arguments on -- on his behalf
5 this morning. We obviously haven't had time to
6 read it. We will take it -- we will -- we will
7 look at it after we -- after we adjourn following
8 the oral arguments this morning. So there's
9 really no need to discuss it unless, Mr. Fox, you
10 want to -- if you want to address it, okay, but
11 otherwise I don't think it's necessary to go -- go
12 into it.
13 Respondent then insists, that's -- you
14 know, that's your right to do it. I -- I'm not
15 going to preclude you from doing that.
16 This argument this morning is really
17 pursuant to Board Rule XI.11 where the hearing
18 committee is contemplating whether it can conclude
19 that Disciplinary Counsel has proven a violation
20 of any of their charged disciplinary rules,
21 preliminarily decide. And the oral argument I
22 think will be helpful in making that

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1 determination. So that's why we'll discuss how
2 the facts bear on the various -- the -- the
3 charges that were issued in this case, 3.1 and
4 8.4)d).
5 So, Mr. Fox, I'll give you the floor at
6 this point, but I -- before you begin, I just want
7 to make a -- make an observation that I think may
8 help guide your argument a bit and -- and -- and
9 it's the -- deals with the -- well, both charges,
10 but we need to know specifically what the charges
11 are based on and what -- what claims they're based
12 on. Because they're -- you know, we come to this
13 to this -- we're late to this case and there are,
14 it seems to me, four or five possibilities. One
15 is the initial complaint which was filed in the
16 case and, of course that was -- that was
17 superseded by an amended complaint. And I --
18 that -- that seemed to me to raise an issue here
19 as to whether that can underlie the 3.1 charge.
20 Then there is a -- an amended complaint
21 and there is some question whether Mr. Giuliani is
22 responsible for that amended complaint because he

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1 said that he did not participate in the revisions
2 is, and the amended complaint also withdrew some
3 of the claims that were in the initial complaint.
4 The third possibility here is the
5 second amended complaint, but that was never --
6 never accepted for filing. So I think that raises
7 a question as to whether 3.1 could be based on
8 that.
9 And then there's the oral -- oral
10 argument before Judge Brann, some of which was
11 discussed, and I -- and I must say that, in that
12 context, in my view there's some room for
13 rhetorical hyperbole in oral arguments. And I
14 wish -- if you're going to rely -- base the claim
15 on the oral argument, I wish you could address
16 that issue.
17 And finally, the Third Circuit appeal,
18 and -- and I don't know if the briefs -- even if
19 the briefs are in the -- in the record, but
20 whether or not the claims made in the appeal
21 underlie the 3.1 claims.
22 So that's -- I just wanted to get that

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1 out of the table before we begin and -- and
2 hopefully you can address some of those issues as
3 you go along.
4 CLOSING STATEMENT
5 ON BEHALF OF DISCIPLINARY COUNSEL
6 BY MR. FOX:
7 MR. FOX: All right, thank you, Mr.
8 Chair. And actually let me -- let me turn to that
9 initially.
10 I would say that I have not read the
11 document that Mr. Leventhal put forth this
12 morning, so I don't intend to comment on that.
13 But let me -- let me talk about the source of the
14 3.1, which I don't really think is -- is an
15 accurate statement of the issue.
16 First of all, we're not contending
17 anything based on the Third Circuit appeal, but
18 what the -- the rule says is that a lawyer shall
19 not bring or defend a proceeding or assert or
20 controvert an issue therein, unless there's a
21 nonfrivolous basis of fact in law.
22 It -- it seems to me that Mr.

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1 Giuliani's conduct is encapsulated in the
2 documents which and -- and the advocacy that he
3 had personal responsibility for. Some of that was
4 first complaint, which was withdrawn. Some of
5 that was -- which was amended. Some of that was
6 the oral argument and some of that was in the
7 second amended complaint. But the focus that I
8 would make primarily would be on the oral argument
9 and the second amended complaint, and I should say
10 that a -- and we'll probably do this for you in
11 the post-hearing briefs, but if you do a
12 paragraph-by-paragraph comparison of the first --
13 of the initial complaint and the second amended
14 complaint, you'll see there's very little
15 difference between them. Actually a couple of the
16 allegations, the factual statements in the first
17 complaint, the initial complaint were withdrawn.
18 There were a few additional facts that were
19 stated. There was a little more sharpening of the
20 rhetoric.
21 But I think the advocacy that Mr. --
22 that we fought Mr. Giuliani on is for his argument

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1 before Judge Brann and the subsequent second
2 amended complaint. And the fact that it wasn't
3 accepted because -- because he had no basis for
4 it, according to Judge Brann, doesn't seem to me
5 to be a factor in mitigation. It seems to me to
6 be a factor in aggravation.
7 So having said that, let me -- let me
8 turn to what I wanted to say initially, which is
9 that elections for federal law in this country are
10 conducted with the states and to some extent the
11 localities. Now, there would have been absolutely
12 nothing improper about the Trump campaign or the
13 Biden campaign or anybody filing an action in
14 state court challenging some of the procedures
15 that were going to be carried into place, put into
16 place when this new act, Act 77, was first
17 enforced in the -- in the -- in the general
18 election. Indeed it happened. As we reviewed
19 with you, there were a number of litigations to
20 flesh out what the -- what that act meant.
21 There's nothing wrong with that whatsoever. Some
22 of those actions were brought -- I -- I don't know

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1 how much -- whether they were brought by the
2 republican party. I know some were brought by the
3 secretary of state herself. But that's perfectly
4 legitimate, to bring those and get those rulings
5 in state court.
6 It's equally legitimate, it seems to me
7 in the election, on -- on Election Day, if an
8 issue arises about the barriers in the context of
9 trying to conduct an investigation -- sorry,
10 conduct an election for the first time in the
11 middle of a pandemic, with many more mail-in
12 ballots to count, how precisely one balances the
13 need to protect people from the virus and --
14 and -- and nevertheless carry out their
15 responsibility as observers, perfectly responsible
16 to bring that issue forth to the state court
17 because it's a state issue and it should be
18 resolved.
19 Indeed Bush v. Gore was a state case
20 initially. It was a -- I mean, it got a lot of
21 procedural tails to it, but initially it was a
22 recount case in an election in Florida that was

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1 decided by something like 500 votes. And they
2 filed for a recount and that led to the -- if you
3 look at Bush v. Gore, the -- the Supreme Court
4 case, you'll see it's a writ of certiorari to the
5 Supreme Court of Florida. That was a state course
6 case.
7 CHAIRMAN BERNIUS: Was there any -- was
8 there any effort to petition for cert in
9 Pennsylvania in the Trump case?
10 MR. FOX: I don't think so. One of
11 the -- one of the pre-election challenges did
12 result in some action before the Supreme Court,
13 and certainly that case -- and I'm drawing a blank
14 of the name -- that Mr. Ortiz testified against
15 yesterday -- testified about yesterday and that it
16 brought up I think earlier in Mr. Giuliani's
17 testimony, that case went to the Supreme Court,
18 not -- not the Boockvar case, but a -- a kind of
19 related case. But aside from that, I don't
20 believe any of the other cases went to the Supreme
21 Court.
22 CHAIRMAN BERNIUS: One other

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1 question --
2 (Network interference.)
3 MR. FOX: I'm sorry. I'm not quite
4 hearing you, Mr. Bernius. I apologize.
5 CHAIRMAN BERNIUS: Is there -- there an
6 equal protection or Due Process claim raised in
7 the Pennsylvania state courts?
8 MR. FOX: I do not believe so. But
9 I -- I will -- I'm subject to check on that, but I
10 do not believe so.
11 Why would it -- why weren't there state
12 court case? Well, Mr. Giuliani testified, I think
13 candidly in this regard, they didn't get very far
14 with the state. So they brought these federal
15 cases.
16 Now let -- let me just say this, before
17 I launch into where I'm -- what I want to talk
18 about --
19 MR. BROZOST: Mr. Fox, can I just ask,
20 talking about the state court, what do you make,
21 if anything, that the procedures for an expedited
22 review of these voting matters was not pursued?

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1 MR. FOX: Well, I -- I -- I think it's
2 a telling fact in the sense that -- and -- and
3 as -- really I was actually going to go to this
4 next -- the purpose of the litigation was probably
5 not so much to get the issues resolved. It was to
6 file a case to file a case, part of a larger
7 action to sort of discredit the results of the
8 2020 election.
9 Filing a case in state court, using the
10 expedited proceedings, would have gotten a
11 decision on the -- on the merits, perhaps, and
12 perhaps rather quickly, but that doesn't seem to
13 be the goal of the plaintiffs in this matter.
14 When -- when -- when Mr. Giuliani left
15 the White House on what he said was probably
16 November 4, he went with a determination to file
17 an action in federal court to change the results
18 of the election. I mean, he's testified that his
19 ultimate goal was to combine a bunch of these
20 cases -- the Mr. Chair used the phrase
21 "multi-district litigation"; I'm not sure that's
22 quite what it was -- but to combine them in some

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1 manner and get the matter in front of the Supreme
2 Court. He took a -- they took a shoot first, ask
3 questions later approach. It was a litigation in
4 search of facts and theory. So -- and you can see
5 that in the evidence. We put into evidence the
6 deposition that's Rule 34, and the reason we're
7 going to put up parts of it -- but it's really I
8 scattered over several pages and it doesn't work
9 very well. But what Mr. Giuliani said there --
10 and he really said it in his -- in his testimony
11 the other day -- was he -- he -- he leaves the
12 White House; he goes to the campaign headquarters.
13 Where are the complaints? You know, why aren't we
14 ready to go? Well, you know, the election just
15 happened. What are the facts to base the
16 complaints on? They -- you know, nobody knows at
17 this point. But the point is to file a complaint.
18 Where are the lawsuits? And I think the testimony
19 makes clear that that's what they were doing.
20 They were going to file a complaint, and let's
21 find the facts and let's find the theory.
22 Look at Mr. Kerik's testimony. Mr.

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1 Kerik, as I understood it, was the chief
2 investigator. Now I -- I think it says something
3 about the integrity of this investigation that you
4 hire multiple -- a guy with multiple felony
5 convictions, nevertheless he's going to run the
6 investigation --
7 MR. LEVENTHAL: He does not have
8 multiple convictions.
9 MR. FOX: And he -- he was looking for,
10 looking for facts, and he pretty candidly told you
11 that. So he comes up with a list of voters who
12 are over the age of 112. The first one on the
13 list is purportedly 166 years old --
14 I'm sorry, somebody in the respondent's
15 set is -- talking.
16 MS. BORRAZAS: You guys have -- you're
17 having interference because you have all three of
18 your computers hooked up to audio. You need to
19 disconnect two of them.
20 MR. LEVENTHAL: I made an objection. I
21 didn't hear a ruling. That's why I -- when he
22 said "multiple convictions".

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1 MS. BORRAZAS: We can barely hear you
2 because you're using Mr. Giuliani's computer.
3 MR. LEVENTHAL: Can you give me one
4 second. I'll try to figure that out.
5 (Brief pause.)
6 MR. FOX: I'm not sure what's going on
7 now.
8 CHAIRMAN BERNIUS: I'm not either.
9 MS. BORRAZAS: You're all computers --
10 you're all on mute. You need to disconnect two of
11 your laptops' audio, like yesterday's setup, so we
12 can hear you.
13 MR. LEVENTHAL: One moment. One
14 moment.
15 (Brief pause.)
16 MR. LEVENTHAL: Can I be heard now?
17 CHAIRMAN BERNIUS: Sure.
18 MR. LEVENTHAL: Can I be heard?
19 CHAIRMAN BERNIUS: What -- what are
20 you --
21 MR. LEVENTHAL: I asked could you hear
22 me. I raised an objection now and no one

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1 responded earlier.
2 CHAIRMAN BERNIUS: What's your
3 objection?
4 MR. LEVENTHAL: When he said multiple
5 convictions.
6 CHAIRMAN BERNIUS: You could respond to
7 that in your argument, Mr. Leventhal.
8 MR. LEVENTHAL: All right. Thank you.
9 Sorry.
10 MR. FOX: Okay, I'm -- I'm sort of lost
11 my train of thought here. But -- -- but okay.
12 Mr. Kerik, he comes up with a list of
13 voters who are over the age of 112, and the first
14 one's 166 years old. Now, right in their own
15 files, in their own documents, there are exhibits
16 that show that these records are not accurate --
17 that these voting records of this regard in the
18 State of Pennsylvania are not accurate.
19 Could we put up Exhibit 20 -- DX24,
20 page 162.
21 This is a -- a declaration that was in
22 the files of one of the law firms that provided

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1 this, from a woman whose name is Pinkerton. She
2 says she's the district manager of one of the
3 congressmen, and that she has to use a state
4 database known as RepNet, and she goes on in
5 paragraph 11 to point out how inaccurate it is and
6 that frequently dates of birth are wrong.
7 They knew that. That's in their files,
8 their evidence, but they're looking for facts to
9 try to support their theory.
10 Mr. Kerik comes up with the astounding
11 fact that, out of the 7M people who voted in
12 Pennsylvania, and the 5M people who voted in
13 Georgia, some of them, a substantial number of
14 them -- maybe 200,000 -- have the same names.
15 I mean, this is -- this -- you know,
16 they're just looking for stuff. Mr. Droz, a
17 somewhat eccentric gentleman, who testified that
18 somebody contacted him and asked him in two days
19 if he could come up with some statistical stuff.
20 It's a -- it's a -- it's a litigation looking for
21 factual support.
22 CHAIRMAN BERNIUS: Mr. Fox, on the --

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1 on the Georgia/Pennsylvania voter lists, was there
2 any -- any identifying information on those two
3 separate lists, other than names? I mean, were
4 there -- that -- so that was it? It was just --
5 MR. FOX: There were addresses,
6 addressed, but nothing like Social Security
7 numbers or anything like that.
8 CHAIRMAN BERNIUS: And it's not the
9 addresses of Joe Jones in Georgia was a Georgia
10 address, and the address of Joe Johnson in
11 Pennsylvania wasn't a Pennsylvania address?
12 MR. FOX: That's right.
13 CHAIRMAN BERNIUS: Okay.
14 And now -- and -- and they're not quite
15 as generic as Joe Jones, but they're pretty
16 generic.
17 Mr. -- Mr. Giuliani testified that you
18 don't plead evidence, you plead allegations.
19 Well, no you don't plead allegations. Allegations
20 have to have some basis and all.
21 (Background interference.)
22 MS. BORRAZAS: Mr. Giuliani, could you

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1 mute your mic, please.
2 MR. GIULIANI: Yeah, I'm sorry.
3 MR. LEVENTHAL: We're right next to
4 each other.
5 I'm sorry. Go ahead.
6 MR. FOX: And the allegations have to
7 have some basis in fact, and under Rule 3.1 there
8 has to be a factual basis. That's what it says.
9 You don't just plead allegations if you don't have
10 the facts to back them up.
11 MS. BORRAZAS: Mr. -- Mr. Fox, how does
12 that jive with discovery? Where does discovery
13 come in?
14 MR. FOX: Well, discovery certainly
15 allows you to flesh out the -- the allegations
16 and -- and the facts of the complaint, no question
17 about it. But it doesn't give you the right to
18 just sue with no factual basis.
19 Let me give you an example. Let's
20 suppose -- and this actually happened to me over
21 the last year or so -- somebody vandalized my car
22 parked on the street next to my house. While I

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1 got a cause of action there and, you know, a
2 perfectly legitimate cause of action, if I knew
3 who did it. But I can't just accuse my next-door
4 neighbor of doing it without any factual basis and
5 say I'll flesh it out in discovery. I've got to
6 have some basis for doing it. Otherwise, you
7 know, you can go around suing anybody for anything
8 without any factual basis. You don't have to have
9 all the facts, but you got to have something.
10 CHAIRMAN BERNIUS: Mr. Fox, let me --
11 let me -- again, I -- I apologize for my
12 confusion, but there -- there was an Elections
13 Clause claim raised and that seems to have at some
14 point disappeared from the case. And then there's
15 a -- there's a Due Process claim and an Equal
16 Protection claim. And it's my -- I -- my sense is
17 that the Equal Protection claim was based on the
18 simple fact that some counties allowed Notice and
19 Cure and other counties didn't, and that the Due
20 Process claims are based on the simple fact that
21 we weren't allowed to see the -- we couldn't see
22 the ballots as they were being opened and counted.

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1 So, in terms of the operative claims,
2 you know, I -- it -- it looks to me like there was
3 an adequate basis in fact. Then there's a lot of
4 other stuff that's thrown in for kind of window
5 dressing and -- and -- so -- so what is the 3.1
6 violation based on? If I'm wrong in that
7 perception, correct me.
8 MR. FOX: Well, the -- the -- the --
9 where I was going to eventually get to, after I --
10 I sort of -- and I'll get there faster, in your
11 question, but where I was eventually going to get
12 to in -- in attempting to show the absence of any
13 facts, is that you were driven to those two
14 things. And I agree with you. It is a fact that
15 some of the counties afforded their voters the
16 Notice and Cure, and it is a fact that there were,
17 you know, provisions put in place, because of the
18 pandemic, to isolate people from one another.
19 Those two things are the facts. But those facts
20 don't support the allegations that were made.
21 Those -- I mean, you know, I -- I will
22 put aside going through all the other facts that

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1 don't exist, but, there's -- you know, Mr.
2 Giuliani made a lot of statements in the course of
3 this -- of this proceeding that just have no
4 factual support whatsoever.
5 But let me -- let me go to the only two
6 facts that they had, okay: that the Notice and
7 Cure was not permitted -- was not permitted --
8 sorry, the Notice and Cure and the observational
9 restrictions, okay. Those are perfectly
10 appropriate issues to litigate before the state --
11 appropriate state form, if in fact, you know,
12 there is a -- a basis to challenge them. For
13 example, it is clear from the statement that Mr.
14 Leventhal made earlier in these proceedings that
15 they take the legal position that, when the
16 Pennsylvania Supreme Court said that the counties
17 are not required to have a Notice and Cure
18 procedure, and they said that we, as a judiciary,
19 are not going to make that decision that whether
20 they're required to do it. It's better left to
21 the legislature. He's got an argument that says
22 that, well, therefore the counties weren't allowed

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1 to do it; perfectly legitimate argument to raise
2 in in front of the state. It's a state court
3 issue. You know, what is Act 77? You raise it in
4 front of the state. You do it before the
5 election. You say, "Okay, we interpret this --
6 this opinion from the Pennsylvania Supreme Court
7 to mean the counties are not even allowed to do
8 it," and you hash that out in front of the
9 appropriate forum: the Supreme Court of
10 Pennsylvania, ultimately; nothing wrong with that.
11 But that's not what they did.
12 The same thing with observation --
13 observational restrictions. I -- there's nothing
14 wrong with -- with bringing the case that, in --
15 in Philadelphia that was brought in the state
16 court to say, you know, "We're not complying --
17 these observational things are interfering with
18 the observers," and let the federal -- the state
19 courts in Pennsylvania hash it out.
20 I mean, it -- it's their law about the
21 fact that they have to have observers there.
22 There's no federal requirement that there be

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1 observers there. It's their law about it, what
2 does it mean to observe. Are these barriers
3 consistent with what observation means in
4 Pennsylvania; or even a legitimate issue to raise
5 in front of the state. But it doesn't constitute
6 a section 1983 action.
7 A section 1983 action is an action --
8 it's a civil rights statute. It's an action --
9 the -- the predicate for a 1983 action is that a
10 citizen has to be deprived of his right under the
11 U.S. Constitution or under federal law. That's
12 what a 1983 action is. It's more than citizens,
13 but if we're talking about the right to vote, I
14 think we can just restrict it to citizens right
15 now. And -- and it's a -- it's a post-Civil War
16 statute, designed to protect voting rights in
17 part. I mean, a lot of these post-Civil War
18 statutes were enacted in -- in -- in the area of
19 Reconstruction to permit the newly emancipated
20 Freedman to vote, to prevent the authorities from
21 interfering with it. To -- the notion that
22 somehow or other you take that and turn it on its

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1 end and try to use it to prevent people's vote
2 from being counted is -- is more than bizarre.
3 There is no federal law that says anything about
4 whether you have to have or can or cannot have a
5 Notice and Cure practice. There's no federal law
6 that says anything about observational barriers
7 and -- and -- and what they would be in a
8 pandemic.
9 And -- and -- and -- and if I can just
10 pause parenthetically on this, when Mr. Giuliani
11 is describing this nationwide conspiracy to
12 interfere with republicans, he keeps saying,
13 "We found it state after state, they had these
14 observational barriers". Well, it's a pandemic.
15 People were dying. There weren't vaccines at the
16 time. And of course, every state is going to come
17 up with some way to try to protect their election
18 workers and their voters at the time. It's not
19 evidence of a conspiracy. It's evidence that it
20 was a rational thing to do in the context of a --
21 of a pandemic. And this is the way they take
22 things and turn that into a civil rights

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1 violation.
2 Now it -- it -- the only way, the only
3 way these things could possibly be a civil rights
4 violation is if somehow they allowed such a
5 massive fraud that they denied, you know, other
6 voters --
7 (Background interference.)
8 CHAIRMAN BERNIUS: Could you please
9 mute your microphone, Mr. Giuliani.
10 MS. BORRAZAS: It's Mr. Giuliani's
11 camera, that his mic's still on. Can you mute it
12 on your computer. Thank you.
13 MR. FOX: The only way that these
14 things could possibly deprive anybody of their
15 right to vote is if they resulted in such a
16 massive fraud that the voters of Pennsylvania's
17 votes were not, you know, counted accurately.
18 That's the only way it could happen. And maybe
19 that would be a federal violation. But, that's
20 not what happened.
21 Look, Notice and Cure doesn't prevent
22 people from voting. It doesn't prevent your vote

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1 from being counted. It enhances the opportunity
2 to count your vote. That's the whole purpose.
3 If -- if -- you know, we've got a new procedure
4 here, people are going to mess it up. They're
5 human beings. We all do it. They mess it up. So
6 it's giving them the opportunity, a legitimate
7 voter who tried to vote and messed it up somehow,
8 is giving him the opportunity, him or her the
9 opportunity, to have their vote count. It's not a
10 civil rights violation. If anything, it enhances
11 the right to vote.
12 And the observational barriers are not
13 flawed in and of themselves. They're not even
14 circumstantial evidence of fraud, despite Mr.
15 Giuliani's somewhat bizarre interpretation of
16 circumstantial evidence. At best they afforded
17 somebody the opportunity to commit fraud, but
18 there's no evidence that anybody did. There's no
19 evidence that any vote was improperly counted,
20 none.
21 And -- and -- and just to pause for a
22 moment and think about this, this fraud claim

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1 presumes that all those good citizens in
2 Philadelphia, in Pittsburgh, and -- and I guess
3 the other five counties, who went down to the
4 polls to work as election workers, on Election
5 Day, risking their health in the middle of a
6 pandemic, were actually all part of a massive
7 conspiracy who were miscounting the votes because
8 people were behind observational barriers and
9 couldn't see what they're doing. And, you know,
10 there's just no evidence of that. And -- and --
11 and certainly one of those persons would have, you
12 know, would have -- would have -- would have
13 disclosed it if it had happened. And indeed look
14 at the evidence. I mean, Mr. Giuliani says, "Oh,
15 there's a terrible democratic machine in
16 Pennsylvania, notoriously corrupt".
17 There is in the evidence. Ironically
18 it's an exhibit in Mr. Giuliani's pleadings --
19 Exhibit 10, it's attached to Exhibit 10 -- that he
20 filed in connection with the second amended
21 complaint which is the transcript of the -- I keep
22 saying bi- -- yeah, bipartisan -- no. Anyhow --

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1 it has two -- it has democrats and one
2 republican -- commission in -- in -- in
3 Philadelphia, looking at the provisional vote.
4 And they threw out, in a heavily democratic area,
5 when the democrats were doing more mail-in ballots
6 than republicans, they threw out 4,000 votes
7 because they were naked ballots. These aren't
8 people who are involved in fraud. There's just no
9 evidence of it.
10 CHAIRMAN BERNIUS: Mr. Fox, excuse me,
11 what is -- what is the standard that a lawyer in
12 this position needs to adhere to in the sense of
13 pre -- pre filing investigation?
14 And -- the -- the record shows there's
15 a lot of -- a lot of stuff that -- that Mr.
16 Giuliani had, and a lot of smoke and some mirrors
17 and -- and -- and a lot -- this stuff that
18 appeared on its face to be absurd, you know, that
19 no reasonable, rational person would rely on,
20 somebody -- some Uber driver tells somebody else
21 about bussing in voters from around the country to
22 Philadelphia to vote, that's just -- nobody would

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1 rely on that in -- in -- in filing a complaint.
2 But -- but some of the other stuff was -- was a
3 bit more credible, and you've got a situation
4 where somebody is -- a lawyer's under the gun, I
5 mean, in terms of time. There's no time really to
6 do much at all before you -- before you pull the
7 trigger. And -- and you know, in that context,
8 under this extreme time pressure, it seems to me
9 that it's -- you're more -- there's a -- there's a
10 better chance that you could legitimately, you
11 know, ready, fire, aim kind of a situation, which
12 I -- you know, in -- in many respects I think you
13 said basically that's what they did. But with the
14 time pressure, isn't there more leeway to do that?
15 MR. FOX: Well, I -- I don't think
16 there's more leeway. I -- the time pressure
17 seemed to me to cut in a couple of ways. First of
18 all, the states have procedures. As Mr. Brozost I
19 think has already pointed out, the states have
20 procedures to deal with these things on an
21 expedited basis. That's -- you know, that's one
22 thing. If you -- if you really think there's a

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1 problem in -- you know, with Notice and Cure,
2 invoke those state procedures and invoke them
3 before the election. If you think there's a real
4 problem with the barriers, do exactly what they
5 did in Pennsylvania: hash it out in the local
6 courts. No problem. That's what you should do.
7 But there's no presumption that you have a right
8 to file a case with no factual basis. And even if
9 there's a -- even if there's a time crunch, there
10 is no presumption of that. And the time crunch,
11 you know, cuts two ways. One of the reasons that
12 it's a time crunch is that it's so important to
13 get these elections done, over and resolved. We
14 all know that from the subsequent events that
15 happened. There are various deadlines in the
16 process when the state has to certify; the
17 electoral college has to vote, the vice president
18 has to accept the results, all these are -- are
19 deadlines, and -- and -- and they're important.
20 And so, you know, somebody should not be bringing
21 a frivolous case to interfere with those
22 deadlines, unless there is a solid basis for doing

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1 so.

2 So I am not sure that the -- that
3 the -- that the time pressure doesn't cut both
4 ways here, but it certainly does not give somebody
5 the right to bring a case with no basis.

6 And I -- I want to talk a little bit
7 about some of the -- of the stuff that Mr.
8 Giuliani just makes up. I mean, he told us
9 yesterday, for the second time, that there were
10 17,000 voters in Pittsburgh who went to the polls,
11 got to the polls and were told, "You've already
12 voted by mail. You can't vote or you got to vote
13 provisionally". That's what he said.

14 Now, we challenged him on that
15 initially, showed him what the facts were or what
16 the basis for that was, and he came back and said
17 it again.

18 I'd like to put up Exhibit --
19 Disciplinary Counsel Exhibit 32 at page 33.

20 This is -- this is a memo from Ms.
21 Friess, which is where this allegation came from.
22 You'll see in the first paragraph she's basing

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1 this on some anonymous whistleblower. We don't
2 know anything about this person, other than he's a
3 whistleblower. And then here's what she says
4 about the provisional ballots. She says that
5 there were 17,000 provisional ballots in -- in --
6 in Pittsburgh. She says some of them were denied,
7 not because they were told they had already voted,
8 but because they -- they were told they had
9 already been sent a ballot, not that they voted
10 the ballot. That Mr. Giuliani -- and -- and it
11 wasn't all the 17,000. Mr. Giuliani continues to
12 say, "Seventeen thousand voters in Pittsburgh
13 found -- got -- showed up to the polls and found
14 out they had already -- they had already voted by
15 mail". That's not what it says. And those kinds
16 of inaccuracies burble from him like bubbles from
17 a fountain.

18 I mean, yesterday he told us for the
19 first time that, in the -- in the voting in
20 Philadelphia, all of a sudden there is an
21 unexpected stop, and everybody was sent home, and
22 then they came back, and then all of a sudden the

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1 votes started spiking for Biden. Where did that
2 come from? Where did that -- there's nothing in
3 the record to support that. There's no -- there's
4 no declaration. There's nothing. That's never --
5 it was not part of the allegations.

6 Now there was an allegation like that
7 made in -- in Georgia, which was completely
8 discredited, but not only did Mr. Giuliani assert
9 yesterday, with no basis whatsoever, that this
10 happened in Philadelphia, he said it happened
11 in -- I know, he named a couple of other cities as
12 well. And his pleading style and his argument
13 style is the same thing: it's fact free.

14 I mean, we have tried to put into this
15 record every single declaration that we can find
16 that Mr. Giuliani had, but he did the same thing.
17 Look -- the -- the first exhibit, Respondent's
18 Exhibit 1, is 624 pages long. It's their biggest
19 exhibit. It purports to be all of the
20 declarations and affidavits and things that they
21 had that supported all these claims. How many
22 times did you hear Mr. Giuliani in his testimony,

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1 or even the Respondent's counsel, refer to their
2 Exhibit 1? How many times did you hear them pull
3 out one of those declarations and show how it
4 supports that there were 17,000 voters in
5 Pittsburgh, or whatever it was? Not once. They
6 don't rely on that at all, and they don't rely on
7 that at all because it doesn't support what they
8 said.

9 Now I've got to prove a negative here.
10 I -- I -- I accept that burden. I understand
11 that. But the way to do that is to try to put all
12 the evidence there, including their own evidence,
13 the declarations they came forth with, they don't
14 support what they claim. And that's why, when
15 you --

16 Look at Exhibit 32. We went through it
17 in some detail. I'm sure I bored you all to death
18 with it a couple of days ago. But it's important,
19 because it's Mr. Giuliani's first response to me
20 when I made an inquiry of him as to, you know,
21 what's going on here. And he sends back an
22 explanation, a detailed explanation, you know,

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1 perfectly rational explanation, and he attaches to
2 it 15 exhibits. Now you would think, you would
3 think these would be the -- the, you know, the
4 smoking guns, the things that would convince you
5 of it. And we went through them one by one. Four
6 of them concerned the existence of these barriers,
7 which we don't dispute. One of them concerned the
8 fact that there was Notice and Cure, which we
9 don't dispute. And the rest of them are garbage.
10 And -- and -- and -- and all of this stuff is.
11 Look at the pleadings themselves. We'll try to
12 detail this for you in - in the post-hearing
13 brief. But the pleadings are tons and tons of
14 verbiage, citations to cases, which is not
15 normally something you see in pleadings. Like --
16 all this stuff, they go on for 80, 90 pages, and
17 they're probably, you know, 15 factual allegations
18 included in the pleadings.

19 CHAIRMAN BERNIUS: Mr. -- Mr. Fox, what
20 do you make of the claim that, "Well, I have a lot
21 of stuff but it's been dissipated and sent to --
22 you know, other people took it and we can't find

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1 it"?

2 MR. FOX: Well, you know, we subpoenaed
3 everybody we could think of. First of all, I
4 don't know that he said there was a lot. He said
5 that there were some. Secondly, if we -- if it
6 was really important, I would think Mr. Giuliani
7 would have been able to describe it for us: "Oh,
8 by the way, I had this one killer declaration that
9 just showed that there was massive fraud being
10 convicted -- committed in Philadelphia by these
11 people, these volunteers who were counting the
12 elections, and I just happened to lose it".

13 But we got it from -- you know, we got
14 it from four different sources: from Mr. Giuliani,
15 from the Scaringi law firm, from Ms. Kearns, and
16 from Mr. Hicks' law firm. Every lawyer who signed
17 a complaint, we subpoenaed them all. And they put
18 in the other -- their -- their own version, RX1,
19 and none of it supports any of this stuff.

20 And, you know, maybe -- maybe I'll be
21 surprised. Maybe Mr. Leventhal, in his closing
22 argument, is going to come up and pull some --

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1 some smoking guns out of RX1, but I -- I doubt it.

2 Now, let me just say, look, to bring a
3 case like this, you got to have a basis in facts
4 and you got to have a basis in the law. And I've
5 been focusing primarily on the basis in fact,
6 because there isn't any basis in fact. There also
7 isn't any basis in the law, but frankly I don't
8 want to get hung up too much on this. Those of us
9 who are lawyers, we like these kinds of things,
10 and -- and -- and -- -- and but, you know, it
11 really -- if there's no basis in fact, it doesn't
12 make any difference. Having said that, I will
13 then launch into a brief discussion of the basis
14 in law. And the first thing I'll talk a little
15 bit about is the Electors and the Election
16 Clause...

17 You know, this is just not something
18 you raise in a 1983 civil rights case. It's --
19 it's -- it's a -- it's an allocation of powers
20 issue. The basic argument is that, when the
21 legislature is given the responsibility under the
22 Constitution to establish the guidelines for

1 voting, and, you know, the legislature generally
2 delegates some of the details of that to the
3 executive branch, in this case the secretary of
4 state. And so the argument is, did the secretary
5 of state -- secretary of state go too far? You
6 know, did she do things that she wasn't
7 authorized. It's a -- you know, it's a -- not --
8 not -- well, I guess really is almost -- not quite
9 a separation of powers argument, but it's -- it's
10 that kind of analysis. It's not a civil rights
11 argument. It's not something you raise in a 1983
12 action. If you're going to raise that issue at
13 all, presumably the legislature assumes the
14 secretary of state, and it gets hammered out. But
15 it's not a civil rights claim and -- and why it
16 dropped out of this case entirely.

17 So what are the civil rights claims?

18 All right, the -- the Equal Protection claim for
19 the voters -- and I don't want to spend a lot of
20 time on that, because I think the hearing
21 committee knows what's wrong with that. You know,
22 the voters sued the wrong party. If they were

1 denied the right to vote, it was because the
2 counties in which they live didn't bother to
3 notify them that they had messed up their --
4 their -- their mail-in ballot, and -- and they
5 sued -- and they should have sued them. But
6 instead they sued the other counties and asked
7 that all those -- all those mail-in ballots be
8 disqualified.

9 The Equal Protection argument for the
10 Trump campaign falls on its face -- and the Third
11 was Circuit, you know, clear on that -- because
12 they don't plead that the Trump campaign was
13 treated any differently than the Biden campaign.
14 Those same barriers that inhibited the Trump
15 campaign observers inhibited the Biden campaign
16 observers.

17 Now, Mr. Giuliani said yesterday, "Well
18 there were some exceptions where some democrats
19 got past them" -- I'm not sure that was ever
20 pled -- but he also candidly admitted that, in
21 general, the democrats -- and he said -- he said
22 it specifically at the oral argument -- the

1 democrats were subjected to the same restraints.

2 And there -- and -- and what about in
3 the Notice and Cure? The Biden voters in the
4 county that didn't have Notice and Cure were
5 treated the same way as the Trump voters. The
6 Biden voters, in the counties that did have Notice
7 and Cure, were treated the same way as the Trump
8 voters. It doesn't make out an Equal Protection
9 claim.

10 And -- and by the way, just to stop for
11 one moment on the Notice and Cure, and maybe this
12 ought to end the thing. It -- it's really a
13 footnote. I mean, the Third Circuit said that --
14 they said they'd identified that something of
15 6,800 sticks in my mind persons who had had the
16 benefit of Notice and Cure, and they said that
17 means the maximum number could have been, let's
18 say, 10,000. This is an election decided by
19 80,000 votes. I mean, it's silly.

20 CHAIRMAN BERNIUS: Is there -- is there
21 anything in the record is to why certain counties
22 did not implement Notice and Cure?

1 MR. FOX: No.

2 CHAIRMAN BERNIUS: Okay.

3 MR. FOX: I mean, I -- I -- I -- I
4 think one could fairly infer that it -- that
5 there -- that there's some timing issues here,
6 because -- what happened was the secretary of
7 state wanted all counties to implement Notice and
8 Cure, and that's why she went to the -- to the
9 state courts. And you've got that ruling that
10 we've all seen from the Pennsylvania Supreme
11 Court. And the Pennsylvania Supreme Court said
12 no, the law doesn't require them to do that.
13 Didn't say they couldn't; said they're not
14 required. So then -- and that's -- the dates in
15 the record of that opinion. It's -- it's either
16 in September or October. So it's shortly before
17 the election. And -- and then she sends it out
18 and, you know, some people do and some people
19 don't.

20 So that brings us to the final claim,
21 which is the barriers that somehow a Substantive
22 Due Process claim. I mean, you know, the barriers

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1 themselves are not any kind of federal claim.
2 What's the Substantive Due Process claim? It
3 depends on the existence of a massive fraud caused
4 by these barriers, and they any even allege facts
5 that there was any fraud. They never -- they
6 never showed a single voter who voted who
7 shouldn't have been allowed to vote or a
8 miscounting of the vote. They never alleged it.
9 What -- how do you try to prove it?
10 Look at the arguments that they make. They make
11 essentially seven arguments I think. Maybe I
12 miscounted but I think it's seven. The first one,
13 they cite the Carter-Baker report. It could --
14 you know, a statement, "This could lead to fraud".
15 That doesn't prove fraud happened.
16 Second, they cite misconduct outside of
17 Pennsylvania. Mayor Daley, in 1960, that
18 certainly is not evidence of any fraud in the 2020
19 election in -- in Pennsylvania.
20 Third, they cite misconduct that
21 occurred before the 2020 election. That isn't
22 proof of fraud in the 2020 election.

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1 Fourth, they cite some irregularities
2 in counties they didn't even bother to sue.
3 Remember yesterday, when Mr. Giuliani pointed out
4 this allegation about this mail carrier? That was
5 in Erie County, not one of the defendants.
6 Okay, not a single allegation of
7 fraudulent conduct -- sorry, not a single fact --
8 plenty of allegations -- not a single fact of
9 fraudulent misconduct in the seven counties that
10 are involved.
11 And so, what are their last three
12 arguments: the observational barriers, which we've
13 discussed; this somewhat eccentric testimony about
14 statistical evidence -- and if you look at the --
15 the oral argument, frankly it doesn't even make
16 much sense; and finally, this unspecified proof
17 that 300 declarations or affidavits that we've got
18 would substantiate all of this. None of it hangs
19 together. None of it is proof of the kind of
20 fraud that you would need to prove. So there is
21 no "there" there. This is not just a pudding
22 without a theme. There is -- there's -- there's

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1 no pudding for this proof.
2 This case is ultimately frivolous
3 because federal courts are not in the business of
4 taking away citizens' right to vote, which is what
5 Mr. Giuliani asked them to do --
6 MR. BROZOST: Mr. Fox, can I -- can I
7 ask you, there are two violations alleged, eight
8 point -- 3.1 and 8.4. Is it necessary that you
9 prove the 3.4 for the eight point -- the 3.1 for
10 the 8.4 violation?
11 MR. FOX: I think the answer is yes.
12 Because if -- you know, if -- if there had not
13 been a -- if -- if the complaint was not
14 frivolous, then you wouldn't have -- I mean,
15 we've -- we've pled eight point -- remember, we're
16 pleading the Pennsylvania rules here, but the law
17 in Pennsylvania, it's a little broader, but the
18 law in Pennsylvania is not dissimilar to the
19 District of Columbia in that unnecessarily
20 burdening a tribunal is a violation of 8.4(d).
21 And -- and, you know, in DC it's required that
22 that happened, not so much in Pennsylvania. But

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1 essentially we're pleading the same thing. And
2 there wouldn't have been all this unnecessary
3 litigation if the litigation had been legitimate.
4 So I think -- I think the answer is
5 that they are linked in that fashion.
6 I see you have a look of puzzlement on
7 your face.
8 MR. BROZOST: Well, I -- I do, from
9 something you said. Let me -- so -- yeah, okay.
10 I -- I understand.
11 So if you plead a case and lose, it
12 doesn't necessarily implicate 8.4?
13 MR. FOX: No, absolutely.
14 I mean, if -- -- if -- I -- I certainly
15 would not take the position that everybody who --
16 who brings a case and loses, but somebody who, you
17 know, had the opportunity to raise these issues if
18 they wanted to raise them in the state courts,
19 where they should have been raised, in a system
20 that is designed to deal with it, and instead
21 concocts this bogus civil rights claim, and files
22 it in the federal court, and ties up the federal

<p style="text-align: right;">Page 1073</p> <p>1 courts and then in -- you know, all the way 2 through the Third Circuit, with -- with this 3 stuff, that's the violation of 8.4. 4 CHAIRMAN BERNIUS: Mr. Fox, I -- in -- 5 in -- in line with that, one -- one of the things 6 that's -- that's really bothering me is, on one 7 hand you have the frivolous claim issue, and on 8 the other hand you have the zealous representation 9 issue. And I'm trying to -- I'm going try to in 10 my own mind to distinguish this case from any 11 other case where a lawyer brings a -- brings a 12 claim and it's -- and it's tossed under 12(b)(6), 13 okay, motion to dismiss granted. And -- and here 14 you have, conceptually -- and I -- I understand, 15 when you get down and dirty in the facts, 16 they're -- they are significant. Conceptually you 17 have a lawyer who engaged local counsel who 18 purported to be experts in election law, who had 19 working with him, at least there is an inference, 20 other -- other lawyers in Arlington -- Toensing 21 and diGenova, and -- and others -- who engaged 22 a -- an investigator to look into these claims</p>	<p style="text-align: right;">Page 1075</p> <p>1 with each other. I mean, for example, just -- 2 just think about this case, these kinds of cases 3 on their merits. On the one hand you have the 4 principal that every vote -- you know, every 5 citizen is entitled to have their vote counted. 6 On the other hand, you have the principal that 7 elections ought to be fair and, you know, and that 8 people who aren't entitled to vote ought not to 9 have -- be able to vote. So you've got opposing 10 principals there. 11 Similarly, you've got opposing -- 12 you've got opposing principals in the Free 13 Exercise Clause and the Establishment Clause of 14 the First Amendment. But -- and -- and -- and 15 you -- and you have an opposing principal here, 16 too. Zealous representation on the one hand, 17 maybe opposing to not bringing a frivolous case. 18 I don't think so. But, you know, one could 19 certainly set it up. I think the zealous 20 representation generally applies once you're, you 21 know, conducting the litigation. I don't think it 22 gives you -- well I know it doesn't give you the</p>
<p style="text-align: right;">Page 1074</p> <p>1 before they pulled the trigger. So, you know, 2 just -- just -- those concept are probably -- 3 represent more diligence than the ordinary -- the 4 reasonably ordinary, prudent lawyer would under -- 5 would have before filing a -- a -- a claim or a 6 complaint in federal court. 7 I -- I don't -- you know, I don't need 8 you to do that now. You can address it if you 9 want. But drawing that line and distinguishing 10 this case from the ordinary reasonable case is 11 something that I'm -- I'm struggling with in my 12 mind. How do you -- how do you identify one as 13 improper and one as perfectly appropriate under 14 the zealous representation doctrine? 15 Does that make sense? 16 MR. FOX: No, that makes sense, and -- 17 and -- and -- and I'll try to address it more 18 thoroughly, but let me just give you an immediate 19 reaction to that. 20 There -- there are many instances that 21 we all confront every day in which we have 22 principals that are, to some extent, are at war</p>	<p style="text-align: right;">Page 1076</p> <p>1 right to bring a case with no basis whatsoever. 2 You can't say, "Well, my client" -- Look, I am 3 quite confident that Mr. Giuliani's clients wanted 4 him to bring, you know, as strong a case as they 5 could. But the fact that your client wants you to 6 do that doesn't mean that you can bring a case 7 that has no basis. If my client says, "Sue 'em, 8 sue 'em, you gotta sue 'em," but I don't have any 9 basis to sue 'em, I got to say to my client, "I 10 can't do that. I don't have a basis to do it". 11 And -- you know, and -- and are the principals 12 somewhat at war? Perhaps. But, you know, as 13 lawyers we have to deal with those kinds of things 14 all the time, and, you know -- and that's what Mr. 15 Giuliani should have done. Maybe his client was 16 insisting that he sue, but he -- it's his 17 obligation as a lawyer to say, "I can't subject 18 defendants to a lawsuit where I have no factual 19 basis to bring that lawsuit". 20 And, as I was starting to say, courts 21 are not in the business of taking away people's 22 right to vote, and the federal courts in</p>

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1 particular are not in that business. And the
2 numbers, like everything else with Mr. Giuliani's
3 pleadings, are very slippery, but let's just take
4 the lowest number, which I think is the most
5 favorable to him, which is 680,000. At a minimum,
6 at a minimum, he was requesting that the federal
7 courts take away the votes of 680,000 citizens of
8 Pennsylvania, the vast majority -- actually
9 probably every one -- but certainly the vast
10 majority of whom were legitimate voters who were
11 voting.

12 Now it is a perversion of the civil
13 rights laws, laws that were designed to protect
14 the right to vote, to use them to deprive people
15 of their right to vote. It's impossible -- I
16 don't -- well, never say never, so, I will say
17 difficult instead of impossible to conceive of
18 facts that would justify doing that. I mean,
19 maybe you could come up with evidence, some
20 evidence that 680,000, you know, people were
21 bussed into Pennsylvania and voted illegally. You
22 know, it'd have to be something like that,

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1 something as preposterous as that. Mr. Giuliani
2 didn't have an evidence of one, even one.

3 Now a lawyer of his experience and
4 sophistication certainly should have known, and
5 probably did know, that this case had no chance.
6 There is an ulterior motive for these cases. It's
7 part of a larger effort that we've all seen to
8 discredit the results of the 2020 election.

9 CHAIRMAN BERNIUS: Is that in the
10 record?

11 MR. FOX: Well, I mean, I think -- Mr.
12 Giuliani likes to use the phrase "inference". I
13 think that's the inference that you draw when you
14 see somebody who goes to the -- the party
15 headquarters the day after the election and says,
16 "Where are the lawsuits?" Not where are the
17 evidence. "Where are the lawsuits?" And this --
18 this wasn't an effort to bring legitimate
19 lawsuits. This was an effort to discredit the
20 election.

21 MR. LEVENTHAL: I object. This is not
22 in evidence.

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1 MR. FOX: Well, then -- I -- I submit
2 to you that you should conclude that that's the --
3 that that's what's going on here and that --

4 CHAIRMAN BERNIUS: Well, Mr. -- Mr. --
5 Mr. Fox, on -- on -- on that issue, isn't it --
6 isn't it reasonable -- and I think somebody
7 testified to this, too -- if you're involved in a
8 heavily fought campaign to have draft complaints
9 ready to go in the event that facts support that.

10 I mean, you don't want to -- you don't
11 want to be caught behind the eight ball doing
12 initial research on to --- in the elections law
13 issues or -- I mean -- so I don't -- I don't see
14 that as quite as sinister as -- as you might.

15 MR. LEVENTHAL: And Mr. -- Mr. Hearing
16 officer, I -- I was --

17 What's going on?
18 (Audio feedback interruption.)

19 MR. LEVENTHAL: I was -- I -- I tried
20 to object, but I -- I don't know what's going on
21 now.

22 CHAIRMAN BERNIUS: I don't what the

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1 objection is but I overruled it.

2 MR. FOX: Mr. Bernius, I don't think --
3 the -- the only evidence I think that -- that
4 people have these draft complaints sitting around,
5 ready to go, is Mr. Giuliani's testimony. I don't
6 know how you draft a complaint without knowing
7 what the facts are. Yeah, you can draft legal
8 memoranda that -- that set things up, and -- and
9 surely, you know, every campaign, or every
10 presidential campaign that I'm aware of in recent
11 years has lined up lawyers ready to go if things
12 happen on Election Day, like the barriers in
13 Philadelphia. And if things happen on Election
14 Day that they have to address immediately, sure.
15 People are lined up and prepared to do that.

16 But, I mean, can you think of any other
17 presidential campaigns recently where, after the
18 results were in, all these massive suits were
19 filed? No. It doesn't happen. This is a unique
20 thing in American history. I mean -- and -- and
21 you know -- and I think you can infer what I --
22 what is obvious: that the purpose here is to

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1 discredit the results of the election, not to win
2 the lawsuit.
3 Whatever it is, Mr. Giuliani is not
4 entitled to use his position as a lawyer to file a
5 case without a basis in law and fact, and he's
6 not -- even if the purpose is not as improper and
7 unworthy as I believe this one was. There's a lot
8 of testimony yesterday about his public service.
9 I don't dispute that Mr. Giuliani has had an
10 extensive career in public service, and I
11 certainly don't dispute that his conduct following
12 the 9/11 was admirable and credible. But he
13 throws all that away when he tries to use a
14 lawsuit to undermine, you know, what I think is
15 the essence of the democratic republic: That the
16 majority rules, and the minority accepts that.
17 And I think it's important to send a message that
18 other lawyers can't do that. That it's improper
19 conduct, and that you can't bring a case with no
20 basis, particularly a case as important as this,
21 that has the implication that this case has.
22 CHAIRMAN BERNIUS: Let me ask you a --

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1 a -- a -- a nitty gritty question...
2 Under -- under the Pennsylvania rule,
3 is the -- is the standard of violation -- to
4 violate 3.1 subjective, or objective, or a
5 combination of both?
6 MR. FOX: It is -- it's -- it's a
7 reasonable a person test. You don't have to prove
8 that the lawyer -- you know, the lawyer could be
9 crazy, or -- or -- or have a irrational belief
10 that there was a legitimate basis for bringing the
11 complaint. But if a reasonable person could not
12 do that, if a reasonable person couldn't come to
13 the conclusion that you use a civil rights statute
14 designed to protect the right to vote, to take
15 away people's right to vote, then that's a
16 violation of 3.1.
17 CHAIRMAN BERNIUS: And -- and, when you
18 say reasonable person, I -- you mean reasonable
19 lawyer.
20 MR. FOX: Yes.
21 CHAIRMAN BERNIUS: Is that a reasonable
22 lawyer steeped in election law, or is it

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1 reasonable lawyer without -- without any
2 particular election law experience?
3 MR. FOX: Well, you're not supposed to
4 bring a case if you're not competent to -- to
5 handle it. So I think it -- one has to assume
6 that the person bringing the case has educated
7 himself sufficiently in the relevant law to know,
8 you know, what the standards are to bring these
9 actions.
10 MR. LEVENTHAL: I have -- I know that
11 Mr. Giuliani is not accused of violating that
12 rule.
13 CHAIRMAN BERNIUS: I -- I didn't hear
14 anything that you -- I --
15 MR. LEVENTHAL: I'm muted again?
16 Oh, I said I just want to note that Mr.
17 Giuliani is not accused of violating another rule,
18 which Mr. Fox has cited.
19 MR. FOX: I'm not accusing Mr. Giuliani
20 of violating another rule. What I'm saying is
21 that all lawyers are supposed to be competent to
22 handle the matters they're handling. And so that

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1 means that, if you're applying a reasonable lawyer
2 test, that you apply a reasonable lawyer who has
3 sufficient education, has sufficiently educated
4 himself in the relevant law in the area in which
5 he's pleading a case.
6 I mean, if I were going to bring a -- I
7 would be totally and completely incompetent to
8 bring a patent case, okay. Maybe all of us would
9 be. I'd be completely incompetent to do so. If I
10 brought a patent case that had no basis in law and
11 fact, I can't -- it's not a defense for me to say,
12 "Gee, I'm not a patent lawyer". So -- so, I -- I
13 think that's the answer to your question.
14 I have nothing further unless the
15 committee has additional questions for me.
16 MS. HAYNESWORTH-MURRELL: I have a
17 question.
18 Based on what you just said, Mr.
19 Giuliani -- did anyone else on his team have, had
20 or have the experience in election law that
21 understood the process in Pennsylvania and the
22 seven counties' election process, was there anyone

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1 else on the team?
2 MR. FOX: I -- I think that's an
3 excellent point, and the answer is yes, at least a
4 according to Mr. Giuliani, and I -- and I think
5 he's right on this -- that -- that Mr. Hicks and
6 the people that were originally on the case
7 withdrew did have that experience.
8 In fact, if you look at the list of
9 lawyers in some of this pre-election cases, you'll
10 see Mr. Hicks' name is prominent there. So
11 clearly Mr. Hicks did have experience in election
12 law. And, you know -- so I think that is -- is
13 attributable to Mr. Giuliani as part of the -- the
14 team at the time.
15 MS. HAYNESWORTH-MURRELL: And why --
16 and maybe I missed or misunderstood why Mr. Hicks
17 is not available to testify in these proceedings.
18 MR. FOX: Mr. Hicks -- my subpoena
19 power is limited to 25 miles around the courthouse
20 where I'm sitting right now.
21 MS. HAYNESWORTH-MURRELL: Okay.
22 MR. FOX: Mr. Hicks is -- is in

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1 Pittsburgh. I -- I represented, and I -- and I
2 think Mr. Leventhal will represent the same thing,
3 that I attempted to speak with him. He wouldn't
4 do that. The only thing I could do was subpoena
5 documents. I do have the ability to subpoena
6 documents, in part because his law firm had a DC
7 office.
8 And you'll -- if you -- the subpoena's
9 in the record, and so I served a -- subpoena on
10 him there in DC. But that's all I could do.
11 MS. HAYNESWORTH-MURRELL: Okay. Thank
12 you.
13 CHAIRMAN BERNIUS: Is there anything in
14 the record as to why those lawyers withdrew, other
15 than what Mr. Giuliani said?
16 MR. FOX: No.
17 CHAIRMAN BERNIUS: Okay.
18 MR. BROZOST: Mr. Fox, I just have one
19 quick housekeeping question.
20 This action -- Mr. Giuliani was
21 suspended based on an action taken by state court
22 in New York. Does this case now assume a life of

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1 its own, regardless of what happens in New York
2 State?
3 MR. FOX: Boy, that's -- that's like a
4 law school exam question. So let -- so let me
5 just kind of walk through the facts and maybe
6 that'll help.
7 My understanding is that the New York
8 court sua sponte suspended Mr. Giuliani without a
9 case being brought by my -- the people who have my
10 job up in New York. I forget the actual name.
11 And they -- they did that on a much broader basis
12 than the case that I have brought, relying on
13 things that I would not be willing to rely on,
14 which are statements that Mr. Giuliani made, not
15 as a lawyer in court, but as a -- he has a radio
16 show and things like that where I think frankly
17 First Amendment issues are involved.
18 The District of Columbia Court of
19 Appeals' rules are that there's a presumption in
20 favor of imposing discipline that's imposed by
21 another court on a member of the DC Bar who
22 happens to be a member of that other court's bar.

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1 And they did that. Mr. Giuliani opposed it. And
2 they did that on that basis.
3 So let's suppose that we go through all
4 this process and there's a determination that Mr.
5 Giuliani has no liability, frankly don't know what
6 happens in that case. I think -- I think the
7 reality would be that time will have solved it,
8 that New York will have come to some final
9 resolution -- because New York is, from my
10 understanding, is just a temporary thing, as
11 ours -- will come to a final resolution, but I
12 don't know -- I can't say for sure.
13 But given the -- the slow pace of
14 the -- the disciplinary process in the District of
15 Columbia, I suspect there will be some kind of
16 resolution of the New York matter, and I would
17 think that the DC temporary suspension would go
18 away if the New York temporary suspension goes
19 away. I assume it would. I certainly wouldn't
20 oppose it.
21 MR. BROZOST: So what effect would that
22 have on the instant proceeding?

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1 MR. FOX: I don't think it would have
2 any. Because that -- because that -- I mean, I --
3 my -- my Specification of Charges is different --
4 there isn't a Specification of Charges, or
5 whatever they call it, in New York, a charging
6 document, but my Specification of Charges is
7 different than the matters that were cited by the
8 New York court in imposing a suspension.
9 MR. BROZOST: Okay, thank you.
10 CHAIRMAN BERNIUS: Okay, anything else,
11 from the panel?
12 It's -- we've been going an hour and a
13 quarter. I would suggest that we recess until
14 12:30 and -- who's arguing on behalf of the
15 respondent, Mr. Leventhal?
16 MR. LEVENTHAL: I will try, your Honor.
17 CHAIRMAN BERNIUS: All right, we
18 will -- we will hear from you at that time, and
19 hopefully if you guys can work out your microphone
20 situation so you don't get yourself twisted up in
21 knots when you're trying to speak, it would be --
22 it would be helpful. Thank you. We'll see you in

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1 15 minutes.
2 (Recess taken.)
3 CHAIRMAN BERNIUS: I'm complaining that
4 I can't hear anybody and I'm muted. I'm sorry.
5 All right, before we begin, have --
6 have the parties agreed on the -- on the witness
7 list -- on the exhibit list and what's been
8 admitted and what's not been admitted?
9 Now we can't hear you, Mr. Kamins --
10 Mr. Leventhal.
11 MR. FOX: Mr. Horrell's been handling
12 that, but I think we -- I think we -- we have a
13 signed witness list now to submit to the board
14 office.
15 CHAIRMAN BERNIUS: But there's no
16 dispute, right?
17 MR. FOX: No, there's been no dispute.
18 CHAIRMAN BERNIUS: That's all I want to
19 know.
20 We can -- we can hear noise but not
21 really what you're saying.
22 Mr. Giuliani, could you say something

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1 and then -- I suggest it might be that you switch
2 chairs with Mr. Leventhal -- no, wait a minute. I
3 can't hear you either, I'm sorry. Can't hear you.
4 (Discussion off that record.)
5 MR. LEVENTHAL: I'm sorry. We had a
6 switch in our technician today.
7 CHAIRMAN BERNIUS: Any time you're
8 ready, Mr. Leventhal.
9 CLOSING STATEMENT
10 ON BEHALF OF RESPONDENT
11 BY MR. LEVENTHAL:
12 MR. LEVENTHAL: Good afternoon.
13 Respondent Rudolph Giuliani should not be
14 sanctioned as there is no clear and convincing
15 evidence -- which I didn't hear Mr. Fox mention at
16 all -- that he violated Rules 3.1 and 8.4(d) of
17 the Pennsylvania Rules of Professional Conduct.
18 Mr. Giuliani's representation of then
19 President Trump must be viewed in the context of
20 what had transpired and occurred during what was a
21 chaotic situation in a compressed and truncated
22 period of time.

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1 I see Mr. Fox wanted to talk only about
2 fraud here, and maybe we'll talk a little about
3 fraud, because there was some fraud alleged, but
4 that's not -- that's not what we're going to
5 concentrate on here. We're going to concentrate
6 on the Due Process, viability of the Due Process
7 and Equal Protection causes of action.
8 The presidential election was held on
9 November 3rd, 2020. On November 4th, then
10 President Trump placed Mr. Giuliani in charge of
11 coordinating the campaign litigation nationally.
12 Mr. Giuliani set up offices at campaign
13 headquarters in Arlington, Virginia. From
14 November 4th through his appearance in the
15 Pennsylvania litigation, he began setting up
16 litigation teams for Pennsylvania, Michigan,
17 Arizona, Georgia, Wisconsin, Nevada and North
18 Carolina and New Mexico and held various
19 suggestions with lawyers in various states.
20 Judge Brann noted that attorneys from
21 the plaintiffs both appeared and withdrew within
22 72 hours. On November 9th, the complaint was

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1 filed by the attorney, Ronald Hicks.
2 And if I can answer his
3 Haynesworth-Murrell's -- I hope I got your name
4 right, madam, that's what it says on the screen,
5 although mine probably says "Barry Kamins, but --
6 MS. HAYNESWORTH-MURRELL: That's
7 correct, Haynesworth-Murrell.
8 MR. LEVENTHAL: Okay. To answer your
9 question, a reasonable attorney who is not well
10 versed in election law should be -- use an
11 attorney who is well established in election law.
12 And I point to you that, in the cases that were
13 cited in the Equal Protection part of the
14 complaint and in the -- and in the motions, namely
15 Pierce vs. Allegheny County Board of Elections,
16 which was a Western District of Pennsylvania
17 federal case, "The district court found that
18 different counties across the commonwealth
19 employed different standards to determine whether
20 an absentee ballot should be counted and
21 considered a legal vote.
22 "The court held that this disparate

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1 treatment implicated the Equal Protection Clause
2 because uniform standards will not be used
3 statewide to discern the legality of a vote in a
4 statewide election.
5 "Notably, the court held that
6 plaintiffs had standing and properly had an Equal
7 Protection claim in capacity as voters and issued
8 a limited injunction."
9 Judge Brann did not distinguish or
10 acknowledge Pierce in this decision. The reason
11 I'm mentioning that is that the attorney,
12 plaintiff's attorney in that case, was Ronald
13 Hicks, and Ronald Hicks was the one who
14 predominantly drafted the initial complaint.
15 Now, on November -- on November 9th,
16 the complaint was filed by Hicks and Carolyn McGee
17 of Porter Wright, and Linda Kearns. On November
18 12th Hicks and McGee moved to withdraw, and two
19 Texas attorneys, John Scott and Douglas Brian
20 Hughes, joined as cocounsel for Linda Kearns.
21 On November 13th, the Third Circuit
22 Court of Appeals issued Bognet vs. Secretary of

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1 the Commonwealth of Pennsylvania. And I want to
2 alert the panel that, two days after the argument
3 on November 17th, the -- the appellants filed a
4 writ of certiorari to the Supreme Court of the
5 United States on Bognet. And that's important
6 because that's what Mr. Ortiz said. Mr. Ortiz
7 said, if that was going to be done, the -- the
8 plaintiffs -- the respondent was perfectly allowed
9 to say that he wanted to preserve that right to --
10 to overturn Bognet.
11 Now on November 15th, 2020, plaintiffs
12 filed the first amended complaint with attorneys
13 Kearns and John Scott. Defendants filed motions
14 to dismiss on November 16th. Later that evening,
15 Linda Kearns along with John Scott and Douglas
16 Hughes, moved to withdraw from the litigation.
17 Judge Brann granted Scott and Hughes'
18 motion as they had only been in the case for less
19 than 72 hours. Judge Brann did not grant Kearns'
20 application as she had been one of the original
21 attorneys in the litigation. An oral argument was
22 scheduled for the next day on November 17th, and

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1 Judge Brann want to have someone to be able to
2 answer the questions as indicated in the oral
3 argument.
4 I'm looking -- just give me one second,
5 your Honor -- here it is.
6 Also on the 16th, Mark Scaringi entered
7 his notice of appearance for the plaintiffs and
8 requested to postpone the previously scheduled
9 oral argument and evidentiary hearing. A
10 continuance application was denied, cited by the
11 court as the emergency nature of the proceeding
12 and the approaching deadline for Pennsylvania
13 counties to certify the election's results on
14 November 23rd.
15 On the morning of November 17th,
16 respondent made it his application -- filed his
17 application to appear pro hac vice to the court
18 and entered his appearance on behalf of the
19 plaintiffs. Argument was held on the first
20 amended complaint and Judge Brann noted that he
21 was glad that Ms. Kearns was there to answer his
22 questions and wished she stayed in the case as

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1 respondent and Mr. Scaringi were just getting
2 settled into the case. And that's noted at page
3 168 of the Disciplinary Counsel Exhibit 8.
4 Respondent and Mr. Scaringi stated
5 their intention to file a motion for leave to file
6 a second amended complaint. Judge Brann stated
7 that he had not decided this matter, so at that
8 point Judge Brann did not think that this was a --
9 a frivolous complaint. He hadn't even decided
10 whether it was going to be dismissed. And that's
11 on page 159 of Exhibit 8. The court noted that
12 the respondent's client was unpopular, and so was
13 his cause, but also noted that representation was
14 warranted. And that's on page 161.
15 CHAIRMAN BERNIUS: Well, didn't --
16 didn't -- in his -- in his opinion, didn't Judge
17 Brann call the -- the remedy that was sought
18 unhinged from the underlying right being asserted?
19 Doesn't "unhinged" suggested that --
20 suggest that he thought it might be frivolous?
21 MR. LEVENTHAL: Well, I just want to
22 bring your attention that when the -- when -- when

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1 Mr. Giuliani and the lawyers brought the motion
2 for a TRO, they only requested to maintain the
3 status quo and not -- so that they would not
4 certify the election, and he intended to prove, if
5 given an opportunity -- a hearing was originally
6 scheduled and he canceled the schedule, Judge
7 Brann, and he was given the opportunity, he would
8 try to prove the allegations and achieve one of
9 the remedies, including whatever the court thought
10 was proper, maybe a new election, like Marks v.
11 Stinson.
12 CHAIRMAN BERNIUS: I thought -- I
13 thought that you were suggesting, because he
14 didn't call the claims frivolous or sanction Mr.
15 Giuliani, that judge -- Judge Brann viewed them
16 somewhat favorably.
17 But it seems to me that calling them --
18 the remedy application "unhinged"... and then he
19 said, "One might expect that when seeking such a
20 startling outcome, a plaintiff would come
21 formidably armed with compelling legal arguments
22 and factual proof of rampant corruption," none of

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1 which was brought before him.
2 MR. LEVENTHAL: Well, that's what he's
3 talking about in the -- dealing with the fraud
4 allegations. But as I said, I think Judge Brann
5 made -- and -- and Mr. Ortiz made big mistakes in
6 the Due Process and Equal Protection realm.
7 And if I may --
8 MR. BROZOST: Can I ask you a question,
9 Mr. Leventhal?
10 MR. LEVENTHAL: Of course you can.
11 MR. BROZOST: Talking about Due Process
12 and Equal Protection, the two plaintiffs -- Henry
13 was it, and Roberts?
14 MR. LEVENTHAL: Yes, sir.
15 MR. BROZOST: Was there not an attempt
16 to get their vote counted rather than to
17 disenfranchise, you know, 680,000 people?
18 MR. LEVENTHAL: Well, that really was
19 under a voter dilution standing, and they couldn't
20 get any remedy if they -- if they sought to sue
21 their counties. I know Mr. Bernius had brought
22 that up earlier. They couldn't get any relief by

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1 suing their own county.
2 So, in Reynolds vs. Simms, the Supreme
3 Court explained that, "The right of suffrage can
4 be denied by a debasement or dilution of the
5 weight of a citizen's vote just as effectively as
6 by wholly prohibiting the free exercise of the
7 franchise".
8 CHAIRMAN BERNIUS: They -- they -- they
9 couldn't get relief in their own counties because
10 they didn't sue them, obviously, and they -- what
11 relief did they expect to get from the counties
12 that they did sue? I don't understand.
13 They sued them as defendants. What did
14 they want those counties to do vis-a-vis the
15 individual plaintiffs?
16 MR. LEVENTHAL: Well, they -- they
17 wanted to have the votes in -- they wanted to
18 have -- it's really an Equal Protection argument.
19 They weren't allowed cure. In the other counties,
20 in the democratic counties you were allowed to
21 cure.
22 I think we just lost someone -- oh.

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1 And -- and -- and that's -- that's an
2 Equal Protection argument. But I think he was
3 talking about standing, if I'm correct.
4 Is that -- is that correct, Mr.
5 Brozost?
6 CHAIRMAN BERNIUS: They sued these --
7 these defendant counties. There's no indication
8 that they ever set foot in those counties.
9 What -- in -- what did they -- what relief were
10 they going to get from the defendant counties?
11 MR. LEVENTHAL: They -- they were
12 trying to show that there was an Equal Protection
13 argument that different counties were -- were
14 treating the way the votes were counted
15 differently in those seven counties as in the
16 republican counties. And there were -- there were
17 averments in the complaint stating that, and --
18 and I can cite --
19 CHAIRMAN BERNIUS: I understand -- I
20 understand, Mr. Leventhal. But what -- they sued
21 seven counties and seven boards of election. What
22 relief did they expect to get from those counties?

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1 MR. LEVENTHAL: They expected that --
2 that those counties who didn't notice the cure,
3 either those votes should not be counted because
4 it was contrary to law, who didn't notice the
5 cure, that that was contrary to law because a
6 reading of the Supreme Court decision where --
7 where -- see, and I think Mr. Fox got that case
8 wrong.
9 What happened in -- in that case, the
10 democratic party sued for notice of cure being
11 mandated. I mean, the Secretary of State was the
12 one who opposed that. She opposed that. She
13 didn't want to have a -- a mandatory notice of
14 cure.
15 So once she -- once she -- once she --
16 once this matter, universal Notice to Cure
17 throughout the state, it runs afoul of Bush v.
18 Gore. It runs afoul of all of -- of all of the
19 Equal Protection cases that were given to you in
20 my -- in our memorandum today but also cited --
21 CHAIRMAN BERNIUS: Can you -- can you
22 name one case, state or federal, in the entire

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1 history of this nation, where a voter who has
2 properly been denied his right to vote can obtain
3 a disqualification of thousands of other voters
4 who properly voted?
5 Is there any -- any case in -- in law
6 or equity that has given that relief?
7 MR. LEVENTHAL: No, but -- but what I'm
8 saying is that, if everyone has to be treated
9 equally, then we either --
10 CHAIRMAN BERNIUS: You don't -- you
11 don't -- you don't -- you don't have any precedent
12 for that extraordinary remedy?
13 MR. LEVENTHAL: Well, let me -- let me
14 say this: that doesn't mean -- look, I had -- Mr.
15 Ortiz -- Mr. Ortiz was on the stand and you were
16 so nice to let me ask him a few questions. And
17 in -- in a double jeopardy situation, the Supreme
18 Court reversed itself when setting precedent
19 within two years.
20 In a criminal law scenario, within 24
21 years, a decision was reversed in how to handle
22 hearsay, and it changed the contour -- it

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1 changed -- never before, it changed the contours
2 of criminal litigation in terms of --
3 CHAIRMAN BERNIUS: This claim was based
4 on the anticipation that the Supreme Court would
5 reverse itself? And what opinion did you expect
6 it to reverse?
7 MR. LEVENTHAL: You're saying it's
8 without precedent when he was trying to make
9 precedent.
10 MR. BROZOST: But he's trying to make
11 precedent but, I mean, the history --
12 MR. LEVENTHAL: There's two ways to
13 look -- I'm sorry, excuse me. Go ahead.
14 MR. BROZOST: But the history since all
15 the voting rights case was to -- and especially
16 Equal Protection, to expand and protect the right
17 to vote.
18 MR. LEVENTHAL: So then are you saying
19 that my client, Mr. Giuliani, did a disservice to
20 his client by not suing all of the counties that
21 did not permit Notice to Cure? If that's so, then
22 he didn't do enough for his client, but it's

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1 definitely not frivolous. He made a mistake.
2 It's definitely not frivolous.
3 If you're telling me he should have
4 sued all of -- all of the counties that didn't
5 allow Notice to Cure because they treated these
6 people unfairly, then he made a mistake. He did a
7 disservice to his client. And if he could have
8 gotten those votes counted, that's a mistake.
9 That's not frivolous lawsuit.
10 MR. BROZOST: But you -- you will
11 acknowledge that in elections, different counties
12 implement different -- different procedures.
13 MR. LEVENTHAL: Ah, but that -- that's
14 not -- that might be true. That might be true.
15 But if you give me a moment, because you -- you
16 ask very good questions, and I want to have a good
17 answer for you.
18 All right, notwithstanding the language
19 in Pennsylvania Democratic Party vs. Boockvar,
20 clearly indicating that whether to provide Notice
21 and Cure is a task addressed to the legislature,
22 let's assume you buy what I -- I would

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1 interpret -- I think a reasonable interpretation
2 is that Notice of Cure cannot be done, all right,
3 but let's assume you say that it's up to each
4 individual counties that such a procedure resided
5 within the discretion of each county board of
6 election..
7 Even if Judge Brann's interpretation
8 were correct and not precluded by the Electors and
9 Elections Clauses, that reading of Pennsylvania
10 Democratic Party vs. Boockvar would implicate the
11 Equal Protection principals in Bush v. Gore.
12 Importantly respondent's arguments in
13 this case did not necessarily hinge on the theory
14 that any nonuniform treatment between counties
15 renders an election process unconstitutional.
16 As a matter of fact, in Bush v.
17 Gore" --
18 MR. BROZOST: I'm sorry, Mr. Leventhal,
19 what are you reading from? What is that?
20 MR. LEVENTHAL: I'm reading from my
21 notes, for the argument.
22 MR. BROZOST: Oh, okay.

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1 MR. LEVENTHAL: The question is not
2 whether local entities in the exercise of their
3 expertise may develop different systems for
4 implementing elections. Instead we are presented
5 with a situation where a state court with the
6 power to assure uniformity has ordered a statewide
7 recount with minimum procedural safeguards.
8 That's what happened here. The
9 secretary of state sent it out: "Do it if you
10 want; don't do it if you want". When a court
11 orders a statewide remedy, there must be at least
12 some assurance that the rudimentary requirements
13 of Equal Protection and fundamental fairness are
14 satisfied. That wasn't done here.
15 What you're saying is that my client
16 should have sued other counties and he might have
17 won the case. That's his fault maybe, but I don't
18 agree with that.
19 I'm sorry.
20 MR. BROZOST: No.
21 MR. LEVENTHAL: No -- and -- and -- and
22 if I -- if I may, I know I alluded to that one

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1 case where Hicks was involved in, but there are
2 two other cases cited and Judge Brann, in due
3 respect -- and if he were here, I would say that,
4 with due respect -- he got it wrong. He got it
5 wrong on the Equal Protection, and --
6 CHAIRMAN BERNIUS: Is there any --
7 any collateral -- is there any collateral estoppel
8 effect in this case from the -- the fact that
9 Judge Brann reached his decision and the Third
10 Circuit affirmed?
11 I mean, your -- your client was a
12 participant in those proceedings, so how does --
13 how can he challenge the -- the -- the rulings at
14 this point?
15 MR. LEVENTHAL: Well, I think we can
16 argue whether a reasonable person can make that
17 argument, and when Mr. -- a reasonable -- as Mr.
18 Fox said, a reasonable attorney can make that
19 argument without being frivolous, and -- and I --
20 and I find it interesting that Mr. Ortiz, who is
21 a -- a scholar and a professor and had this case
22 for over a year -- had this case for over a year

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1 didn't know that Messinas was reversed --
2 CHAIRMAN BERNIUS: I was just asking --
3 MR. LEVENTHAL: -- did not know that --
4 CHAIRMAN BERNIUS: I was just asking
5 about and responding to your comment that Judge
6 Brann in the Third Circuit got it wrong.
7 MR. LEVENTHAL: Well, if -- if -- if
8 our client argued something which wasn't
9 appreciated by the Third Circuit, and the Third
10 Circuit basically said -- I -- I think the part of
11 their reasoning was undue delay. They agreed with
12 Judge Brann. So it's rest is dicta about -- I
13 mean, that's what they based it on, undue delay,
14 and -- and they also thought it was without merit.
15 But I think there was merit. And that's what I'm
16 saying. Judge Brann misinterpreted Townley and he
17 also -- Messinas was reversed. And that was
18 overlooked by the Professor Ortiz. And I thought
19 it was interesting that every time Mr. Kamins
20 asked Mr. Ortiz whether he was familiar with that
21 case or this case, he didn't know it, but when Mr.
22 Fox asked him, he -- he knew it. But he had

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1 this -- he had this report for over a year to look
2 at the -- to look at the Brann decision.
3 So --
4 CHAIRMAN BERNIUS: Mr. -- Mr.
5 Leventhal, do you think in a -- in a -- in a
6 situation, a case where a lawyer brings a lawsuit
7 basically seeking to undo the election of the
8 President of the United States -- at least in
9 part, at least undo the results of a statewide
10 election -- don't you think there's an enhanced
11 duty to investigate before filing a complaint
12 seeking that remedy?
13 MR. LEVENTHAL: Now, may I ask you
14 the -- you're -- you're aware of the time frame,
15 right? So this is a very --
16 CHAIRMAN BERNIUS: I understand -- I'm
17 well aware of the time frame.
18 MR. LEVENTHAL: And -- and he did --
19 CHAIRMAN BERNIUS: But even under --
20 there was -- there -- what -- if you -- you either
21 agree with that or not, and what I would like to
22 know is if you agree with it, what investigation

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1 did the plaintiff do to -- did the respondents
2 do -- respondent do to verify the stuff, the
3 information that he was being given?
4 MR. LEVENTHAL: Right. Now you heard,
5 when Mr. Kerik -- when Mr. Kerik testified, he
6 didn't know who gave him that. There were a lot
7 of investigators out there.
8 Ms. Friess, who was an attorney, you
9 know, Mr. -- Mr. Giuliani was asked what other
10 information did he forget about? Well he forgot
11 about Friess', which -- which -- which Mr. -- Mr
12 Fox had provided. So --
13 CHAIRMAN BERNIUS: Kerik testified --
14 Kerik testified he gave your client a bunch of
15 stuff. He had no idea whether it was true or not.
16 MR. LEVENTHAL: He had 200 --
17 CHAIRMAN BERNIUS: And -- and -- and --
18 and so, under those circumstances, is he entitled
19 just to take stuff from an investigator, because
20 he's called an investigator, not determine whether
21 there was any truth to the contents, and just --
22 and just use it, rely on it to file a complaint

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1 seeking to undo an election?
2 MR. LEVENTHAL: He -- he interviewed a
3 number of people himself. And also we had --
4 CHAIRMAN BERNIUS: Where is that --
5 where is that in the record? Whom did he
6 interview?
7 MR. LEVENTHAL: Well, he -- he said he
8 testified to that in the Brann -- Mercer --
9 All right, please.
10 And also -- also, the reason why Kerik
11 didn't know who gave him this information, there
12 were a lot of investigators out there. It wasn't
13 just one. It wasn't just Bernie Kerik.
14 MR. BROZOST: Mr. Leventhal -- Mr.
15 Leventhal, Mr. Giuliani did say he spoke to Mr.
16 Mercer, and --
17 MR. LEVENTHAL: Right.
18 MR. BROZOST: In fact there were two
19 affidavits from Mr. Mercer.
20 What I'm struggling with is Mr. Mercer
21 testified before the Supreme Court, who deemed him
22 a credible witness, and said that -- and -- and

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1 Mr. Mercer said his observation was not obstructed
2 in any meaningful way.
3 MR. LEVENTHAL: Listen, I -- I don't
4 think he testified in Supreme Court. I don't
5 think they have witnesses in the Supreme Court.
6 He probably -- if they -- they -- I think -- I
7 think what happened -- I think the Supreme Court
8 took that he was "in the room" as an -- as an
9 ability to observe. And if you look at the
10 dissent, they said that's not meaningful and
11 that's what the -- five to two, "in the room" --
12 and you heard the room described by --
13 MR. BROZOST: It's a majority. It's a
14 majority.
15 MR. LEVENTHAL: Yeah, they -- that's
16 what they said, but it doesn't mean he observed,
17 because the statute says you have to be present
18 when the ballots are opened, counted and recorded.
19 No one was present, when we know what present is,
20 with our eyeballs watching it.
21 Now, the question was --
22 MR. BROZOST: Yeah, but that leads me

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1 to another question then, as long as we're on
2 that...
3 What is the role? What do you see the
4 role of a poll watcher to be?
5 MR. LEVENTHAL: Well, people in the
6 campaign as well as poll watchers are allowed to
7 be there.
8 MR. BROZOST: Okay.
9 MR. LEVENTHAL: Okay? So let us
10 assume, let us assume that something's not
11 dated -- and first of all -- let me start from the
12 beginning.
13 We have the envelope and they're
14 separated. These people were not present for six
15 days when all the -- virtually all the counting
16 was done. The outer envelopes were separated.
17 There was no way to challenge whether there was
18 any problem with the outer envelopes at all. It
19 has to be dated, it has to be signed, and --
20 and -- and the address has to be on it.
21 MR. BROZOST: They can't challenge --
22 can they challenge a ballot?

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1 MR. LEVENTHAL: They should be able to
2 challenge an individual ballot, sure. They should
3 be able to challenge an individual ballot,
4 absolutely.
5 CHAIRMAN BERNIUS: Does the Supreme
6 Court of Pennsylvania say that they didn't have
7 that right?
8 MR. LEVENTHAL: Well, they -- yeah,
9 they said they don't have that right, but I'm
10 telling you that if --
11 CHAIRMAN BERNIUS: Okay, so -- so
12 what's the basis on which you say that they did?
13 MR. LEVENTHAL: Well, that's why you
14 have to go to federal court. And if you say
15 there's no ability to observe -- if -- yeah,
16 and -- and if you have no ability to observe, then
17 you have to go to federal court, because you can't
18 make any of these challenges.
19 And I think that the sad --
20 CHAIRMAN BERNIUS: But a loss -- if you
21 lose on a state election issue in state court, you
22 go to federal court -- why? It's a state

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1 question.
2 MR. LEVENTHAL: Well, first of all --
3 first of all, we went for Due Process and Equal
4 Protection on the Notice of Cure being treated
5 differently in different counties, and also the
6 observational being different in different
7 counties, and that's why we went to federal court.
8 Now, there was -- I know Mr. Fox wants
9 to talk about fraud, but there's viable Equal
10 Protection and Due Process arguments. And I --
11 I'm not going to go into the law any more, but
12 I've laid that all out in the document that I
13 filed today.
14 And, regarding the remedy, there are
15 cases where they overturned an election. Now I
16 understand this is a presidential election you're
17 saying. That's without precedent. Mr. Bernius,
18 this election was unprecedented. There was
19 2,650,000 plus ballots voted by mail or absentee
20 ballot; 250 -- 2,650,000 absentee ballots. So
21 this was an unprecedented election; never happened
22 before. There was almost 900% more absentee

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1 ballots than voted in the -- in Pennsylvania in
2 the 2016 election. So this was unprecedented.
3 CHAIRMAN BERNIUS: And it was combined
4 with the COVID pandemic, which also through some
5 uncertainty in the process. So you can -- you can
6 anticipate that there are going to be glitches and
7 hiccups --
8 MR. LEVENTHAL: But it doesn't
9 mean -- I'm sorry. But it doesn't mean you
10 shouldn't have observers from the -- from --
11 and -- and -- and what -- and what's in the
12 complaint is that in republican counties, they let
13 them go closer.
14 And you heard -- you heard Mr.
15 Lewandowski testify that, despite the court order,
16 the elected -- now a democrat -- but the elected
17 democratic sheriff would not let them go within
18 six feet before it was reversed in November 17th.
19 So that's from November 5th through November 9th.
20 Even though there was also a settlement order,
21 they were not allowed to go closer than the court
22 ordered.

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1 CHAIRMAN BERNIUS: An anecdote about an
2 individual not being allowed in until he got
3 credentials is one thing, but how do you expand
4 that to -- to justify undoing the election?
5 MR. LEVENTHAL: Well I'm not saying
6 undoing the election. One of the things that
7 could have been done is a new election. And
8 the -- and the -- and he asked -- the Wisconsin
9 Supreme Court, in a four to three decision, which
10 I cited in the papers that I'd given you, when
11 they would -- when they -- when -- when they were
12 challenging, asking for a drastic remedy in
13 Wisconsin, three judges pointed out that they also
14 asked for further relief as the court deems
15 equitable, you know, similar to what -- what was
16 asked for in the second amended complaint. And
17 they thought that was fine.
18 CHAIRMAN BERNIUS: And I may be wrong
19 on this -- correct me if I am -- but didn't the
20 second amended complaint also ask that -- that Mr.
21 Trump be declared president, or words to that
22 effect?

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1 MR. LEVENTHAL: Not in the relief. It
2 was -- it -- it might have been in a paragraph,
3 but not in the relief that was requested; not in
4 the -- not in the -- you know, the last page.
5 So if you look at the prayer for
6 relief, it was not in the prayer for relief. It
7 was mentioned in the -- in the complaint.
8 I just want to point out that there
9 were cases enjoining -- and I -- I'm not going to
10 cite them for you now; they're in my -- my
11 submission -- enjoining defendant's vote count and
12 ordering new election. I cited an Arizona case, a
13 Florida case in balloting election, and there was
14 a Maine case, which is kind of interesting. In
15 any event, there was a valid Equal Protection and
16 Due Process.
17 Do you want me to go into the law at
18 all on that and how this applies?
19 CHAIRMAN BERNIUS: No, not unless
20 you -- not unless you think it's important.
21 MR. LEVENTHAL: Well it is important,
22 but I gave it to you already. But I just want to

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1 mention that Mr. Giuliani -- and I'm not going
2 into fraud; I'm saying there's a viable causes of
3 action for fraud and Due Process, a reasonable --
4 or Equal Protection. I'm sorry, not fraud. Equal
5 Protection and Due Process. And fraud is a -- is
6 a red herring here. There were some allegations
7 in fraud and -- and I take issue with the fact
8 that Mr. Fox says there were no allegations of
9 fraud. In Centre County, a poll worker -- this is
10 paragraph 129 -- "Reported that persons appearing
11 at the polls and admitting they were New Jersey
12 voters, rather than Pennsylvania voters, were
13 nonetheless provided provisional ballots on which
14 to vote. And -- and -- and there were other
15 allegations throughout the complaint like that.
16 So, I don't want to belabor the point. You're
17 free to look at the -- you're free to look at the
18 complaint. But there was a viable Due Process and
19 Equal Protection argument that they were treated
20 differently and the ability to observe differently
21 and the Notice to Cure, which is key. The Notice
22 to Cure is key. If we don't know how many people

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1 were -- voters were denied Notice to Cure, in
2 those republican counties, then we can't be
3 certain that the election might not have been
4 changed. And I'm not saying it would have been
5 changed, but I think that had to be explored. It
6 had to be explored by the campaign, and it was a
7 viable argument, and it was definitely not
8 frivolous.

9 If you give me a moment, please, if you
10 have any more questions, but just give me a
11 moment.

12 MR. BROZOST: Yeah, just following up
13 on that, was it ever pled that the number of votes
14 in the counties that did not implement Notice and
15 Cure should be discerned? I don't remember that
16 at all. It was -- I thought it was the seven
17 counties, but not the counties that did implement
18 Notice --

19 MR. LEVENTHAL: Well in -- in there I
20 think there were -- there were allegations that
21 the republican counties thought that the law
22 required them not to implement the Notice of Cure,

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1 and that's -- and -- and -- and I'm saying to you,
2 which is my argument, that unless you know how
3 many people were denied the Notice to Cure, you
4 can't be certain that the results would not have
5 been impacted. I'm not saying it would have been
6 impacted, but that's something that should have
7 been explored at a -- at a hearing or trial.

8 MR. BROZOST: But it wasn't. I mean,
9 it wasn't. I mean --

10 MR. LEVENTHAL: It wasn't, of course.
11 He wasn't given an opportunity.

12 Now -- now, they didn't give the
13 republican counties, because the republican
14 counties followed the law as they saw it. And
15 that's the problem under Bush v. Gore and the
16 other cases that I -- that I've cited; that if you
17 have different ways of doing things, of course the
18 state, as the Pennsylvania Supreme Court stated,
19 that only the legislature could do Notice of Cure.
20 But even if -- even if you interpreted that you
21 could or you may or you might, that's definitely
22 an Equal Protection under the case law. It's not

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1 just Bush v. Gore. It's the two other cases that
2 are cited by Mr. Giuliani.

3 MR. BROZOST: Mr. Leventhal, how many
4 counties are there in Pennsylvania?

5 MR. LEVENTHAL: I really don't know
6 that. I'll have to look that up.

7 MR. BROZOST: I -- I thought --

8 MR. LEVENTHAL: I will. I will.
9 How many counties in Pennsylvania?
10 We'll look it up right now.

11 CHAIRMAN BERNIUS: I think it's 67.

12 MR. BROZOST: That's what I thought.
13 It was in --

14 MR. LEVENTHAL: Okay.

15 MR. BROZOST: -- the '60s.

16 MR. LEVENTHAL: Okay.

17 MR. BROZOST: And there were seven
18 counties that you alleged as the defendants.
19 Are all the other counties, the 50 plus
20 counties, republican counties?

21 MR. LEVENTHAL: No. But listen, we --
22 we brought a notice -- we brought a voter dilution

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1 standing argument, and I think the voter dilution,
2 if you look at what we -- all right, give me --
3 give me one second.

4 CHAIRMAN BERNIUS: How many
5 republican -- how many republican counties allowed
6 Notice and Cure?

7 MR. LEVENTHAL: We don't believe any
8 did, but I'm not sure. But I don't believe any
9 did. I'm not swearing to that under oath, but we
10 believe that none did.

11 MR. BROZOST: And how many democratic
12 counties did not implement Notice and Cure as
13 well?

14 MR. LEVENTHAL: Well we know -- we
15 believe that Allegheny and Philadelphia did, where
16 most of the democratic votes occurred, and -- and
17 there might -- and then these other counties that
18 were named didn't do that.

19 Now we believe, we believe, in a
20 reasonable interpretation of the Boockvar case, is
21 that it was not allowed. But even if it were
22 allowed, it's up to each individual county, as you

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1 had said, Mr. Brozost, that you had said that,
2 "Shouldn't the counties be able to do what they
3 want," that's violative of Equal Protection.
4 And -- and -- all right.
5 So just give me one second, please.
6 (Brief pause.)
7 MR. LEVENTHAL: Even if -- even if this
8 were done -- it's a violation of Equal Protection
9 under the case law. And I'll -- and it's Pierce
10 vs. Allegheny County Board of Elections, it's
11 Charfauros vs. Board of Elections, a Ninth Circuit
12 case, and it's Bush v. Gore. It's -- that is
13 clear. The can't have two different systems of
14 counting votes. And that's also a voter dilution
15 argument, giving them standing, and it's
16 articulated throughout their papers and it's
17 further expounded in the papers that I've given
18 you. So I don't want to go into the law with you
19 on that, but we could.
20 Yeah, and I just want to point out
21 that, if you have any doubts, whether it's more
22 likely or less likely, the burden here is clear

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1 and convincing evidence that there is no
2 nonfrivolous cause of action in this complaint.
3 And I submit to you that there is a nonfrivolous
4 causes of action for Equal Protection and Due
5 Process, under Notice of Cure, and I submit to you
6 that there is a Due Process, nonfrivolous, on both
7 of those claims, and I also submit to you that one
8 person having standing is enough, and I've cited
9 to you in the -- in the papers that I've submitted
10 and given to Mr. Fox, that the one-plaintiff rule
11 is applied with considerable frequency in more
12 than two dozen Supreme Court cases. I cited a law
13 review article for that. And I also want you to
14 know that the problem of Equal Protection in
15 election process generally presents many
16 complexities. And that's Bush v. Gore. And we
17 have many complexities here. The mere fact that a
18 legal position is created but contrary or existing
19 law does not make that position frivolous.
20 Existing law often has ambiguities and, even if it
21 is clear, there is always the potential for
22 change.

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1 CHAIRMAN BERNIUS: Mr. -- Mr.
2 Leventhal, do you have any authority for the
3 notion that one nonfrivolous claim in a -- in an
4 action is sufficient to defeat a 3.1 charge or
5 other claims?
6 In other words, if there's three claims
7 in an action, one of which is frivolous, isn't an
8 attorney responsible for making that frivolous
9 claim, even though he's made some nonfrivolous
10 claims?
11 MR. LEVENTHAL: May I -- may I say to
12 you that we never made a cause of action for
13 fraud. We've only made Due Process, the Electors
14 Clause, Equal Protection. There were seven
15 counts, and I'm going to look for my summary of
16 the accounts in one second. They were just here.
17 There was not one fraud cause of action, not one.
18 And I know Mr. Fox wants to make this
19 all about fraud, but I won't engage him in that.
20 I can tell you that there are -- there are
21 throughout -- sprinkled throughout the complaint
22 allegations, averments that fraud had occurred,

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1 but there was no cause of action sounding in
2 fraud. And I submit that all the seven causes of
3 action that were submitted were nonfrivolous.
4 Do you -- do you want me to summarize
5 the -- what the causes of action were in the
6 second amended complaint? I'm looking.
7 CHAIRMAN BERNIUS: I don't think
8 it's -- I don't think it's necessary, but if you
9 do, you can.
10 MR. LEVENTHAL: Well, I just -- as long
11 as we're in agreement that there was no cause of
12 action for fraud, I'll -- I'll just stop right
13 there.
14 CHAIRMAN BERNIUS: I think the
15 complaint will speak for itself.
16 MR. LEVENTHAL: Thank you. I just
17 wanted to remind you that there was no cause of
18 action for fraud.
19 CHAIRMAN BERNIUS: Mr. Fox, do you have
20 any -- any -- any other questions for the panel?
21 MR. BROZOST: No.
22 CHAIRMAN BERNIUS: Mr. Fox, do you have

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1 a response?
2 REBUTTAL CLOSING STATEMENT
3 ON BEHALF OF DISCIPLINARY COUNSEL
4 BY MR. FOX:
5 MR. FOX: I will be very brief.
6 The reason there is no fraud count in
7 the complaint is because fraud in a state election
8 does not make out a violation of federal law. But
9 there is absolutely no way that a Substantive Due
10 Process claim can be made under Section 1983
11 without something like fraud that deprives voters
12 of a fundamental right, the right to vote.
13 Substantive Due Process requires that
14 you identify a fundamental right that is being
15 taken away from the plaintiff without reason,
16 arbitrarily. And, you know, putting up barriers
17 to protect people to make sure that people social
18 distance isn't that, and encouraging more people
19 to cure their defective ballots isn't that.
20 So, you know, the red herring here is
21 the argument that this case is not about fraud.
22 That's all I have, unless there are any

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1 questions from the panel.
2 CHAIRMAN BERNIUS: Thank you, Mr. Fox.
3 All right, the hearing -- the -- the
4 liability phase of the hearing is over. We will
5 now adjourn to go into executive session to
6 discuss whether or not there's been a preliminary
7 nonbinding finding.
8 Under the circumstances, because the
9 respondent filed the legal memo this morning, I
10 will -- I will give Disciplinary Counsel 'till
11 next Wednesday to file a response to that memo,
12 if -- if you so choose, Mr. Fox. And I would ask
13 the parties to hold open -- since we had
14 anticipated -- we -- we booked two weeks for this
15 hearing, I would like the parties to hold open
16 next week December 15th.
17 In the event that there is a
18 preliminary finding made, we will -- we may
19 reconvene, depending on whether anybody wants to
20 offer evidence or oral argument on sanction.
21 Mr. Leventhal?
22 MR. LEVENTHAL: I -- I just want -- my

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1 client may have another court matter on that date.
2 Could I just check that out, please? I'm just
3 going to check it out. It might not be a problem;
4 it might be.
5 (Brief pause.)
6 MR. LEVENTHAL: And Mr. Bernius, thank
7 you for keeping your word that we would be
8 finished by 3:00. Thank you.
9 CHAIRMAN BERNIUS: Sure. Let me --
10 again, we -- you know -- I want -- I want -- I
11 want a date, an adjourn date that people --
12 MR. LEVENTHAL: He's looking at -- he's
13 looking at his calendar right now.
14 CHAIRMAN BERNIUS: In the case.
15 MR. LEVENTHAL: We're fine. The 15th's
16 good.
17 CHAIRMAN BERNIUS: So whether we --
18 again, that's only assuming there's a preliminary
19 finding made, and -- and then if the parties want
20 to reconvene. That would be if you have
21 documentary evidence, exhibits for mitigation
22 or -- or aggravation, those can be submitted. We

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1 don't need to -- we don't need to reconvene. Or
2 if you have witness testimony, we'll have to
3 convene. And if you want oral arguments, we can
4 convene as well.
5 But that's up -- think about that and
6 we can -- we will -- we will issue an order
7 between -- well, what -- what did I say, Mr. Fox?
8 December --
9 How much time do you need to file a
10 responsive brief if -- of you do file one?
11 MR. FOX: I have not looked at it, Mr.
12 Bernius, and I don't know, but you've just freed
13 my week, so I assume I'll be able to get it within
14 the -- the deadline that you just mentioned --
15 CHAIRMAN BERNIUS: All right, so --
16 MR. FOX: Which I forgot, frankly I --
17 CHAIRMAN BERNIUS: So if you can -- if
18 you could -- why don't we move that to the -- can
19 we move that to the 13th? If you're going to file
20 anything, file it by then.
21 MR. FOX: Okay.
22 CHAIRMAN BERNIUS: We will -- we

1 will -- we'll notify the parties on the 14th
2 whether we make a preliminary finding, and then if
3 we do, we'll determine whether we go ahead on the
4 15th.

5 Does that make sense?

6 MR. LEVENTHAL: Fine. And the 15th, of
7 god forbid there is a -- a sanction, we will have
8 one witness.

9 CHAIRMAN BERNIUS: Okay.

10 MR. LEVENTHAL: What time? What time
11 on the 15th if we reconvene?

12 CHAIRMAN BERNIUS: We'll make it 9:00
13 a.m.

14 MR. FOX: Mr. Bernius, I have told the
15 respondent's counsel before and I'll tell them
16 again, that I am not going to object if they
17 submit letters in lieu of character testimony.

18 So, I'm -- I'm -- I'm not going to object to that.

19 CHAIRMAN BERNIUS: Okay. That -- that
20 may help.

21 Anything else before we adjourn?

22 Actually I'd like to go off the record before --

1 CERTIFICATE OF NOTARY PUBLIC
2 I, KIM M. BRANTLEY, C.S.R., the officer
3 before whom the foregoing hearing was taken, do
4 hereby, certify that the proceedings were taken by
5 me in stenotype and thereafter reduced to
6 typewriting under my direction; that said hearing
7 is a true record of the proceedings; that I am
8 neither counsel for, related to, nor employed by
9 any of the parties to the action in which this
10 hearing was taken; and, further, that I am not a
11 relative or employee of any counsel or attorney
12 employed by the parties hereto, nor financially or
13 otherwise interested in the outcome of this
14 action.

15
16
17 _____
18 KIM M. BRANTLEY, C.S.R.
19 Notary Public in and for
20 the District of Columbia

21 My commission expires: October 31, 2024
22

1 before we all leave. But anything else on the
2 record at this point?

3 MR. FOX: Nothing from me.

4 CHAIRMAN BERNIUS: Okay.

5 MR. LEVENTHAL: Nothing from me here.

6 CHAIRMAN BERNIUS: Let's go off the
7 record, please.

8 (Whereupon at 1:23 p.m. the hearing
9 stood in recess until Thursday, December 15, 9:00
10 a.m.)
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