



**Date:** December 5, 2022

**Case:** In Re: Rudolph W. Giuliani



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THE BOARD OF PROFESSIONAL RESPONSIBILITY

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In re: : Board DNo. 21-BD-027

RUDOLPH W. GIULIANI, Esq. : Disc. DNo. 2020-D253

Respondent :

- - - - - x

ZOOM

Board of Professional Responsibility

Washington, D.C.

Monday, December 5, 2022

The hearing convened at 9:00 a.m.

BEFORE: ROBERT C. BERNIUS, Esquire, Chair

JAY BROZOST, Esquire, Attorney Member

CAROLYN HAYNESWORTH-MURRELL, Public Member

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1 Appearances:  
2 HAMILTON P. FOX, Esquire  
3 Disciplinary Counsel  
4  
5 JASON HORRELL, Esquire  
6 Assistant Disciplinary Counsel  
7 District of Columbia  
8  
9 For Respondent Rudolph W. Giuliani,  
10 Esquire  
11 JOHN M. LEVENTHAL, Esquire  
12 BARRY KAMINS, Esquire  
13  
14 RUDOLPH W. GIULIANI, Esquire, Respondent  
15  
16  
17  
18  
19  
20  
21  
22

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1 PROCEEDINGS  
2 [9:04 a.m.]  
3 THE CHAIR: Good morning. This is the  
4 Matter of Rudolph W. Giuliani, Disciplinary Docket  
5 No. 2020-B253. This matter is before a Hearing  
6 Committee pursuant to Rule 11 of the District of  
7 Columbia Court of Appeals governing the District of  
8 Columbia. I am Robert Bernius, the Chair of an Ad  
9 Hoc Hearing Committee and with me are the other  
10 members of the Committee, Jay Brozost and Carolyn  
11 Haynesworth-Murrell. This hearing will be an  
12 adversary proceeding to determine whether discipline  
13 should be imposed upon the Respondent.  
14 All proceedings before the Hearing  
15 Committee shall be open to the public. In this  
16 proceeding the witnesses will be examined under oath  
17 or affirmation. The COVID-19 pandemic has required  
18 the Disciplinary System to make many adjustments to  
19 ensure that cases can proceed without in-person  
20 appearances. The Disciplinary System has thus  
21 determined to conduct disciplinary hearings via  
22 remote video conference which are livestreamed for

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1 public access through YouTube.  
2 The Board's staff has made every effort  
3 to make this hearing run smoothly, but technological  
4 issues may arise, so we need to exercise patience.  
5 In that respect, I ask the parties to mute their  
6 microphones when not speaking to minimize feedback  
7 and allow us to hear each person more clearly.  
8 At this time I also want to remind the  
9 parties that they're required to keep track of the  
10 exhibits that are admitted, excluded, or not offered  
11 into evidence over the course of this hearing. At  
12 the end of each day of the hearing, the parties  
13 should confer and agree on the status of exhibits.  
14 At the end of the hearing the parties need to sign  
15 lists indicating the status of each exhibit using the  
16 exhibit list forms that they filed before the  
17 hearing.  
18 If the parties disagree as to the  
19 disposition of any exhibit, the disagreement must be  
20 raised with the Hearing Committee before the end of  
21 the hearing so that it may be resolved them. The  
22 side list should be filed with the Board Office as

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1 soon as possible following conclusion of the hearing.  
2 I'll now swear in the court reporter.  
3 (Court reporter sworn in.)  
4 THE CHAIR: I'm sorry?  
5 MR. CARROLL: This is Mr. Carroll. We're  
6 having a little trouble with the Zoom livestream  
7 right now. If you could give us two minutes to try  
8 to get that going. We'll let you know when that's  
9 fixed.  
10 THE CHAIR: Sure. Absolutely.  
11 (Off the record)  
12 THE CHAIR: All right. It looks like  
13 we're all back. Because the livestreaming was not  
14 working earlier, I will start the proceeding again.  
15 This is the Matter of Rudolph W. Giuliani,  
16 Disciplinary Docket 2020-D253. This matter is before  
17 a Hearing Committee pursuant to Rule 11 of the  
18 District of Columbia Court of Appeals governing the  
19 District of Columbia.  
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8 the Disciplinary System to make many adjustments to  
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11 conduct disciplinary hearings via remote video  
12 conference which are livestreamed for public access  
13 through YouTube.  
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15 to make this hearing run smoothly, but as we've  
16 learned personal this morning, technological issues  
17 may arise, so we need to exercise patience. In that  
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10 of any exhibit, the disagreement must be raised with  
11 the Hearing Committee before the end of the hearing  
12 so that it may be resolved them. The side list  
13 should be filed with the Board Office as soon as  
14 possible following conclusion of the hearing.  
15 Now, I just want to ask the parties to  
16 identify themselves for the record, beginning with  
17 Disciplinary Counsel.  
18 MR. FOX: Hamilton Fox and Jason Horrell  
19 for the Office of Disciplinary Counsel.  
20 MR. LEVENTHAL: John Leventhal and Barry  
21 Kamins for the Respondent.  
22 THE CHAIR: Thank you. There's some

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1 administrative issues that we have this morning.  
2 There've been various messages submitted to the Board  
3 and I want to address them before we begin.  
4 I assume, Mr. Fox, you have asked about  
5 your expert witness and his attending the hearing  
6 when he's not testifying. I assume, by implication,  
7 you're invoking the rule on witnesses? You're on  
8 mute.  
9 MR. FOX: I know. I'm sorry. I  
10 apologize. Actually, I really don't much care about  
11 the rule on witnesses, but on the assumption that the  
12 rule is going to be applied, I would like an  
13 exception, but I'm not actually asking that the rule  
14 be invoked. It's up to the Respondent's counsel.  
15 THE CHAIR: Mr. Leventhal, do you have  
16 any view on whether witnesses should be excluded?  
17 You're on mute too.  
18 MR. LEVENTHAL: No. We'll agree with Mr.  
19 Fox. I'm sorry. I'm getting a little feedback. I  
20 don't know if you're getting it.  
21 (Technical issues.)  
22 MR. LEVENTHAL: As Mr. Fox has stated, we

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1 will waive the rule on witnesses.  
2 THE CHAIR: Okay. Another issue is the  
3 timing of the ending of the proceeding today. I  
4 anticipated we would generally go to 5 o'clock. The  
5 Respondents have asked to break early as 4:00, is  
6 that going to be an issue, Mr. Fox?  
7 MR. FOX: That will not be an issue as  
8 far as I'm concerned.  
9 THE CHAIR: Good. We'll do that. The  
10 Respondents have filed some exhibits which, by Board  
11 rule, had to be redacted, birthdates of names, Social  
12 Security numbers have to be redacted before they were  
13 filed.  
14 Just let me note that if the Respondents  
15 intend to have testimony or discussion of unredacted  
16 documents, we're going to have to do that in a  
17 private session. We can't do that in a public  
18 session. So, at the break if you could work out the  
19 logistics.  
20 If you need to do that, please discuss it  
21 with Mr. Fox and we'll try to figure out the best way  
22 to handle that without interrupting the middle of the

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1 hearing. It may be something that we do right after  
2 lunch break or right after the midafternoon break,  
3 something like that.  
4 Another point, at the end of the day I  
5 want all counsel to notify the other party as to what  
6 witnesses they will be calling the next day. I think  
7 that probably applies mostly to Respondents because  
8 your witness list is much longer, so please let Mr.  
9 Fox know at the end of the day who your witnesses are  
10 actually going to be coming in the next day so that  
11 he can be prepared to deal with whoever you intend to  
12 call.  
13 Anything else we need to discuss before  
14 we go into openings?  
15 MR. LEVENTHAL: Mr. Chair, Mr. Fox and I,  
16 and Mr. Kamins, we've had discussions -- today's  
17 Monday, it seems like forever -- last week and Mr.  
18 Fox has indicated that the Respondent, Mr. Giuliani  
19 will take most of today and maybe a little bit of  
20 tomorrow and he will also have his expert tomorrow  
21 and he said that we should be ready to go -- we had  
22 talked about it. Our witnesses are ready to go on

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1 Wednesday.  
2 THE CHAIR: Okay.  
3 MR. LEVENTHAL: And also, we filed a  
4 stipulation -- I just want to put that on the record  
5 -- of exhibits that we've agreed to, thus far.  
6 THE CHAIR: Right. Well, how much of the  
7 day will you be consuming tomorrow, Mr. Fox?  
8 MR. FOX: I think we'll take most of  
9 today and tomorrow, most of tomorrow with the case.  
10 THE CHAIR: Okay. All right. So, we'll  
11 start with Respondent's case on Wednesday. Anything  
12 else?  
13 MR. FOX: Just a couple of preliminary  
14 things. First -- oh, I'm sorry. I see Mr. Ortiz has  
15 been admitted to the meeting, so that's the first  
16 thing I wanted to clear up.  
17 Secondly, I think we ought to move the  
18 stipulated exhibits in right now so that we don't  
19 have to fool around with that during the hearing,  
20 unless there's some reason not to do. I've got the  
21 list of them here if you would like me to run through  
22 them.

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1 THE CHAIR: Mr. Leventhal, is that all  
2 right with you?  
3 MR. LEVENTHAL: I have no objection. We  
4 stipulated to them, so I think by stipulating -- we  
5 stipulated to the exhibits that we agreed upon, so I  
6 thought that they are admitted by our stipulation.  
7 THE CHAIR: Not yet. You want to give us  
8 that list, Mr. Fox, on the record?  
9 MR. FOX: Yes, I will. First, there are  
10 Disciplinary Counsel's Exhibit 1 through 23,  
11 Disciplinary Counsel Exhibit 25, Disciplinary Counsel  
12 Exhibit 27, and Disciplinary Counsel Exhibits 29  
13 through 40.  
14 Respondent's exhibits that we stipulated  
15 to are Respondent's Exhibits 1 through 6,  
16 Respondent's Exhibits 8 through 10, Respondent's  
17 Exhibit 12, Respondent's Exhibits 15 through 37, and  
18 Respondent's Exhibit 39.  
19 THE CHAIR: Mr. Leventhal, anything to  
20 add?  
21 MR. LEVENTHAL: No. Each party has  
22 reserved their right to try to admit the exhibits

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1 objected to and reserves their right to object to the  
2 exhibits that the other party seeks to admit. That's  
3 all. I would end.  
4 THE CHAIR: Well, I didn't hear the last  
5 part, but if you have any objection to the exhibits  
6 that Mr. Fox just mentioned being moved into  
7 evidence --  
8 MR. LEVENTHAL: No, no objection. I just  
9 said we reserve our respective rights as to the --  
10 THE CHAIR: Yes.  
11 MR. LEVENTHAL: Okay.  
12 THE CHAIR: We'll deal with the others if  
13 and when we need to. Those exhibits listed by Mr.  
14 Fox are accepted into evidence.  
15 (Disciplinary Counsel Exhibit Nos. 1  
16 through 23, 25, 27, and 29 through 40, admitted in  
17 evidence.)  
18 (Respondent's Exhibit Nos. 1 through 6, 8  
19 through 10, 12, 15 through 37, and 39, admitted in  
20 evidence.)  
21 THE CHAIR: Mr. Fox, I guess it's up to  
22 you to make your opening statement at this time.

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1 MR. FOX: Yesterday's Washington Post  
2 Magazine was devoted to a discussion of which rights  
3 of the citizens of this country are so fundamental  
4 that they will continue to be protected by the  
5 Constitution of the United States. The Magazine's  
6 articles were written in the context of the Dobbs  
7 Opinion obviously, and there's an interesting  
8 introduction by a New York University law professor,  
9 who talked about the various rules of thought in the  
10 legal profession, and jurisprudence as to which  
11 rights were fundamental and which were not.  
12 But nobody would disagree that the right  
13 to vote is fundamental. Not much mention about it in  
14 the original Constitution, but we've amended the  
15 Constitution three times, the 16th Amendment --  
16 sorry, the 15th Amendment which gave the right to  
17 vote to emancipated males, the 19th Amendment which  
18 expanded the right for all women, and the 26th  
19 Amendment which expanded the right to persons 18 and  
20 older. All those amendments expanded the right to  
21 vote.  
22 If you grew up in the fifties and

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1 sixties, as I did, you know how important the right  
2 to vote is to American citizens. People marched,  
3 people protested, people suffered, and some people  
4 even died for the right to vote.  
5 What this case is about is that Mr.  
6 Giuliani was responsible for filing a frivolous  
7 action asking a Federal Court to deprive millions of  
8 the people in Pennsylvania of their right to vote.  
9 There was no precedent for this. In addition to the  
10 fact that there was no precedent, there was no  
11 factual basis.  
12 This action was premised on two essential  
13 facts. Pennsylvania had gone to a new voting system  
14 whereby people could vote by mail as a matter of  
15 right. It was a new system, the kinks had to be  
16 worked out, a number of people messed up. They  
17 didn't properly fill out the envelope or they didn't  
18 sign their name to it.  
19 The Secretary of State of Pennsylvania  
20 directed or suggested, is the better word, to the  
21 various county election boards that if they got a  
22 mail-in ballot from someone that was filled out

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1 incorrectly that they contact that person and give  
2 that person the opportunity to fix it, to come in and  
3 vote in person, for example.  
4 We'll refer to this as "notice and cure."  
5 Not every county did it. Some counties did. And  
6 that's the first factual basis of the complaint in  
7 the lawsuit that Mr. Giuliani filed and supervised.  
8 The second factual basis arose from the  
9 fact that this election in November of 2020 occurred  
10 during the middle of the pandemic and that required  
11 social distancing. Now, part of the procedures in  
12 Pennsylvania are that when the mail-in ballots are  
13 counted each side is entitled to a certain number of  
14 observers to be present when those ballots are what  
15 they call "canvassed," especially meaning opening the  
16 envelopes and when they are counted.  
17 And because of the pandemic the various  
18 counties set up social distancing protocols which  
19 meant that the observers were restricted to certain  
20 areas and this is the second fact on which this  
21 lawsuit was based. An argument that because these  
22 observers were restricted to certain areas there was

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1 the possibility that fraud might've occurred which  
2 they hadn't seen.  
3 That's what the case was all about and  
4 this what the Courts said about it. Let me first put  
5 up what our Exhibit 16 in evidence, page 12, this is  
6 from the Third Circuit. This is the language the  
7 Third Circuit used in affirming the dismissal of this  
8 complaint. And you can see there it says not only  
9 was there no evidence the campaign never alleged that  
10 any ballot was fraudulent or cast by an illegal  
11 voter.  
12 The District Court said something very  
13 similar. And let me ask that we put up in evidence,  
14 Exhibit 14, Disciplinary Counsel 14, page 8. And  
15 what the District Court did was characterize the  
16 litigation as presenting strained legal arguments  
17 without merit and speculative accusations unsupported  
18 by evidence. In short, both Courts said there was no  
19 basis in law or fact for this litigation.  
20 Now, let me pause for a moment and talk a  
21 little bit about the nature of elections for federal  
22 offices in the United States. Article 1 of the

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1 Constitution largely delegates the responsibility for  
2 the conduct of elections to the states. And the  
3 states, in turn, delegate some of that responsibility  
4 to the various localities. In the case of  
5 Pennsylvania, there were election boards in each  
6 county.

7 Up until 2019, Pennsylvania only required  
8 people to vote in person, except for a very few  
9 limited categories of people who were allowed to vote  
10 absentee. Now, that's not the case throughout the  
11 United States. As I said earlier, the states pretty  
12 much decide how elections are going to be run and a  
13 number of states have for years, particularly some of  
14 the western states like Oregon, Arizona, and Utah,  
15 allowed voting by mail as a matter of right. You  
16 didn't have to be sick; you didn't have to be out of  
17 the state on election day. If you wanted to vote by  
18 mail, you could vote by mail.

19 And in 2019, somewhat fortuitously in  
20 light of the subsequent events, Pennsylvania decided  
21 to go to a similar system. And they adopted  
22 something which is referred to as Act 77 and that

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1 was adopted or enacted into law in the fall of 2019.  
2 And it said that the voters in Pennsylvania could  
3 vote by mail as a matter of right.

4 Now, they didn't just willy-nilly send  
5 every registered voter in Pennsylvania a ballot. You  
6 had to apply for it, you had to prove your  
7 identification, and your right to vote by mail could  
8 be challenged up until the Friday before the  
9 election, but the important point here was they  
10 developed this new system.

11 And of course, like any new system, it  
12 had kinks. There were new procedures, as I'm sure  
13 you all recognize, most of the people that work on  
14 election day are volunteers. They have to be  
15 trained. They have to learn the new procedures.

16 So, we got a brand-new system and the  
17 first general election -- it was used in primary  
18 election in the spring, but the first general  
19 election in which this system was going to be tried  
20 out was the November 2020 election and then the  
21 pandemic came and we all knew what that meant, social  
22 distancing, staying home, wearing masks.

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1 But as a result of the pandemic many more  
2 people in Pennsylvania elected to vote remotely or by  
3 mail rather than in person. Almost seven million  
4 people voted in the November 2020 election in  
5 Pennsylvania and about a third of them voted by mail.

6 In addition the pandemic having that  
7 affect on the voters, it also had affect on the  
8 election workers. Because as I said before, these  
9 people are volunteers. They come down and they man  
10 the polls and in the case of the mail-in ballots  
11 there were a number of people had to volunteer and  
12 process those ballots.

13 Well, those people are concerned in the  
14 pandemic as well. They're concerned about social  
15 distancing. They don't want to be exposed to the  
16 virus. And as a result of that the various counties  
17 adopted different rules, but essentially provide that  
18 the people who were observing the counting couldn't  
19 mix in with the voters. They had to keep their  
20 distance. And in some instances, in many instances,  
21 that meant they were confined to a certain area of  
22 the room in which the counting was occurring.

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1 Now, as I said before, there ere kinks to  
2 be worked out in the system and there was some  
3 litigation that occurred before the election that  
4 worked out some of these kinks. I'm not going to go  
5 through every single ruling, but there were three of  
6 them that were particularly important.

7 The first one was that the Pennsylvania  
8 Supreme Court ruled that when the mail-in ballots  
9 were being processed or canvassed is the phrase that  
10 they use, the people who were processing did not have  
11 to compare the signatures on the outer ballot from  
12 the voter with the signatures on the registration.  
13 They said these people are handwriting experts.  
14 That's not part of their job.

15 The second ruling that's important is  
16 that the Supreme Court of Pennsylvania also said that  
17 there could be no challenges during the processing of  
18 the mail-in ballots. In other words, you could make  
19 a challenge up to the Friday before the election to a  
20 voter who voted by mail-in, but you didn't have a  
21 right to review the ballot envelope and challenge the  
22 ballot.

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1 In many ways it's analogous to what  
2 happened at the polls. At the polls, a poll worker  
3 or a poll watcher can challenge a person's right to  
4 vote and that person may have to vote provisionally,  
5 but the poll watcher doesn't get to go and look at  
6 the actual ballot itself that the person cast.  
7 And then the third salient ruling was  
8 that the Secretary of State asked the Supreme Court  
9 whether it was required that the various county  
10 election boards adopt some sort of notice and cure  
11 procedure for any mail-in ballots that might be  
12 defective in some way and the Supreme Court said it's  
13 not required that you do that.  
14 But the Secretary of State, nevertheless,  
15 as I mentioned earlier, sent around a missive to the  
16 various election boards and said you're not required  
17 to do this, but we encourage you to do that. And  
18 some did and some didn't. The Third Circuit  
19 estimated about 10,000 people statewide in an  
20 election that was decided by 80,000 votes were given  
21 the opportunity to fix their defective mail-in  
22 ballots. So, those are the pre-election litigation.

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1 On Election Day some disputes broke out  
2 about the social distancing rules in the various  
3 places where the mail-in ballot was counted. That  
4 resulted in some litigation in Philadelphia. In  
5 Philadelphia, for example, which is the biggest city  
6 in Pennsylvania, these ballots are being counted on  
7 the floor of a convention center and the area where  
8 the observers were was such that they couldn't see  
9 everything that everybody was doing in this large  
10 room and that resulted in some litigation.  
11 The election was held, votes counted. A  
12 few days after the election President Biden was  
13 declared the winner by an excess of 80,000 votes. At  
14 that point, Mr. Giuliani began to head up a  
15 nationwide effort to challenge the voting results in  
16 various states and in various courts around the  
17 country and he was particularly involved in  
18 Pennsylvania. Indeed, that was the only case that he  
19 personally litigated, although he supervised a  
20 nationwide effort, but in Pennsylvania he was in  
21 charge.  
22 Now, the decision that he made was not to

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1 bring election contests in State Court, which is the  
2 logical place to bring them. Because as I said  
3 earlier, most of the rules, most of the way the  
4 election is conducted is determined by the states and  
5 the states have procedures, expedited procedures to  
6 deal with disputes that arise during the election.  
7 Pennsylvania has those. They also have the ability  
8 to have an election contest on an expedited basis,  
9 but he didn't do that. Instead, they elected to  
10 bring a federal action.  
11 Now, the federal action, which was  
12 brought in the Middle District of Pennsylvania, was  
13 brought on behalf of the Trump Campaign and two  
14 voters. And the Defendants in the case were the  
15 Secretary of State, the one who had sent out that  
16 suggestion that the notice and cure procedures be  
17 adopted, and seven counties. Only seven out of -- I  
18 think there's more 50 in Pennsylvania -- that were  
19 sued.  
20 Now, the problem that the litigants faced  
21 is what federal issues are raised? And as I said,  
22 the two facts on which they fastened were the notice

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1 and cure provisions, procedures that some counties  
2 adopted and some didn't, and the social distancing  
3 requirements which they said because of the distance  
4 sometimes between where the observers were and where  
5 the people were who were actually involved in  
6 processing the ballots and counting the votes gave  
7 rise to the opportunity for someone to commit fraud.  
8 And while there were lots of theories,  
9 legal theories that were discussed, some of which  
10 we'll go into, ultimately this was a case about a  
11 fraud and that's what Mr. Giuliani himself said.  
12 Now, when you plead fraud in Federal court, you have  
13 to plead fraud with specificity. You can bring a  
14 complaint in Federal Court in general simply by a  
15 simple statement of the facts, but if you claim that  
16 fraud exists you have to be specific as to what the  
17 fraud was.  
18 There were three complaints that were  
19 ultimately filed or attempted to be filed in this  
20 case. None of them were specific. They were simply  
21 based on conclusory statements. No facts were pled  
22 that could possibly constitute fraud. At best, at



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1 best, facts were pled which might have given rise for  
2 the opportunity for someone to commit fraud, but as  
3 you saw what the Third Circuit said and what the  
4 District Court said, there was not evidence of any  
5 fraudulent ballot or any illegal voters and there not  
6 even any allegations about that.

7 There was no evidence of any systemic,  
8 intentional miscounting of the vote that could  
9 possibly, possibly have overturned an election with a  
10 margin in excess of 80,000. The remedy that Mr.  
11 Giuliani sought varied from time to time. The least  
12 drastic remedy that he sought was to disqualify, not  
13 count the votes of 680,000 people who had voted in  
14 Allegany County, where Pittsburgh is, and  
15 Philadelphia County, by mail to deprive 680,000  
16 people of their right to vote.

17 The most extreme remedy that he sought  
18 was to deprive seven million voters in Pennsylvania  
19 of their right to vote, throw those votes out, and  
20 ask the legislature to declare who was the choice of  
21 Pennsylvania who would get the electoral votes in  
22 Pennsylvania.

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1 No court ever in the history of the  
2 United States has ever considered anything close to  
3 that remedy. And of course, the Courts summarily  
4 refused to do so, dismissed the complaint confirmed  
5 by the Third Circuit because there was no basis in  
6 law and fact to do that.

7 That's what the evidence is going to  
8 show. Let me take a moment to talk about how we're  
9 going to try to prove this. I confront here the  
10 problem of proving a negative. What I need to prove  
11 by clear and convincing evidence is that there was no  
12 basis in law or fact for the case that Mr. Giuliani  
13 set forth and so we're attempting to do that, first,  
14 by putting our arms around every single piece of  
15 evidence that we can identify that he might have  
16 relied upon.

17 So, we have asked him and his lawyers,  
18 who've been extremely cooperative in this regard, to  
19 provide us with all of the documentation, including  
20 statements of witnesses, that they have to support  
21 the allegations that Mr. Giuliani made. And he made  
22 several productions to us. We put every one of them

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1 into evidence and some of them, if you look at them,  
2 and I hope you won't have to. But if you look at  
3 them, you'll see some instances in which the same  
4 declaration or affidavit is there three, four, five  
5 times, but we put everything in that we got.

6 In addition, Mr. Giuliani's lawyers have  
7 in their Exhibits 1 and 2, which were just admitted  
8 into evidence, have put in all of -- essentially the  
9 same stuff. Exhibit 2 is some additional information  
10 that came to light after they made the production to  
11 us. But Exhibit 1 should be largely duplicative of  
12 what we've put in. I will not promise you that I've  
13 compared every page. I certainly haven't, but we  
14 tried to put everything in that they've got.

15 The second thing we did is that we  
16 subpoenaed all of the other lawyers who signed the  
17 pleadings in this case for similar documents, every  
18 document that they had, every witness statement that  
19 would support the claims. Now, those lawyers are in  
20 Pennsylvania and I don't have the ability to call  
21 them as witnesses and they wouldn't cooperate with  
22 me, but I did have the ability to subpoena documents

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1 from them going through the Pennsylvania courts and  
2 we did, and all of those documents are also in  
3 evidence here.

4 The next thing we did, Mr. Giuliani wrote  
5 us a letter and he told us in that letter, it's dated  
6 March 10, 2021, that we ought to look at the  
7 proceedings that occurred in Gettysburg,  
8 Pennsylvania towards the end of -- or after the case  
9 had been dismissed.

10 A number of Republican senators held a  
11 session. I'm not exactly sure how to characterize  
12 this, but they held what we would normally call a  
13 hearing, took most of the day, and MR. Giuliani put  
14 on his case. And so, the transcript of that hearing  
15 I think both sides have included in their exhibits  
16 and that's been admitted into evidence.

17 And then final thing that we did was  
18 there's a deposition Mr. Giuliani gave in another  
19 case in which he discussed some of these matters and  
20 we put that into evidence as well. So, we have tried  
21 to put into evidence every single possible fact on  
22 which Mr. Giuliani could have based his case. And as

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1 I've said before, we will call Mr. Giuliani as our  
2 first witness and examine him about the basis for the  
3 claims that he made and then we will put on Daniel  
4 Ortiz, he's a professor at the University of Virginia  
5 Law School, expert in election law and expert in  
6 civil procedure to talk about the structure of  
7 elections in the United States, what you've got to do  
8 to go into Federal Court to set aside an election  
9 and how the information that was provided in this  
10 case fell so woefully short.

11 Lawyers are not permitted in any case to  
12 file complaints in court without a factual or a legal  
13 basis for doing do. That's prohibited by the Rules  
14 of Professional Conduct. It was particularly  
15 egregious that it occurred in this case that a  
16 meritless complaint was filed because it was an  
17 attempt to undermine the legitimacy of the  
18 Presidential election.

19 The first contested Presidential election  
20 in the United States in which power changed hands was  
21 the election of 1800. They didn't call them parties  
22 in those days. They called factions, but the faction

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1 that Thomas Jefferson represented prevailed over the  
2 faction of then-President Adams.

3 To some extent, figuratively speaking,  
4 the country held its breath in those days. I mean  
5 Benjamin Franklin famously said this is a republic if  
6 you can keep it. This was the first test of whether  
7 you could keep it and Adams, patriot that he was,  
8 left the District of Columbia, went back to  
9 Massachusetts and retired and Thomas Jefferson  
10 succeeded and became President of the United States.  
11 That was the precedent that was set. And  
12 constitutional democracy such as ours does not work  
13 unless the loser honors the decisions of the voters.

14 In this case, the Respondent, Mr.  
15 Giuliani, with no basis of law and fact weaponized  
16 his law license to bring a frivolous action in an  
17 attempt to undermine the Constitution to which he,  
18 like all members of the District of Columbia Bar,  
19 took an oath to support.

20 THE CHAIR: Thank you, Mr. Fox. Mr.  
21 Leventhal, does the Respondent make an opening  
22 statement at this time?

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1 MR. LEVENTHAL: Yes, I do. Thank you.  
2 Good morning, Mr. Chair and members of  
3 the Ad Hoc Hearing Committee, Mr. Fox and Mr.  
4 Horrell. And I also want to thank Ms. Borrazas for  
5 helping us with the technical aspects here. And Mr.  
6 Catherine, make sure you can hear me because I want  
7 to make sure I'm heard. Thank you.

8 Mayor Giuliani was the attorney  
9 representing former President Trump on the second  
10 amended complaint that was sought to be filed in  
11 Trump v. Boockvar. Disciplinary Counsel contends  
12 that the second amended complaint was frivolous and  
13 without basis in law or fact.

14 It is Respondent's contention that there  
15 was a reasonable basis for the arguments made by  
16 Respondent Rudolph Giuliani. Even assuming,  
17 arguendo, that the fraud allegations were not pled  
18 with specificity required by the Federal Rules of  
19 Civil Procedure, the claims based on the denial of  
20 equal protection and due process were properly pled  
21 and were certainly not frivolous.

22 This was not in my prepared statement,

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1 but I have to answer Mr. Fox. I'm putting up his  
2 Exhibit No. 20, page 20. I don't know if you can see  
3 it, but I'd like to read it. "In this case, the  
4 Democratic Party -- this Democratic Party v.  
5 Boockvar, 238, Ad. 3rd, 345.

6 On page 20 of Mr. Fox's exhibit, it is  
7 clear that Ms. Boockvar opposed, opposed, and I  
8 repeat, opposed the Democratic Party's request to  
9 make notice and cure a requirement. The Court said,  
10 no, only the legislature can do this and Ms. Boockvar  
11 was part of the Executive Branch of government. An  
12 interpretation of this case is that notice and the  
13 opportunity to cure was not permitted, not that it  
14 was an option.

15 Although Judge Brand said it was an  
16 option, that's not what the case says. A reasonable  
17 interpretation in reading this case, unlike the other  
18 claims asserted herein, the Secretary opposes  
19 Petitioner's request for relief in this regard and  
20 that was for notice and opportunity to cure. She  
21 counters that there is no -- this is the Secretary --  
22 "there is no statutory or constitutional basis for

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1 requiring the boards to contact voters when faced  
2 with a defective ballot and afford them an  
3 opportunity to cure ballots."  
4 The Secretary further notes that the  
5 Petitioner relies upon the -- and the Petitioner is  
6 the Democratic Party -- upon the free and election  
7 clause. That clause cannot create statutory  
8 language that the General Assembly chose not to  
9 provide.  
10 So, if you read -- I don't want to read  
11 the whole page into evidence, but it is clear that  
12 the Supreme Court of Pennsylvania said it is only for  
13 the legislature to decide. What has come out in the  
14 affidavits supplied in Exhibit 1 is that the  
15 Republican counties believed that they were adhering  
16 the law that notice and cure was not permitted and  
17 the Democratic counties did the notice of cure and  
18 that's the due process -- that's one of the due  
19 process and equal protection arguments that we made.  
20 I might also add, and I wasn't going to  
21 include this in my opening statement, even though  
22 certain conditions were altered during the election

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1 because of the pandemic and because of statute,  
2 Article 77, it was not reversed. Pennsylvania  
3 Statute 25PS, Sections 3146.8, and I will read it,  
4 Subdivision B. "Watchers shall be permitted to be  
5 present, present when the envelopes containing  
6 official absentee ballots and mail-in ballots are  
7 opened and when such ballots are counted and  
8 recorded."  
9 What is the reason for this? The reason  
10 for this is that if there's an impropriety, such as  
11 date, signature, not in the secrecy envelope, which  
12 the Supreme Court of the United States has later in  
13 one of my exhibits you'll see. Could we go to my  
14 exhibits please, the last -- just go on the exhibit  
15 list.  
16 The Supreme Court of the United States,  
17 Judge Alito, they reversed the fact that date and  
18 signature might not be -- Exhibit 20, 28. Please put  
19 it up, 28. Could you scroll it, I want to see the  
20 case. Okay. So, if you look at Exhibit -- this  
21 basically granted certiorari and vacated the Third  
22 Circuit decision.

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1 Exhibit 29 gives you the history of this  
2 where three judges wanted to grant a stay, but it  
3 shows that the failure to put the date and signature  
4 should've been challenged in the election. Now, this  
5 certainly is not frivolous. So, the claims based on  
6 the denial of equal protection and due process were  
7 properly pled and were certainly not frivolous.  
8 They were based on the numerous  
9 declarations the information given to Respondent by  
10 attorneys and other members of the Trump Campaign  
11 team. Respondent's representation must be viewed in  
12 the context of what had occurred and transpired  
13 during that time. When Mr. Giuliani was coordinating  
14 the litigation in various states in a very time  
15 pressured and chaotic situation during this period  
16 and where he had to take over the Pennsylvania  
17 litigation at the 11th hour that was abandoned by  
18 local attorneys and two Texas attorneys under  
19 political pressure by their law firms and others.  
20 This is especially so, considering the  
21 truncated timeframe of any election challenge, the  
22 election was held on November 3rd. The county board

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1 of electors were mandated to certify the results of  
2 the election on November 23, 2020. The original  
3 complaint was filed on November 9th by other  
4 attorneys with minimal contribution by Respondent.  
5 You'll hear that his total contribution was to add  
6 that this occurred in many other jurisdictions.  
7 The first amended complaint was filed on  
8 November 15th by another attorney. The second  
9 amended complaint was in which Respondent, Rudolph  
10 Giuliani, was one of named attorneys was submitted  
11 for filing on November 18th, only one day after he  
12 was admitted, pro hac vice, to appear in the  
13 Pennsylvania litigation. This again was necessitated  
14 by the withdrawal of an attorney who was on the  
15 original complaint and others who had joined the  
16 litigation at a later date.  
17 An election law proceeding is unlike any  
18 other lawsuit. In a medical malpractice or personal  
19 injury matter, a commercial dispute involving money  
20 or property or in any other type of litigation an  
21 attorney can do months or even a year or more of an  
22 investigation to determine whether a lawsuit is

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1 viable to be commenced.  
2 This is simply not possible in an  
3 election law challenge. In this case, Mr. Giuliani  
4 was asked to argue a case the day he was admitted pro  
5 hac vice. Judge Braun acknowledged Respondent's late  
6 entry into this case by asking Ms. --, a local  
7 attorney to remain on to answer questions and by the  
8 Judge's acknowledgment that Mr. Giuliani was a late  
9 entry.  
10 It is clear through the colloquy by the  
11 Court at oral argument that the Court, although  
12 perhaps skeptical of the lawsuit, did not think it  
13 was frivolous. In fact, the Court stated that it  
14 had not made up its mind. In this matter, Mr.  
15 Giuliani had a reasonable basis to rely on the  
16 information that he was provided through third  
17 parties and to try to develop legal arguments that  
18 were developed under the time constraints of the  
19 election challenge in this matter.  
20 We, through hindsight, have done a deep  
21 dive legal research into the Braun decision and we  
22 will present at the conclusion our legal arguments

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1 how some of the conclusions reached by Judge Braun  
2 were not only incorrect, but were contrary to law  
3 and to law that he cited. Excuse me one second,  
4 please, Mr. Chair.  
5 In this matter Mr. Giuliani had a  
6 reasonable basis to rely on the information he was  
7 provided -- I think I said this -- through third  
8 parties and to try to develop legal arguments that  
9 alleged under the time constraints under the election  
10 challenge in this matter. Excuse me for repeating.  
11 I lost my place.  
12 Besides the second amended complaint was  
13 not allowed to be filed and considered by the Court.  
14 Mr. Fox was wrong. It was not filed. It was not  
15 accepted to be filed. He was not allowed to do that.  
16 We note that Judge Braun did not sanction Mr.  
17 Giuliani under Rule 11 of the Federal Rules of Civil  
18 Procedures for filing a frivolous lawsuit and the  
19 Third Circuit Court of Appeals did not seek to  
20 sanction him under Rule 38 of the Federal Rule of  
21 Appellant Procedure for filing a frivolous appeal.  
22 Additionally, his opponent attorneys in the

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1 Pennsylvania litigation did not seek to sanction him  
2 at the District Court or Appellate level.  
3 Now, Disciplinary Counsel seeks to  
4 discipline Mr. Giuliani for arguments made in the  
5 second amended complaint that was never accepted for  
6 filing by the Court. We have done national research  
7 and I haven't seen anyone disciplined by filing -- by  
8 attempting or seeking to file a complaint that was  
9 not accepted. We additionally contend that no  
10 discipline should be imposed based on a document that  
11 was never accepted by the Court.  
12 Thus, we contend that there is no clear  
13 and convincing argument that Respondent, Rudolph  
14 Giuliani, intentionally violated Rules 3.1 and 8.4(D)  
15 of the Pennsylvania Rules of Professional Conduct.  
16 And I again say that we will go into a deep dive of  
17 the law regarding due process and equal protection.  
18 And also, if the Court were to address those federal  
19 issues that there would be supplemental jurisdiction  
20 to consider the violation of 25 --  
21 THE CHAIR: Mr. Leventhal? You've cut  
22 out, Mr. Leventhal, the last couple of sentences.

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1 MR. LEVENTHAL: I said at conclusion of  
2 the hearing we will do a deep dive into the law  
3 regarding the fact that the due process and the equal  
4 protection claims were not frivolous and that there  
5 would also, if they were accepted by the Court, the  
6 Court would be able to exert its supplemental  
7 jurisdiction under the Federal Statute to consider  
8 the violation of Pennsylvania statute, Section  
9 3146.8.  
10 For all those reasons we believe that  
11 Respondent should not be sanctioned by the Hearing  
12 Panel. Thank you so much.  
13 THE CHAIR: Thank you, Mr. Leventhal.  
14 Mr. Fox, are you ready to call your first witness?  
15 MR. FOX: The first witness will be Mr.  
16 Giuliani. Might I suggest that we take a 10-minute  
17 recess now before we do that since we've been going  
18 for about an hour and a half?  
19 THE CHAIR: That's fine. Okay, 10-minute  
20 recess.  
21 (Off the record)  
22 THE CHAIR: Mr. Fox, call your witness

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1 please.  
2 (Technical issues)  
3 THE CHAIR: All right, Mr. Giuliani, do  
4 you solemnly swear or affirm that the testimony you  
5 will give in this proceeding will be the truth, the  
6 whole truth, and nothing but the truth, so help you  
7 God?  
8 MR. GIULIANI: I do.  
9 THE CHAIR: Mr. Fox, you may proceed.  
10 (Whereupon, RUDOLPH GIULIANI, having been  
11 duly sworn, testified as follows)  
12 DIRECT EXAMINATION BY MR. FOX:  
13 Q. Good morning, Mr. Giuliani.  
14 A. Good morning, Mr. Fox.  
15 Q. I want to talk first about your role in  
16 the post-election cases filed by the Trump Campaign.  
17 A. Yes, sir.  
18 Q. Is it accurate that a day or so after the  
19 election President Trump asked you to head the legal  
20 team representing the campaign?  
21 A. I believe it was the next day. It could  
22 possibly have been the day after, but I think it was

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1 the next day. Yes.  
2 Q. And you were supervising all of the  
3 efforts in -- nationwide, is that fair?  
4 A. Well, first, I don't think I knew what --  
5 , but I guess that's the way it turned out, although  
6 I had a great deal of help, but that's true. I mean,  
7 when I first took it over I had had no involvement in  
8 it up to that point, except to hear that it had been  
9 terribly disorganized and it wasn't very well  
10 prepared. That's the only thing I knew about it.  
11 Q. And I think you have indicated before that  
12 when you showed up to take over at the campaign  
13 headquarters you found out that nobody had even  
14 started drafting complaints; is that correct?  
15 A. Well, at least they didn't produce them to  
16 me. I mean, I showed up with a small group of  
17 lawyers that I put together quickly who I was  
18 familiar with either from my dates in the Justice  
19 Department or civil law practice. And when I arrived  
20 there, I had expected, because we were speculating  
21 about this in the weeks leading up to this, that  
22 there must be a large group of complaints prepared,

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1 draft complaints. I mean I've been involved in other  
2 campaigns before, not as the lawyer, but I'd see -- I  
3 was involved in the Bush Campaign in -- Bush Campaign  
4 in 2004 and my own campaign in 2008, McCain's  
5 Campaign, Romney's Campaign. You always have -- even  
6 in my campaign, which went 11 months, you always have  
7 a group -- you have a lawyer and draft complaints and  
8 you sort of anticipate -- I mean, since the Bush v.  
9 Gore case, everybody in a major election anticipates  
10 some kind of litigation after, so you prepare draft  
11 complaints because you know this has to go very, very  
12 quick. You don't have any time. It's very -- you  
13 know, I was used to doing very major criminal cases  
14 that took years to prepare and these are -- here you  
15 got a week, so you have to prepare in advance.  
16 Q. Now, with respect to Pennsylvania, you  
17 personally started writing the complaint there with  
18 Ron Hicks of the Porter Wright firm; is that correct?  
19 A. No, that wouldn't be the -- that wouldn't  
20 be correct. I mean, it's sort of correct, but it's  
21 sort of out of context also. I had on focus on any  
22 place when I started. I asked them to tell me where

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1 the issues were coming from. And when I left the  
2 White House -- the President asked me to come to the  
3 White House. I believe it was morning after the  
4 election. I arrived there with several people  
5 because I knew what it was about. We had a very  
6 lengthy conversation and then he said I want you to  
7 take over and I want you to take over the  
8 litigation. And I said, well, Mr. President, would  
9 you call there and let them know that because  
10 they're going to be very insubordinate when I show  
11 up. You've got to know how your people operate. And  
12 he said he would do that and I told him who I was  
13 going to use, he approved them, and I directly went  
14 to Arlington to the campaign headquarters. When I  
15 got there I tried to reach the main people, all of  
16 whom I had worked with before. I mean I knew who  
17 they were. One of them had been my deputy press  
18 secretary when I ran for President and a good friend  
19 of mine, and he did help. And I asked them to please  
20 get me whoever could brief me on what's pending right  
21 now and then let's think out what we're going to have  
22 to do. So, he brought in a few lower-level -- I'm

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1 not even sure they were lawyers, but people who were  
2 helping the lawyers. And they put them all up on  
3 whiteboards. So, I'm going to miss a state or two,  
4 but certainly Pennsylvania, Michigan, Minnesota,  
5 Wisconsin, Arizona, Nevada, Virginia, North  
6 Carolina, South Carolina, Georgia, New Mexico -- did  
7 I say Arizona? Arizona, I believe. They put them  
8 all up on a board, whiteboard. And I don't remember  
9 the order in which they did it, they tried to  
10 explain what they knew about -- there had been prior  
11 litigation in some of these places litigating the  
12 constitutionality of the changes that had been made.  
13 Q. Mr. Giuliani, my question is specifically  
14 about Pennsylvania.  
15 A. Yeah, well, it's hard to do that because  
16 it wasn't specifically about Pennsylvania.  
17 Pennsylvania didn't come into focus until maybe three  
18 -- two three hours later while I'm working on all  
19 these other places trying to figure out how up to  
20 speed we are and I get a call from either Pam Barnaby  
21 or Mr. Lewandowski. I believe it was Lewandowski.  
22 They said it's very important that they talk to you.

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1 Well, this was probably the 50th "very important to  
2 talk to you" person I had and I said, well, can I  
3 have somebody else talk to them because I'm trying to  
4 -- right then we had an emergency somewhere else.  
5 Probably is not relevant, but we had an emergency in  
6 two other places. One of them was Arizona and the  
7 other was Michigan. And I said, you know, they're  
8 more important right now. And they came back and  
9 said, well, he says it's more important here because  
10 they're having trouble. They're getting pushed  
11 around. They need your help. So, I got on the phone  
12 and he said we're having a terrible time here. Our  
13 people are being put in pens like they're cows.  
14 Never seen this before. He said have you ever done  
15 -- have you ever done inspection work, you know, on  
16 absentee ballots. I said, yeah, I did many, many  
17 years ago, but as a Democrat. I don't know if they  
18 do it differently as a Republican back in Nassau  
19 County. And then I did it actually to some friend's  
20 campaign as a Republican. He said, well, you're not  
21 going to believe this, but they're not allowing us to  
22 see any of the paper. And I said, what'd you mean?

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1 He said the Republicans are being kept in pens like  
2 cows and that all of a sudden rang a bell with me  
3 because I had gotten that complaint from Detroit,  
4 Atlanta --  
5 Q. Mr. Giuliani, I am trying to find out what  
6 your role was in writing -- in drafting the initial  
7 complaint in Pennsylvania and you're telling -- I'm  
8 asking you what time it is and you're telling me how  
9 to make a watch. What I want to -- what I've asked  
10 you is whether you started writing the complaint in  
11 Pennsylvania with Ron Hicks, who was the lawyer who  
12 was in charge?  
13 A. Well, you know, I really do think you  
14 should let me answer the question so that I can get  
15 the context in which I was operating so you don't  
16 create the false impression that all my time and  
17 attention was given to one matter when that was not  
18 the case. I would think you'd want the panel to  
19 know what really happened --  
20 THE CHAIR: Mr. Fox, would you ask the  
21 question again please?  
22 MR. FOX: Yes.

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1 BY MR. FOX:  
2 Q. The question I asked was were you  
3 personally involved in drafting the initial  
4 complaint with Ron Hicks of the Porter Wright firm  
5 for the Pennsylvania litigation?  
6 A. Not that day.  
7 Q. I don't think I specified a day.  
8 A. You did. You were asking me about when I  
9 saw the President and what happened. The next thing  
10 that happened is I went to the headquarters and I was  
11 explaining to you how I got involved in the  
12 Pennsylvania case, which apparently you don't want to  
13 know, but that would actually help to explain a lot  
14 of the things that you said that were incorrect and  
15 false about our not having evidence of -- please let  
16 me finish. Would you let me finish my answer? I let  
17 you finish your question. That would explain very  
18 early on I actually, personally witnessed a lot of  
19 the fraud myself as even a fact witness because I  
20 went to Pennsylvania that day and I saw many of the  
21 things that I alleged in the complaint.  
22 THE CHAIR: Mr. Giuliani, your role here

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1 is as a witness, not advocate. And if you would  
2 answer the questions, as asked, and then Mr. Fox can  
3 ask another question. Your lawyers will have an  
4 ample opportunity to ask you questions to flesh out  
5 anything that you need to be discussed. But at this  
6 point, I think we need to just try to listen to  
7 question and answer the question that's posed.  
8 MR. GIULIANI: Well, Mr. Chairman, I tried  
9 to. I tried to answer the question without taking  
10 one-tenth of it focusing on that pretending there  
11 wasn't nine-tenths surrounding it.  
12 BY MR. FOX:  
13 Q. Mr. Giuliani, let me try it again.  
14 Regardless of what day, whether it was the first day  
15 or the third day you were involved, did you start  
16 writing the complaint that was filed in Pennsylvania  
17 with Ron Hicks?  
18 A. No, I did not.  
19 MR. FOX: Would you please put up Exhibit  
20 34, put up the first page?  
21 BY MR. FOX:  
22 Q. Mr. Giuliani, do you recognize this as a

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1 deposition that you gave in August of 2020 in the  
2 Comer litigation?  
3 A. Mm-hmm.  
4 Q. Is that a yes?  
5 A. Well, I actually don't, but I did give --  
6 I did give a deposition in the litigation. I don't  
7 recognize the piece of paper.  
8 Q. Okay.  
9 MR. FOX: Can you go please to page 141  
10 and put up lines 14 through 25?  
11 BY MR. FOX:  
12 Q. Can you read that, sir? The only question  
13 is whether you're physically able to read it right  
14 now.  
15 A. No, I can read it.  
16 Q. Okay. And did you testify at that  
17 deposition, and I'm going to lines 21 through 25.  
18 "And when they came back I said where's our  
19 Pennsylvania lawsuit. We don't have one, so I  
20 started writing one myself with a lawyer who was in  
21 charge, Hicks, and it alleged fraud." Was that your  
22 testimony?

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1 A. Yes, sir, and that happened later.  
2 Q. That's why, Mr. Giuliani, my question was  
3 posed not on the first day, but at any time. So, you  
4 did start writing the complaint with Mr. Hicks and  
5 alleged fraud. Correct?  
6 A. I contributed to the complaint with Mr.  
7 Hicks on fraud. That is correct.  
8 Q. All right. Whether the language --  
9 A. At some point.  
10 Q. The language you used was I started  
11 writing one, right?  
12 A. That may be, yeah.  
13 Q. Okay. Now, you were aware, were you not,  
14 that Pennsylvania had state procedures for contesting  
15 elections?  
16 A. When? At what time?  
17 Q. At what time were you aware? At the time  
18 you drafted this complaint were you aware that  
19 Pennsylvania had procedures, state procedures for  
20 election contests?  
21 A. I assumed it. I wasn't knowledgeable  
22 about them and Mr. Hicks was the local counsel. And

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1 I should clarify that my contribution to it was to  
2 add two paragraphs to what Mr. Hicks had already  
3 written and Mr. Hicks wrote probably 80 percent of  
4 it, 90 percent of it and I contributed 20 percent, 10  
5 percent, and I edited it.  
6 Q. Okay.  
7 A. But I relied on Mr. Hicks for the  
8 Pennsylvania, as you would with local counsel. I  
9 relied on Mr. Hicks for the knowledge of  
10 Pennsylvania law. And at that point, he was  
11 definitely going to argue, not me. It was his case  
12 and I was giving him language so that eventually we  
13 would have a chance to consolidate this case with  
14 other cases similar to it. We could try to have one  
15 case to go to the Supreme Court. I had been given  
16 that advice by several lawyers I had talked to in the  
17 interim.  
18 Q. Now, Mr. Giuliani, you never made any  
19 efforts to bring any state actions to challenge any  
20 irregularities that occurred in the campaign, correct  
21 -- sorry, in the election?  
22 A. Well, I was never advised to do that.

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1 Q. Okay.  
2 A. I would assume that would be --  
3 particularly, being brought in at the last minute  
4 like that, that that would be the responsibility of  
5 local counsel. I did not purport to be an expert on  
6 Pennsylvania law. I certainly wasn't, not admitted  
7 to the Bar there, so I've done a lot of this  
8 litigation nationwide. And generally, particularly,  
9 you have a local lawyer of Mr. Hicks' ability. He  
10 wasn't just a local lawyer; he was the principle  
11 lawyer. You would rely on him.  
12 Q. Okay. And from the start this was always  
13 a federal lawsuit that you were going to bring,  
14 right?  
15 A. I can't -- I don't recall if we ever  
16 discussed a state lawsuit. We may have, but it  
17 happened so fast it couldn't have been much of a  
18 discussion. I can't reject it that we didn't  
19 discuss it, but I don't remember.  
20 Q. Okay. I want to go at some length later  
21 into the actual allegations of the complaint, but I'd  
22 like to give the Hearing Committee first sort of an

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1 overview of how this litigation process went. So,  
2 the first thing -- the initial complaint that you  
3 filed, the one that we've just been discussing that  
4 you said you edited, alleged fraud; is that correct?  
5 A. It had allegations of fraud in it, yes,  
6 sir.  
7 Q. Okay.  
8 A. It did, as I recall it. I haven't reread  
9 that. I've reread the second one. But yes, the  
10 second one is largely a rewrite of it, so yeah, I  
11 think it did. Yeah.  
12 Q. Okay. And the Plaintiff was the Trump  
13 Campaign, correct? Was one of the Plaintiffs,  
14 correct?  
15 A. Yes. I don't have it in front of me right  
16 now, but sure. It was Donald Trump for President and  
17 then I think we had two individual -- they had. They  
18 had already put that together. They had two  
19 individual defendants who had been -- two individual  
20 Plaintiffs who had been deprived of a right to cure.  
21 Q. Right. These were two individuals who had  
22 voted in counties and had filed defective mail-in

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1 ballots. Correct?  
2 A. That's what they claimed.  
3 Q. And those counties where they voted had  
4 not had a notice and cure procedure. Correct?  
5 A. I think that's right, yeah. Yeah, I'm  
6 pretty sure that's right.  
7 Q. And so -- but you didn't sue the two  
8 counties that didn't give them the notice and cure  
9 procedure. You sued seven other counties. Correct?  
10 A. Yeah, for violation -- yes, for denial of  
11 due process, yeah, and also for -- seemed like a very  
12 simple equal protection claim. Yeah.  
13 Q. Okay. We'll come back to the nitty-gritty  
14 in a moment. The Defendants in the case were the  
15 Secretary of State, who is -- and I have never been  
16 quite sure how to pronounce her name. Since you've  
17 been involved in this litigation, perhaps you --  
18 A. Boockvar, I believe.  
19 Q. Boockvar? Ms. Boockvar and seven  
20 counties. Correct?  
21 A. Yes, sir.  
22 Q. And would I be right that those seven

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1 counties were all counties that had voted heavily for  
2 President Biden?  
3 A. Well, at the time I'm not sure. I relied  
4 on Hicks for that, but yeah, that is correct.  
5 Q. All right. And you did not sign the  
6 initial complaint because you were not admitted in  
7 the Middle District of Pennsylvania, as you mentioned  
8 just a moment ago. Correct?  
9 A. Yeah. And I didn't think it was really  
10 fair for me to sign it because I didn't have a great  
11 -- I mean I just came in at the last minute, made  
12 some suggestions so that -- my main role was, and I  
13 had been working on this -- that's why I tried to  
14 describe what I was doing before I got to this. I  
15 was working on that language in several other  
16 complaints because the allegations in this complaint  
17 were so similar to the allegations in three other  
18 complaints that it seemed to me and our lawyers that  
19 this was a very, very good case for possible  
20 consolidation at the right time because it would  
21 raise very similar issues of law and fact. So, I  
22 wanted to write a paragraph or two that would be



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1 similar to the paragraphs where you could justify it  
2 that we may have already put in other cases. The  
3 other one in Michigan, the one in Georgia, which  
4 hadn't been written yet, two others, I can't remember  
5 which others.  
6 Q. Mr. Giuliani, you just said a moment ago  
7 you came in at the last minute, but in point of fact,  
8 it's your testimony, is it not, that nobody had even  
9 started on the complaint until you got involved and  
10 that you started writing it.  
11 A. I didn't start -- I didn't start writing  
12 this. Originally, he started writing it. I started  
13 working -- and I didn't put my name on it because it  
14 was largely his product with my contribution which  
15 I've described to you, the allegations that would  
16 allow us ultimately to consolidate, if we could. And  
17 number two, there were -- I did -- I did some editing  
18 and contribution of things, but I can't -- I couldn't  
19 for the life of me distinguish what I contributed to  
20 this as to what I contributed to the one that was  
21 being filed at the same time in Michigan or the one  
22 that was being revised in Arizona. Kind of doing

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1 them at the same time.  
2 Q. That complaint was filed on November 9,  
3 2020; is that correct?  
4 A. Yes, sir. Yes, sir.  
5 Q. And it was signed by Mr. Hicks and also by  
6 Linda Kerns. Correct?  
7 A. I think so. Whatever it says. I didn't  
8 sign it, right? I don't think I signed.  
9 Q. Did you want to look at the -- do you want  
10 us to look?  
11 A. Sure. Sure. I think I -- I mean, I don't  
12 remember signing.  
13 Q. You didn't sign it.  
14 A. Okay. Good. I take your word for it.  
15 Q. Now, at some subsequent point, you did  
16 move for pro hac vice admission in the Middle  
17 District of Pennsylvania?  
18 A. Yes, sir, I did.  
19 Q. And not all of the members of our panel  
20 are lawyers, so pro hac vice is a provision whereby  
21 you can appear for one case in a jurisdiction even  
22 though you're not admitted in that jurisdiction.

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1 Correct?  
2 A. Correct.  
3 Q. All right. And I think that occurred on  
4 the 17th and you were granted admission to the Middle  
5 District of Pennsylvania for the purposes of arguing  
6 the Boockvar case. Correct?  
7 A. Yeah. I mean I'm not going to dispute the  
8 dates. I don't have -- I don't have an independent  
9 recollection of the dates, but yeah.  
10 Q. Well, the --  
11 A. It happened all in --  
12 Q. The motion is in -- the pleading is in  
13 evidence.  
14 A. Yeah. All right, I'm sure it's right.  
15 Q. Now, without your knowledge, as I  
16 understand it, the Campaign filed an amended  
17 complaint that eliminated the fraud allegations; is  
18 that correct?  
19 A. Well, I don't know who -- well, yeah.  
20 There was -- a better way to -- the accurate way to  
21 answer that is there was a first amended complaint  
22 filed in the interim between the first thing you

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1 asked me about on the 17th and I did not know about  
2 it until the morning after that it was filed nor did  
3 I know what was in it.  
4 Q. So, you had no involvement, no role at all  
5 in the first amended complaint?  
6 A. No, sir.  
7 Q. And you'll agree with me that it  
8 eliminated the allegations of fraud.  
9 A. Of -- yes, except -- yes. Certainly, not  
10 in any way you could discovery them easily. I mean  
11 you could tease out fraud allegations from it if you  
12 wanted to, but it sure as heck, by and large, did not  
13 allege fraud anyway anybody would understand it.  
14 Q. And this was filed on the 15th of November  
15 2020?  
16 A. I guess.  
17 Q. And do you remember that it was signed by  
18 Linda Kerns --  
19 A. I do remember that. She signed it. I  
20 don't know if anybody else did.  
21 Q. And it was not signed by Mr. Hicks,  
22 correct? He'd withdrawn at this point.

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1 A. By? I'm sorry, not signed by?  
2 Q. Not signed by Mr. Hicks because he'd  
3 withdrawn. Correct?  
4 A. He had withdrawn. Whether he was  
5 technically withdrawn at this point, I don't know.  
6 Q. Okay.  
7 A. Yeah, for all intents and purposes, he was  
8 withdrawn at this point.  
9 Q. There's another name on the complaint, a  
10 fellow from Texas named Scott. Do you know what, if  
11 any, role he played?  
12 A. No, I don't. I just know that he was  
13 brought in -- he may have even come into my office in  
14 Arlington and I have no idea who got him, who found  
15 him, where he came from, or what contribution, if  
16 any, he made to that complaint.  
17 Q. Okay.  
18 A. I think -- I'm sorry. I think he was  
19 brought in by Linda -- brought in by somebody. He  
20 was going to argue the case for Hicks. Hicks --  
21 originally, Hicks was going to argue this case. So,  
22 I was -- I was in the role of helping him in the

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1 background and I -- and my major thing was I felt  
2 strongly that we should have something in there that  
3 we could hook it together with the other cases.  
4 Once Hicks dropped out, well, now the case was in  
5 limbo.  
6 Q. Well, you actually believed, did you not,  
7 that this first amended complaint with the  
8 elimination of fraud was an effort to tank the case;  
9 isn't that right?  
10 A. I thought the case had been -- well, I  
11 mean, yeah. I thought it would put it in grave  
12 jeopardy. It seemed to me that the Judge -- there's  
13 a real good chance the Judge would dismiss it.  
14 Q. And you didn't even find out about these  
15 changes until the night before the oral argument.  
16 Correct?  
17 A. You know, Mr. Fox, I think it was the  
18 night -- the night before the oral argument.  
19 Q. Yes, sir.  
20 A. I found out about it the day before,  
21 whether it was earlier in the day or nighttime. I  
22 think it was a little earlier in the day. And I

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1 found out about it like in steps. First, I found out  
2 that Hicks was withdrawing. I tried to talk Hicks  
3 out of it, but that may have been the day before.  
4 Hicks originally wasn't going to withdraw. He said  
5 his law firm had put a lot of pressure on him, but he  
6 said, damn it, I'm not going to withdraw. Then it  
7 elevated to his family had been threatened. And he  
8 said I just have to do it. I hope you understand.  
9 And I said, sure, I can't ask anybody to do that.  
10 So, that's where I left it when I then find out that  
11 Kerns had filed something and then I saw it sometime  
12 that day. So, it's probably fair to say I didn't  
13 probably get to read it until pretty much the night  
14 before.  
15 Q. And was the night before the oral argument  
16 which occurred on the 17th of November before Judge  
17 Braun. Correct?  
18 A. Yeah, that seems -- yeah, I know. I know  
19 the dates say that. It seems awfully close together,  
20 but okay, yeah. Yeah.  
21 Q. Now, because of the first amendment  
22 complaint you faced a dilemma in the argument as to

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1 how to argue fraud, is that fair?  
2 A. Yeah. I kind of approached it a little  
3 differently than that, how to argue the two -- how to  
4 argue what I thought we needed in order to make this  
5 a case that we could consolidate which was the common  
6 element involved in this case with the case in what  
7 turned out to be five other districts.  
8 Q. You believed that the essence of your case  
9 was fraud, is that fair?  
10 A. No. Do I believe it -- I don't believe  
11 it's the essence of my case. It would've been -- it  
12 would have been the -- it really would've been more  
13 of the conspiracy to do this that would be at the  
14 core of whether -- now, do this could involve --  
15 could involve fraud. It could involve mistakes, it  
16 could involve misinterpretation of the law, it could  
17 involve -- I mean, we weren't stuck just with fraud.  
18 But the thing that was driving equal protection, due  
19 process. The thing that -- the thing that was  
20 driving me and my people was how similar it was to  
21 five other places and therefore if it's going to get  
22 resolved correctly it really should be consolidated

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1 so one court in one place could hear all of this and  
2 we thought that -- evaluate because we thought it was  
3 a very serious situation and kind of defied -- it  
4 kind of defied just accidents that precisely the same  
5 things were done at precisely the same time in five  
6 or six different places and there were about six  
7 elements to it that it was made at beyond fidelity  
8 that these would've been dreamed up separately, you  
9 know, that six different people in six different  
10 places would've gone out and bought gates to put  
11 Republicans behind since in the whole history of  
12 doing absentee ballots we never put anybody behind  
13 gates before or that they would in each one of these  
14 jurisdictions call off counting at midnight within 20  
15 minutes of each other when they were all intending to  
16 count all night or that in each one of these places,  
17 even after they called off counting all night when  
18 the Republicans were out they want to continue to  
19 count anyway without Republicans around and that in  
20 each case now all the votes that night were  
21 disproportionately and statistically impossibly for  
22 Biden. For example, in one case Biden had 99.6

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1 percent of the votes counted at night --  
2 Q. I'm not asking about what happened in  
3 other states.  
4 A. But other states are important to my  
5 defense and explanation because you're asking my role  
6 and my role in it was not necessarily Pennsylvania.  
7 That was hopefully to be Hicks. My role was to show  
8 how Pennsylvania involved same set of eight or ten  
9 suspicious actions, illegal actions, whatever you  
10 want to call it, irregular actions that could not  
11 have been the product of just accidents. It's  
12 strange fidelity to think that and certainly would've  
13 made overpowering circumstantial evidence and that's  
14 how -- gosh, that's how I proved conspiracy  
15 throughout my career. You never get a written down  
16 contract of conspiracy. You get the conspirators  
17 acting the same way in disparate places. So here  
18 what you had was you had all Republicans locked out.  
19 Q. Mr. Giuliani, I really am trying to ask a  
20 much more simpler question.  
21 A. And I'm trying to get them to understand  
22 what happened.

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1 THE CHAIR: Mr. Giuliani, as I said, my --  
2 THE WITNESS: In my defense because largely my  
3 defense is to try to get away from the sound bit into  
4 the explanation of what happened.  
5 THE CHAIR: Mr. Giuliani, if you could try to  
6 limit  
7 yourself to answering the questions. As I said  
8 before, you'll have an opportunity when your lawyer  
9 asks you questions to explain more fulsomely, but try  
10 to focus on the question and if you could answer it  
11 directly it would be very helpful.  
12 THE WITNESS: May I just say one thing,  
13 Your Honor, one thing? And that is a part of the  
14 problem here to me, in which I really believe I've  
15 been persecuted for three or four years, including  
16 false charges brought against me by the federal  
17 government that have now been dismissed, a false  
18 claim brought against me for January 6th that was  
19 dismissed by the Court, I feel that things are taken  
20 out of context that are much more complicated than in  
21 context. And I guess he's playing lawyer, but by  
22 playing lawyer that is exactly what Mr. Fox is

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1 doing. He's taking something out of context to make  
2 look bad which if you understood the timing of it and  
3 the other things that were connected with it is just  
4 the opposite. It was my obligation to do this as a  
5 lawyer, so I'm sorry.  
6 THE CHAIR: Mr. --  
7 THE WITNESS: I'll do what you say, but I'm  
8 telling  
9 you this is exactly part of what has created this  
10 injustice.  
11 THE CHAIR: Mr. Giuliani, I hear your  
12 complaint, but you've been a trial lawyer for a long  
13 time and you understand how the process works. The  
14 process is regular arms. Mr. Fox will ask you  
15 questions and you will answer those questions and  
16 your counsel will have complete opportunity to ask  
17 you questions to clarify anything you wish to have  
18 clarified and we will permit that. And you will be  
19 able to put your witnesses on to the extent that you  
20 want and explain your situation even more  
21 comprehensively, but at this -- I think it would be  
22 helpful if we tried to be more succinct in our

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1 answers to Mr. Fox.  
2 THE WITNESS: I'll do my best. Thank you.  
3 THE CHAIR: Thank you, sir.  
4 BY MR. FOX:  
5 Q. Mr. Giuliani, you mentioned at the oral  
6 argument that you believed there was a widespread  
7 conspiracy in several cases to manipulate the results  
8 of the election, correct? You said that in your oral  
9 argument?  
10 MR. LEVENTHAL: Your Honor, if you don't want  
11 Mr. Giuliani to talk about that, why is Mr. Fox --  
12 I'm sorry.  
13 (Technical issues)  
14 MR. LEVENTHAL: I'm leaning forward. It's  
15 very awkward. People are going to see the top of my  
16 head. They're going to know how bald I am, but  
17 that's okay. But anyway, if I may, I understand what  
18 the Chair and the Hearing Panel don't want him to go  
19 into these other jurisdictions, but Mr. Fox is asking  
20 him a question about that. We can't have it both  
21 ways. He's asking about --  
22 MR. FOX: I will withdraw the question.

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1 MR. LEVENTHAL: Okay.  
2 BY MR. FOX:  
3 Q. Mr. Giuliani.  
4 A. Yes, sir.  
5 Q. At the oral argument in Pennsylvania,  
6 November 17, 2020, you did, in fact, argue that there  
7 had been fraud in the Pennsylvania election, is that  
8 fair?  
9 A. I did. Yes, sir, I did. I certainly  
10 talked about it. Yeah.  
11 Q. And the problem that you faced was that  
12 you were technically arguing the first amended  
13 complaint which had eliminated the allegations of  
14 fraud. Correct?  
15 A. Absolutely correct. I was arguing a  
16 complaint that I knew didn't have fraud in it and I  
17 was trying to get the Judge to take the second  
18 amended complaint because that's the case we really  
19 wanted.  
20 Q. That's exactly where I'm going. You were  
21 in the process simultaneously of drafting a second  
22 amended complaint which you were going to file

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1 shortly after the oral argument and that -- which put  
2 the fraud back into the case. Correct?  
3 A. Yeah. I think it'd already been drafted,  
4 to be honest with you.  
5 Q. Okay. And that's what you were trying to  
6 convey to the Judge that while the first amended  
7 complaint didn't allege fraud this case was about  
8 fraud and you were going to put it back into the case  
9 in the second amended complaint. Correct?  
10 A. Correct. And when I started the argument,  
11 to just clarify, I didn't know actually what I was  
12 arguing because we had very little communication with  
13 the Judge. The day before we had attempted to put in  
14 the -- well, the second amended complaint. The Clerk  
15 told us to come back and put it in, in the morning.  
16 I wasn't sure whether we had filed it or not. And  
17 when we started, I wasn't sure if we were arguing,  
18 one, both, and the Judge clarified it for me that we  
19 were arguing -- and he also said because I thought  
20 maybe he'd consider them both at the same time, he  
21 wanted to consider -- you might remember in the  
22 transcript, he says at some point, well, let's

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1 dispose of what we have in front of us, the first  
2 complaint, and then we'll get -- we'll get to that if  
3 we have to.  
4 Q. Now, the second amended complaint you did  
5 sign, correct?  
6 A. I did. Yes, sir.  
7 Q. And that was actually filed the day after  
8 the argument, do you want to look at it?  
9 A. No, I remember that, but we attempted two  
10 days before to file.  
11 Q. Right. Okay. And at the same time you  
12 filed the second amended complaint, you filed a  
13 number of -- a motion for a Temporary Restraining  
14 Order and supporting memoranda in support of that  
15 motion. Correct?  
16 A. I assume Mr. Scaringi. Yeah, I'm sure we  
17 did. I wasn't -- it was only a certain amount of  
18 time involved and mine was directed really even more  
19 to just getting ready for the argument.  
20 Q. Okay.  
21 A. I had like 12 hours to do it.  
22 Q. And you mentioned Mr. Scaringi, in

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1 addition to yourself, the complaint was signed by Mr.  
2 Scaringi and I think another lawyer by the name of  
3 Caffery, from Mr. Scaringi's law firm. Correct?  
4 A. Correct. And they handled a lot of that  
5 part you're talking about because I didn't have the  
6 time.  
7 Q. And in the second amended complaint you  
8 alleged two practices that had occurred in  
9 Pennsylvania that you considered to be fraudulent.  
10 Correct?  
11 A. You'll have to remind me. Two that I --  
12 Q. The first practice that you considered  
13 fraudulent were the regulations or procedures that  
14 affected the observation and monitoring of the  
15 canvassing of the mail-in ballots. Correct?  
16 A. At a certain stage it became very, very  
17 strong, overpowering circumstantial evidence of  
18 fraud. Yes. I mean it's sort of the difference  
19 between if it happened once or twice you wouldn't be  
20 able to draw any conclusion, but when it happened  
21 seven or 800,000 times in all different places  
22 accompanied by people being pushed around, pushed

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1 out, yelled at, screamed at, with testimony it never  
2 happened before in 20 years of being -- so it begins  
3 as just, you know, an allegation of irregularities.  
4 Q. Okay.  
5 A. And on a spectrum when you get to, well,  
6 it happened four times, so what? It happened 10  
7 times, so what? It happened in one place. Now, it  
8 happens every place and we're talking about --  
9 Q. Mr. Giuliani, I'm just trying to get an  
10 overview now. We're now going to go into some depth  
11 into your --  
12 A. I'm sorry. It's a complicated question.  
13 I really am trying to give you an honest answer to  
14 it. I'm doing the best I can to give you an answer  
15 of how I developed in my mind like I did in a  
16 thousand conspiracy cases I've handled which never  
17 have a written-out contract of conspiracy. That's  
18 just happening so often in so many places we now have  
19 -- we now have something much more than just  
20 irregularities.  
21 Q. I'm just trying to focus on the two things  
22 -- the two practices that you cited in the second

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1 amended complaint. And one of them was the practices  
2 concerning the restrictions of the observers.  
3 Correct?  
4 A. That is one of the things we spent time on  
5 in the complaint. Yes.  
6 Q. And the second one was the disparate  
7 treatment of the mail-in ballots with respect to the  
8 notice and cure practice, right?  
9 A. That is correct.  
10 Q. All right. And you alleged in your  
11 pleadings that these were part of an intentional  
12 scheme by the Defendants, the seven counties and the  
13 Secretary of State, to harm the Trump Campaign.  
14 Correct?  
15 A. I don't remember if we did it exactly that  
16 way, but yeah, basically sure.  
17 Q. Okay.  
18 A. These were intended to defeat Trump and  
19 elect Biden.  
20 Q. Okay. And just to carry out again the  
21 overview, the District Court ruled against you and  
22 dismissed the first amended complaint and did not

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1 allow you to file the second amended complaint.  
2 Correct?  
3 A. That's -- sure. Yeah, that's the record.  
4 Sure.  
5 Q. Right. And that occurred on November 21,  
6 2020?  
7 A. If that's what it says, sure.  
8 Q. All right. And then you appealed to the  
9 Third Circuit, but what you appealed was the denial  
10 of leave to file the second amended complaint.  
11 Correct?  
12 A. Don't exactly remember what we appealed,  
13 but I think that's right.  
14 Q. And the Third Circuit affirmed the  
15 District Court on November 23, 2020. Correct?  
16 A. That I don't have an independent  
17 recollection of, but if you say so, no objection.  
18 Q. But it's Exhibit 16 if you want --  
19 A. No, no, I'm not arguing with that. I'm  
20 just as -- at that point, my attention had moved onto  
21 other things.  
22 Q. And forgive me if I'm confusing your

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1 testimony with Mr. Leventhal's opening statement, but  
2 I think -- I think it was you who said earlier that  
3 one of the problems here is you had to act before  
4 November 24, which was when the vote was going to be  
5 certified. And in fact, it was certified on that  
6 date, correct, November 24? That was a bad  
7 question, so let me try it again. There was a  
8 deadline by which the State of Pennsylvania had to  
9 certify the vote in the election. Correct?  
10 A. Correct.  
11 Q. And that deadline was November 24, do you  
12 remember that?  
13 A. I don't remember the date. I remember  
14 there was a deadline. Yes.  
15 Q. Is it consistent with your recollection  
16 that it was, in fact, certified on whatever the  
17 deadline was?  
18 MR. LEVENTHAL: Mr. Fox, Mr. Chair.  
19 MR. FOX: I can't hear you, Mr. Leventhal.  
20 MR. LEVENTHAL: Can you hear me now?  
21 MR. FOX: Yes.  
22 MR. LEVENTHAL: It's terrible that I've

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1 got to bend down to be heard, but it was my opening  
2 and it was November 23rd.  
3 MR. FOX: Okay. Whatever the date was.  
4 MR. LEVENTHAL: And that's what Judge  
5 Braun said.  
6 MR. FOX: Forgive me.  
7 BY MR. FOX:  
8 Q. But at any rate, the results of the  
9 election were certified after the Third Circuit  
10 acted. Correct?  
11 A. Yes. Yes, yes.  
12 Q. Okay. Now, you're aware that we've  
13 subpoenaed from the Porter Wright Law Firm for Ms.  
14 Kern and the Scaringi Law Firm all of the documents  
15 they had which supported allegations in the  
16 complaint, have you seen those subpoenas?  
17 A. I haven't seen them, but I'm aware of it,  
18 yes.  
19 Q. Okay. Well, let's just look at them  
20 quickly.  
21 MR. FOX: Let's up Disciplinary Counsel  
22 Exhibit 23, and if you could just focus in on the top

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1 half of that to make it a little more legible. Okay.  
2 THE WITNESS: That's nice and big. I see  
3 it, yes, sir.  
4 BY MR. FOX:  
5 Q. All right. That's a subpoena to the  
6 Porter Wright firm, which is Mr. Hicks' firm.  
7 Correct?  
8 A. Correct.  
9 MR. FOX: And if you'll go to the second  
10 page please  
11 of the subpoena and just highlight the first  
12 paragraph, if you will?  
13 BY MR. FOX:  
14 Q. And you see we asked for unredacted and  
15 legible copies of documents and records in your  
16 possession that support or explain each factual legal  
17 claim made in a verified complaint filed --  
18 A. I got it. I see it.  
19 Q. Okay.  
20 MR. FOX: Mr. Chairman, Disciplinary  
21 Counsel Exhibit 24 is the response to that subpoena.  
22 The Respondents did not want to stipulate to the

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1 admissibility of that exhibit, and so I move into  
2 evidence now. They've stipulated to the  
3 authenticity, but not to the admissibility.  
4 THE CHAIR: I'm sorry. Could you repeat  
5 that, Mr. Fox?  
6 MR. FOX: Exhibit 24, Disciplinary Counsel  
7 Exhibit 24, is the production from Porter Wright in  
8 response to the subpoena, which has been -- the  
9 authenticity of which has been stipulated to, but the  
10 admissibility of which has not been stipulated to and  
11 I would move it into evidence now.  
12 MR. LEVENTHAL: I'd like to be heard, but  
13 Mr. Chair, can I take a short break? You're aware of  
14 a condition that I have that I just need a very short  
15 break.  
16 THE CHAIR: Okay. We'll take 10 minutes  
17 and we'll resume at 11:30.  
18 MR. LEVENTHAL: Thank you.  
19 MR. FOX: Before we do that, maybe to  
20 shortcut things  
21 a little bit, I'm going to do the same thing with --  
22 as I'm doing with Exhibit 24 with Exhibit 26, which

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1 is the production from Ms. Kerns and Exhibit 38,  
2 which is the production from the Scaringi Law Firm.  
3 MR. LEVENTHAL: You mean 28. You mean 28.  
4 MR. FOX: Do I mean 28? You're right. I  
5 do mean 28.  
6 MR. LEVENTHAL: Thank you. I will address  
7 all there upon the --  
8 MR. FOX: I thought we might address them  
9 all at the same time.  
10 MR. LEVENTHAL: Right. No problem.  
11 THE CHAIR: Thank you. Back at 11:30. Thank  
12 you.  
13 (Off the record)  
14 THE CHAIR: We're back on the record, but  
15 Mr. Leventhal, Mr. Giuliani is not on the screen.  
16 (Technical issues)  
17 THE CHAIR: Mr. Leventhal, if you want to  
18 lean into Mr. Giuliani's microphone until the lunch  
19 hour, that's fine. And over the lunch hour we can  
20 work out the technical problems on your end.  
21 Mr. Fox has moved some exhibits into  
22 evidence and what's Respondent's answer to it?

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1 MR. LEVENTHAL: Okay. Mr. Fox has asked  
2 to put in what has been supplied by Scaringi, Kerns,  
3 and Hicks. And the reason why we object is he's  
4 trying to imply that this is all that was extant out  
5 there. And if we have to we could answer that, but  
6 the problem that I have is that I told Mr. Fox, and  
7 he knows this, that I tried, just like he did, to  
8 speak to Scaringi, Fox (sic), and Hicks.  
9 Hicks I emailed. Kerns I actually spoke  
10 to, who wouldn't talk to me, I understand there might  
11 be reasons for both of them, and Scaringi didn't  
12 return my message. So, we really can't see if this  
13 is all that they have had, even if this is what they  
14 produced through their -- some of them produced it  
15 through their attorneys. I don't even think they  
16 produced it. I think their attorneys produced it.  
17 But I mean we could explain this if we  
18 have to, but this is not determinative of what was  
19 extant at the time, not at all.  
20 THE CHAIR: Mr. Fox, do you have anything  
21 to add?  
22 MR. FOX: No, other than to say what we're

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1 offering into evidence -- what's in evidence right  
2 now are the subpoenas that we served on all three law  
3 firms and what we're seeking to move in are the  
4 responses to those subpoenas, most of which have  
5 cover letters which each explaining they're  
6 responding to the subpoenas.  
7 I have not been able to talk to these  
8 lawyers either. I don't have subpoena power for  
9 people in Pennsylvania, so I can't bring them here to  
10 the hearing. But what I'm trying to do is to get my  
11 -- the subpoena asked for everything they had and  
12 this is what we got in response.  
13 THE CHAIR: There's no dispute as to  
14 authenticity. Correct?  
15 MR. FOX: Correct.  
16 THE CHAIR: I'll overrule the objection  
17 and which exhibits are we talking, Mr. Fox?  
18 MR. FOX: I'll just summarize them for you  
19 and I think I can actually move off this line of  
20 questioning. Exhibit 23, which is in evidence, is  
21 the subpoena to Porter Wright. Exhibit 24 is what  
22 I'm moving in are production. Exhibit 25 is the

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1 subpoena to Linda Kerns, which is K-e-r-n-s, for the  
2 court reporter. And Exhibit 26 is the production.  
3 Exhibit 27, which is in evidence, is the subpoena to  
4 the Scaringi, S-c-a-r-i-n-g-I, firm. And Exhibit 28  
5 is the production.  
6 THE CHAIR: Over objection, Exhibits 24,  
7 26, and 28 are admitted into evidence.  
8 (Disciplinary Counsel Exhibit Nos. 24,  
9 26, and 28, admitted in evidence.  
10 THE CHAIR: You may continue, Mr. Fox.  
11 BY MR. FOX:  
12 Q. Mr. Giuliani?  
13 A. Yes.  
14 Q. We made a request for documents from you  
15 which you responded to on several occasions.  
16 Correct?  
17 A. Okay. Yeah, I guess I did.  
18 Q. I mean, if you want, I'll show you.  
19 A. No, no, no, I know I have a whole group of  
20 documents.  
21 Q. Okay. And your lawyers also included in  
22 their exhibits in their Respondent's Exhibit 1, which

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1 is in evidence, the declarations that you had from  
2 the witnesses to the Pennsylvania litigation.  
3 Correct?  
4 A. Yes, sir. Yes.  
5 Q. And then you later got some additional  
6 texts and emails that were relevant, which your  
7 lawyers produced as Respondent's Exhibit No. 2.  
8 Correct?  
9 A. Mm-hmm -- yes, that's correct.  
10 Q. Now, when I first asked you to respond to  
11 the allegations that have brought us here today, you  
12 wrote me a letter and recommended that I review the  
13 hearing that occurred in Gettysburg, Pennsylvania on  
14 November 25, 2020, do you recall doing that?  
15 A. I do.  
16 Q. Okay. And that's Exhibit 29.  
17 MR. FOX: Would you just put up the first  
18 page of Exhibit 29 so we can let Mr. Giuliani see  
19 that that's the transcript. Actually, go to the  
20 cover page. I just really want him to see that's the  
21 -- this is the hearing that you recommended that we  
22 consider. Correct?

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1 THE WITNESS: That is it. Yes, sir.  
2 MR. FOX: Okay. And you can take that  
3 down now.  
4 BY MR. FOX:  
5 Q. Just tell us, briefly, what -- if you  
6 could just tell us in summary fashion what was the  
7 nature of that hearing?  
8 A. The nature of that hearing was for us to  
9 call some of the witnesses, just a sampling of  
10 witnesses because we didn't have that much time, that  
11 would lay out the fact that many, many people -- they  
12 were just an example, maybe 10 percent, 5 percent,  
13 that had witnessed irregularities, illegalities  
14 during the process and that this was -- all of this  
15 was citizen-based. That we weren't making up any of  
16 these things. These were complaints that have been  
17 brought to us in many cases without our even having  
18 the capacity to out and investigate because they were  
19 volunteered, they volunteered to us. We had a -- we  
20 had a hotline that was going 24 hours a day. And the  
21 reason that the documents are all in our possession  
22 and not in Mr. Scaringi or Mr. Hick or Linda Kerns is

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1 the fact gathering was done at the headquarters with  
2 a staff that was working 24 hours a day getting  
3 complaints from people and trying to go through them  
4 to figure out which ones are valid. And as you might  
5 imagine in a situation like that, you get a lot of --  
6 I don't know how to put it, but not so valid  
7 complaints.  
8 Q. Okay. And recognizing the time  
9 constraints that you had at this Gettysburg hearing,  
10 would I be correct that you put on what you thought  
11 were the best witnesses?  
12 A. No, not necessarily. The ones that we  
13 could get -- some of the best ones had COVID. In  
14 fact, I developed COVID at that hearing. No, they  
15 were not necessarily our best witnesses. Some of our  
16 best witnesses were unavailable, but I think the  
17 allowed us to put in declarations from them. I'm not  
18 sure.  
19 Q. Okay. Now, taking what was done at  
20 Gettysburg and the exhibits that you've -- the  
21 declarations that you've provided us and what we've  
22 gotten from the three lawyers, do I understand what

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1 you're saying -- is that a complete record of all the  
2 documentary evidence that supports your charges?  
3 A. Oh, no, absolutely not.  
4 Q. There's more?  
5 A. Well, sure. I mean, first of all, there's  
6 the declarations, the 250, 60, 70 affidavits and  
7 declarations that we gave you.  
8 Q. You're misunderstanding my question, so  
9 let me -- because I probably mislead you and forgive  
10 me if I did. You've provided those declarations,  
11 which are you Exhibit 1. Correct?  
12 A. PA declarations, yes.  
13 Q. Okay. So, with your Exhibit 1 and 2, and  
14 the information that you've provided us earlier, and  
15 the information that we got from the three law firms,  
16 all of which are in evidence now, is that a complete  
17 record of the documentary evidence that exist to  
18 support your claims?  
19 THE CHAIR: We can't hear you.  
20 MR. LEVENTHAL: May I interject, Mr. Fox,  
21 if I may?  
22 THE CHAIR: Yes.



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1 MR. LEVENTHAL: Exhibit 2, when we  
2 received the devices back from the government that  
3 was taken from Mr. Giuliani when they found that  
4 there was absolutely no crime occurred, quickly we  
5 gave you what we found very quickly. I didn't do  
6 this task. Someone else did that task. There might  
7 be more. And that's pretty much of the -- almost all  
8 of them, but there might be a few more if I went  
9 though, but that's generally it.

10 MR. FOX: Okay.

11 MR. LEVENTHAL: There might be more texts  
12 and emails on his devices. We didn't have time to go  
13 through all of that when they were returned shortly  
14 before this hearing. Sorry.

15 BY MR. FOX:

16 Q. Okay. With the possibility that there's  
17 some stray texts or emails somewhere have we put into  
18 evidence all of the documentary evidence that existed  
19 to support the claims that you made in the  
20 Pennsylvania litigation?

21 A. I think an answer to that, sir, is that we  
22 put in all that we could put our hands on. There's

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1 no doubt there's more of it because there are things  
2 that I've read, looked at, charts that I've looked at  
3 that we don't have that at various times I relied on.  
4 And I mean, it was a deluge of material and some of  
5 it was filed correctly and some wasn't, so I would  
6 say it would be misleading to say that that is the  
7 full sum and substance of everything we had  
8 available.

9 Q. And where would these other documents  
10 exist if not in your files or the files of the other  
11 law firms that handled these cases?

12 A. Well, they might exist in the hands of  
13 other lawyers, might exist in the hands of others who  
14 did reports. We tried to keep everything we had. We  
15 tried to keep it organized, but things were moving  
16 around so much for other cases, so when one of our  
17 experts would testify in another case somebody would  
18 pick up the documents from, let's say, the  
19 Pennsylvania case, and bring it over to another case.  
20 There's no doubt in my going through this I know that  
21 there are things that I relied on that are not there  
22 that were there at one time.

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1 Q. And can you give us some examples?

2 A. Yeah, there was more -- there was more  
3 than one -- well, I'm thinking about Pennsylvania, in  
4 particular now, because this applies to the other  
5 states as well.

6 Q. Well, I'm only interested in Pennsylvania.

7 A. I know you are. It's a little hard  
8 isolating just on Pennsylvania. It seemed to me that  
9 we had several different reports about people that  
10 were turned down -- here's one that I can't seem to  
11 put my hands on. I was told and shown a document  
12 that demonstrated that 17,000 people in Pittsburg  
13 showed up on Election Day to vote and had been told  
14 they already voted. And it also had attached to it,  
15 not 17,000 affidavits from them, but a large number  
16 of affidavits from -- I have -- I think we've turned  
17 over to you one of the coversheets, but I don't think  
18 we've turned over to you any of the affidavits and  
19 there were affidavits supporting that.

20 Q. And did you allege in any of your  
21 complaint that thee were these 17,000 voters in  
22 Pennsylvania who appeared live at the polls and had

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1 been told they already voted?

2 A. I argued it in front of the Judge, yeah.

3 Q. You did.

4 A. It was in front of Judge Braun.

5 Q. You did? Okay.

6 A. Because it had been given to me, oh gosh,  
7 maybe a half hour before.

8 Q. Okay.

9 A. And I actually -- the reason it sticks in  
10 my head is I remember the two people who gave it to  
11 me and I remember the document and I remember the  
12 attachment to the document and now I don't see the  
13 attachment to the document.

14 Q. And this was in Pittsburgh, correct?

15 A. Well, it was in Gettysburg that I saw it.

16 Q. No, no, no.

17 A. It referred to -- it referred to the  
18 allegations, of which there were many others about  
19 Pittsburgh, but this one was a specific allegation  
20 about the number of people who showed up who said  
21 that they had voted -- that they hadn't voted and  
22 they were confronted with the fact that somebody had

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1 filed -- somebody had filed an absentee or mail-in  
2 ballot for them. And I'm very sure of that.  
3 Q. Okay.  
4 A. Now, that happened in a number of other  
5 jurisdictions, so I could easily get it confused, but  
6 in this particular case I remember the document.  
7 Q. And Pittsburgh was a city that voted  
8 heavily in favor then-Vice President Biden. Correct?  
9 A. Yeah, like 8 to 2 or something.  
10 Q. Okay. Anything else that you can think of  
11 that we're missing?  
12 A. I can't think of it right now. There are  
13 things that are missing, though, so I couldn't give  
14 you a definitive -- I honestly cannot give you a  
15 definitive that's everything.  
16 Q. Okay.  
17 A. My recollection tells me there's more, but  
18 then I might start telling you about something in  
19 Georgia that I get confused with something  
20 Pennsylvania.  
21 MR. VOX: Could I ask the Trial Director  
22 to put up Respondent's Exhibit 11, please?

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1 BY MR. FOX:  
2 Q. Mr. Giuliani, this is a document entitled  
3 Pennsylvania 2020 Voting Analysis Report which your  
4 lawyers have marked as Respondent's Exhibit 11. You  
5 can see it's dated the 16th of November 2020. When  
6 did you first see it?  
7 A. I see it.  
8 Q. No, you misunderstood my question. When  
9 did you first see this report?  
10 A. I think in -- I think I may have first  
11 seen it in the car driving to the hearing. I have a  
12 recollection of drawing on it. I mean some things  
13 come to you and some things don't. I have almost a  
14 perfect recollection of one page of it that I did my  
15 own arithmetic on and wrote on it.  
16 Q. Okay.  
17 A. I can't find the one that I wrote on.  
18 Q. Okay. All right, that's fine. So, you  
19 think you may have seen this for the first time on  
20 the 17th of November of 2020 on your way to the --  
21 A. Yes, sir. Now, it is possible I saw a  
22 draft -- I mean even though it was out on the 16th, I

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1 probably got it a couple days before, but didn't look  
2 at it.  
3 Q. Okay.  
4 A. I might've seen a draft. What I remember  
5 more than the document are several of the charts.  
6 Q. Okay.  
7 A. I remember them like perfectly. I think I  
8 had the finished one, though, in the car. But if I  
9 didn't, I had the pinholes of a draft.  
10 Q. All right.  
11 A. One is a chart of the votes that took  
12 place between -- when they closed down on election  
13 night and then reopened the next morning. And then  
14 there's an overall analysis that blew my mind of all  
15 the votes that took place after they closed down.  
16 Because when I looked at that I said this is -- I  
17 mean, this is impossible.  
18 Q. All right. I'm really only right now  
19 trying to find out when you first saw it.  
20 A. This one kind of blew my mind.  
21 Q. Okay. As I understand it, you saw it  
22 before the argument and you say you alluded to it in

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1 the oral argument. Correct?  
2 A. I think I did. I mean, I did. I probably  
3 didn't allude to it in great detail. I didn't  
4 understand it completely and I wanted to be sure I  
5 was right because one of them I wanted to check out  
6 before I alleged it because it seemed so ridiculous.  
7 Q. All right. Now, the -- your lawyers have  
8 also marked as Exhibits 13 and 14, and I'm not going  
9 to put them up unless you need it, two reports  
10 written by Mr. Navarro.  
11 A. Yes, sir, Peter Navarro. Yes.  
12 Q. You didn't see those reports before the  
13 Pennsylvania litigation because they weren't written  
14 at the time. Correct?  
15 A. No. No, at the point of the litigation,  
16 we were cooperating with Mr. Navarro and exchanging  
17 documents with him and I did see reports from him  
18 that ended up in his ultimate treatise or whatever  
19 you would all it, but I didn't see the actual  
20 treatise. It hadn't been written yet.  
21 Q. And your lawyers have also offered, and  
22 have not been admitted yet, Exhibits 43 through 43,

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1 Respondent's Exhibit 40 to 43, which are some  
2 allegations about things like voters who voted who  
3 allegedly were dead or voters who voted who ere also  
4 admitted -- registered in Georgia. When did those  
5 documents come to your attention?  
6 A. Wow. I mean that's the group of documents  
7 that I'm -- I know there are more of them. I just  
8 can't -- I saw many documents like that, different  
9 analysis at different times before the argument and  
10 after the argument.  
11 Q. They weren't included in the files that  
12 you provided; do you know why that is?  
13 A. I don't know why.  
14 Q. Okay.  
15 A. I mean, I honestly wasn't familiar with  
16 the files. Other people put those together and sent  
17 them to you.  
18 Q. All right. That's all I want to talk  
19 about the evidence right now. I want to move into  
20 something else, which is the subject of fraud.  
21 MR. FOX: Could we put up Disciplinary  
22 Exhibit 9, page -- well, let's put up the first page

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1 first. Now, this is in evidence and I don't want to  
2 testify here, but just to explain the exhibit,  
3 Exhibit 9 contains the motion for leave to file the  
4 second amended complaint. It contains the second  
5 amended complaint and it contains a red line  
6 version. Maybe I should've broken that down, but I  
7 apologize that I didn't do so, but I want to look at  
8 page 5 of this first exhibit and can you highlight  
9 the Paragraph 13?  
10 BY MR. FOX:  
11 Q. Now, this is part of the motion you filed  
12 in support of the second amended complaint. And the  
13 second sentence says, "Given the widespread reports  
14 of voter fraud and irregularities at the casting and  
15 processing of votes around the country and  
16 particularly Pennsylvania, the Court should have  
17 necessary allegations before it in order to fairly  
18 rule upon the Plaintiff's request for relief." You  
19 distinguish in that sentence between voter fraud and  
20 irregularities. Would you agree with me that there  
21 is a difference between voter fraud and voting  
22 irregularities?

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1 A. Yes. I mean, can merge into the other,  
2 but at some point --  
3 Q. Right.  
4 A. At some point it's an irregularity and  
5 then depending on what happens to it, it can be  
6 evidence of fraud.  
7 MR. FOX: We can take that down now.  
8 BY MR. FOX:  
9 Q. Fraud is generally an intentional act.  
10 Correct?  
11 A. It always it. Well, no, you could have as  
12 a negligent -- yes, reckless disregard. Disregard is  
13 a substitute for intent, right?  
14 Q. But you couldn't have pure negligence, but  
15 you could have reckless -- you might have reckless.  
16 A. If you get to the stage of reckless  
17 disregard, the Court will accept that and will charge  
18 a jury. Yeah.  
19 Q. For example, if somebody swore to  
20 something without actually verifying the  
21 truthfulness of it, that would be reckless intent.  
22 A. Depending on what it was and how important

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1 it was and you know sometimes people just don't read  
2 things, but it would depend on how important the  
3 thing was.  
4 Q. Okay. It could be then swearing to  
5 something without actually verifying its  
6 truthfulness, depending on its importance, could be  
7 reckless -- sort of a reckless.  
8 A. Right.  
9 Q. Okay.  
10 A. That would be a good example.  
11 Q. All right. And you will agree with me,  
12 just based on your experience, that mistakes are made  
13 in every election.  
14 A. Absolutely. Sure.  
15 Q. And most elections are staffed by  
16 volunteers, correct?  
17 A. Yes, sir.  
18 Q. All right. And for that reason in  
19 Pennsylvania they had something called provisional  
20 voting if there was a dispute about whether somebody  
21 could actually cast a vote. You could vote  
22 provisionally, are you familiar with that?

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1 A. I think just about every state has that.  
2 I mean it does seem to me in Pennsylvania it was  
3 abused to a fair thee well, but yeah.  
4 Q. Okay. And you're aware that by federal  
5 statute every state is required to maintain a  
6 computerized list of registered voters. Correct?  
7 A. I'm not sure. I imagine. I would have to  
8 say I assume that.  
9 Q. Okay. Certainly, you understand from your  
10 experience with Pennsylvania that the had a  
11 computerized --  
12 A. Oh, sure. Absolutely. Yeah.  
13 Q. All right. Now, starting in 2019, for the  
14 first time in Pennsylvania you could request a  
15 mail-in ballot without offering any explanation.  
16 Correct?  
17 A. That is correct. That was the change they  
18 made in the law. Yeah.  
19 Q. They called it Act 77, remember that name?  
20 A. That's correct. Yeah, I do remember that.  
21 Q. But it was true that under Act 77 the  
22 voter had to request a mail-in ballot. Correct?

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1 A. That's what -- yes.  
2 Q. All right. The state didn't send every  
3 registered voter a mail-in ballot, only the ones that  
4 corrected it. Correct?  
5 A. Well, that isn't correct. The state sent  
6 a lot. I mean we have a lot of evidence that people  
7 who received three, four, five, some -- we had some  
8 very startling evidence of a woman who received  
9 several for her dead son.  
10 Q. Well, come back to that. Let's just put  
11 -- let me rephrase the question. The way it was  
12 supposed to work.  
13 A. Oh, the way it was supposed to work you  
14 should only get one and it should be sent to you and  
15 you basically can't solicit. You can't just send out  
16 all kinds of --  
17 MR. LEVENTHAL: May I have a moment to get  
18 a document, Mr. Chair? It'll be one moment.  
19 THE CHAIR: I can't hear you, Mr. Leventhal.  
20 THE WITNESS: He asked if he could have a  
21 moment to get a document.  
22 MR. FOX: Sure.

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1 THE CHAIR: Sure.  
2 MR. LEVENTHAL: One moment.  
3 THE WITNESS: Don't you guys ever get  
4 thirsty?  
5 (Pause)  
6 THE WITNESS: Myself, I sympathize with  
7 you.  
8 THE CHAIR: Mr. Fox, you may continue.  
9 BY MR. FOX:  
10 Q. Mr. Giuliani, we were talking about the  
11 process to obtain a mail-in ballot. Before a voter  
12 obtained a mail-in ballot in Pennsylvania, he or she  
13 was required to prove his identification. Correct?  
14 A. Yeah. You know, Mr. Fox, I get the  
15 different statutes of the different places mixed up,  
16 but I think that's correct. Yeah.  
17 Q. And it had to be a registered voter,  
18 correct?  
19 A. Yeah. I mean I'll disagree with you if  
20 you say that. That sounds right.  
21 Q. All right. And when an application was  
22 received by the county before they sent out a ballot,

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1 they verified that the person was, in fact, qualified  
2 as a voter in the election.  
3 A. Well, that's theoretically. I mean,  
4 that's the way it was supposed to work, right?  
5 Q. And they did that by comparing the  
6 information on the application that the voter filled  
7 out with the registration card that he had -- he or  
8 she had filled out when they registered to vote.  
9 A. Well, then again, there's evidence that  
10 they didn't do that all the time.  
11 Q. Okay. That was the way it was supposed to  
12 work.  
13 A. Yeah. You're telling me now the way wall  
14 was structured.  
15 Q. Okay.  
16 A. In many of these cases there's evidence  
17 that we had that it was violated.  
18 Q. Okay. Well, we're going to come to that.  
19 And if there was a problem with the application for  
20 the mail-in ballot, the process was that the County  
21 Board would notify the voter that his application had  
22 not been approved, right?

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1 A. I don't know if they did or they didn't do  
2 that.  
3 Q. I'm sorry?  
4 A. If there was a problem with it, meaning if  
5 the person incorrectly filled out the absentee  
6 ballot?  
7 Q. No, no, I'm talking about the application  
8 now. We're talking about the application process to  
9 get the ballot.  
10 A. I don't know that. If there's a problem  
11 with the affidavit seeking the ballot the county  
12 would reach out and help you with it? I didn't know  
13 that.  
14 Q. Okay. Well, I think if you'll look at the  
15 Boockvar opinion it's all discussed there. Let me  
16 just move on because I don't want to --  
17 A. It's not that. I mean I'm just not aware  
18 of it.  
19 Q. Are you aware that with the application  
20 process to get a mail-in ballot that there was a  
21 right to challenge the voter, to challenge whether  
22 the voter was, in fact, permitted to vote in the

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1 Pennsylvania election?  
2 A. I'm not familiar with that, but I assume  
3 that there would be.  
4 Q. Okay.  
5 A. It would make sense there would be.  
6 Q. Does it ring a bell that you could  
7 challenge up 'til 5:00 p.m. on the Friday before the  
8 election?  
9 A. Yes, that does ring a bell. Thank you.  
10 Q. And this is obviously different from the  
11 challenge to the in-person voter, which is done at  
12 the polls.  
13 A. Correct.  
14 Q. Okay. Now, if an application was --  
15 everything was fine, the ballot was mailed to the  
16 voter. Correct?  
17 A. I guess, yeah.  
18 Q. And the state kept a record of to whom  
19 these ballots were mailed.  
20 A. Again, they're supposed to. Don't know.  
21 I don't know either from the point of view of  
22 negligence or deliberate misconduct if they were 100

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1 percent in that regard.  
2 Q. Okay. But that's what they're supposed to  
3 do, they're supposed to have a record.  
4 A. Uh-huh.  
5 Q. And the reason for that was that if the  
6 person showed up at the polls and there was a record  
7 of having sent a mail-in ballot then they were not  
8 going to be allowed to vote twice. Correct?  
9 A. That's the idea of it. It seemed that  
10 that became a major problem in several jurisdictions  
11 in Pennsylvania. Thousands of people showed up  
12 saying we want to vote and they were told they  
13 already voted and they hadn't voted. You know maybe  
14 a few of them were confused, but the vast majority of  
15 them were correct. They hadn't voted. Somebody  
16 voted for them.  
17 Q. And --  
18 A. There's no question about that.  
19 Q. And under those circumstances they were  
20 filed to file a -- to vote a provisional ballot.  
21 Correct?  
22 A. Yeah. And it turned out that some of them

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1 never had that provisional ballot registered. They  
2 went and checked later. Now, not every one of them  
3 did and I'm sorry we didn't follow through on all of  
4 this, but some did follow through on it, found that  
5 their provisional ballot got lost or it wasn't  
6 accepted. The answer to that is some filed a  
7 provisional ballot and it was accepted and others  
8 filed a provisional ballot and it wasn't accepted. I  
9 don't know the reasons, but that's in our affidavits.  
10 Q. I didn't really want to digress on this,  
11 but let's just do that for a second. They way the  
12 provisional ballot process works is that ultimately  
13 the County Board of Elections votes on whether to  
14 accept or deny the provisional ballot. Correct?  
15 A. Again, I don't know who actually makes  
16 that decision, but I assumed it was one of the  
17 bureaucrats. Yeah.  
18 Q. Okay. Well, they weren't bureaucrats.  
19 They were three elected officials. Correct?  
20 A. Okay. All right, three elected officials.  
21 Q. All right. We'll come back to that  
22 because I think we have an example that we an look at

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1 in a little bit. So, let's talk about the mail-in  
2 process from the voters' perspective. The voter --  
3 the way it was supposed to work. I know you argue it  
4 didn't work this way, but the way it was supposed to  
5 work, right, was that the voter was to mark his or  
6 her ballot and put it in a secrecy envelope.  
7 Correct?  
8 A. Mm-hmm. Yes. I mean, I -- it seemed to  
9 me it was very similar to New York's, which I've  
10 utilized several times.  
11 Q. Okay.  
12 A. I think I understand.  
13 Q. I'm sorry. I spoke over you.  
14 A. I said I think I understand. Some of the  
15 other states had very different ways of doing it, but  
16 yes, I think I understand.  
17 Q. All right. And there were not supposed to  
18 be any markings on the secrecy ballot -- sorry -- the  
19 secrecy envelope to preserve the secrecy of the  
20 ballot. Correct?  
21 A. Right. There should be nothing there to  
22 identify the person who's voting. So basically --

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1 Q. Okay. All right.  
2 A. -- yes.  
3 Q. And then the secrecy envelope was put in  
4 an outer mailing envelope. Correct?  
5 A. Yeah. You have the ballot, the secrecy  
6 envelope, and then the outer mailing.  
7 Q. Okay. And that outer mailing envelope has  
8 a bar code that's unique to each voter, right?  
9 A. That's correct. Yes, it has -- yes, yes,  
10 yes.  
11 Q. And the bar code links the envelope to the  
12 application so you can look -- if you looked at the  
13 bar code you could see that that's the same person  
14 that filed the application or should've been, right?  
15 MR. LEVENTHAL: Are you talking about the  
16 outer envelope or the secrecy envelope with the bar  
17 code? Mr. Fox, I'm asking you are you talking about  
18 the outer envelope or the secrecy envelope with the  
19 bar code?  
20 BY MR. FOX:  
21 Q. Well, Mr. Giuliani, you understand, do you  
22 know, that the bar code is on the outer envelope

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1 because the secrecy ballot is not supposed to have  
2 any identification markings? Correct?  
3 A. Yeah. I mean you're educating me on --  
4 I'm doing this based on assumption -- I'm assuming  
5 that's correct. Yeah.  
6 Q. Well, when you were litigating the  
7 election procedures in Pennsylvania, did you not  
8 learn what those procedures were?  
9 A. I did. But I also learned eight others  
10 and the one for Pennsylvania doesn't stand out in my  
11 mind as -- I mean if you're asking me to -- the  
12 answer is I'm assuming you're correct. I'm not  
13 disputing you, but my recollection about each state  
14 and the differences is imperfect.  
15 Q. Did you sign any pleadings in any of these  
16 other states?  
17 A. No.  
18 Q. Did you argue any of the cases in any  
19 other state?  
20 A. I did not.  
21 Q. All right.  
22 A. But I also had about seven hours to get

Page 113

1 ready to do this, so I wasn't going to go look at bar  
2 codes.  
3 Q. On the outer envelope there is a  
4 declaration that the voter is supposed to sign.  
5 Correct?  
6 A. There is. That's the -- that's the  
7 critical signature that gets compared to whatever  
8 signature is on file.  
9 Q. But that's not what the Pennsylvania  
10 Supreme Court ruled, was it, that the signature got  
11 compared?  
12 A. No. But that's why -- time in memorial  
13 that's why it's there.  
14 Q. Okay. And that was required by Act 77  
15 that there's a declaration that says I'm the person  
16 who got this voter and I haven't voted elsewhere in  
17 the election and I'm -- they sign the name. That's  
18 what it says, in essence, right?  
19 A. Yeah. I mean, that's basically what I  
20 imagine it says. Yeah.  
21 Q. And that was indicated by Act 77, the  
22 contents of that declaration?

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1 A. I assume that's right.  
2 Q. And there's also on the outer envelope  
3 space for the voter to write his or her address and  
4 -- name, address, and date. Correct?  
5 A. Yes.  
6 Q. All right. So, the main -- so the ballot  
7 in the secrecy envelope, the secrecy envelope ballot  
8 in the outer envelope, outer envelope is either  
9 mailed or delivered to the voting jurisdiction.  
10 Correct?  
11 A. Well, it has to be one or the other,  
12 right?  
13 Q. Right. And when it's received the bar  
14 code is canned, right?  
15 A. It should be.  
16 Q. All right. So, the state now has a  
17 record, a computerized record of all the voters who  
18 have voted by mail or who have had their mail-in  
19 ballots delivered, right?  
20 A. Well, assuming they scan all the bar codes  
21 --  
22 Q. Okay.

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1 A. -- which there's evidence they didn't.  
2 Q. We're going to give you plenty of  
3 opportunity to show us what that evidence is.  
4 A. I just want to make sure we're speaking  
5 hypothetically.  
6 Q. All right. And so, once that bar code is  
7 scanned, the county or the state has a record of who  
8 sent in a mail-in ballot and that person is not  
9 permitted to vote in person, right?  
10 A. That's correct.  
11 Q. And as we discussed earlier, when some  
12 people showed up at the polls and said you tell me I  
13 had a mail-in ballot. I didn't mail in my ballot.  
14 They let them vote provisionally, right? Am I right?  
15 A. Yeah, yeah, yeah. Thousands of people  
16 showed up like that, particularly in Pittsburgh, in  
17 Pennsylvania County, Montgomery County, maybe seven  
18 or eight counties, in particular, had unusually large  
19 numbers of people who showed up and said I didn't  
20 vote. What the heck's going on.  
21 Q. Now, another thing the voter could do is  
22 the voter could decide he or she did not want to vote

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1 by mail, bring that mail-in ballot in, and it would  
2 torn up or destroyed in some fashion, then they could  
3 vote live, if you will. Correct?  
4 A. I'm not sure. Didn't they have to vote  
5 provisionally if they did that and that ballot had to  
6 be spoiled and then it was also a problem with that  
7 because there are a lot of witnesses that said that  
8 the ballot turned in, the absentee ballot that was  
9 turned it was not spoiled. It was left -- there was  
10 a significant amount of testimony that it didn't  
11 happen that way.  
12 Q. Let's distinguish between two situations.  
13 One is the person who shows up with his or her  
14 absentee ballot, but there's no record that they've  
15 sent it in. In other words, they were sent a ballot,  
16 they apparently didn't vote it. They show up live at  
17 the polls. They were allowed to vote provisionally.  
18 Correct?  
19 A. They come in and they say I want to vote.  
20 They look and they say, well, you've voted already.  
21 The person says I haven't voted. And then they take  
22 the person's word for it and they give the person a

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1 provisional ballot and the person votes. Second  
2 situation they come in and they have an absentee  
3 ballot, but they decided that they don't want to vote  
4 by absentee ballot and they have to -- and I'm pretty  
5 sure I have this right, but you could correct me.  
6 They have to turn it in. It has to be spoiled,  
7 voided, I guess would be another way to say it. And  
8 then I believe they're given a provisional ballot and  
9 they don't go into the -- they don't vote the way you  
10 or I would if we didn't have that situation. I think  
11 that's right, but I may be wrong and I may have it  
12 confused with another state. And because in my own  
13 state, if you happen to be in the state on the day of  
14 the election, you have to go in and vote and turn in  
15 your -- I don't know what happens to you.  
16 Q. And then the third situation is the person  
17 who got the mail-in ballot decided not to vote by  
18 mail, but wanted to vote live, but forgot to bring  
19 the ballot with them. So, there wouldn't be any  
20 record that they'd mailed the ballot, but may be  
21 allowed to vote provisionally. Correct?  
22 A. Yeah. Or I imagine, and this could be

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1 innocent, there'd be people that just didn't know and  
2 they walked in, they had the mail ballot at home and  
3 they just voted.  
4 Q. Right. Okay. But because the record  
5 showed that a ballot has been sent to them, even  
6 though they don't show it's been received, they have  
7 to vote provisionally. Correct?  
8 A. I believe that's right. Again, I said I  
9 -- just please, if I have it confused with another  
10 state, forgive me, but I think that's right.  
11 Q. Now, the ballots -- the mail-in ballots  
12 were not counted until the Election Day, right?  
13 A. Yes, they started counting them on the  
14 morning of the election.  
15 Q. Right.  
16 A. So, the election is going on in one place  
17 and they begin counting ballots in another place.  
18 Q. And until Election Day the ballots are  
19 kept in sealed or locked containers, right?  
20 A. Supposed to. An awful lot of ballots  
21 showed up that weren't.  
22 Q. And then comes Election Day there's a room

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1 in which these ballots are canvassed and eventually  
2 counted, these mail-in ballots, right?  
3 A. A room or rooms, depending on the venue.  
4 Q. All right. And the first thing that  
5 happens is somebody looks at the outside envelope and  
6 ensures that the declaration has been signed, right?  
7 A. Again, we're doing what is supposed to be  
8 done, what they're trained to do.  
9 Q. What's supposed to be done, absolutely.  
10 Q. Right. They look at it and they make sure  
11 everything is there that's supposed to be there.  
12 Q. And I understand you contend that maybe it  
13 wasn't done that way.  
14 A. Wasn't done that way many, many times,  
15 according to the evidence.  
16 Q. Okay.  
17 A. I'm not -- I don't -- I mean I did see a  
18 little of it, but I didn't see most of it.  
19 Q. Okay.  
20 A. Evidence of it is all over the affidavits  
21 in this case.  
22 Q. And if the outside ballot is -- you know,

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1 it's been signed and it's appropriate, then it's  
2 passed on to somebody else -- the ballot's opened and  
3 the secrecy ballot is passed onto somebody else.  
4 Correct?  
5 A. Well, yeah, I guess that's right in  
6 Pennsylvania. I mean there are states in which one  
7 person does the whole thing. There are states in  
8 which it's handed over to another person to do that.  
9 Q. Well, we are talking about Pennsylvania  
10 here.  
11 A. Okay. So, in Pennsylvania -- I'm trying  
12 to remember. Q. Okay. If the person who  
13 read the ballot, outside ballot, opened the secrecy  
14 ballot he would know who the person was and how they  
15 voted. Correct?  
16 A. Right. It makes much more sense for  
17 somebody else to do it, but sometimes it's done very  
18 quickly by one person.  
19 Q. Now, that's what happens if the mail-in  
20 ballot is okay. IF there's a question about the  
21 mail-in ballot, then it's passed onto someone else to  
22 review, are you aware of that?

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1 A. Yeah. It's put into a -- again, usually  
2 they have a box for that.  
3 Q. Right.  
4 A. It's dropped into a box.  
5 Q. If it isn't resolved there at the day of  
6 the counting, then it's passed onto to the Election  
7 Board like a provisional ballot, is that your  
8 understanding?  
9 A. Yes, sir.  
10 Q. All right.  
11 A. Now, there's a piece missing. What  
12 normally happened up until then was when the person  
13 validating the signature, validates the signature, he  
14 shows it to the representatives of the candidates.  
15 He shows it to the Republican, the Democrat, whatever  
16 else, and they agree or disagree that it's a valid  
17 signature and you are allowed to object. You might  
18 remember seeing that so often with the hanging chads  
19 in Florida. The guy doing the hanging chads was  
20 surrounded almost -- by a Republican or a Democrat.  
21 Q. Mr. Giuliani, that was not the procedure  
22 in Pennsylvania, was it?



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1 A. In the past, it had been in many places.  
2 Q. No. Under Act 77, that was not the  
3 procedure in Pennsylvania. Correct?  
4 A. Well, Act 77 is silent on it. But in  
5 fact, many of the witnesses say that up until now  
6 that had been the procedure.  
7 Q. But the Supreme Court --  
8 A. And that's what they were there for,  
9 otherwise, they're just potted plants. That's what  
10 they were there for as inspectors --  
11 Q. Mr. Giuliani --  
12 A. -- to check the validity of the  
13 signatures.  
14 Q. -- you're aware that the Supreme Court of  
15 Pennsylvania before the election specifically ruled  
16 that it was not the function of the election  
17 canvassers to check the signature and compare it to  
18 the registration card. Correct?  
19 A. I'm aware that that was the ruling of the  
20 Court. I'm also aware of the evidence of the  
21 practice that was followed in the past and the  
22 practice that's uniformly followed in most states

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1 which is that when you do absentee ballots because  
2 the signature is the only thing between you and fraud  
3 because it's the only way you can identify the  
4 ballot, unlike when a person votes in person, that  
5 the candidates get a chance to look at that signature  
6 and object. Because once the signature is separated  
7 and the ballot goes off on its own, you can no longer  
8 check it.  
9 Q. But the Pennsylvania Supreme Court ruled,  
10 did it not, before the election under Act 77 that  
11 there was not ability to challenge the mail-in  
12 ballots at the canvassing session.  
13 A. Seem to me that that would be a good one  
14 to test in the Supreme Court. It would seem to me  
15 that that would be a rather fundamental violation of  
16 due process.  
17 Q. Would you answer my question, sir? Did  
18 the Pennsylvania --  
19 A. I know -- I know they ruled that way, but  
20 I also know that as lawyers we challenge things that  
21 Courts rule. They get reversed all the time.  
22 Q. And you think that that -- the ruling of

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1 the highest court in Pennsylvania on a matter of  
2 state election law is something that is a matter of  
3 federal law that could be reviewed by the Supreme  
4 Court?  
5 A. Well, if it violates due process, it sure  
6 the hell would be -- I mean it wouldn't be the first  
7 time the Supreme Court reversed a State Supreme  
8 Court. I mean, come on, I mean, we litigate that all  
9 the time and there is a certain strong argument that  
10 could be made that you've really rendered the  
11 absentee ballot, mail-in ballot now totally  
12 defenseless. If you don't look at the signature,  
13 you're not going to know who it is and then you could  
14 back to the literature about the problems they had in  
15 Europe with absentee ballots, the problems in the  
16 United States, the problems in Oregon. I mean it is  
17 taking away maybe the most important way of  
18 identifying. So, I mean, I would think that would be  
19 a heck of a constitutional challenge. I never  
20 predict how they happen, but I would think as a  
21 lawyer if you're representing a client that could  
22 benefit from that you'd be committing malpractice not

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1 to utilize it.  
2 Q. So, your testimony is that the procedures  
3 to safeguard the integrity of a state election are a  
4 matter of federal constitutional law, is that right?  
5 I just want to know, yes or no, because I don't want  
6 to debate.  
7 A. No, of course not.  
8 MR. LEVENTHAL: Objection.  
9 THE WITNESS: I didn't say it. That's a  
10 complete mischaracterization of what I said.  
11 MR. LEVENTHAL: Objection.  
12 THE CHAIR: Overruled.  
13 THE WITNESS: Well, I didn't say that.  
14 MR. LEVENTHAL: Can I give the fulsome  
15 reason for my objection?  
16 THE CHAIR: It's overruled. The question  
17 has been answered.  
18 MR. FOX: I'm going to move onto something  
19 else. Okay?  
20 THE WITNESS: Because that question has  
21 several parts to it that are inconsistent with each  
22 other. First of all -- first of all, of course, the

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1 rules for an election are not set by the State  
2 Supreme Court of a state. They're set by the  
3 legislature of a state under Article 1, Article 2 of  
4 the Constitution. In the case of a congressional  
5 election, Congress has a role and can change the  
6 procedures. In the case of a presidential election,  
7 by specific decision of the constitutional Congress,  
8 the role is exclusively to state legislature. So, if  
9 you go look at the two texts, you look at the text of  
10 Article 1, which governs congressional elections and  
11 you look at the text of Article 2, which governs  
12 presidential elections, in Article 1 you see a  
13 reservation of power for the Congress. In Article 2,  
14 no such reservation. The Supreme Court has  
15 interpreted that many, many times as lately as Bush  
16 v. Gore, but way back in 1897 that's a plenary power  
17 that's possessed only by the legislature of the  
18 state, not by the State Supreme Court. They get to  
19 set the rules. Now, what's the role of the Court?  
20 The role of a court, including the Supreme Court,  
21 this is the only way they could interfere in this is  
22 if they did something unconstitutional. It violated

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1 the federal constitution. The power of the state  
2 legislature and the power of the State Supreme Court  
3 is over state law. But if they violated federal due  
4 process, then that would be obviously something only  
5 the Supreme Court of the United States could decide.  
6 And the argument that a good lawyer I think would be  
7 duty bound to make for a client, given that decision  
8 by the State Supreme Court of Pennsylvania, which is  
9 not, you know infallible, no court's infallible. And  
10 no lawyer should view a court as infallible if you're  
11 representing a client and you want to argue in the  
12 light most favorable to your client, even if your  
13 client's unpopular. The argument that to exclude  
14 viewing a signature on a mail-in ballot is a  
15 violation of fundamental due process that would  
16 actually become an objection by foreign visitors who  
17 are opining on an election that would take place in a  
18 third world country. If a third world country was  
19 accepting ballots and not validating signatures you  
20 can be darn sure the U.N. would write this is a  
21 denial of fundamental due process.  
22 Q. Okay. So, let's go back to the process.

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1 MR. LEVENTHAL: What time are we going to  
2 break for lunch? Do you know what time we'll break?  
3 THE CHAIR: In about five minutes.  
4 MR. LEVENTHAL: Okay.  
5 THE CHAIR: Is now an appropriate time,  
6 Mr. Fox?  
7 MR. FOX: I'm just at the end of a little  
8 bit and I'll finish up in five minutes.  
9 BY MR. FOX:  
10 Q. So, to go back to the process and let's go  
11 back to our ballot that's everything is fine. It's  
12 passed onto the -- the secrecy envelope is passed  
13 onto someone else. That person opens the envelope,  
14 puts it in a file, and eventually it's counted by a  
15 machine. Correct?  
16 A. Yes.  
17 Q. All right. Now, there was something that  
18 featured in Pennsylvania called a "naked ballot," are  
19 you familiar with that term?  
20 A. Mm-hmm.  
21 Q. And what a naked ballot means, does it  
22 not, is that the voter forgot to use the secrecy

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1 ballot. He just put his or her ballot right inside  
2 the outer envelope. Correct?  
3 A. Correct.  
4 Q. All right. And if a mail-in ballot was a  
5 naked ballot, it would not be counted. Correct?  
6 A. Again, that's the law -- yeah, that -- it  
7 shouldn't be counted. That doesn't mean it wasn't.  
8 Q. It would be reviewed by the local Election  
9 Board. Correct?  
10 A. It should be.  
11 MR. FOX: I want to look at Disciplinary  
12 Counsel  
13 Exhibit 10. I just want to see form the outside.  
14 BY MR. FOX:  
15 Q. This is the amended motion for Temporary  
16 Restraining Order that you filed. And you go down to  
17 the bottom and it shows your name is on it.  
18 A. Okay. I don't really -- okay. I don't  
19 really remember this.  
20 MR. FOX: Can we show his signature?  
21 THE WITNESS: No. I'm sure I signed it.  
22 I'm sure I signed it, just not one I spent a lot of

Page 130

1 time.

2 MR. FOX: Okay. And now I want to go to

3 page 115 of this exhibit, which s an attachment to

4 the motion. And just blow it up a little bit so we

5 can let Mr. Giuliani read -- see this.

6 BY MR. FOX:

7 Q. So, you can see this is a transcript of a

8 Board of Elections meeting of the Commissioners after

9 the election and somewhere I can show you that this

10 is Philadelphia. See, at the top it's Philadelphia.

11 I'll represent that you represented in your motion

12 that it was Philadelphia. Okay?

13 MR. FOX: Okay, I would like to go to page

14 126. And incidentally, for the record, I'm referring

15 to the Bate stamps numbers when I'm talking about the

16 pages. I'm not necessarily talking about the page of

17 the internal document.

18 THE WITNESS: Okay.

19 MR. FOX: And if we could look at lines 13

20 to 24? And you can see -- I just want you to see

21 here that they're talking about this naked ballot

22 problem.

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1 BY MR. FOX:

2 Q. And you'll see in Philadelphia it had over

3 4,000 of these naked ballots.

4 A. Okay. This is referring back to the 2022

5 -- 2020 election?

6 Q. Yeah.

7 A. Okay.

8 Q. And let's go to page 127, lines 1 through

9 17. And you can see that the Commissioners voted 2

10 to 1 not to count the naked ballots.

11 A. Okay.

12 Q. So, that's how challenged ballots or

13 provisional ballots are dealt with in the

14 Pennsylvania system. Correct?

15 A. No. That's how those ballots were dealt

16 with.

17 Q. Okay. You think it's different procedures

18 in different counties?

19 A. Well, I don't know if it's different

20 procedures, but I know a lot of ballots didn't go

21 through any procedure at all.

22 Q. Well, we can agree that in Philadelphia,

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1 which are heavily Democratic jurisdictions. Correct?

2 Right?

3 A. Yeah.

4 Q. And they decided not to count over 4,000

5 of these naked ballots.

6 A. Yeah. Well, I would mean almost nothing.

7 I mean, so 4,000 ballots out of what? How many

8 millions? So, they had at least 4,000 ballots.

9 Correct. I'm not alleging they handled every single

10 ballot incorrectly, just -- but they handled a large

11 number, hundreds of thousands incorrectly.

12 Q. And the last piece --

13 A. I'm not alleging that. I have evidence of

14 that.

15 Q. The last piece --

16 A. And you have those affidavits.

17 Q. And we're certainly going to look at them.

18 The last piece I want to cover before lunch is you're

19 aware that these decisions of these Election Boards,

20 County Election Boards can be appealed to the Courts?

21 A. I do know that. Yep.

22 Q. Okay. I mean, if you want, I'll show you

Page 133

1 an example that's also attached --

2 A. You don't have to. I'm sure there are

3 many decisions that are appealed to Courts.

4 Q. okay.

5 A. It happens in New York. It happens

6 everywhere.

7 Q. All right.

8 MR. FOX: So, I'm at a good place to stop,

9 Mr. Chair.

10 THE CHAIR: Mr. Leventhal, did you have

11 something to say?

12 MR. LEVENTHAL: I said we'll try to work on the

13 microphone during the lunch hour.

14 THE CHAIR: We'll adjourn for lunch until

15 1:45. Thank you very much.

16 (Lunch recess)

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1 AFTERNOON SESSION  
2 [1:45 p.m.]  
3 THE CHAIR: Anything to discuss before we  
4 resume testimony?  
5 MR. FOX: Not for me.  
6 THE CHAIR: All right. Mr. Fox, you may  
7 proceed.  
8 BY MR. FOX:  
9 Q. Now, Mr. Giuliani, we've touched on these  
10 before, so I want to proceed quickly through them,  
11 but I want to talk about a few of the pre-election  
12 Court rulings about the new mail-in procedures.  
13 Excuse me.  
14 MR. FOX: If you'll look at Disciplinary  
15 Counsel Exhibit 17, which is --t here you go. And  
16 just blow up the caption of that, would you please so  
17 we can see what we're talking about here?  
18 BY MR. FOX:  
19 Q. Now, this was a case that the Supreme  
20 Court of Pennsylvania decided before the election  
21 that related to certain procedures in connection with  
22 the mail-in ballots. Have you read this case, are

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1 you familiar with it?  
2 A. I image I did. Now, it doesn't ring a  
3 bell.  
4 Q. Okay. Your counsel pointed to it in his  
5 opening statement. This was the one that held, among  
6 other things, that counties were not required to  
7 implement notice and cure procedures for envelopes.  
8 A. Yes, yes, yes, I did read it. Sure.  
9 MR. FOX: And let's go to page 20, please. And  
10 if  
11 you'll blow up the paragraph that's got the 13, I  
12 think, in front of it. There you go, that one.  
13 BY MR. FOX:  
14 Q. And this was a ruling that you're talking  
15 about where they say the Boards are not required to  
16 implement at notice and opportunity to cure  
17 procedure. But would you agree with me that they  
18 never said that the Boards were prohibited from doing  
19 so?  
20 A. Sure. Yeah, it doesn't say that.  
21 Q. Okay. That's all I have with respect to  
22 that. Before we go to the next exhibit, however, you

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1 do understand you plead that following this opinion  
2 the Secretary of State recommended to all the  
3 counties that they implement a notice a cure process.  
4 Correct?  
5 A. I do -- yes, I do recall that. Yes.  
6 Q. All right.  
7 A. I know it was very confusing, but yeah, I  
8 do.  
9 MR. FOX: Let's look next  
10 at Disciplinary Counsel Exhibit 19, 19 please. If we  
11 could just look in the upper right-hand corner again,  
12 make sure what this is.  
13 BY MR. FOX:  
14 Q. And do you recognize this as an original  
15 proceeding in the Supreme Court of Pennsylvania  
16 brought shortly before the election which again  
17 resolved some of these procedural issues, remember  
18 reading that before?  
19 A. Not yet. Not just by seeing that.  
20 Q. Okay. All right. I'll tell you what,  
21 let's see if this helps a little bit.  
22 MR. FOX: Go to page 13, please. And if

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1 you'll highlight in the first column the last two  
2 paragraphs -- not the other column, the first column.  
3 That's right, the last two paragraphs.  
4 THE WITNESS: Right there? Okay.  
5 BY MR. FOX:  
6 Q. Okay. And you'll see, reading through  
7 this, if you go down after they cite the Act, they  
8 said that the legislature eliminated a time of  
9 canvassing challenges entirely from Section such and  
10 such, right?  
11 A. Mm-hmm.  
12 Q. And a little bit later on it says,  
13 "Accordingly, the election code presently provides no  
14 mechanism for time of canvassing challenges by  
15 candidate or party representative, right?  
16 A. Right.  
17 Q. So, that means there was no right for any  
18 of the people at the canvassing of the mail-in  
19 ballots to make a challenge to the ballots. Correct?  
20 A. I'm sure, right. Cure wasn't possible.  
21 Q. All right. And now, on that same page if  
22 we go to the conclusion. You also recall this is the

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1 same opinion that said that there was no handwriting  
2 comparison?  
3 A. Mm-hmm.  
4 Q. And that's in the conclusion. Correct?  
5 A. I got it, yeah. I see it.  
6 Q. Thank you. That's all we have for that  
7 one. I think we can agree that the voting occurred  
8 during the pandemic, right?  
9 A. Yeah, yeah.  
10 Q. And there were a surprising number of  
11 mail-in ballots probably attributed to the pandemic,  
12 certainly many more than any other election that  
13 occurred in Pennsylvania.  
14 A. Oh, my goodness, yeah. That year they  
15 were 10 to 1.  
16 Q. Okay. And the pandemic also had an effect  
17 on the willingness of election workers to work in the  
18 campaign -- in the voting area.  
19 A. That I don't know.  
20 Q. Okay. You will agree that a lot of the  
21 counties, if not all of the counties, imposed some  
22 social distancing rules at the locations where the

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1 mail-in ballots were canvassed and counted.  
2 A. I don't know that a lot did, some did,  
3 yeah.  
4 Q. And there was some litigation that  
5 occurred in Philadelphia on Election Day, do you  
6 recall that?  
7 A. I don't.  
8 Q. Okay. Do you remember that -- do remember  
9 the name Judge Fasano Cannon, do you remember her  
10 name?  
11 A. Oh, you talking about that case? I do  
12 recall that case.  
13 Q. I thought you would.  
14 A. That's the one that Corey and Pam Bondi  
15 called me about.  
16 MR. LEVENTHAL: Wasn't that  
17 on November 5th, not Election Day?  
18 MR. FOX: Yes. Did I say  
19 Election Day? And I apologize.  
20 MR. LEVENTHAL: Yes, you did.  
21 BY MR. FOX:  
22 Q. What I meant was the controversy began on

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1 Election Day and you recall, initially, there was a  
2 judge who said that the -- and the controversy, Mr.  
3 Giuliani, to be clear, was about how far the  
4 observers were away from the people who were actually  
5 counting the ballots, right?  
6 A. Well, that's the way it was presented to  
7 me. It was that there was -- they were placed in  
8 positions that they could not exercise their  
9 responsibility of being able to check the identify  
10 criteria on the envelopes.  
11 Q. Okay.  
12 A. Which is what they're, up to that point,  
13 historically, their role had been and what you would  
14 think due process, as a minimum, would require.  
15 Q. And so regardless of whether it's  
16 distance, the issue was positioning, is that fair?  
17 A. No, I don't think the issue was position.  
18 The issue is are you able to fulfill your due process  
19 obligation or aren't you? In other words, can you  
20 see the identifying data so you can in good conscious  
21 sign off on the ballot or object to it.  
22 Q. Mr. Giuliani, I think we just agreed --

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1 A. There's no other way. I mean with an  
2 absentee ballot and a mail-in ballot, which is why  
3 there are so many warnings against it and why it's  
4 seen as an opportunity to have massive fraud, there's  
5 only one chance to check it, that's the chance.  
6 That's it.  
7 Q. Mr. Giuliani, I think --  
8 A. A ruling, for example, of the Court has to  
9 be one that eventually will be reversed because it's  
10 completely contrary to due process.  
11 Q. But the rules that were in effect at the  
12 time that these ballots were counted were that the  
13 signatures did not have to be compared. Correct?  
14 A. Yeah. I mean I didn't know it at the  
15 time, but sure. It wasn't -- I mean, I would've  
16 fainted if somebody had told me that, but yeah.  
17 Q. Okay. But that was the rule that was in  
18 effect, no signature comparison. Correct?  
19 A. That was the rule that is written down on  
20 that piece of paper. Yeah, it's kind of  
21 non-irrational, but yeah.  
22 Q. That piece of the paper is the opinion of

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1 the highest court in Pennsylvania, right?  
2 A. They've been wrong before.  
3 Q. Okay.  
4 A. And been reversed before.  
5 Q. And the second thing that the Court had  
6 ruled was you couldn't make a challenge to the  
7 ballots. The observers had no right to make a  
8 challenge to the ballots. Correct?  
9 A. Yeah. I mean now we're starting to get  
10 into elections that wouldn't be approved in a  
11 foreign, non-developed countries. Yeah, if you can't  
12 challenge a ballot and you can't signatures. I would  
13 think Carter and Baker wouldn't approve that as a  
14 foreign election.  
15 Q. But that was the law in Pennsylvania,  
16 right?  
17 A. That's what they said.  
18 Q. All right. And some people challenged  
19 positioning of the observers in the Philadelphia area  
20 where they were counting the ballots, correct, that  
21 was challenged in court?  
22 Q. Oh, yeah, a lot of people challenged it,

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1 but I think -- I only know of one that went to court.  
2 Right.  
3 Q. Okay. I meant challenged in court,  
4 right?  
5 A. Yeah, I think there -- well, I know of  
6 one.  
7 Q. Okay. And there was this ruling by Judge  
8 Fasano Cannon, correct, who ruled that --  
9 A. That was the second ruling.  
10 Q. Okay. Let's go to that then. I was going  
11 to skip the first ruling because it goes my way, but  
12 I'll go to it. The first ruling by a trial judge  
13 upheld the procedures that Philadelphia put in place.  
14 Correct?  
15 A. Yes, it upheld it and then --  
16 Q. And then they had a special appellate  
17 procedure for these elections and Judge Fasano  
18 Cannon, sitting as -- by herself, but as an  
19 intermediate Appellate Judge said, no, you have to  
20 let them get closer. Correct?  
21 A. Correct. She wrote a four- or five-page  
22 opinion and came to that conclusion.

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1 Q. And that's your Exhibit 16.  
2 A. Yes.  
3 Q. And ultimately, that was reversed by the  
4 Supreme Court of Pennsylvania, was it not?  
5 A. It was.  
6 Q. Okay. And the Supreme Court of --  
7 MR. FOX: Let's look at Exhibit 20,  
8 Disciplinary Counsel Exhibit 20. It shows in the  
9 upper left-hand corner.  
10 BY MR. FOX:  
11 Q. Do you recognize this as the opinion of  
12 the Supreme Court dated November --  
13 A. I do. Yeah, yeah, yeah, I do recognize  
14 it. Could you put the whole thing out?  
15 Q. Sure.  
16 MR. LEVENTHAL: Can you make it bigger?  
17 Can you make it bigger? Yeah.  
18 MS. BORRAZAS: What do you want to make  
19 bigger?  
20 MR. LEVENTHAL: That first page please.  
21 MR. FOX: The only part of the first  
22 page --

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1 THE WITNESS: I guess they have to  
2 eliminate some of the page there to make it bigger.  
3 MR. FOX: The second column because the  
4 second are just head notes.  
5 THE WITNESS: Okay. I can see it.  
6 MR. FOX: All right.  
7 BY MR. FOX:  
8 Q. And in this opinion --  
9 A. What is it, a 5/2 decision?  
10 Q. I don't recall, but I'm sure -- I think  
11 you're right. In this --  
12 A. The Chief Justice and somebody else  
13 dissented. Oh, no, 5/3.  
14 Q. In this opinion --  
15 A. 4/3?  
16 MR. LEVENTHAL: 5/2.  
17 BY MR. FOX:  
18 Q. In this opinion, the Supreme Court said --  
19 MR. LEVENTHAL: Yeah, 5/2.  
20 THE WITNESS: right.  
21 BY MR. FOX:  
22 Q. Mr. Giuliani?

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1 A. Yeah, I got it.  
2 Q. In this opinion, the Supreme Court said  
3 that the observers only had the right to be present  
4 in the room. Correct?  
5 A. Yes, I recall this very, very clearly. I  
6 mean this opinion -- well, never mind. But I mean  
7 this is a very debatable opinion, right?  
8 MR. FOX: Can we go to page 8, please?  
9 THE WITNESS: I mean this sort of makes  
10 present totally useless.  
11 MR. FOX: And if you will highlight the  
12 last paragraph on the second column. And that's the  
13 holding that the statute only requires that the  
14 representatives to be permitted to remain in the room  
15 while the ballots are counted.  
16 A. I got it. Yeah. So, you would agree that  
17 my position is reasonable since it was the same  
18 position as Judge Cannon.  
19 Q. Mr. Giuliani, I ask the questions.  
20 A. And the dissenters. It was hardly --  
21 THE CHAIR: Mr. Giuliani?  
22 THE WITNESS: It was a reasonable opinion,

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1 right.  
2 MR. LEVENTHAL: Hold on.  
3 THE CHAIR: Mr. Giuliani, I understand  
4 your frustration, but this is not the point at which  
5 you should argue your claims.  
6 THE WITNESS: I'm sorry.  
7 THE CHAIR: Just answer the questions.  
8 Thank you.  
9 THE WITNESS: Okay. I'm sorry. I  
10 apologize.  
11 BY MR. FOX:  
12 Q. And that ruling was completely consistent  
13 with the pre-election ruling that there was no  
14 inspection of the signature and that there was no  
15 right to object to the ballots. Correct?  
16 A. Yeah. And inconsistent with the  
17 intermediate court.  
18 Q. Now, while this was going on, there was  
19 also a separate case in Federal Court, was there not?  
20 A. Yes, sure. There was a case in Federal  
21 Court, right?  
22 Q. And the case in Federal Court they reached

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1 a settlement. Correct?  
2 A. I don't remember.  
3 Q. You don't recall that there was a  
4 settlement in the Federal Court in which the  
5 authorities in Philadelphia agreed to increase the  
6 number of observers and to allow them to get closer  
7 than they had been under the original rules that they  
8 set forth?  
9 A. When did that happen?  
10 MR. LEVENTHAL: When was that?  
11 BY MR. FOX:  
12 Q. My question to Mr. Giuliani, is do you  
13 recall that that happened?  
14 A. I don't. That's why I'm asking you when  
15 was it.  
16 Q. That a motion for an emergency injunction  
17 before Paul S. Diamond, the United States District  
18 Court for the Eastern District of Pennsylvania, and  
19 I'm looking for the date here. It looks like it was  
20 -- no, that was the date it was filed. But anyhow,  
21 you don't recall during the election --  
22 A. I don't.

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1 Q. -- they reached that settlement in  
2 Philadelphia?  
3 A. I don't recall it.  
4 MR. LEVENTHAL: Mr. Fox, when was that  
5 filed, please?  
6 MR. FOX: I'll have to get it for you. I  
7 have the date it was filed the -- the transcript is  
8 the 18th, but when it was --  
9 THE WITNESS: The 18th of November? The  
10 counting would be over by then.  
11 MR. FOX: No, sir. That was not the date  
12 of the hearing. That was the date the hearing was  
13 filed in court. The transcript has to be prepared.  
14 THE WITNESS: Okay. I do not know of any  
15 such --  
16 MR. FOX: All right.  
17 BY MR. FOX:  
18 Q. I want to turn now to the factual basis or  
19 bases for your fraud allegations in the advocacy that  
20 you've made in front of the Middle District of  
21 Pennsylvania and I think we'll focus mainly on the  
22 first complaint, the initial complaint, but you know

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1 if -- we'll compare later on with the second amended  
2 complaint.  
3 A. The initial complaint I had nothing to do  
4 with.  
5 Q. Well, no, sir. The initial complaint was  
6 the one that you testified under oath at your  
7 deposition that you started writing. Remember?  
8 A. Oh, yeah, but that's the one I contributed  
9 the two paragraphs to.  
10 Q. And edited, right?  
11 A. I edited it, but I really had very little  
12 to do with that. It's the third -- it's the third  
13 complaint, second amended complaint that I really had  
14 more to do with.  
15 Q. All right. Well, most of these  
16 allegations that we're talking about in the first  
17 complaint were picked up in the second complaint, as  
18 we --  
19 A. That's true.  
20 Q. Okay. You did understand as an  
21 experienced lawyer that fraud has to be pled with  
22 specificity.

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1 A. I do.  
2 Q. Let's look at Exhibit 5, which is the  
3 first amended complaint, Disciplinary Counsel Exhibit  
4 5. We're going to be talking a lot about this, so  
5 let's agree that this is the first complaint, the  
6 initial complaint. That look right to you, Mr.  
7 Giuliani?  
8 A. It does.  
9 Q. All right. And I want to look at some of  
10 the specific factual allegations that you made. And  
11 first, let's go to page 22 and I want to look at the  
12 paragraphs 51 that begins on that page and then goes  
13 over to -- all the way to paragraph 56. And I just  
14 want to take -- take time to familiarize yourself  
15 with that and the question I'm going to ask you is  
16 whether there are any specific allegations of facts  
17 that constitute fraud in any of these paragraphs?  
18 A. In that particular paragraph there isn't,  
19 but this is like three days into the investigation.  
20 Q. Okay.  
21 A. So, it would be very, very hard to have  
22 such facts at that -- at that point.

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1 Q. Okay.  
2 A. But there are facts alleged later on in  
3 the complaints to the extent that we had them. This  
4 is a case that we'd just begun investigating, which  
5 is in the nature of an election case. I don't know  
6 that you can expect of an election case that has to  
7 be done in two days the same kind of pleading that  
8 you're going to get in a case that you have three  
9 months to investigate and the Courts recognize that.  
10 Q. All right. Well, let's go on and continue  
11 until we get to Paragraph 56 and just establish that  
12 this sets -- this makes a lot of assertions about the  
13 --  
14 MR. LEVENTHAL: Could we take our time and  
15 read 51 please?  
16 MR. FOX: Oh, absolutely. Absolutely.  
17 MR. LEVENTHAL: Could we start with 51?  
18 Thank you.  
19 (Pause)  
20 MR. LEVENTHAL: And you can continue, if  
21 you don't mind.  
22 THE WITNESS: And this is 51.

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1 MR. LEVENTHAL: Fifty-one through  
2 fifty-six. Hold on.  
3 THE WITNESS: Well, 51 seems pretty  
4 specific.  
5 MR. LEVENTHAL: Well, just wait until he  
6 asks a question.  
7 THE WITNESS: Fifty-two is pretty  
8 specific.  
9 MR. KAMINS: Wait until he's asked a  
10 question.  
11 MR. LEVENTHAL: Wait until he asks a  
12 question. You can move it up again, if you need to,  
13 Mr. -- thank you.  
14 (Pause)  
15 MR. LEVENTHAL: You want to continue on  
16 56?  
17 THE WITNESS: And the question is, is this  
18 specific enough? That's about as specific as you'd  
19 be able to pled an introduction like this. This lays  
20 out --  
21 BY MR. FOX:  
22 Q. That's fine. That's an introduction, can



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1 we agree to that?  
2 A. Yeah. And it lays it out -- it lays out  
3 specifically what we're relying on.  
4 Q. Now, if you'll go to Paragraph 57, this,  
5 as far as I can find, is the first specific reference  
6 to something that actually occurred during the  
7 election and it occurred -- and there are two  
8 references here to things that occurred in Fayette  
9 County, so why don't you familiarize yourself with  
10 that?  
11 A. You talking about 57?  
12 Q. Paragraph 57.  
13 (Pause)  
14 BY MR. FOX:  
15 Q. And I'm just talking about the first two.  
16 We're going to come to Luzerne County in a minute,  
17 but the first two concern things that you say,  
18 "Suspected instances of mail fraud -- mail-in ballot  
19 fraud in Fayette County.  
20 A. Tell me where that is.  
21 Q. Paragraph 57, it's right there in front of  
22 you.

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1 A. "The state fails to follow even basic  
2 integrity and transparency of the measure,  
3 especially, its own. It violates the right to free,  
4 fair, and transparent public election."  
5 Q. Paragraph 57, sir.  
6 THE WITNESS: I'm reading 57, right?  
7 MR. FOX: It's up on the screen.  
8 MR. LEVENTHAL: No, his is different.  
9 THE WITNESS: My 57 is different than  
10 yours.  
11 MR. LEVENTHAL: You're looking at a  
12 different complaint.  
13 MR. FOX: Maybe you're not looking at the  
14 exhibit then, so why don't you look at the exhibit?  
15 THE WITNESS: Okay. Okay.  
16 (Pause)  
17 THE WITNESS: Yes, it's much different  
18 than what I have. Okay.  
19 MR. LEVENTHAL: Hold on.  
20 (Pause)  
21 THE WITNESS: All right, I have down to  
22 President Trump.

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1 MR. FOX: No, I'm just going to focus on  
2 the first two instances in Fayette County.  
3 THE WITNESS: Yes, sir.  
4 MR. FOX: We'll come back to the one in  
5 Luzerne County in a moment, so back please to the  
6 previous page.  
7 THE WITNESS: All right.  
8 BY MR. FOX:  
9 Q. All right. Now, Fayette County was not a  
10 Defendant in this lawsuit. Correct?  
11 A. Sure. That's correct. Yeah.  
12 Q. In fact, Fayette County has -- is a  
13 Republican county, is it not?  
14 A. I don't know that.  
15 Q. You don't that it voted overwhelming for  
16 President Trump?  
17 A. Don't remember that.  
18 Q. Okay. It has a reference here to some  
19 duplicate ballots that's apparently the result of  
20 some software glitch, right?  
21 A. I don't remember that either.  
22 Q. In your complaint.

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1 A. Where does it say that?  
2 Q. "First, an issue caused by Pennsylvania's  
3 SURE, SURE Software System as to the marking of an  
4 online application submitted prior to the June  
5 primary election with the permanent mail-in status  
6 clause caused some voters to receive duplicate  
7 ballots for the general election," see that?  
8 A. I do.  
9 Q. Okay. And there's no evidence and you  
10 don't assert that there was any duplicate voting.  
11 You assert that it was a software glitch that  
12 resulted in some duplicate ballots being prepared.  
13 Correct?  
14 A. That is -- that's what we allege, right.  
15 I don't know what the reference -- I don't know what  
16 the reference involves, see. And then we have sort  
17 of a footnote. I don't know what that involves.  
18 Q. Okay.  
19 MR. FOX: And then the second thing, if  
20 you can go down to like the next item, it says,  
21 "Prior to November 3," where you highlight that. The  
22 sentence begins "Prior to November 3." You can

1 highlight that whole sentence, if you will, or maybe  
2 even -- so Mr. Giuliani can see it.  
3 THE WITNESS: I see it.  
4 MR. FOX: Gentlemen his age and my age  
5 may not see as well as some of you younger folks.  
6 And there, there were two voters who received mail-in  
7 ballots that were already filled out, supposedly.  
8 THE WITNESS: Got it. No, I was able to  
9 see it. It's okay. You can put it down.  
10 MR. FOX: Okay.  
11 BY MR. FOX:  
12 Q. So, those were the specific instances that  
13 you pled with respect to Fayette County, a Republican  
14 county. And I take it that your position is those  
15 are examples of fraud that occurred in the election?  
16 A. It could be. I mean, yeah, you could  
17 characterize it as fraud. You probably need to know  
18 more to be sure it was fraud, but --  
19 Q. Yeah. So, let's look at the last sentence  
20 in the thing and the bottom of 56 it goes over to 57.  
21 A. You need to know more to be sure.  
22 Q. So, it says, "In late September 2020,

1 officials in Luzerne County discovered that a  
2 temporary seasonal elections worker had discarded  
3 into a trash bin nine Military ballots received in  
4 unmarked envelopes, seven of which were all cast for  
5 President Trump." Correct?  
6 A. I see that.  
7 Q. Luzerne County is also not a Defendant in  
8 this lawsuit, was it?  
9 A. No.  
10 Q. It's also carried by President Trump, was  
11 it not?  
12 A. If you say so.  
13 Q. And these -- and what you found here was a  
14 mistake by one temporary worker which was found and  
15 corrected, right?  
16 A. I don't know that it was corrected.  
17 Q. And would you -- is it your position that  
18 these three instances that occurred in counties other  
19 than the counties that you sued are evidence that  
20 there was fraud committed by the Defendants in this  
21 case?  
22 A. I mean, yes, it could be in combination

1 with other evidence. Not all by itself of an  
2 election that was very poorly conducted.  
3 Q. In Luzerne County and in Fayette County,  
4 right?  
5 A. Correct.  
6 Q. Because in Pennsylvania the counties are  
7 responsible for conducting the elections, are they  
8 not, on a day-to-day -- you know at the ground level?  
9 A. That depends. I mean they get direction  
10 -- they get direction from the state as well.  
11 Q. Okay.  
12 A. I mean, ultimately, it's the state  
13 legislature that's responsible, but --  
14 Q. Aside for these three specific facts, what  
15 other facts did you cite of -- that might constitute  
16 fraud in the 2020 general election in Pennsylvania?  
17 A. Well, my goodness, you're going to have to  
18 give me some time to go through the complaint.  
19 Q. Okay. You're right and that's probably an  
20 unfair question.  
21 A. There's --  
22 Q. So --

1 MR. LEVENTHAL: Make sure it's the same  
2 complaint.  
3 THE WITNESS: Yeah, I got to make sure I  
4 have the same complaint that you have because --  
5 MR. LEVENTHAL: What exhibit are you on,  
6 Mr. Fox?  
7 MR. FOX: I'm on Exhibit 5, the one that'  
8 sin evidence.  
9 MR. LEVENTHAL: Exhibit 9.  
10 MR. FOX: Five.  
11 MR. LEVENTHAL: No, no, I'm saying that  
12 Mr. Giuliani is looking at Exhibit 9. Give me a  
13 second.  
14 (Pause)  
15 THE WITNESS: Are we looking at the first  
16 complaint?  
17 MR. LEVENTHAL: Yes, the initial  
18 complaint. Yeah, I got it.  
19 THE WITNESS: Well, I don't know why we're  
20 looking at the first complaint. It would be the  
21 second complaint where we --  
22 MR. LEVENTHAL: Yeah, you're right.

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1 THE WITNESS: Where we would've alleged I  
2 with specificity.  
3 MR. FOX: Are we on the same page now?  
4 MR. LEVENTHAL: No.  
5 THE WITNESS: I mean these are paragraphs  
6 that I --  
7 MR. LEVENTHAL: That general complaint.  
8 THE WITNESS: Okay.  
9 MR. LEVENTHAL: Just a second. Let me get  
10 the original complaint for him.  
11 THE WITNESS: Which complaint am I looking  
12 at?  
13 MR. LEVENTHAL: He can't look at the whole  
14 thing on the --  
15 THE WITNESS: The first or the --  
16 MR. LEVENTHAL: The original complaint.  
17 THE WITNESS: I don't think that's the one  
18 to be questioning me about as to whether I alleged it  
19 with specificity. I didn't write these.  
20 MR. LEVENTHAL: Hold on.  
21 THE WITNESS: I spent tow hours on this in  
22 the middle of the night.

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1 MR. LEVENTHAL: Here it is.  
2 THE WITNESS: Getting ready to argue the  
3 next day.  
4 MR. LEVENTHAL: Rudy. Mr. Fox, this one  
5 says on the top besides your exhibit, page 1 of 86;  
6 is that right, on the top at the beginning?  
7 MR. FOX: Yes.  
8 MR. LEVENTHAL: Thank you. Here it is,  
9 Rudy, the original complaint is the one he's talking  
10 about.  
11 THE WITNESS: This is the original  
12 complaint?  
13 MR. LEVENTHAL: Yeah. What page are you  
14 on?  
15 THE WITNESS: How am I going to answer  
16 questions about a complaint I didn't draft?  
17 MR. LEVENTHAL: He's asking you.  
18 THE WITNESS: Okay.  
19 MR. FOX: Are we on the same page now?  
20 MR. LEVENTHAL: What page do you want him  
21 on?  
22 MR. FOX: Let's go to paragraph -- let's

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1 go to page 47.  
2 MR. LEVENTHAL: What paragraph?  
3 MR. FOX: Starting at Paragraph 110.  
4 MR. LEVENTHAL: Paragraph 110. Paragraph  
5 110.  
6 THE WITNESS: 110. I can't even remember  
7 this, much less --  
8 BY MR. FOX:  
9 Q. Paragraph 110 and it goes on to the next  
10 page -- the next couple of pages, through 127,  
11 "Assert a number of alleged irregularities in some of  
12 the counties in Pennsylvania." And my question for  
13 you is --  
14 MR. LEVENTHAL: You're not on 110 right  
15 now on the screen.  
16 THE WITNESS: You're at 118. Okay. So,  
17 this is -- okay. I recall some of this now. Go  
18 ahead.  
19 BY MR. FOX:  
20 Q. So, let's stick with page -- Paragraph 10,  
21 it's the introductory paragraph.  
22 A. Yeah.

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1 Q. "Throughout the Commonwealth, including  
2 the main county Election Board, numerous voters  
3 reporting receiving mail-in ballots, even though they  
4 did not apply for them." Correct?  
5 A. Got it.  
6 Q. And there's a bunch of others that go on  
7 from here and my question for you is there any of  
8 those that were directed, aside from the one in  
9 Paragraph 123, which we'll come back to, were  
10 directed at the Trump Campaign, they're part of the  
11 Trump Campaign, as opposed to simply some kind of  
12 alleged irregularity that occurred in the election?  
13 You know what --  
14 A. That was the --  
15 Q. Let me withdraw the question because I  
16 don't think we're going to get anywhere.  
17 A. It's the same election. I mean that would  
18 be --  
19 Q. I think it's --  
20 A. If somebody submitted a false ballot in  
21 the election, it would've affected Trump. We don't  
22 know if it was directed at Trump or not, but if it

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1 was a false ballot, it's a false ballot.  
2 Q. Well, it depends -- it would've affected  
3 Trump, but the question is whether it would have  
4 affected him negatively.  
5 A. No, it wouldn't.  
6 Q. You have to know if the ballot was for or  
7 against Trump, don't you?  
8 A. Well, you never know. You just discount  
9 the ballot.  
10 Q. Okay.  
11 A. And then it works out based on what the  
12 other numbers are and that's how it's done in every  
13 state, including in Pennsylvania when they do that --  
14 when they find that a ballot is invalid, they don't  
15 know if it's a ballot for Trump or for Biden or for  
16 somebody else. It would inure depending on the  
17 breakdown in that particular jurisdiction. It would  
18 inure Biden's benefit or Trumps.  
19 Q. All right. Let's go to paragraph -- page  
20 50, Paragraph 110.  
21 A. I might add these are as specific as you  
22 going to get at this stage of this litigation one day

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1 into it.  
2 Q. Okay.  
3 A. I mean this obviously contemplates a bill  
4 of particulars, a further complaint. This is what I  
5 had at the time to the best of my ability.  
6 Q. And would you agree with me then that what  
7 you didn't have at that time was any specific  
8 evidence of particular irregularities that affected  
9 the count between Trump and Biden?  
10 A. No, that isn't correct. I think these are  
11 specific. And if you're looking at those counties,  
12 it would affect Trump and Biden if these -- if these  
13 allegations are taken as true, as they have to be at  
14 this stage, right, they would mean some of these  
15 votes would be invalid and they would be discounted  
16 from the vote of Chester County or Delaware County,  
17 which are counties in which Biden had a big margin of  
18 victory.  
19 Q. Let's look at --  
20 A. They would be to Trump's benefit.  
21 Q. Look at Paragraph 122 at the top of the  
22 page, 122. Thank you. Now, there's an allegation

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1 that 15 percent of the mail-in ballots were sliced or  
2 damaged in the opening process, is that an evidence  
3 of election fraud?  
4 A. It could be. I mean it's a piece of  
5 evidence. We had this discussion once before. Is  
6 somebody's blood on a knife evidence that they  
7 committed the murder or is it evidence and then you  
8 have to connect it to other evidence to determine if  
9 it's evidence to commit a murder? So, this is  
10 evidence. Yes. Would it be evidence of the ultimate  
11 crime? No. But would it be a fact that has, in  
12 logic, the tendency to support such a crime? Yes.  
13 Evidence is not the whole case. It's not the whole  
14 charge. It's one tiny little fact. This is a fact  
15 from which you can draw an inference if it's combined  
16 with other facts. So, if you ask me if there are no  
17 other facts to combine this with, maybe not. If  
18 there are a couple more facts to combine it with or  
19 a pattern to combine it with, then it could be very  
20 powerful.  
21 Q. And so, what facts did you allege that you  
22 could combine it with that would make --

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1 A. Of course I didn't know that at the  
2 beginning of a litigation. Nobody -- no lawyer would  
3 know that, Mr. Fox. You find that out when you take  
4 discovery. You find that out when you ask further  
5 questions. I'm in this case for two days.  
6 Q. You asked for a Temporary Restraining  
7 Order. You have to be able to show a likelihood of  
8 success on the merits.  
9 A. Well, this would. This is a fact that  
10 points to something very -- that points to something  
11 unusual. Can it be explained as an irregularity,  
12 maybe. Is it part of a fraud, just as maybe.  
13 Q. Okay.  
14 A. And that's how cases get developed. I  
15 mean you're --  
16 Q. Okay. So, maybe it was part of a fraud --  
17 A. Almost any lawyer who's used to this kind  
18 of litigation would tell you that. Two days into a  
19 litigation and you have to bring the case because of  
20 the time limits that are involved, this is about as  
21 -- this is pretty darn good.  
22 Q. Can we agree then with your last

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1 statement, which is maybe it's evidence of  
2 irregularity and maybe it's evidence of fraud; is  
3 that right?  
4 A. But maybe it's evidence of irregularity  
5 and maybe if it's evidence of fraud, it's evidence of  
6 fraud.  
7 Q. Okay.  
8 A. Because all that a piece of evidence has  
9 to, has to have a tendency in logic to prove. It  
10 doesn't have to be conclusive. If that was the case  
11 one little piece of evidence would decide a whole  
12 murder case. It's usually about 50 pieces of  
13 evidence and another explanation for every one of  
14 those 50 pieces of evidence coming in as an  
15 explanation. I don't know what you're expecting of  
16 me, but it sure heck is different than any other  
17 lawyer that I think of.  
18 Q. Mr. Giuliani, you've agreed that you pled  
19 fraud with specificity. Correct?  
20 A. And I'm telling you that's about as  
21 specific as you can make an allegation.  
22 Q. Sir, do you agree that you have to pled

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1 fraud with specificity?  
2 A. You have to pled fraud with specificity  
3 within reason, within what you have, what's  
4 available. If you don't have the date that something  
5 happened it doesn't mean you don't plead it. You  
6 plead it and then -- and then in discovery you hope  
7 to get it, but you don't leave it out. You don't  
8 hurt your client by leaving it out. That's specific  
9 enough for this -- for that stage of the proceeding.  
10 Q. Okay.  
11 A. Even when you plead it with specificity,  
12 it probably has two or three innocent explanations as  
13 well. That's why it's evidence, not a conclusion.  
14 Q. Let's pass onto something else.  
15 A. Please.  
16 Q. No, I want to go back. I do want to  
17 highlight Paragraph 123 on this page. And I want to  
18 be fair and I submit to you that in this paragraph  
19 there is an allegation in Chester County that one  
20 observer reported instances in which -- in numerous  
21 instances in which an election worker altered an over  
22 voted ballot by changing the votes that had been

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1 marked for Trump, see that?  
2 A. Over -- an observer, witnessed a flawed  
3 resolution process over -- the -- witness, one  
4 election worker responsible for solving over vote  
5 ballots by subjectively determining who the elector  
6 intended to chose on the empty votes. The observer  
7 reports that in numerous instances the election  
8 worker altered the over vote and marked it down to  
9 another candidate. Yes, I see that.  
10 Q. Okay. And can you -- are you aware of any  
11 allegations in this entire document that specifically  
12 refer to harm done to the Trump Campaign, other than  
13 this one?  
14 A. No. Almost -- the one that you -- the one  
15 that I just read to you is harm done to the Trump  
16 Campaign.  
17 Q. No. I said specifically refer to harm  
18 done to the Trump Campaign.  
19 A. Any -- any fact, any piece of evidence  
20 that suggest there was fraud is harm done to the  
21 Trump Campaign. They all involve harm done to the  
22 Trump Campaign.

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1 Q. All right.  
2 A. This happens to be one specific act that's  
3 very, very clear and very dramatic, but anything that  
4 involves fraud would be harm to the Trump Campaign.  
5 Q. What does over voting mean?  
6 A. Over voting usually means that you have  
7 more votes than you have people that registered up to  
8 that point.  
9 Q. An overvoted ballot.  
10 A. Oh, an over voted ballot.  
11 Q. That's what's referred to int his  
12 paragraph.  
13 A. It means that they probably voted for two  
14 people.  
15 Q. Okay. And do you have any idea how many  
16 people made that mistake in Chester County in 2020?  
17 A. I'd have to go back -- no, I don't know,  
18 except --  
19 Q. You would assume it's a fairly small  
20 number that actually voted for two people for  
21 President on the same ballot.  
22 A. Yes, I -- maybe I shouldn't. I don't know

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1 what I should assume. All I can tell you is what I  
2 read.  
3 Q. Let's go to something else. Notice and  
4 cure, how is the fact that some counties gave -- and  
5 we can put that exhibit down for the time being.  
6 A. Can I change -- can I just clarify the  
7 answer to that?  
8 Q. Of course.  
9 A. You know what you're asking me to do now  
10 is interpret what Mr. Hicks put there because this  
11 complaint couldn't have had more than one or two  
12 things that I supplied in terms of allegations. He's  
13 the who drafted -- remember this complaint is the one  
14 that he drafted. I contributed to.  
15 Q. Mr. Giuliani, do you recall when we were  
16 discussing the second amended complaint a little  
17 earlier in this discussion when you told me that you  
18 put back the fraud allegations that had been removed  
19 from the first amended complaint?  
20 A. Yes.  
21 Q. Okay. I'll represent to you and I'll show  
22 you in a moment that these -- with one or two

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1 exceptions, these allegations were in the second  
2 amended complaint that you signed.  
3 A. Well, that means that between that time  
4 and this time I had a chance to see something, see a  
5 document, something that supported that.  
6 Q. Now, is it your contention or was it your  
7 contention that the notice and cure opportunity that  
8 some counties gave to voters constituted election  
9 fraud?  
10 A. I saw that more of as an equal protection  
11 claim.  
12 Q. Okay.  
13 A. You could -- I mean you could argue it as  
14 fraud, but I saw it as more of -- I thought it would  
15 be much more clearly understood by a court as an  
16 equal protection claim. It's almost a classic equal  
17 protection claim, right?  
18 A. Okay. And the equal -- and you did bring  
19 an equal protection claim on behalf of these two  
20 voters who were not given the opportunity for notice  
21 and cure. Correct?  
22 A. Yeah, I think we even restored some of

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1 those counts, even the equal protection and due  
2 process arguments had been really neutered by the --  
3 by the first amended complaint and we restored about  
4 two more equal protection counts and two more due  
5 process counts in the -- making sure right now, the  
6 second amended complaint.  
7 Q. Okay. And both in the first complaint and  
8 the second amended complaint you argued that the  
9 counties that did not afford your clients the  
10 opportunity for notice and cure had violated their  
11 rights. Correct?  
12 A. Yes. But because of the position they had  
13 been put in by the Secretary of State and by the  
14 State.  
15 Q. But you didn't sue the two counties in  
16 which they voted.  
17 A. No. We really should sue the counties  
18 that went ahead and did notice and cure because  
19 they're the ones who caused it.  
20 Q. Okay. And so --  
21 A. Notice and cure those counties who do  
22 notice and cure is illegal. They viewed it as not

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1 authorized by the law of the state and you can't make  
2 something up. It would've been very hard to argue  
3 they did something illegal, whereas the counties that  
4 provided for notice and cure where the ones who  
5 created the disparity with the counties that didn't  
6 do it. The wrongdoers were not the counties that  
7 didn't do it. They were following the letter of the  
8 law. It's the ones that did do it and it's an  
9 extraordinary thing to do, by the way, to call  
10 somebody back in --  
11 Q. Mr. Giuliani?  
12 A. Please let me -- can I just finish a  
13 little part of my answer so I feel like I actually  
14 answered the question.  
15 Q. It's not the question that I asked.  
16 A. Yes, it is. You want me to -- you want me  
17 to explain why we didn't sue one and we sued the  
18 other. I'm explaining to you why we did it. We sued  
19 the one that was the wrongdoer. You're hardly going  
20 to sue a county that's doing -- that's been put in a  
21 position where the only way it can comply with what  
22 you want is to violate the law. The counties

1 violating the law created the disparity of  
2 treatment. They're the ones that allowed people to  
3 do something -- also, it's very rather extraordinary.  
4 You file a ballot and then you get called up and you  
5 get told you can fix it? I mean that's a very  
6 strange thing to do. I'm not sure I would ever  
7 authorize anybody to do that.

8 Q. Now, Mr. Giuliani, the solution that you  
9 sought to the fact that these two individuals had not  
10 been able to vote was to not count the absentee votes  
11 in the seven counties that you sued. Correct? That  
12 was your remedy?

13 A. Absolutely. I mean the notice and cure  
14 was a -- the people who provided -- the counties that  
15 provided notice and cure are the ones that set up the  
16 -- both lack of due process, failure of due process  
17 and equal protection with regard to the counties that  
18 didn't do it because they would not violate the law.

19 Q. And the number of people that voted  
20 absentee in those seven counties by the calculations  
21 in your complaint -- and if you want -- well, why  
22 don't we do it.

1 MR. FOX: Go back to Exhibit 5 and put up  
2 Paragraph -- on page 46, put up Paragraph 108. Is, I  
3 think, 500 shy of 1.3 million.

4 THE WITNESS: Well, it wouldn't affect all  
5 of them. It would be the ones that -- I'm not sure  
6 -- I'm sure only a small fraction of them had notice  
7 and cure. You're not telling me that all of them had  
8 --

9 Q. But Mr. Giuliani, you can't identify after  
10 the fact which ballots were voted on notice and cure,  
11 can you ?

12 A. Well, you can identify the number. That's  
13 all you need is the number.

14 Q. So, what was your proposal from these 1.3  
15 people (sic) who voted absentee by your statistic  
16 you're going to deduct 10,000 randomly and what were  
17 you going to do? A cure to some to Biden and some to  
18 Trump? You can't do that.

19 A. You don't do that. The states are always  
20 invalidating votes -- the State of Wisconsin does it  
21 in every election. The State of Wisconsin  
22 invalidates votes. For example, if you don't keep --

1 if you don't keep the application for an absentee  
2 ballot in the State of Wisconsin -- in fact, the  
3 Supreme Court of Wisconsin just upheld it again.  
4 That vote is invalid. Now, you don't know which  
5 vote is invalid, but one vote is deducted from  
6 Milwaukee County, so there's one less vote in  
7 Milwaukee County.

8 Q. After the votes have been counted how do  
9 you do that? You deduct one from the Biden column or  
10 do you deduct it from the --

11 A. No. You deduct it from the overall vote.  
12 You deduct it -- it's done all the time in different  
13 states. You deduct it from the overall vote because  
14 there have been 10 invalid votes. So, now there are  
15 10 invalid votes and then the vote descends to  
16 whatever the percentage is between the two people.  
17 That's why in a county in which Trump was beaten very  
18 badly he would benefit greatly by a deduction of a  
19 vote and in one where Biden was beaten badly he would  
20 benefit, but this happens in election law all over  
21 the country and it happens in Wisconsin routinely.

22 Q. Okay.

1 A. Nothing earth shattering about that, so  
2 were you're going it would take -- let me spell it  
3 out. You would go and you would take discovery of  
4 the counties that were doing the I would say  
5 absolutely odd, strange notice and cure. Calling up  
6 people and saying, hey, you screwed up your ballot.  
7 You want come and fix it. Presumably, they kept some  
8 kind of record of that. In fact, we do know they  
9 kept some kind of record of it. Probably you're not  
10 going to get an accurate record because they probably  
11 did a lot of it without keeping a record of it. But  
12 whatever you had a record of, then they'd be deducted  
13 50 votes or 100 or 200 or the 500 times they engaged  
14 in that would be deducted from the overall total of  
15 that county. So, if you deducted 500 votes from  
16 Philadelphia and Trump lost 8 to 2, so Trump would  
17 pick up, what, 6 votes for every 10. That's the way  
18 it would work or you can change the arithmetic,  
19 depending on whether it happened in a Biden county.  
20 That's how it happens and that's how sometimes people  
21 get elected to office.

22 Q. And are you telling me that somewhere in

1 your oral argument and in these pleadings that's the  
2 relief you asked for?

3 A. No. We weren't there yet. That was an  
4 allegation -- we're at the beginning of a litigation.

5 Q. Did you tell Judge Brann in the oral  
6 argument that you had to eliminate a million and a  
7 half votes?

8 A. I told him that?

9 Q. Didn't you tell Judge Brann in the  
10 argument that there was no way after the fact of  
11 knowing which one of these absentee or mail-in votes  
12 are valid and which ones not, so you had to discount  
13 a million and a half of them?

14 A. Absolutely not.

15 Q. You didn't? Okay.

16 A. I never told Judge Brann we had to  
17 eliminate a million and a half votes.

18 Q. Okay.

19 A. The largest number I gave him was the  
20 number of votes where it was no -- that we had been  
21 able to have a record of the number of votes that  
22 there was no opportunity to look at the -- at the

1 ballot and verify that it was an actual vote that it  
2 was a legitimate vote. We wanted -- we wanted the  
3 law because we disagreed with the conclusion of the  
4 Supreme Court of Pennsylvania that present is  
5 satisfied if you're just there like a potted plant.  
6 You were there to -- when they put the word "present"  
7 in the statute they had a meaning to present. It  
8 didn't mean you could be there listening to the  
9 radio. It meant you were there to make sure that the  
10 ballot was a valid ballot. They never got an  
11 opportunity to do that. Some of them kept records of  
12 that. We had those records and those are the numbers  
13 that we would've asked be deducted. I think, and  
14 this is my recollection now, it was something like  
15 160 or 70 in Pittsburgh and Allegany and maybe 200 in  
16 Philadelphia.

17 Q. 200,000 or 200?

18 A. Pardon me?

19 Q. Are you saying 200,000 or 200 ballots?

20 A. 200,000..

21 Q. Okay. So --

22 A. It would've been about 300,000 votes, I

1 think. I'd have to go back and get the exact  
2 numbers, but that's what we were asking for as that  
3 part of the relief. We weren't asking for a million  
4 votes to be -- only the ones that we could document  
5 with evidence from witnesses. For example, Mr.  
6 Mercer kept a record.

7 Q. We're going to come to Mr. Mercer, but I'm  
8 just trying to focus on the relief. The relief now  
9 that you say you asked for was to, what, deduct from  
10 Allegany County and Philadelphia County 300,000 votes  
11 that were voted by mail-in, right? You just subtract  
12 them from the totals.

13 A. No, no, no, not voted by mail. 300 votes  
14 that were counted illegally by not allowing any  
15 independent inspection --

16 Q. You've called that your equal protection  
17 claim. Now, I'm coming to your whatever this claim  
18 is.

19 A. No, I'm not asking for that under the --  
20 on the equal protection claim we were asking for  
21 discounting the votes in which people were allowed to  
22 notice and cure, however many we could prove there

1 were.

2 Q. Okay.

3 A. We didn't know that -- I'm sorry. We did  
4 not know that number nor did we ever give a number.

5 Q. And the Third Circuit said that that  
6 number could not -- 10,000 was a generous estimate of  
7 what that number was, isn't that correct?

8 A. And that would've been it.

9 Q. And the margin of victory in this election  
10 was 80,000.

11 A. Well, we don't know that. You don't know  
12 that until you have discovery. I mean the Circuit  
13 says that's a margin, that generous. If you don't  
14 allow discovery, you never find out. I mean  
15 sometimes people think it's 10,000 and sometimes it's  
16 200,000.

17 Q. Okay.

18 A. And sometimes they think it's 200,000 and  
19 it's 10,000. You've had enough litigation to know  
20 that. At this stage of the litigation the only thing  
21 we had solid at this stage of the litigation that I  
22 thought made a very, very strong was in both cases,



1 in Pittsburgh and in Philadelphia we had two very,  
2 very obsessive, compulsive team leaders who kept  
3 very, very good records of the number of ballots that  
4 were counted without their being the slightest bit of  
5 inspection by an independent party. And that number,  
6 again, as an exact number is about 300.

7 Q. I promise you I will come back to that,  
8 but I really want to focus on the equal protection  
9 claim now. And I'll move off it if you'll just  
10 answer this question.

11 A. Okay. That's a deal.

12 Q. What was the remedy, the appropriate  
13 remedy for these two voters who were denied their  
14 ability elect notice and cure what did you contend  
15 was the appropriate remedy for what you said was  
16 their violation of their equal protection rights?

17 A. Well, I think one of the remedies would be  
18 to deduct in the counties that did notice and cure  
19 which created the violation of equal protection that  
20 vote from the vote of the county. I mean there could  
21 be other remedies. We could have a new election.

22 Q. How, Mr. Giuliani --

1 A. How? You just deduct it.

2 Q. Mr. Giuliani, let me finish the question,  
3 sir. How did that benefit your clients?

4 A. It benefited my client because the  
5 counties that did it were counties in which Biden had  
6 massive victories and any deduction of vote would've  
7 been a -- not a complete gain for my client, but a --  
8 for example, if those were deducted in Philadelphia,  
9 it would've been a gain of 6 votes for every 10.

10 Q. So, your two individual clients who were  
11 denied their right to vote the remedy wasn't to give  
12 them the right to vote. The remedy was to take away  
13 votes in the counties where there'd been notice and  
14 cure; is that right?

15 A. Unless the Court accepted our plea, which  
16 I -- which we thought would be highly unrealistic,  
17 but a Court could do it of declaring a new election.

18 Q. Right. And I was going to come to that at  
19 some -- well, let me come to that later. Now, let's  
20 talk about the other thing you want to talk about,  
21 which is the -- and I will take whatever description  
22 you want because every time I try to give you a

1 summary description you object to it, but the --

2 MR. LEVENTHAL: Could I ask Mr. Fox to  
3 stop testifying please? I'm sorry. I like him very  
4 much, but he shouldn't -- he shouldn't testify and  
5 declare what Mr. Giuliani is saying, characterize it.

6 THE CHAIR: I would be eternally grateful  
7 if Mr. Fox would ask questions and Mr. Giuliani would  
8 answer questions. And that's how I contemplate the  
9 hearing to proceed. So, you're getting maybe a tad  
10 argumentative on both sides.

11 BY MR. FOX:

12 Q. So, Mr. Giuliani, give me a catch phrase  
13 to characterize the problem of the inability of the  
14 observers to see the count of the mail-in ballot?  
15 What did you call that, a geographical problem, a  
16 positional problem, what's your phrase for that?

17 A. A coverup, I guess. I don't know what --  
18 I mean I can't imagine why you wouldn't want the  
19 other side to see it if you weren't worried that they  
20 were going to find something wrong with it,  
21 particularly, all over the country.

22 Q. Okay. I'll call it the observer's free

1 access.

2 A. This happened in eight or nine different  
3 jurisdictions to the point where they fought for  
4 months not seen a single piece of paper.

5 Q. One of those jurisdictions was Berks  
6 County, was it not?

7 A. I don't remember Berks County.

8 MR. FOX: Can we look at Exhibit 24, which  
9 I'll represent of the materials we got from the  
10 Porter Wright firm, at page 18.

11 THE WITNESS: Page 18 of the complaint?

12 MR. LEVENTHAL: No. It's --

13 MR. FOX: I'm talking to the Trial  
14 Director for her to put up Exhibit 24, page 18. Do  
15 you see this -- and I'll represent to you this is  
16 from -- Exhibit 24 is from the Porter Wright firm and  
17 you'll see it's a declaration of Mr. Bastard and I  
18 like the way you had it before if you -- I could read  
19 it better. Okay. And you'll see he's registered --  
20 he's talking about Berks County here in Paragraph 3  
21 and Paragraph 5 and 6. He's a watcher in Berks  
22 County.

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1 MR. LEVENTHAL: Mr. Fox, this is  
2 subpoenaed from which attorney?  
3 MR. FOX: Porter Wright.  
4 MR. LEVENTHAL: That was Hicks?  
5 MR. FOX: Yes.  
6 MR. LEVENTHAL: Hicks? Thank you.  
7 THE WITNESS: Yeah, I don't recall this.  
8 BY MR. FOX:  
9 Q. Okay. Now, let's look at page -- the  
10 number line 10 through 11 and it goes onto the next  
11 page.  
12 MR. LEVENTHAL: Can you make it bigger  
13 again please?  
14 (Pause)  
15 BY MR. FOX:  
16 Q. Now, you'll see by looking 10, 11, and  
17 even 12 that he had this problem in Berks County that  
18 he had to conduct his work in a way that he said  
19 prevented him from seeing everything that was going  
20 on. Correct?  
21 A. That's what he says, yes. I'm not -- I've  
22 not seen this before. Yeah.

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1 Q. Okay. Well, let's look at one of the  
2 exhibits, I think, that your lawyers provided. Let  
3 me see now. Let me double check on that. Yeah, it's  
4 Exhibit 36. And I want to go to page 390, a  
5 declaration -- okay. Here's a declaration and this  
6 was provided by your lawyers, a declaration of Jorge  
7 Figuerredo. I'm probably butchering his name, a  
8 resident of Berks County, do you see that?  
9 A. I do.  
10 Q. Okay. And if you go on down a little  
11 lower, Paragraph 8, he also had a problem because he  
12 couldn't get close enough to the counting room,  
13 right?  
14 A. I see that.  
15 Q. And this is the kind of problem that  
16 you're talking about that you think should result in  
17 the election being overturned, right?  
18 A. No, not just this problem. Not just these  
19 two situations.  
20 Q. I'm not saying just these two.  
21 A. This is one small piece of evidence.  
22 Yeah.

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1 Q. And it happened in Berks County, right?  
2 A. That's what it says.  
3 Q. Okay. Berks County is a Republican  
4 controlled county.  
5 A. Doesn't matter.  
6 Q. And it voted by 53 percent for Mr. Trump.  
7 A. Okay, yeah.  
8 Q. So, are you saying that Berks County  
9 defrauded the Trump Campaign in some way by employing  
10 these social distancing procedures?  
11 A. Nope, not saying that at all. I'm saying  
12 that those votes should've been deducted because they  
13 were illegally counted. Now, some of them might well  
14 have been by accident. Some them might've been on  
15 purpose. You'd have to look at the entire evidence  
16 to decide that. If it happens two or three times in  
17 a counting, then that's likely going to be a mistake.  
18 If it happens 200,000 times in a counting, then you  
19 know it's not a mistake. I mean there are -- that's  
20 why when you look at -- evidence is just one little  
21 fact. It's then got to be seen in a much larger  
22 context, so it's possible. It's possible there was

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1 some kind of cheating going on there. It's possible  
2 there wasn't. You need to know more about the  
3 county. I don't know anything else about Berks  
4 County. I mean were there any more allegations like  
5 that? What is that in terms of the percentage of  
6 voting that's going on? How often -- did it happen  
7 uniformly? Did it happen just a few times? All  
8 those questions have to be answered, which you can't  
9 answer at this stage of the litigation, so you put  
10 out all the allegations you have, the ones that help  
11 you, the ones that don't, and then you work your way  
12 through it in the litigation.  
13 Q. Now, Mr. Giuliani, would you agree with me  
14 that the problems -- because of the social distancing  
15 rules and keeping the observers away from the people  
16 doing the counting gave the people who were doing the  
17 counting the opportunity to commit fraud if they were  
18 so inclined?  
19 A. Sure. Yeah, I did. Particularly, when at  
20 that point in time the science was six feet and they  
21 were being kept 50, 60, 70 feet away, put in bunkers.  
22 Q. Okay. And I think you just said a moment

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1 ago that you don't whether fraud was committed. You  
2 don't know whether it was committed. You had to get  
3 more evidence, right?  
4 A. Well, of course we do. Yeah. You have to  
5 get -- you have to -- the only way you're going to  
6 eventually get to the point of providing fraud by a  
7 preponderance of the evidence at this point you  
8 really just have to allege it by a much lesser  
9 standard, which has to be the case if you're going to  
10 have litigation. You don't start a lawsuit being  
11 able to prove -- I mean you're very lucky when you  
12 do. You don't start a lawsuit being able to prove,  
13 but being able to responsibly allege. I was  
14 responsibly alleging based on the things that were  
15 told to me by other people. I wasn't proving. I had  
16 a long way to go to prove. At this point, I started  
17 every litigation in my 60-year career in which I've  
18 never been cited for anything wrong.  
19 Q. Mr. Giuliani, would you also agree that  
20 these social distancing regulations rules apply to  
21 the Democrat observes as well as the Republican  
22 observers?

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1 A. That would've been a defense, absolutely.  
2 Q. Okay.  
3 A. And then the question is how far did you  
4 go with it? Did you -- were you talking about six  
5 feet or were you talking about 50 feet? Are you  
6 talking about six feet?  
7 Q. Sir, that's not the question I asked you.  
8 The question I asked you --  
9 A. My mistake. I was just trying to give an  
10 illustration. I'm sorry.  
11 Q. The question I asked you was whether the  
12 restrictions applied equally to the Democrats as --  
13 A. Yes. Yes, that absolutely is and that's  
14 why we have the allegation.  
15 Q. Well, your allegation in -- well, later on  
16 was that these were intentionally done to harm the  
17 Republicans and specifically Mr. Trump. Correct?  
18 That's the allegation you made.  
19 A. In some counties there were a excessive  
20 number of them with very large distances involved and  
21 pens put up.  
22 Q. Wait a minute. Excessive number --

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1 A. An Order of the Court that was disobeyed.  
2 Q. Mr. Giuliani, an excessive number of them,  
3 what is "them"? Sir?  
4 A. -- excessive.  
5 Q. And there's one set of restrictions, so  
6 what are the "them"?  
7 A. A excessive number of times when it was  
8 done so it was done uniformly, distances that were  
9 irrational like 50 feet and 60 feet or what happened  
10 in Philadelphia, refusing to follow a Court Order and  
11 that it required six feet, but not allowing  
12 Lewandowski and the former Attorney General of  
13 Florida, Pam Bondi to get within six feet. So, you  
14 had two or three counties, four counties in which  
15 there was an excessive number of times it happened at  
16 highly irrational distances that had nothing to do  
17 with the science of COVID. You don't have to be 100  
18 feet away or 50 feet away or a football field away.  
19 That's not about COVID. That's about not letting you  
20 see the document.  
21 Q. When we first sent a letter to you opening  
22 this matter, you responded in a letter dated March

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1 10, 2021. I don't want to give you a memory test on  
2 the dates.  
3 MR. FOX: Let's just put up Exhibit 32.  
4 BY MR. FOX:  
5 Q. Okay. Do you recognize this as a letter  
6 that you sent to me responding to my initial inquiry?  
7 A. Mm-hmm.  
8 Q. And if you will go to page 13 please.  
9 THE WITNESS: Is this the first one?  
10 MR. LEVENTHAL: Yeah.  
11 THE WITNESS: I don't remember it being  
12 that long.  
13 MR. LEVENTHAL: Well, those are exhibits.  
14 BY MR. FOX:  
15 Q. First of all, that's your signature,  
16 correct, Mr. Giuliani?  
17 MR. LEVENTHAL: He's looking at the hard  
18 copy. Give him a second, all right, please.  
19 THE WITNESS: Haven't gotten there yet. I  
20 mean I'm sure it is, but let me just look at it.  
21 (Pause)  
22 THE WITNESS: Yep. Yes, sir.

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1 MR. FOX:  
2 Q. And you attached 15 exhibits.  
3 A. Yeah, that's right.  
4 Q. This is the letter that I alluded to  
5 earlier where you also suggested to us that we ought  
6 to watch the Gettysburg hearing, right?  
7 A. Did I? Okay.  
8 Q. It's not important if you don't remember.  
9 We'll pass on it. I don't want to go find it. I  
10 take it that you selected -- you represented I think  
11 earlier in your testimony and certainly in front of  
12 Judge Brann that you had, I think, 200 affidavits or  
13 maybe you said 300 affidavits to support the  
14 allegations of fraud, is that -- am I --  
15 A. I think I said 300. I really had about  
16 240, 250 and I probably was thinking about some of  
17 the other cases because I have about 800 altogether.  
18 Q. Okay. And I take it that when you  
19 attached these various affidavits and statements to  
20 the letter to me you picked ones that you thought  
21 were some of the strongest examples?  
22 A. I don't know that I did. I mean I picked

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1 out ones -- I can't really say that, that I did that.  
2 Q. Well, did you --  
3 A. It would make sense that I would, but I  
4 was -- I don't think I can say that. No.  
5 Q. Well, what was the method you used to  
6 select which ones you were going to submit, random?  
7 A. No, probably the ones that I had closest  
8 to me.  
9 Q. Because I want to --  
10 A. If I could make one explanation.  
11 Q. Sure.  
12 A. I have a room, an entire room filled with  
13 at least a thousand exhibits, affidavits, pictures of  
14 voter fraud, so I probably grabbed a group. I mean  
15 some of these are -- some of them are stronger, but  
16 some aren't when I look at them. I remember most of  
17 these. I don't think they were just picked out at  
18 the strongest, but just a representative sample.  
19 Q. Representative sample? You tried earlier  
20 to talk to us about Mr. Mercer's affidavit. You  
21 included two of his in there, right?  
22 A. Yes. I mean I think Mr. Mercer was the

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1 one that was in charge, so I thought that would be a  
2 good one to give you.  
3 Q. So, let's --  
4 A. And Queeter seemed to me knew the most  
5 about what happened in -- in Philadelphia.  
6 Q. All right. So, let's look at these  
7 affidavits. Exhibit 1 is from Mr. Mercer. Correct?  
8 A. I haven't gotten there yet, but --  
9 Q. Just for your information, I'm going to  
10 first look at Exhibit 1, 2, 3, and 5. And what I  
11 want to establish is that all of these exhibits  
12 relate to -- I still can't come up with the right  
13 phase, the spacing issue.  
14 A. The what, spacing?  
15 Q. Yeah.  
16 MR. LEVENTHAL: We call it the distance of  
17 observation.  
18 THE WITNESS: The failure to observe, the  
19 failure of the ability to observe.  
20 MR. FOX: Okay.  
21 BY MR. FOX:  
22 Q. So, just check that Exhibits 1, 2, 3, and

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1 5 all relate to that issue that we just talked about.  
2 MR. LEVENTHAL: Maybe vantage point would  
3 be a good term.  
4 THE CHAIR: Say it again; I'm sorry?  
5 MR. LEVENTHAL: Maybe vantage point would  
6 be a good term, shorthand.  
7 MR. FOX: Vantage point is fine, whatever  
8 you want to use. I just want to make sure it relates  
9 to that issue.  
10 THE WITNESS: The failure to observe.  
11 MR. FOX: Okay.  
12 THE WITNESS: Inability to observe.  
13 MR. FOX: Okay.  
14 MR. LEVENTHAL: I'm sorry. Just give us  
15 --  
16 THE WITNESS: Kind of the way those  
17 witnesses described it before. They weren't able to  
18 do what they were sent there to do.  
19 MR. LEVENTHAL: Just give him a moment to  
20 re-familiarize himself with these please, 1, 2, 3,  
21 and 5?  
22 MR. FOX: 1, 2, 3, and 5.

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1 (Pause)  
2 THE WITNESS: Well, Mercer is one, right?  
3 "It was impossible for me to view any of the  
4 documents by the workers on the ballots. I remained  
5 at the center all day Tuesday."  
6 MR. LEVENTHAL: Don't read out loud.  
7 THE WITNESS: Oh, I can't read aloud?  
8 Okay, I'll read to myself.  
9 (Pause)  
10 THE WITNESS: Yeah, here's the 100,000.  
11 Yeah, well, the first one is a --  
12 MR. FOX: Mr. Giuliani, could you just  
13 answer my question?  
14 BY MR. FOX:  
15 Q. Are Exhibits 1, 2, 3, and 5 all related to  
16 the --  
17 A. I don't know that until I look at them.  
18 I'm sorry.  
19 Q. Well, I'm asking you to do so, sir.  
20 A. That's what I'm doing. Oh, you want me to  
21 be quiet while I'm doing it, all right, and then give  
22 one answer. I will do that.

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1 (Mr. Giuliani reviewing documents)  
2 THE WITNESS: May I confer with my  
3 counsel.  
4 MR. LEVENTHAL: Can we put it on silent  
5 for a second? He wants to confer with me.  
6 MR. FOX: Is it really appropriate to be  
7 talking to a lawyer while the witness is under --  
8 MR. LEVENTHAL: I don't know what his  
9 question is.  
10 THE WITNESS: I won't talk to my counsel  
11 if I'm not allowed to do that, you know. I did think  
12 I had the right to counsel, but that's okay.  
13 THE CHAIR: During your testimony --  
14 THE WITNESS: Not too many rights left  
15 anymore.  
16 THE CHAIR: Mr. Giuliani, as you know, a  
17 witness on the stand is not allowed to have ex parte  
18 counsel discussions.  
19 THE WITNESS: Okay.  
20 THE CHAIR: You know that as well as we  
21 all do.  
22 THE WITNESS: I really didn't -- I really

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1 didn't think we were in like a criminal proceeding.  
2 I thought we were a little more informal.  
3 THE CHAIR: This is an adversarial -- this  
4 is an adversarial proceeding.  
5 MR. LEVENTHAL: Understood, Mr. Chair.  
6 THE WITNESS: All right, absolutely.  
7 Well, fine.  
8 (Pause)  
9 THE WITNESS: One, two, and then was it  
10 three?  
11 MR. FOX: And five.  
12 MR. LEVENTHAL: Five, and five.  
13 MR. FOX: Skipping four, for the moment.  
14 MR. LEVENTHAL: Four too?  
15 MR. FOX: No, we'll come back to four,  
16 one, two, three, and five.  
17 MR. LEVENTHAL: Okay. All right.  
18 THE WITNESS: I don't want to be difficult  
19 and get you guys upset, but one is --  
20 MR. LEVENTHAL: Read it.  
21 THE WITNESS: But I want to -- I want to  
22 make sure I'm doing the right thing. One is Jeremy

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1 Mercer, two is Jeremy Mercer, three is -- no, two is  
2 -- two is Cannon. I have number two I have Judge  
3 Cannon here.  
4 MR. FOX: That's right. That's her  
5 opinion and that also relates to the same issue.  
6 THE WITNESS: Do you want me to answer  
7 with regard to Judge Cannon as well?  
8 MR. FOX: Mr. Giuliani, I'm just trying to  
9 ascertain whether these four exhibits all relate to  
10 the limitations on the observers. That's all I  
11 wanted to establish. Now, if you really need to  
12 re-read Judge Cannon's opinion, --  
13 MR. LEVENTHAL: No.  
14 MR. FOX: -- do so, but that's all I'm  
15 trying to establish.  
16 THE WITNESS: Okay, I'm looking at it.  
17 (Pause)  
18 THE WITNESS: Yes, the all, at least in  
19 part, deal with the inability to observe.  
20 MR. FOX: Okay.  
21 BY MR. FOX: And Exhibit 9, would you put  
22 that up please? It's at page 85. If you'll just

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1 blow up the sixth paragraph, Paragraph 6 maybe  
2 that'll --  
3 BY MR. FOX:  
4 Q. This deals with the notice and cure issue  
5 that we've been talking about, right?  
6 A. Well, I don't know. I have to look at it.  
7 Q. Okay, then look at it. Take your time.  
8 MR. LEVENTHAL: Could we look at the top  
9 for a second?  
10 THE WITNESS: Could you just go down  
11 again, please? That's good. Now, the very end, I  
12 can't see the very end. "Amy Cozy said she was" --  
13 "Going to have to tell the DA I did" -- that posed  
14 photos were taken."  
15 MR. LEVENTHAL: I can't see it.  
16 THE WITNESS: Okay. Yes, sir.  
17 BY MR. FOX:  
18 Q. And will you agree with me that this  
19 relates to the notice and cure issue?  
20 A. It does.  
21 Q. All right. Thank you. We've talked about  
22 those two issues already, so I want to talk about the

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1 other exhibits now.  
2 MR. FOX: And so let's go to Exhibit 4. Let's  
3 just  
4 put up the first page, but it's a very long --  
5 THE WITNESS: I know.  
6 MR. FOX: -- affidavit from -- or  
7 declaration from Mr. Stenstrom, S-t-e-n-s-t-r-o-m.  
8 BY MR. FOX:  
9 Q. Now, he also testified in Gettysburg, did  
10 he not?  
11 A. He did. Yes, sir.  
12 Q. And who was or is Mr. Stenstrom?  
13 A. Well, I don't know him, other than the  
14 testimony that he gave.  
15 Q. Okay.  
16 A. But I have no further knowledge about it,  
17 other than what he says about himself.  
18 Q. Well, all I'm going -- all I want to  
19 establish what is a quite long declaration with  
20 pictures and so forth, is that the concern that Mr.  
21 Stenstrom is addressing are what he believes are the  
22 inadequate security measures taken in Chester County.

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1 Do you recall enough of this affidavit or declaration  
2 to say that that's what it's about?  
3 A. I do. I thought it was quite a bit more  
4 than that, but okay. He's written a lot.  
5 Q. Okay.  
6 A. He's even done game theory and that's one  
7 of the things he was concerned about. Yes. It  
8 wasn't the only thing.  
9 Q. Would you agree with me that Mr. Stenstrom  
10 does not identify any fraudulent ballot that was  
11 filed -- that was counted in Chester County?  
12 A. I don't -- I can't agree with you or not.  
13 I would have to read the whole thing to do that. I  
14 don't remember it that well. I don't remember it  
15 that well to answer that question.  
16 Q. Okay. Let's not do that right now. If  
17 the Hearing Committee needs to do that, they can  
18 satisfy themselves. Let's look at the same tenure at  
19 Exhibit 10, which is at page 88.  
20 A. I got it. Mr. Meehan?  
21 Q. Yes. And what I'd ask you about this is  
22 Mr. Meehan's concern is with the security around a

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1 single drop box. Correct?  
2 A. Again, I don't remember.  
3 Q. This is a short one.  
4 A. I'll read it. I'll read it.  
5 (Pause)  
6 THE WITNESS: Yes, I do remember this. I  
7 remember Mr. Meehan too. Remember why we put it  
8 here.  
9 BY MR. FOX:  
10 Q. And he also doesn't identify any  
11 fraudulent ballot that was cast.  
12 A. Well, I mean I -- I put this here because  
13 there were a lot of allegations about drop boxes.  
14 Q. Okay.  
15 A. I do -- gosh, I hope I don't have this  
16 confused with some other state, but I thought you  
17 could only put one in.  
18 Q. And so, if a husband took his wife's and  
19 his ballot and dropped them in the drop box that  
20 would be election fraud?  
21 A. No. But if he -- when you look at the  
22 movie, if you put 20 in, and you do it every night

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1 for 10 nights in a row, then it's a different story.  
2 Like all of this, some of it is innocent. Some  
3 isn't. It depends on what else happens.  
4 Q. So, can we agree that the concern here is  
5 about the security around a single drop box?  
6 A. Yes. But I put it in to illustrate the  
7 security around drop boxes that were very  
8 controversial.  
9 Q. Let's now look at Exhibit 6, which I think  
10 you alluded to earlier. It's at page 73.  
11 A. Okay.  
12 Q. This is a memorandum written by Katherine  
13 Friess, F<sup>^</sup>r-i-e-s-s, who is she?  
14 A. Katherine Friess worked on our team as an  
15 investigator -- oh, I'm sorry. Katherine Friess  
16 worked on our team as an investigator. She  
17 volunteered actually because she came to us  
18 volunteering a great deal of evidence about  
19 Pittsburgh that she had gather kind of like Mercer.  
20 She's sort of like the Mercer of Pittsburgh and then  
21 she stayed on and did a great deal of investigating  
22 for us.

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1 Q. Okay. Now, let's go to the second page  
2 first just to verify one thing. The second page of  
3 the exhibit, which is 74.  
4 MR. FOX: if you'll highlight that  
5 paragraph against provisional ballots there.  
6 THE WITNESS: The one on the top says,  
7 "Provisional Ballots, November 7."  
8 BY MR. FOX:  
9 Q. That's the 17,000 ballots in Pittsburgh  
10 that you were talking about earlier in your  
11 testimony. Correct?  
12 A. Yes. Yes, that's -- yeah, that's making a  
13 reference.  
14 Q. Yeah. You said there were affidavits  
15 attached to it, but there aren't any affidavits  
16 attached to this, are there?  
17 A. I thought she had given us affidavits.  
18 Q. And at no place in your pleadings did you  
19 reference this allegation about the 17,000  
20 provisional ballots in Pittsburgh, did you?  
21 A. Sure.  
22 Q. You did?

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1 A. Did I? I mean I'm not sure I knew at the  
2 time we did the pleadings. Katherine came on board a  
3 little later -- no, she was there. Okay. No, I  
4 didn't.  
5 MR. FOX: Go back to the first page,  
6 please, on page 73.  
7 THE WITNESS: First page on what?  
8 MR. FOX: I'm talking to the Trial  
9 Director, but 73 and that's right. Highlight the  
10 first half of it. That's good right there, right  
11 there is fine.  
12 THE WITNESS: "Here's the primary way"  
13 there.  
14 MR. FOX: Right.  
15 BY MR. FOX:  
16 Q. Now, Ms. Friess in this memorandum --  
17 incidentally, you said you didn't think you had this,  
18 but you didn't -- the initial complaint was filed on  
19 November 9 and this dated on --  
20 A. Yeah, 7-2020 is the date of it to Bernie.  
21 I probably had it before, but the fact that it went  
22 to Bernie on the 7th doesn't really me when I got it.

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1 Q. Now, in this first half of the first page  
2 that we're looking at is what I would call a fairly  
3 elaborate scheme of fraud that's laid out here which  
4 she says she got because she received a call from a  
5 whistleblower, you see that?  
6 A. I do see it. Yes.  
7 Q. But you never included these allegations  
8 about this fraudulent scheme anywhere in your  
9 pleadings, did you?  
10 A. I did not.  
11 Q. And you didn't assert it in your argument  
12 in front of Judge Brann either, did you?  
13 A. Not as far as I can remember.  
14 Q. And is that because it's just -- that it's  
15 completely unprovable?  
16 A. No. Probably because I didn't have an  
17 affidavit.  
18 Q. Okay.  
19 A. Oh, yeah, there's another reason, but I  
20 think it's the first one, mainly. Katherine has  
21 always maintained that she wouldn't testify because  
22 of her prior activities, so therefore I was very

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1 careful not to attribute anything to her that we  
2 couldn't prove some other way.  
3 Q. But she's not the person that claims to  
4 have personal knowledge of this. She says she got  
5 this from a whistleblower who she doesn't identify.  
6 A. Now, I'm speculating a little. I'd have  
7 to ask Bernie. It means we never got the  
8 whistleblower.  
9 Q. Okay.  
10 A. I know what you're saying. I would've  
11 gone -- if we had gotten the whistleblower or  
12 Katherine would've been out of the picture, we  
13 could've used the whistleblower.  
14 Q. So, you were never able to substantiate  
15 these allegations. Correct?  
16 A. Yeah, that's correct -- that's fair.  
17 Q. Okay.  
18 A. And 940 sounds a little --  
19 Q. Right.  
20 A. The 334 doesn't, but the 940 does.  
21 Q. Okay.  
22 MR. FOX: So, let's go to Exhibit 7.

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1 MS. BORRAZAS: What is the page number?  
2 MR. FOX: The page number is 77, Exhibit  
3 7.  
4 BY MR. FOX:  
5 Q. This is a very short one and I just want  
6 you to verify that what's been complained here is the  
7 difficulty that one person had with getting her  
8 credentials recognized in Philadelphia on Election  
9 Day.  
10 A. Yeah. This has nothing to do with the  
11 other issues. You're right. I mean a lot of people  
12 were complaining to me of how miserably they were  
13 treated and I guess we put this in as an example of  
14 this. Some even had some allegations of being pushed  
15 around.  
16 Q. Let's look at one of those allegations.  
17 Look at Exhibit 13, page 96.  
18 A. This doesn't bear on what we were talking  
19 about. You're right.  
20 Q. So, let's look at Exhibit 13, page 96.  
21 MR. LEVENTHAL: Is that short too?  
22 MR. FOX: It's fairly short.

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1 MR. LEVENTHAL: Thirteen, right?  
2 MR. FOX: Exhibit 13, page 96, and this is  
3 also another example of somebody had problems with  
4 their credentials being recognized.  
5 THE WITNESS: Yeah, I probably put this in  
6 here because it corroborates -- I was personally  
7 involved in this part of it and it kind of  
8 corroborates the stuff about Pam Bondi and this is  
9 the same -- this is the same thing as Cory  
10 Lewandowski.  
11 MR. FOX: Oaky.  
12 THE WITNESS: That's why that's here.  
13 That's not because of the credentials.  
14 MR. FOX: All right.  
15 THE WITNESS: It's corroborate Pam and  
16 Cory.  
17 MR. FOX: So, let's look next at Exhibit  
18 8, which is at page 79.  
19 BY MR. FOX:  
20 Q. Now, this is a declaration of Mr.  
21 Makridis, am I saying his name correctly?  
22 A. I think so.

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1 Q. Mr. Makridis, did he also testify in  
2 Gettysburg, I think, am I right about that?  
3 A. I think he did. I'm not sure. I'm not  
4 sure, Mr. Fox.  
5 Q. Okay. If he did he would've had a fuller  
6 -- I'll withdraw that question. Mr. Makridis offers  
7 a lot of -- he's got a Masters in Economics and  
8 Management, Science, and Engineering and he offers a  
9 lot of statistical information in this -- in the  
10 document, does he not?  
11 A. I mean I don't -- I'll have to look at it.  
12 Q. Okay, take a look at it, but I think you  
13 testified about this before that some chart was very  
14 impressive to you. Maybe I'm wrong, but I think  
15 that's what you said.  
16 A. I thought I was talking about Drose.  
17 Q. You're right, you were. I apologize.  
18 Withdrawn.  
19 A. I don't remember -- I don't have a great  
20 recollection of Mr. Makridis.  
21 Q. Let me ask the question. You can verify  
22 it when you look at it -- as you look at it.



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1 MR. LEVENTHAL: Page 2 please, page 80?  
2 Where's page 80? Can you go to the next page please?  
3 No?  
4 THE WITNESS: Okay.  
5 (Pause)  
6 THE WITNESS: Okay. Then we go to the  
7 last page?  
8 (Pause)  
9 THE WITNESS: Okay.  
10 BY MR. FOX:  
11 Q. Now, the first part of -- are you  
12 finished? I'm sorry.  
13 THE WITNESS: I'm not completely finished.  
14 I sort got the gist of it.  
15 BY MR. FOX:  
16 Q. The first part of Mr. Makridis's  
17 declaration concerns the speed with which provisional  
18 ballots were counted. Correct?  
19 A. Yes, sir.  
20 Q. You make any allegations about the speed  
21 with which provisional ballots were counted in your  
22 -- in any of the arguments that you made in front of

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1 the Court?  
2 A. I might have, but not with regard to this.  
3 With regard to -- Mr. Drose does a similar analysis  
4 that I thought was better of the -- first of all, of  
5 the overall vote after they closed down and then of  
6 the vote that took place when they threw the people  
7 out at -- I don't know if it was midnight or 1  
8 o'clock on election night. For some reason that  
9 seemed more -- I was thinking more if we had a  
10 hearing I thought that would be easier to explain to  
11 a -- and I always think about, you know, a jury, but  
12 easier to explain to a judge. There were two very,  
13 very extraordinary statistically impossible things  
14 that happened after they closed down the balloting  
15 right after midnight on election night.  
16 Q. Okay. Mr. Giuliani, can we talk about the  
17 exhibit that's in front of us for the moment?  
18 A. This is kind of -- is another way of  
19 getting at the same thing. I don't know as I  
20 understood it as well.  
21 Q. Yeah, well, I'm not sure I understand it  
22 either, but the paragraph on the first page he

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1 extrapolates from some information that a former  
2 Mercer County elections director had given him to  
3 conclude that you couldn't possibly have counted the  
4 provisional ballots in the time that they were  
5 counted. Correct?  
6 A. Yes.  
7 Q. And did you find that to be a sensible,  
8 statistical analysis, this extrapolation from this  
9 comment by this one guy?  
10 A. I honestly didn't know.  
11 Q. But this is the one --  
12 A. It's something I probably if I was going t  
13 go further with this litigation would've followed up  
14 on, but I would've wanted to preserve it as a  
15 possibility, but I wasn't going to emphasize it.  
16 Q. This is one of the exhibits you selected  
17 to demonstrate to us that you had a basis for your  
18 allegations. Correct?  
19 A. Sure. I mean, yeah, if people are telling  
20 -- what I was trying to show you was I didn't make  
21 this stuff up.  
22 Q. And you didn't include, incidentally, the

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1 Drose report or whatever you would call it.  
2 A. No, I don't -- no, I didn't.  
3 Q. Okay. All right. I really am trying to  
4 get through all of these.  
5 MR. FOX: So, let's go to Exhibit 11 at  
6 91.  
7 THE WITNESS: Can we take a short break?  
8 MR. FOX: I'm happy to do so. We're going  
9 to conclude at 4:00, as I understand it.  
10 THE CHAIR: Yeah, I think that --  
11 THE WITNESS: It would really take like  
12 three minutes, five minutes, no less -- no more.  
13 THE CHAIR: Well, let's take five minutes.  
14 THE WITNESS: Five minutes, I promise.  
15 MR. LEVENTHAL: Mr. Chair, can we go off  
16 the record for one second? I want to say something  
17 personal. Can we?  
18 (Off the record)  
19 THE WITNESS: Mr. Makridis?  
20 MR. FOX: No, no, we're pass that.  
21 THE WITNESS: All right, yeah, 'cause now  
22 I'm regretting not having used it.

1 MR. FOX: Exhibit 11 and page 91.  
2 BY MR. FOX:  
3 Q. And all I want to ask you about this  
4 exhibit and the next exhibit is to verify that these  
5 were two voters who told you that the record showed  
6 that they had voted by mail when they said they  
7 hadn't and they had to file provisional ballots. So,  
8 I want to ask that question.  
9 A. Number 11 and Number 12?  
10 Q. Yes, correct, which 12 is at 94.  
11 A. Yeah, I got it, yeah, Jennifer Decker.  
12 Yeah. Yeah, she said she never voted by mail.  
13 Q. And if you go to Exhibit 12, page 94,  
14 that's to the same effect.  
15 A. Yes, it is.  
16 Q. Okay. And now, the last two exhibits,  
17 which will be very quick, first, Exhibit 14, page 99.  
18 This is an article somewhere which talks about how  
19 people like me are unamerican, I guess, but it has  
20 nothing to do with the facts of Pennsylvania  
21 election. Correct?  
22 A. No, I just found the -- no, it -- it does

1 in many -- it has something to do with what's been  
2 going on with me for the last three or four years.  
3 Yeah.  
4 Q. But there's no specific facts relating to  
5 the Pennsylvania election that are in this article.  
6 A. I don't think so. But I mean it has --  
7 quite relevant.  
8 A. I said I thought I should bring it to your  
9 attention because --  
10 Q. I'm not arguing that it's anything  
11 inappropriate, Mr. Giuliani. I'm just trying to  
12 establish, you know, in terms of looking for factual  
13 allegations about Pennsylvania this address a  
14 different issue?  
15 A. Yes.  
16 Q. And the same goes for Exhibit 15 at page  
17 106.  
18 A. Exactly. And one I think Bar Associations  
19 have been very, very negligent to do anything about.  
20 I lost a lawyer in the impeachment proceeding because  
21 he was helping us with research and his law firm  
22 drove him out and another one, his law school drove

1 him out, which I think is destroying our profession,  
2 but doesn't seem like Bar Associations care about  
3 that.  
4 Q. Again, at Exhibit 15, page 106, this talks  
5 about -- this is an article about voting fraud and  
6 how around the world it's a real problem. But again,  
7 it doesn't address any of the specifics of what  
8 happened in Pennsylvania in 2020. Correct?  
9 A. No -- well, it addresses -- yeah, okay.  
10 It has nothing to do with that, but it addresses a  
11 much quoted statement that's made in the New York  
12 Times that there really is no voter fraud. That it  
13 somehow is dreamed up.  
14 Q. Okay.  
15 A. I could give you article after article  
16 like that from the left.  
17 Q. All right. So, I'm finished with --  
18 you'll be very happy to know that I'm finished with  
19 the exhibits to your letter to us. And I think  
20 before we break at 4 o'clock there's one other thing  
21 that I want to address which will fit nicely in this.  
22 MR. FOX: So, I want to go to Exhibit 36

1 and 36 -- and specifically let's go to page 104.  
2 That's where we are, good. But I need to represent  
3 that 36 are the declarations that your counsel or you  
4 submitted to us in the course of this investigation.  
5 And as I indicated before, there's a lot of  
6 duplicates in there, but we put everything in.  
7 BY MR. FOX:  
8 Q. Would you agree that many of these  
9 declarations don't have anything to do with election  
10 fraud in the counties that you sued?  
11 A. Well, I'd have to look at all of them. I  
12 don't recall this one.  
13 Q. I'll withdraw the question, okay, because  
14 I don't want to do that. So, let's look at this  
15 declaration from a guy named Douglas Barry.  
16 MR. FOX: If you'll highlight Paragraph 5  
17 and Paragraph 6.  
18 BY MR. FOX:  
19 Q. And you'll see where he received a mail-in  
20 ballot application for his son, Michael Barrel Barry,  
21 who's been deceased that's what he says in the -- for  
22 three years. He says in first -- Paragraph 5. And

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1 then in the second paragraph he says the application  
2 was addressed to Michael A. Barry. You don't regard  
3 that as any evidence of election fraud, do you?  
4 Somebody sent two people -- you know, somebody with a  
5 similar name, mis-sent the application.  
6 A. Yeah, I'm sorry, I don't -- I just don't  
7 recall this one.  
8 Q. But somebody on your team took this down  
9 as a declaration in support of your case, right?  
10 A. I guess. Let me see. Let me read it  
11 again. Well, on the face of it, it doesn't look like  
12 it does. Right, doesn't look like it applies.  
13 Q. All right. Okay.  
14 A. I don't know why we put it in there.  
15 Q. All right. So, let's look at page 126, it  
16 relates to Maria Rutenburg. Now, you may want to  
17 take a little time to look at it, but let me tell you  
18 what I want to highlight here.  
19 MR. FOX: If you could highlight Paragraph  
20 5 and 6. Yeah.  
21 BY MR. FOX:  
22 Q. And you'll see here that she witnessed

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1 people in the lobby of a hotel --  
2 A. Right.  
3 Q. -- with a lot of Black Lives Matter gear,  
4 see that?  
5 A. I see it.  
6 Q. Then if you'll go to the next page --  
7 MR. LEVENTHAL: Could you go back to the  
8 next page, at the bottom. I want to read the bottom.  
9 MR. FOX: Let's let you read the whole  
10 thing then.  
11 MR. LEVENTHAL: Yeah.  
12 MR. FOX: Because it's the third page I  
13 wanted to look at, but let John read the whole thing.  
14 MR. LEVENTHAL: Keep going.  
15 MR. FOX: And so, would you highlight  
16 please Paragraphs -- or maybe -- I think they're  
17 perfectly visible, 28, 29, and 30.  
18 BY MR. FOX:  
19 Q. So, this is based on a statement by an  
20 Uber driver, who's not fully identified, although his  
21 license plates are, that it's common knowledge that  
22 BLM, which I take it stands for Black Lives Matters,

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1 group came here to vote and none of them are local  
2 and live here.  
3 A. Yeah.  
4 Q. Do you think that was reliable evidence of  
5 fraud in the 2020 election in Pennsylvania?  
6 A. I don't know. We would find out. We  
7 would certainly follow up on this. It is -- I  
8 wouldn't say -- it is long-term common knowledge  
9 going back to the seventies that Philadelphia almost  
10 routinely buses in people from Camden to vote in  
11 Philadelphia elections. I was involved in the  
12 Thornburg governor's election way back in 1978 and  
13 that was a very big problem for us, and once again  
14 '82.  
15 Q. And so --  
16 A. Philadelphia is notoriously corrupt and  
17 Black Lives Matter is -- the major donor is George  
18 Soros, who's also the major donor of the Democratic  
19 Party and Joe Biden and Antifa and the District  
20 Attorney in Philadelphia, who basically has driven  
21 the crime rates in Philadelphia to record levels.  
22 MR. LEVENTHAL: That's not answering the

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1 question.  
2 THE WITNESS: So, would Black Lives Matter  
3 have an interest in being involved in this election  
4 in Philadelphia? Yeah. I mean there's a lot of  
5 connections here.  
6 BY MR. FOX:  
7 Q. Okay. So --  
8 A. It doesn't mean that it's all going to  
9 turn out that way, but I wouldn't be shocked if they  
10 bused a bunch of Black Lives Matter people to vote in  
11 Philadelphia.  
12 Q. Okay.  
13 A. Knowing that the District Attorney there  
14 would never, ever prosecute.  
15 Q. Okay. And so that's based --  
16 A. -- anybody.  
17 Q. And this declaration is based on an  
18 observation of some woman from out of town who sees  
19 Black Lives Matter people in her hotel and then a  
20 statement from an Uber driver.  
21 A. Yeah. Maybe you and I have a different  
22 view of Black Lives Matter. I know Black Lives

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1 Matter to be a communist-run organization by two  
2 self-acknowledged communists. It's supported  
3 completely by Soros and at every rally they hold,  
4 they yell out pigs in a blanket, fry them like bacon,  
5 which basically means kill police officers. Two of  
6 their major advisors are two cop killers who were  
7 released, pardoned by Bill Clinton, and one of their  
8 other major advisors is a member of the Chinese  
9 Communist Party. So, I have a different view of  
10 Black Lives Matter than the politically correct view.  
11 Q. Okay.  
12 A. But now I'll tell you something really  
13 funny. I don't remember this, but do I think it's  
14 appropriate to have it in here? You're darn right I  
15 do.  
16 Q. Okay. Let's go to -- and I've only got  
17 two more of these and this may take us to 4 o'clock.  
18 A. I'd like to emphasize I'd investigate this  
19 before I did anything with it, which is why you don't  
20 see anything in the papers of that.  
21 Q. Go to page 160, which is the declaration  
22 of John Deitzel I guess it would be pronounced. Take

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1 a look at this. It's not a very long one and then  
2 we'll ask a question or two about this.  
3 THE WITNESS: Could you go up or down a  
4 little?  
5 MR. LEVENTHAL: Slow down. Slow down.  
6 THE WITNESS: Could you go back just a  
7 little? Okay.  
8 BY MR. FOX:  
9 Q. Now, Mr. Giuliani, MR. Deitzel says he saw  
10 a bus transporting some people from the Assisted  
11 Living facility and when they got to the polls, poll  
12 workers were telling them how to mark their ballots,  
13 right?  
14 A. That's what he says.  
15 Q. And there's no other explanation as to  
16 what "mark their ballots" means, such as, for  
17 example, for whom they were marking the ballots.  
18 Correct?  
19 A. That's correct.  
20 Q. And do you think it's evidence of fraud --  
21 A. I don't -- I think it's worthy to -- you'd  
22 want to look into it. No, I don't know that it's --

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1 I don't that it even qualifies as evidence of fraud,  
2 maybe a weed that you'd have to take a look at. It  
3 would go either way. It might turn out to be  
4 perfectly appropriate. Might turn out to be  
5 something, particularly in light of the fact that  
6 there were a lot of allegations in Pennsylvania, but  
7 other places also, that there was a lot of fraud with  
8 regard to nursing homes.  
9 Q. Okay.  
10 A. That does mean that it applies to this or  
11 not, but that's the way you follow up leads.  
12 Q. Okay.  
13 MR. FOX: And the last one I want to look  
14 at is page --  
15 THE WITNESS: But again, I should  
16 emphasize obviously I didn't go any further with this  
17 or the one before this because either we didn't have  
18 a chance to investigate it any further or we did and  
19 we didn't find anything.  
20 MR. FOX: The last one I want to go to is  
21 page 498 and I think this one will be more in the  
22 area that you did investigate and this is an

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1 affidavit of somebody named Joseph Schmitz.  
2 THE WITNESS: Joseph what?  
3 MR. LEVENTHAL: Schmitz.  
4 THE WITNESS: Schmitz? Oh, Schmitz.  
5 MR. LEVENTHAL: Yeah.  
6 THE WITNESS: Okay.  
7 MR. FOX: You thought I misspoke.  
8 THE WITNESS: I thought you did.  
9 MR. FOX: And I suspect I know how. And  
10 he says in the second paragraph, if you'd highlight  
11 that. That he was an Inspector General with the  
12 Department of Defense. Okay. And then if you'll go  
13 on down the page a little bit -- if you need to go  
14 back I'll certainly let you do so, but I want to just  
15 highlight a couple things for you. I'm sorry, go  
16 back. There's a statement where he --  
17 MR. LEVENTHAL: What exhibit is this, by  
18 the way/  
19 MR. FOX: It's back in the same exhibit.  
20 It's page -- it's Exhibit 36, page 498.  
21 MR. LEVENTHAL: And his name is Schmitz,  
22 right?

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1 MR. FOX: I'm sorry. You need to go up a  
2 little bit more. I'm sorry. I apologize. Okay,  
3 it's right before the bullet point. He says, "I  
4 personally witnessed" -- it says, "witnessed the  
5 widespread voter fraud and systemic election  
6 corruption in York County, Pennsylvania." And I want  
7 to look at what he said was the systemic fraud.  
8 THE WITNESS: If it helps you, I've never  
9 seen this before.  
10 MR. FOX: Okay. But I still want --  
11 THE WITNESS: This is completely --  
12 MR. FOX: Well, look at the first bullet  
13 point and the sub-bullet points here. You'll see  
14 he's talking about notice and cure for naked ballots  
15 in York County, Pennsylvania, and I'll let you take  
16 your time to read this. And he's also talking about  
17 giving both Republicans and Democrats the opportunity  
18 to contact voters. Take your time and read that and  
19 make sure I've got that right.  
20 THE WITNESS: Yeah, that's what it says.  
21 MR. LEVENTHAL: Let me read it. Let me  
22 read it with -- myself. Could you go up please? No,

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1 I mean the other way. Yeah. Sorry.  
2 MR. FOX: I'm going to come to the second  
3 one in a minute. I want to talk about the first  
4 bullet point. They're separate points.  
5 MR. LEVENTHAL: All right. Good.  
6 (Mr. Leventhal reading the document)  
7 MR. LEVENTHAL: Go ahead.  
8 MR. FOX: Okay.  
9 BY MR. FOX:  
10 Q. So, do you agree that giving both the  
11 Republicans and the Democrats the opportunity for  
12 notice and cure of 500 naked ballots out of  
13 approximately 70,000 was evidence of widespread  
14 fraud?  
15 A. No, I don't agree this or disagree with  
16 it. I mean I've never seen this before. I have no  
17 evidence it's true.  
18 Q. Well, it was from your file.  
19 A. The last three I've given you hypothetical  
20 opinions about because they have nothing to do with  
21 the argument I made and they had nothing to do with  
22 what didn't report because I didn't see them.

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1 MR. FOX: All right. Let's look at the  
2 last -- the second bullet point that starts on the  
3 bottom of the page.  
4 THE WITNESS: Black Lives Matter, the  
5 second one, and the third one I didn't see any of  
6 those three. They had nothing to do with the  
7 argument I made in court.  
8 MR. FOX: The second bullet point talks  
9 about the handling of York County of provisional  
10 ballots. These are the ones where they don't count  
11 it immediately. It's passed onto the Election Board  
12 and the Election Board makes a determination. So,  
13 take your time to look at that.  
14 (Pause)  
15 THE WITNESS: Could you just get down to  
16 the very end. There you go. Good. Yeah, yeah.  
17 Okay.  
18 MR. FOX: And if you'll highlight the  
19 paragraphs where it says, "Of these 222 deficient  
20 provisional ballots" and then bullet points below  
21 that. That's right, right there.  
22 BY MR. FOX:

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1 Q. Okay. Now, what he says here was that the  
2 Board reviewed -- and this is in York County --  
3 reviewed these ballots, passed 60 percent of them,  
4 counted the ballots and rejected the other 40  
5 percent, 222 ballots for the reasons that were set  
6 forth here, such as the voter wasn't registered or  
7 the signatures were missing and so forth and so on.  
8 Do you regard this as evidence of widespread fraud?  
9 A. I really -- I just really shouldn't  
10 express an opinion on it. I didn't -- this didn't  
11 form the basis for anything I did because I didn't  
12 read it. You're giving me a hypothetical allegation  
13 of fraud and asking me do I regard it as fraud or  
14 not.  
15 Q. Okay.  
16 A. I'd have to investigate it to find out.  
17 Q. Okay. York County was not a Defendant, so  
18 maybe that's one of the reasons you didn't  
19 investigate, right?  
20 A. I don't think I investigated it. I never  
21 remember seeing it nor the last two. Now, I don't  
22 know where this came from.

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1 Q. Trump won York County by not quite 62  
2 percent of the vote, right?  
3 A. Pardon me?  
4 Q. Trump won York County by about not quite  
5 62 percent of the vote; do you know that?  
6 A. No, I didn't know that.  
7 Q. Are these four declarations part of the  
8 300 declarations that you -- or 250 that you have  
9 represented that you had which was evidence of  
10 widespread fraud?  
11 A. No, those would've been the ones that I  
12 read. The ones that I indicated to you I was aware  
13 of are the ones that I would've been referencing in  
14 terms of the 250 or 300 that I had. And the only  
15 confusion there may be I was confusing some of them  
16 with others that I had for other states at the time  
17 that I said it, but that's about the right number.  
18 MR. LEVENTHAL: Mr. Fox, could I ask you a  
19 question? Exhibit 9 does that have all our exhibits  
20 in one that we gave you?  
21 MR. FOX: Exhibit 9 is the second amended  
22 complaint.

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1 MR. LEVENTHAL: Right. But I'm saying  
2 that you said you have all our exhibits and our  
3 exhibits are in Exhibit 1 of our submission.  
4 THE WITNESS: Yeah, I don't remember  
5 those.  
6 MR. LEVENTHAL: You don't have all of  
7 those.  
8 THE CHAIR: We can work out the numbering  
9 of exhibits when the hearing is concluded.  
10 MR. FOX: I'm about ready to wrap this up.  
11 MR. LEVENTHAL: Okay.  
12 MR. FOX: And what I'm trying to  
13 understand is --  
14 THE WITNESS: And I should tell you, Mr.  
15 Fox, they're not in -- you know, in order to prepare  
16 for this I reviewed all the exhibits I thought we  
17 gave you. Those were not in those exhibits.  
18 MR. FOX: Okay.  
19 THE WITNESS: So, they could not have  
20 formed the basis for my statement that I had 250 or  
21 300 or any of the things that I wrote or said that  
22 you want to hold me responsible for. I can assure

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1 you of that. I've never -- I don't have them here,  
2 never seen them.  
3 MR. FOX: Trial Director, this is the last  
4 thing I want to do. I want to -- this is part of  
5 Exhibit 36, what we've been looking at, these last  
6 four. I want to go to -- well, I'll just -- I'll  
7 withdraw, other than to represent as we have -- as we  
8 represented when we moved these in, that these were  
9 the exhibits that were submitted by your counsel on  
10 your behalf from your file.  
11 MR. LEVENTHAL: That's the supplement  
12 list, is that correct? It's not part of the  
13 original. These are things that we found later on,  
14 so Mr. Giuliani may not have had those at the time.  
15 That's a supplemental --  
16 THE WITNESS: I'm happy to show you the  
17 list that I had.  
18 MR. LEVENTHAL: That's not the first  
19 thrash that we gave you.  
20 MR. FOX: Presented by you on August 31.  
21 MR. LEVENTHAL: Say again.  
22 MR. FOX: Presented by you on August 31,

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1 Mr. Leventhal.  
2 MR. LEVENTHAL: Yeah, that was not part of  
3 the original declarations that I gave you. We found  
4 these later on, so I'm not sure Mr. Giuliani had  
5 them, but I thought we were under obligation to turn  
6 everything over to you.  
7 MR. FOX: Okay. We're at 4 o'clock and  
8 I'm ready to move onto something else.  
9 THE WITNESS: What's the number of this  
10 exhibit?  
11 THE CHAIR: At the request of Respondents,  
12 we're going to terminate the hearing right now and we  
13 will resume tomorrow morning at 9:00 a.m. Anything  
14 further we need to discuss?  
15 MR. LEVENTHAL: I just would like to ask  
16 Mr. Fox how much longer do you have on Mr. Giuliani?  
17 MR. FOX: I actually think we ought to be  
18 able to conclude tomorrow morning.  
19 MR. LEVENTHAL: And then I'll give a brief  
20 questioning and then Mr. Ortiz is going to go?  
21 MR. FOX: That's my understanding, yes.  
22 That's my plan. He's the only other witness I've

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1 got.  
2 MR. LEVENTHAL: Okay.  
3 THE WITNESS: Mr. Fox, just so you  
4 understand, the only exhibits that I was aware of are  
5 Exhibit -- what was this, 36?  
6 MR. LEVENTHAL: This is 36, yeah.  
7 THE WITNESS: Exhibit 36, those are the  
8 ones that I --  
9 MR. LEVENTHAL: No, no, yours Exhibit 1  
10 that we submitted.  
11 THE WITNESS: Yeah, I know, but I've never  
12 seen those.  
13 MR. LEVENTHAL: All right. And when we go  
14 off the record, I'd like to say something to  
15 everyone.  
16 THE CHAIR: Okay. We'll terminate --  
17 we'll have what's essentially a bench conference, I  
18 think, and we'll terminate the public proceeding and  
19 Mr. Leventhal, you can approach the bench when the  
20 technologically adapted our setup here.  
21 MS. BORRAZAS: All right. The livestream  
22 has been stopped. Just to be clear, do you expect

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1 the court reporter to keep typing or no?  
2 MR. LEVENTHAL: No.  
3 MS. BORRAZAS: Okay.  
4 MR. LEVENTHAL: Your Honor, can we go off  
5 the record.  
6 THE CHAIR: Yeah.  
7 (Whereupon, at 4:07 p.m. the hearing was  
8 adjourned.)  
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C E R T I F I C A T E O F C O U R T R E P O R T E R

1  
2  
3 I, GAYNELL CATHERINE, Court Reporter, do hereby  
4 certify that that the testimony contained herein is a  
5 true record of the testimony given by said witness,  
6 and I further certify that I am neither attorney nor  
7 counsel for, related to, or employed by any of the  
8 parties to the action in which this statement is  
9 taken; and, further, that I am not a relative or an  
10 employee of any attorney or counsel employed by the  
11 parties hereto, or financially interested in the  
12 action.  
13  
14  
15  
16 GAYNELL CATHERINE  
17  
18  
19  
20  
21  
22

<b>A</b>			
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