
Who Really Won – and Lost – the 2004 US Presidential Election?^{*}

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1. The Importance of this Panel Session

Judging from the turnout here, people remain interested in the question of the session: “Who really won the 2004 US Presidential Election?” But it’s probably more important to consider who has *lost*. It’s not just the disenfranchised. The losers also include everyone in the nation and around the world who care about democracy and America. And among those who are continuing to lose in the fallout of the 2004 election are all the institutions entrusted to safeguard the democracy: the media, the “opposition” party, and most salient to this conference – academia and the relevant professions.

1. 1. Inherent Bias of this Panel Session

Frankly, I was a bit at a loss for how to proceed with this presentation. The forum is unfortunately set up so that existing assumptions about the credibility of the election counts and polls are almost certain to stay intact:

^{*} This paper draws heavily from my book co-authored by Joel Bleifuss: “Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count” (New York: Seven Stories Press 2006). I’d also like to thank Josh Mitteldorf, Kathy Dopp, Stephanie Singer, and Jonathan Simon for helpful suggestions and contributions.

Under the best of circumstances, 15 minutes is insufficient to challenge fundamental assumptions. But whereas Ron Baiman (Baiman & Dopp 2006) and I are deprived the opportunity to show the overall integrity of our findings, the other panelists then have three-quarters of an hour to criticize or at least raise doubts about whatever meager points we can make in our allotted time.

We have replies to all their critiques, as well as mountains of additional evidence that we did not have time to present. But since they have the last three rounds in this forum, including that of the normally neutral “discussant,” they will almost certainly succeed in at least raising doubts about our observations.

And, so the likely result will be that we, as a community of scholars and professionals, do nothing. Yet though that is the likely outcome, it is an outcome I would like to avoid. So, I have accordingly changed my presentation and my paper. I do get to “Accepted Improbabilities and Neglected Correlations in 2004 US Presidential Exit Poll Data,” (my original submission) in section 3 of this paper, but that is not here my focus. Those interested in the full text, can see my presentation last fall to the Philadelphia Chapter of American Statistical Association (Freeman 2005b). Better yet, you can see it, fully in context, in my book with Joel Bleifuss, “Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count” (Freeman & Bleifuss 2006). But in this brief presentation, I focus directly on the question at hand for the panel.

1. 2. The Meaning of the Exit Polls

Lindeman (2006) implies in his conference paper that Ron and I are “exit poll fundamentalists,” i.e., that we take the exit poll data as gospel.

Nothing could be further from the truth.

I came to this inquiry as a methodologist, perplexed and professionally curious: first by a large unexplained exit poll discrepancy, then by the fact that this discrepancy not only went unexplained, but seemed to disappear entirely from the public record.

Neither Ron nor I, nor any serious commentator has ever claimed that exit poll data should be taken as independent proof that the election of 2004 was stolen. When I began my inquiry, I noted simply the fact of the discrepancy and said it ought to be investigated (Freeman 2004:12). Indeed, much about the NEP exit poll data and procedures are highly questionable, but regardless of whether or not the exit polls are “correct,” they are data. The discrepancy is a fact. The question is what caused it. As I myself began to investigate that question, I was astounded on the one side by extent and strength of allegations and evidence of a corrupted count, and on the other by an almost total lack of explanation and evidence supporting the official account of polling error.

And today, more than 19 months after the election, there is still no account. Perhaps the paper Lindeman (2006) presents today is progress, in that at least it directly engages – for the first time – some of our evidence and arguments. But even here, there is no account set forth, and given 34 pages of single spaced text, remarkably little advancement of understanding. Bizarrely, most of the paper is devoted to disputing blog posts – many of them anonymous! – and then attacking this straw man of “exit poll fundamentalism.” With respect to the important questions, he attempts to poke a few holes in a few of the many exit-poll arguments set forth indicating a corrupted count, ignoring completely the overwhelming preponderance of evidence. Indeed, he refuses to consider at all the concrete evidence of fraud, but rather issues an “appeal to readers’ capacity to make basic intellectual distinctions,” to focus on “specific arguments” about the exit polls. This, although everyone who has ever seriously looked at the exit polls treat it, in the words of Congressman John Conyers (2005), as “but one indicia or warning that something may have gone wrong—either with the polling or with the election—and that the election results bear greater scrutiny.”

Alas, the 2004 exit poll discrepancy took place in the context of an election in which there were tens of thousands of reports of voting problems, malfeasance, and fraud; of voting technologies and practices which provide no verification that votes are counted as cast; of an

election system overseen by a federal administration that ruthlessly and effectively concerns itself with raw political power, and in which there are open violations and inequities. In such a context, the exit polls *may* provide a quantitative indication of the extent to which the official count is corrupted. The exit polls are not the end of a story, but rather they are one among many reasons that we as a nation should be demanding a thorough, wide-reaching and independent investigation of the 2004 election and the vulnerability of our election system to corruption in the future.

2. Grave Problems with US Elections

2.1. Vote Suppression and Election Administration

Most of us in this room know there are serious problems with US elections, but very few know and have considered the full extent of the system perversions. Consider first, widespread vote suppression in the 2004 election: Just a few of these techniques include great swaths of Democratic absentee ballots rejected, allegedly because signatures did not match; GOP registration groups which collected and then discarded Democratic forms, Ohio registrations rejected if not on forms of the precise paper-weight, and long lines— 11 hours at Oberlin U.; 7 hours in black precincts of Columbus – which systematically suppressed Democratic voting. All told US vote suppression techniques are so effective that the US ranks #139 out of 172 countries in the world for election turnout (Table 1). And, if anything, this *overstates* US performance because throughout this period, an additional 2%-3% of all ballots cast were “lost” in any given election. (Of course, ballots were disproportionately lost among the minorities and poor whose votes were also being otherwise discouraged.)

Table 1. Election Turnout around the World (Average from 1945-1998)

Country	%vap	Country	%vap
1 Italy	92.5	135 Cent African Rep	50.3
4 Iceland	89.5	136 Antigua & Barbuda	50.2
6 Indonesia	88.3	137 Burma/Myanmar	50.0
8 New Zealand	86.2	138 Switzerland*	49.3
12 Austria	85.1	139 USA**	48.3

* Switzerland: Women not permitted to vote until 1971

** Ranking based on turnout, not ballots counted (in the US, an additional 2% of all ballots cast are "lost")

Source IDEA, Sweden

Consider also the utter untrustworthiness of elections administered by campaign managers. Imagine the uproar in this country if a football championship were decided in a game where the home team's coach doubled as referee! Rather than acting as impartial arbiters, Chief Elections officers are often themselves the greatest problem. Table 2 lists just a few of the gross violations in just two states from recent Presidential elections.

Table 2. Vote Manipulation by Campaign Managers / Chief Election Officers

Florida 2000 (Katherine Harris)	Ohio 2004 (Ken Blackwell)
<ul style="list-style-type: none"> • Faux-Felon lists • Differential treatment of absentee ballots • Impossibly tight recount deadlines • Disregard law to acknowledge voter intent • Disregard law to conduct machine recount (1/4 of the state ballots) • Miami manual count obstructed 	<ul style="list-style-type: none"> • Arbitrary guidelines used to reject registrations • Unequal distribution of voting machines • Impossibly tight challenge deadlines • Diversion of HAVA funding to observers, who were there to challenge voter qualifications • Failure to conduct recount • Obstruction of judicial review • Attempt to disbar attorneys who contested the election

2.2. Were Votes Counted as Cast in Ohio 2004?

If this were the whole of the problem, as is widely suggested (i.e., Baker 2005, Blumenthal 2005), then there would be little reason for this panel session. If a presidential election were decided by effectively keeping key players off the field and biased penalty calls, well there's not much to say or do. Indeed, the exit polls might be too blunt a tool to discern such transgressions. But, unfortunately, these transgressions are just the visible tip of the iceberg.

The exit polls suggest not tens of thousands of stolen or denied votes, but rather *millions* in jurisdictions throughout the country. Can it happen? Well, look at Ohio, the only state where even a semblance of an investigation has occurred. The Conyers report (2005) and a variety of books (Miller 2005; Freeman and Bleifuss 2006; Fitrakis, et al forthcoming), articles (Hitchens 2005;

Kennedy 2006), and film documentaries (Fadiman 2006, Brooks 2006, O'Brien 2006) by authors and directors of varied backgrounds political perspectives document an extraordinary variety of malfeasance around Ohio:

- A bloated victory margin for Bush in Warren County where a Secret Count was conducted due to “FBI terrorist alert,” an alert denied by the FBI.
- 25% spoilage in black precincts of Republican Montgomery Co.
- Systematic vote switching in Cleveland: Ballots with candidate position “rotation” tabulated at wrong precincts, resulting in a big net loss of Democratic votes
- Appalachian and southwestern Ohio precincts with turnout rates approaching 100% and far more votes cast than recorded voters.
- “Ghosts in the machines” of Youngstown and Miami Co.: Voters tried to vote for Kerry, yet Bush’s name came up or they cast a vote for Kerry, yet Bush’s name flashed briefly.¹
- Clermont Co. optical-scan scam: Stickers were found covering up Kerry ovals, but no stickers were used at the polls on Election Day.

The cumulative effect of these acts was far more than enough to switch the state from Bush to Kerry. Yet a non-recount was conducted throughout the state. Instead of auditing randomly selected precincts as required by law, election officials hand chose precincts that they could easily balance, aided by a “cheat sheet” provided by the voting machine manufacturer.

2.3. Was Ohio 2004 the Exception or is Election Fraud Commonplace?

Ohio was almost certainly not exceptional. Mitofsky (2005) himself, has said that other states – he mentioned Kentucky and Louisiana – were worse. Others have claimed that New Mexico, Florida, and Nevada all would have fared almost as badly had investigations been made there. Rather, we know of Ohio malfeasance only because, due to the closeness of the official count, it was where the presidential election is thought to have been decided.

Nor, unfortunately, is it a single election. Florida 2000 was considered an anomaly, but it was probably only anomalous in the high level of public visibility at which subversion of the people’s will occurred. As such, Florida 2000 may be better understood as a rare glimpse behind the veil of contemporary politics. And as such, it exposed the willingness and ability of Bush-

Cheney campaign officials to subvert the will of the electorate; even without the power of the chief executive office. But the full story is hardly known.

Had the ballots been counted in 2000 as stipulated by Florida statute, not only would Gore have won, but it would not have been that close. By Florida state law, any ballot in which the voter's intention was clear should have been counted.² Gore was deprived of more than 70,000 "overvotes," many of which can be attributed to confusing ballots. On the infamous butterfly ballots in Palm Beach County, for example, it said "vote for the group," so punches were made both next to the presidential candidate and below, next to the vice presidential candidate. In others, the ballot itself gave incorrect instructions. More than 20% of ballots in black precincts of Duval County were rejected because the listing of presidential candidates was split over two pages, and on the sample ballot, voters were instructed to mark every page. Even had only those ballots been counted in which the voter emphatically tried to ensure the vote by writing in Gore's name as well as marking it, Gore still would have won.

Table 3. Florida 2000 Uncounted Votes

	Bush	Gore	Margin
Certified Count	2,912,790	2,912,253	537
Undervotes	13,055	14,332	-1,624
Overvotes	24,288	70,020	-45,732
Totals	2,948,982	2,998,505	-46,189

In addition to these ballot problems, there were many votes suppressed. Were it not for this vote suppression, George Bush would not have even been able to contest the state. The many sources of suppressed votes include:

- Disenfranchised Felons: 800,000 Florida citizens were not eligible to vote. This represents 7% of the state's voting age population. An astounding one-third of all African American males are legally disenfranchised (Uggen & Manza 2002)
- Faux-Felon lists: In addition to those legally disenfranchised, 82,389 voters were wrongly purged in 2000, 52% of them African American (11% of electorate; 91% of whom voted for Gore) (Palast 2001)
- Other targeted efforts to suppress black votes, including road-blocks (USCCR 2001)

- Differential treatment of absentee ballots, with Democratic ballots far more likely to be disqualified (Toobin 2001)

And even all this may well understate the scope of the subversion. Florida 2000 had its own unexplained 435,000 vote exit poll discrepancy (7.3 percentage points). Warren Mitofsky (2001: 37) said at the time that, “Of the thousands of races I have participated in, this is only the second time I have seen this much solid evidence for a projection that turned out wrong.” Yet only two Florida counties completed manual counts. Wide exit poll discrepancies in Tampa went uninvestigated, and one quarter of the state’s votes were never even machine recounted - in direct violation of the law (Toobin 2002).

In November 2004, Sen. Richard Lugar explained that despite similar numbers from a far *more* reliable exit poll, “the 2004 U.S. exit-poll discrepancy is not comparable to the Ukraine exit-poll discrepancy because the U.S. is a mature democracy, whereas in the Ukraine ... we have concrete physical fraud such as voter intimidation.” (Freeman & Bleifuss: 68) Yet for physical intimidation, we need look no further than the Brooks Brothers mob organized by then–Republican House majority whip Tom DeLay of Texas and led by Rep. John Sweeney (R.-N.Y.) that stopped the court-ordered count in Miami. John Nichols (2001: 154-155) reported:

Dozens of neatly attired, carefully coiffed “radicals” stormed through the hallways of the Clark Building, punching and kicking local Democrats, trampling people, and ultimately crowding into a narrow hallway outside the glass doors of the office of the Miami-Dade supervisor of elections. . . . “Stop the count” they screamed as their leaders banged fists on the glass. Rumors came from the mob that a thousand angry Cuban Americans were massing outside the building to storm it—no idle threat in Miami, a town still raw with tension from the Elian Gonzalez clashes of earlier in the year.

2.4. Electronic Voting

Lugar is correct however, in that physical fraud is no longer necessary in the US. There’s a whole new class of voting technology which makes such practices obsolete: more than a third of Americans now vote on electronic machines that not only provide no audit trail, but no confirmation at all that votes are counted as cast. Electronic voting is practically an invitation for mass scale electoral fraud. It’s as though you’re asking a scribe sitting behind a curtain to faithfully record your vote. Like the scribe, the programmer can record votes without regard to

how the voter intends to cast them. The only difference is that the scribe must still record votes one ballot at a time; in e-voting, *millions* of votes can be switched through a mere two lines of buried software code:

- On November 2, 2004 7 a.m.: change 1 of every 10 Kerry votes to Bush.
- On November 2, 2004 9 p.m.: delete this and the previous line.³

We'd have no way of knowing. Just as with the scribe, the results need bear no relation at all to the buttons voters push. Machines could be preprogrammed by the three interrelated companies that control 80% of the industry to produce whatever results they want. The instructions would have been originally buried among millions of lines of code that we can't examine anyway. It's proprietary. And subsequently would disappear anyway in the unlikely event that that the software were examined.

A nearly unanimous 95% of computer professionals oppose e-voting (Legard 2004); the handful that work with or otherwise support the voting machine industry do not even dispute the principles, but rather claim there is no real life evidence of e-voting election fraud. Unfortunately, that's the point: e-voting produces no evidence at all either to confirm or negate official counts. But there are indications of corrupted counts: one is the ghosts in the machines of Youngstown and elsewhere in the country that may have betrayed internal functioning; another are the gross errors that were caught (indeed, only these gross errors can possibly be caught), all of which, it seems, favored the President, e.g. 4,258 Bush votes in a Gahanna, Ohio precinct where were only 638 voters cast ballots. In one US county there was a natural experiment in 2004, with 2/3 of vote cast on paper/optical scan and 1/3 of vote on electronic voting machines and details learned from the Republican initiated recount. We learned that although the Democratic gubernatorial candidate, Christine Gregoire, won on paper (a result confirmed by the recount); Republican Dino Rossi won big on electronic voting machines, bigger yet in precincts with problems and machines with maintenance, and by a 50% margin on machines which had to be removed for overt malfunction.

Table 4. Snohomish County's Parallel Systems and Divergent Results

Voting Technology, Condition	Republican Gubernatorial Candidate Dino Rossi		Democratic Gubernatorial Candidate Christine Gregoire		Winner/ Margin
Paper / optical scan	95,228	49.5%	97,044	50.5%	Gregoire 1.0%
Electronic voting machines	50,400	54.5% (+5.0%)	42,145	45.5% (-5.0%)	Rossi 9.0%
Polling places with Election Day problems	21,847	56.1% (+6.6%)	17,100	43.9% (-6.6%)	Rossi 13.2%
Precincts with CPU changes	4,237	58.1% (+8.6%)	3,050	41.9% (-8.6%)	Rossi 16.2%
Malfunctioning DREs	155	60.5% (+12%)	101	39.5% (-12%)	Rossi 21.0%

Table 4: Data from the 2004 gubernatorial election in Washington State. Gregoire beat Rossi handily among precincts where the vote was verifiably honest. Elsewhere, Rossi's vote percentage correlated strongly with the vulnerability of the precinct to electronic tampering. (Lehto & Hoffman 2005)

In short, a corrupted count is not only possible, but electronic voting leaves little reason to place any faith in the count. But it's not just electronic voting; all machine counts are vulnerable to programming fraud and/or other manipulations. That's why audit trails are so important, but even where audit trails exist, financial hurdles, statutory prohibitions, and extralegal mechanisms *usually* prevent manual recounts. Even in those rare instances when audits or "recounts" are conducted, lax procedures regarding machine and ballot custody cast doubt upon inspections performed weeks later. Finally given the evidence of malfeasance in Ohio, the one state investigated, the confirmation of a well conducted exit poll would be *just about the only reason we should* believe the results of electronic voting or those of other unverified machine counts.

3. Analyzing the Exit Poll Discrepancy

3.1. The Magnitude of the Exit Poll Discrepancy

So, having now made the case against "official results fundamentalism," let's examine the data without *any* fundamentalism. In order to do so, I want to focus on one critical statistic, Within Precinct Disparity (WPD) – the difference between the official vote tally in just those precincts where exit polls were conducted and the exit poll numbers in those very same precincts. In other words, the difference between who people said they voted for as they walked out of the voting booth, and the way those votes were officially recorded. Across the nation, among 114,559 sampled voters at 1,460 precincts, WPD was a whopping 6.5 percentage points. The discrepancy is highly consequential. Whereas according to official results, Bush won a slim victory, an

analysis of state by state Within Precinct Disparity indicates a decisive Kerry win (Table 5).

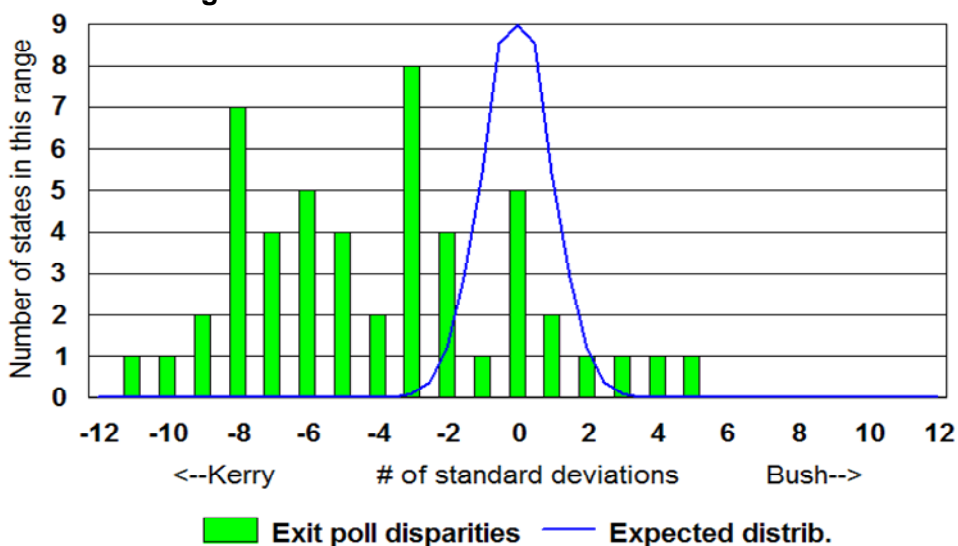
Table 5. Election Outcome if the Count Matched how Voters Reported their Votes

STATE	Bush Official Vote	Kerry Official Vote	Official Margin	WPD	Exit Poll Bush	Exit Poll Kerry	Exit Poll Margin	EP EV Bush	Too Close to call	EP EV Kerry
* Colorado	51.7%	47.0%	4.7	-6.1	48.6%	50.1%	-1.4		*9	
* Florida	52.1%	47.1%	5.0	-7.6	48.3%	50.9%	-2.6		*27	
* Iowa	49.9%	49.2%	0.7	-3.0	48.4%	50.7%	-2.3		*7	
Missouri	53.3%	46.1%	7.2	-5.8	50.4%	49.0%	1.4		11	
** Nevada	50.5%	47.9%	2.6	-10.1	45.4%	52.9%	-7.5			** 5
**New Mexico	49.8%	49.0%	0.8	-7.8	45.9%	52.9%	-7.0			** 5
No. Carolina	56.0%	43.6%	12.4	-11.3	50.4%	49.2%	1.1		15	
** Ohio	50.8%	48.7%	2.1	-10.9	45.4%	54.2%	-8.8			**20
Virginia	53.7%	45.5%	8.2	-7.9	49.7%	49.4%	0.3		13	
Total USA	50.7%	48.3%	2.5	-7.1	47.2%	51.8%	4.6	174	82	282

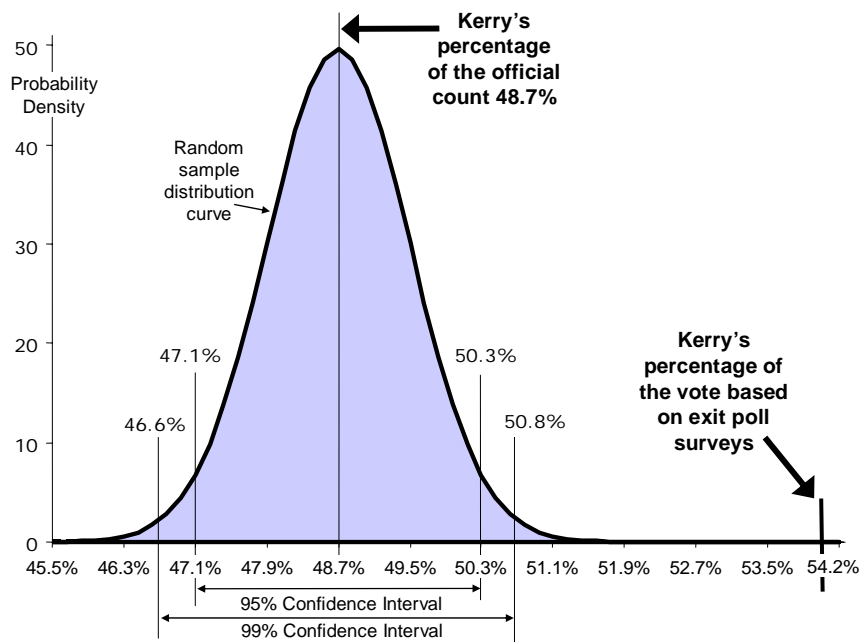
Table 5: If the official election results matched how NEP respondents reported having cast their ballots, Kerry would have easily won the election. The Electoral College projections are 282 votes for Kerry vs. 174 for Bush, with 82 too close to call. (270 electoral votes are sufficient for a victory.)

As illustrated in Figure 1, the deviation in state after state is extraordinary. These standard deviations should have been t-distributed, but instead we find them spread widely and shifted sharply to the left.

Figure 1. Distribution of Standard Deviations



The 10.9 percentage point deviation in Ohio, for example, is far, far beyond the realm of plausible sampling error as indicated in Figure 2:

Figure 2. Official vs. Exit poll Results in Ohio

The results are so extreme that you might want to just throw out the data. It just can't be that far off ... but there are only two possible explanations for WPD:

1. Kerry voters disproportionately – and by an extremely large margin – agreed to fill out the questionnaires offered by pollsters; or
2. The votes were counted incorrectly.

It is our view that both these possibilities merit detailed consideration and a thorough, on-site investigation.

3.2. The Edison/Mitofsky (2005)⁴ Explanation

Unfortunately, Edison/Mitofsky rejected the latter out of hand and accepted the former as what must have happened despite lack of substantiating evidence, historical evidence, or even an explicit theory as to why that would be the case. Rather they implicitly blame their interviewers.

They note higher WPD under 4 conditions.

- when interviewers are more than 25 feet away from the polling place
- among with younger interviewers
- among interviewers with advanced degrees

- among interviewers in large precincts

Now, in no way do I rule out the possibility of interviewer effects. No one can. We don't have the data – but I do point out, first, that this explanation is at best unlikely to provide a complete explanation for the discrepancy. It's true that WPD is higher when the interviewer was further away, but even inside the polling place, there was a 5.3 percentage point deviation between how people said they voted for as they walked out of the voting booth, and the way those votes were officially recorded.

Figure 3. Interviewer Effects? Location

Distance	mean WPE	median WPE	mean Abs(WPE)	N
Inside	-5.3	-4.2	11.8	416
Right outside the entrance	-6.4	-7.5	13.4	207
10 to 25 feet away	-5.6	-4.2	14.0	220
25 to 50 feet away	-7.6	-7.3	14.8	150
50 to 100 feet away	-9.6	-10.3	17.7	97
More than 100 feet away	-12.3	-12.1	16.7	37

Edison/ Mitofsky page 37

Figure 3: In their report of 19 Jan 05, NEP statisticians note that WPD increased with distance of interviewers from the poll. What they don't explain is that 1/3 of the interviewers were right inside the polling place, and still their mean WPD was -5.3%, a historic high.

Age is a big factor in the Edison/ Mitofsky analysis, but even in the “best performing” age groups, 35-44 and over 65, there was a 4 percentage point deviation between how people said they voted and the way those votes were officially recorded.

Figure 4. Interviewer Effects? Age

Interviewer Age	mean WPE	median WPE	mean Abs(WPE)	N
24 and under	-7.4	-8.6	15.0	430
25-34	-8.2	-7.2	13.4	182
35-44	-4.0	-3.9	13.4	167
45-54	-6.3	-4.7	12.5	191
55-64	-7.0	-5.8	12.6	143
65 and over	-3.7	-5.4	12.9	68

Edison/ Mitofsky page 37

Figure 4: The NEP report emphasizes that WPD was a function of the age of the interviewer, but don't come to terms with the fact that results from all age groups indicated more Kerry support than did the corresponding official results from the same polling station.

But even more important than the general skew, it's not at all clear that those groups with lower mean WPDs are most accurate. Figure 5, from Edison/ Mitofsky page indicates that interviewers with advanced degrees had lowest miss rates and lowest refusal rates suggesting that their results are likely the *most* accurate. And those with the least education had the *highest absolute error*, suggesting that *their* results were the *least* accurate. Concordant with common sense, this suggests that, if anything, we should put greatest faith in the results obtained by interviewers with advanced degrees. And these were the precincts in which WPD was highest, with a mean of -7.9% .

Figure 5. Interviewer Effects? Education

Interviewer Education	mean WPE	median WPE	mean Abs(WPE)	N
High school or less	-3.9	-4.6	14.7	177
One to three years of college	-7.3	-7.0	14.0	526
Four year college degree	-6.3	-6.3	12.8	222
Some graduate credits	-5.4	-5.9	11.9	71
Advanced degree such as MA, MBA or PhD	-7.9	-5.2	13.1	123

The completion rates tend to be slightly higher in precincts with more educated interviewers :

Interviewer Education	Completion Rate	Refusal Rate	Miss Rate
High school or less	0.52	0.36	0.11
One to three years of college	0.53	0.37	0.11
Four year college degree	0.55	0.34	0.11
Some graduate credits	0.57	0.34	0.10
Advanced degree such as MA, MBA or PhD	0.60	0.32	0.08

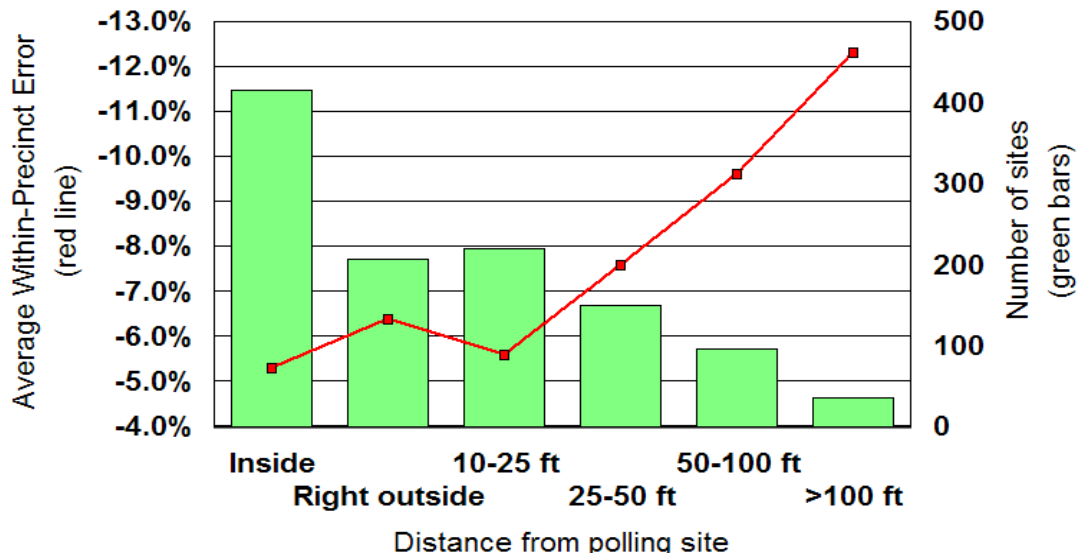
Edison/Mitofsky page 43

Figure 5: NEP pollsters with the highest levels of education showed every indication of doing the best work: their completion rate was highest, and their refusal rates and miss rates were lowest. They also tallied higher mean directional WPD than other groups, but not higher mean absolute WPD. This indicates that the high quality of their work only magnified the measured difference between exit polls and official tallies.

Finally, these correlations may well indicate count corruption. Consider location. It's understandable, perhaps, that absolute error rates might be higher when the interviewer was further away, but it's not at all clear why *mean WPD* should increase. On the other hand, one also must ask why an election officer or a secretary of state would be trying so hard to keep observers

from being close to the polling place. In Ohio, NEP had to sue to force Ken Blackwell to allow their people anywhere near the polls. Blackwell throughout the process fought to keep observers out. Were these the precincts in which the count deviated so sharply from the results?

Figure 6. Interviewer Effects? Location



Source for the data: Edison/ Mitofsky page 37

And that's about all that anyone other than Mr. Mitofsky and his trusted analysts can say about interviewer effects. That's because no one else has the data. The data needed to properly investigate the integrity of the election has never been made available to any independent investigator. Rather it remains the proprietary property of the media consortium.

3.3. Evidence For and Against the Hypothesis of Response Bias

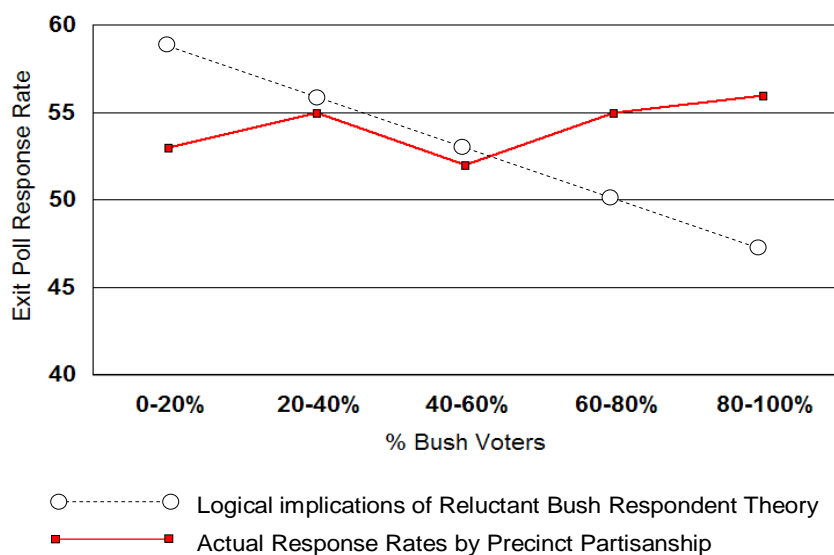
If we had precinct level summary data, we could statistically examine effects of voting technology and partisan control and all the interactions. We could physically investigate precincts with high WPDs. Why were they so high? It is difficult for journalists and the public to understand statistical arguments; specific stories are another matter.

Edison/Mitofsky and NEP has not made this data available to any independent researchers. But much of the data that Edison/Mitofsky provide in principle to support their thesis, actually does just the opposite.

Let’s begin with the precinct level data used in the January report. Edison/Mitofsky provides some grouped data, including response rates as a function of precinct partisanship. If Kerry voters were more likely than Bush voters to fill out the questionnaire, what would you expect to see in the data? Well, the first thing you’d expect is that the response rate for the questionnaire would be higher where Kerry voters predominate than where Bush voters predominate.

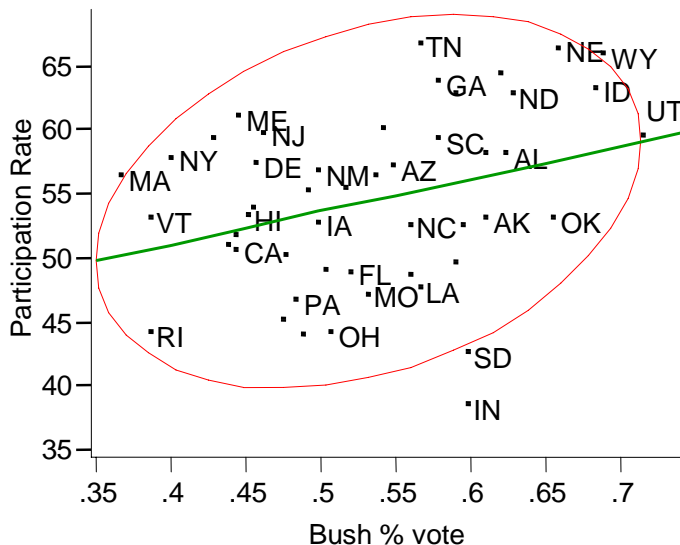
But there is no such trend. In fact, there’s a slightly higher response rate in Bush precincts.

**Figure 7.
Response Rates by
Precinct
Partisanship**



In the January report, Edison/Mitofsky provides, along with WPD figures, statewide participation rates. This gives us a different test of differential response. Again, to satisfy the presumption that Kerry voters were 14% more likely to participate, one would expect a negative correlation between Bush support and participation rate. But on the state level, there is no such trend either. Just as Bush precincts show *higher* rather than lower response rates, so do Bush states.

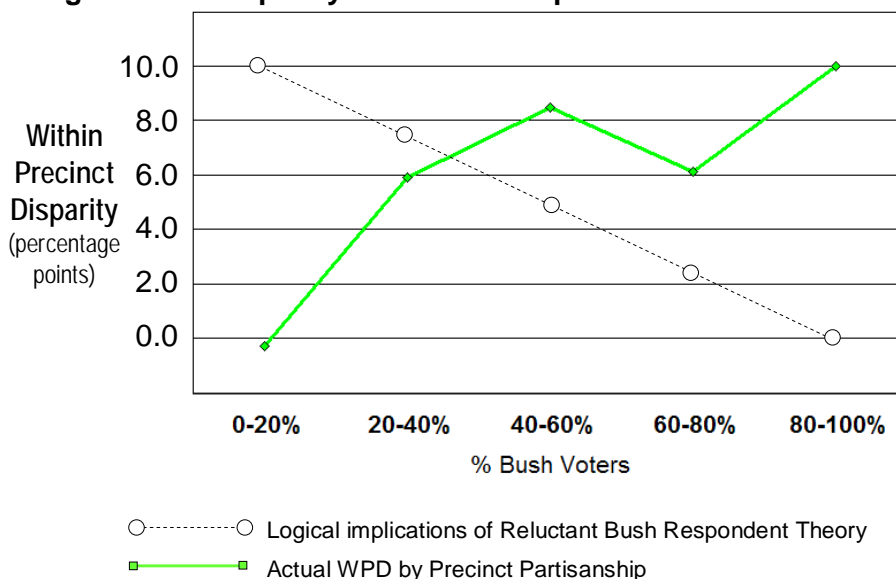
**Figure 8.
Actual Participation
Rate by Bush % of
State Vote**



Other details of the data make it that much more implausible yet. Maybe Republicans are reluctant to fill out the questionnaire when in the minority among aggressive Kerry supporters, but not when they're among friends. That could conceivably account for the response rates in the charts displayed. But if that were the case, then WPD would necessarily be concentrated in the Democratic precincts, and not in the Republican areas where the response rate is nice and high and, if anything, it's the Democrats who have something to be shy about. (Blumenthal 2005)

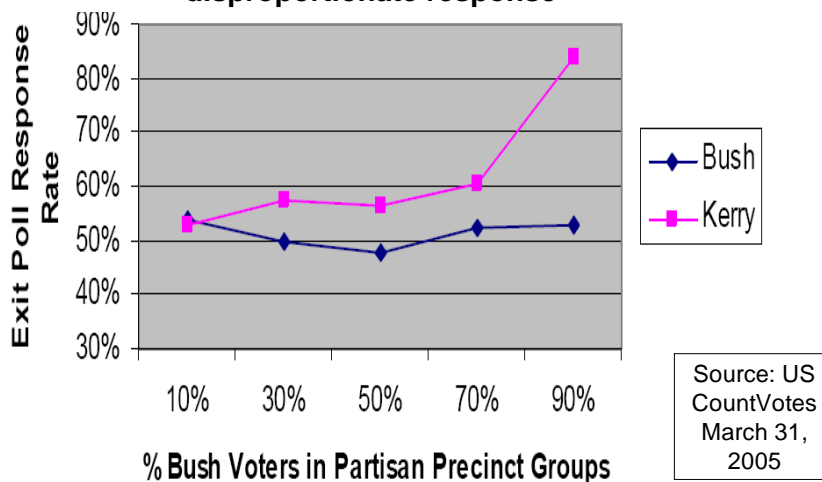
But that too is *not* the case. WPD is zero in the Kerry strongholds, but the discrepancy is highest on the right side of the spectrum – in those areas where Bush voters would have had to participate at such healthy rates to make up for their lack of participation in the Kerry strongholds.

Figure 9. Discrepancy Rises with Proportion of Bush Voters



In fact, the stronger Bush’s support, the greater the disparity. Put the two data sets together, as in Figure 10, and we see that outlandish numbers are required to satisfy the Edison/Mitofsky presumptions.

Figure 10. Differential response rates needed to satisfy the presumption of Kerry disproportionate response



3.4. Neglected Exit Poll Evidence Indicating a Corrupted Count

At the same time that these implausible correlations have been accepted, explanations and correlations screaming out for investigation are neglected. For example, if fraud were afoot, it would make sense that the president's men would steal votes in GOP strongholds, where they control the machinery of government and there’s little danger of independent oversight, let alone

prosecution.

Now consider again the numbers in Figure 9. In those precincts where the official count was 80% or higher for Bush, average WPD – the difference between who people said they voted for as they walked out of the voting booth, and the way those votes were officially recorded – was an astounding 10 percentage points. For example, in those precincts where Bush received 90% and Kerry 10% of the vote in the official count, average exit poll margins of 85% to 15%. In other words, in these Bush strongholds all across the country, Kerry, on average, received only about two-thirds of the votes that exit polls predicted he should have received.

Other damning correlations are similarly neglected. The first priority was, of course, to win the election. Thus, it would make sense that votes would be most vigorously coveted in the swing states that would determine the winner of the Electoral College. Sure enough, Edison/ Mitofsky found WPDs higher in precincts in swing states than in precincts of other states. It’s difficult to infer what they mean in their interpretation. Perhaps Mr. Mitofsky or Ms. Liddle can explain. But it is clear that they do not even consider the most obvious explanation.

Figure 11. Is PLD different for Swing States? (Precinct-Level Data)

12. Swing states:

The WPE was greater in the more competitive “swing” states. For this analysis, the following were considered swing states: Colorado, Florida, Iowa, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, Ohio, Pennsylvania, and Wisconsin.

Swing state	mean WPE	median WPE	mean Abs(WPE)	N
Precinct not in a swing state	-6.1	-5.1	13.1	776
Precinct in a swing state	-7.9	-8.6	14.8	474

Swing state	Completion Rate	Refusal Rate	Miss Rate
Precinct not in a swing state	0.56	0.34	0.10
Precinct in a swing state	0.50	0.38	0.11

This indicates that voters in the swing states (who were exposed to more paid advertising and media coverage than voters in non-swing states) were less likely to respond to the exit poll: but among those who did, more likely to be Kerry voters.

Edison/ Mitofsky page 42

Figure 11: NEP report that WPD was significantly elevated in “swing states” that the Republicans needed to win the Electoral College. They do not consider the possibility that these states may have been the target of more intense efforts to corrupt the vote count, but promote the hypothesis that a higher level of electoral tension in those states made Bush voters (but not Kerry voters) shy of the exit poll.

A state- level WPD analysis corroborates Edison/Mitofsky precinct level data.

Table 6. Is WPD different for Swing States? (State-Level Data)

	#	Mean WPD	Median WPD
Non- Swing States	39	5.4	4.7
Swing States	11	8.0	7.8

Among the Swing States:

	#	Mean WPD	Median WPD
Non- Critical Swing States	8	7.6	7.6
Critical Battleground States (Florida, Ohio, Pennsylvania)	3	9.1	8.8

Table 6: Not only was WPD was significantly elevated in “swing states”, but in the three most critical states (FL, OH, and PA), WPD was higher yet.

Yet another damning correlation from the report concerns voting technology. Indeed, only consideration of fraud in Edison/Mitofsky’s 77 page report is the summary dismissal: “Exit polls do not support the allegations of fraud due to rigging of voting equipment.” This because they found no systematic differences between WPD in precincts that used newer electronic touch screen and optical scan voting systems and those that used the older punch card and mechanical voting equipment. But the difference between electronic voting machines and the others is the lack of verifiability. If the ballots are never manually counted anyway or if there is a lax chain of custody on the ballots, then punch card and optical scan machines are as vulnerable to programming fraud as electronic machines. Lever machines, a 19th century technology, have their own problems and vulnerabilities, including lack of a paper trail, and are being phased out.) But Figure 12 illustrates a sharp difference between paper ballots and machines of all types.

Figure 12. Does WPD Vary by Voting Technology?

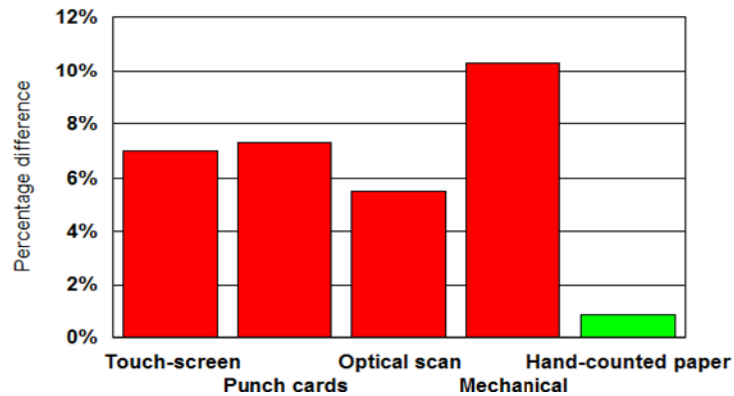


Figure 12: 50 precincts surveyed by NEP used hand-counted paper ballots that are difficult to corrupt. The exit poll discrepancy for this subset of precincts was well within statistical margin of error. For

Edison/Mitofsky argues that this difference is a function of paper’s predominance in rural precincts. But even after creating a partition, they ignore that paper has lower WPD than machines in “urban areas” regardless, and that a sharp difference remains between paper and machines in the statistically significant “rural/small town category.” WPD in the 1,117 machine-counted rural/small town precincts is nearly than three times that of WPD in the 35 rural/small town precincts with paper ballots.

Figure 13. Is Voting Technology or Urban/Rural the key factor?

Size Of Place	Type of equipment used at polling place		mean WPE	median WPE	mean Abs(WPE)	N
Urban Areas (> 50,000)		Paper Ballot	-6.0	-11.5	15.7	5
		Mechanical Voting Machine	-12.7	-12.5	16.8	92
		Touch Screen	-7.5	-7.6	14.8	272
		Punch Cards	-9.3	-10.0	15.2	108
		Optical scan	-7.2	-5.9	12.3	350
Rural/Small Town Areas (< 50,000)		Paper Ballot	-1.6	-0.6	10.5	35
		Mechanical Voting Machine	-3.2	-5.4	14.7	26
		Touch Screen	-6.0	-4.8	4.8	88
		Punch Cards	-0.8	-1.7	12.0	50
		Optical Scan	-4.4	-5.0	13.2	223

Rural Area Comparison

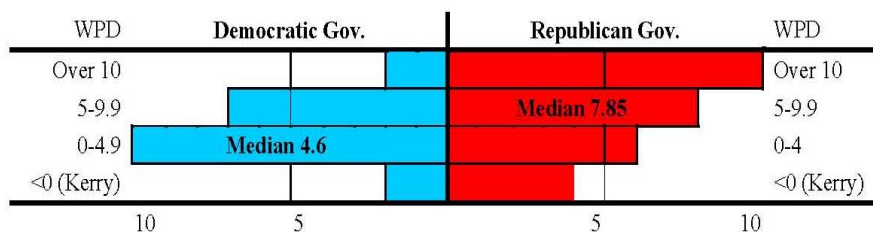
Voting Technology	Mean WPE	N
Paper Ballot	-1.6	35
Machine average	-4.4	1117

Figure 13: The NEP report attributes the accuracy of the poll in precincts that use paper ballots to the fact that most of these precincts were small and rural. But their own data suggest that the critical factor was the voting technology itself, not the location or population density.

Yet another pattern we might expect to see are higher average WPD where Republicans

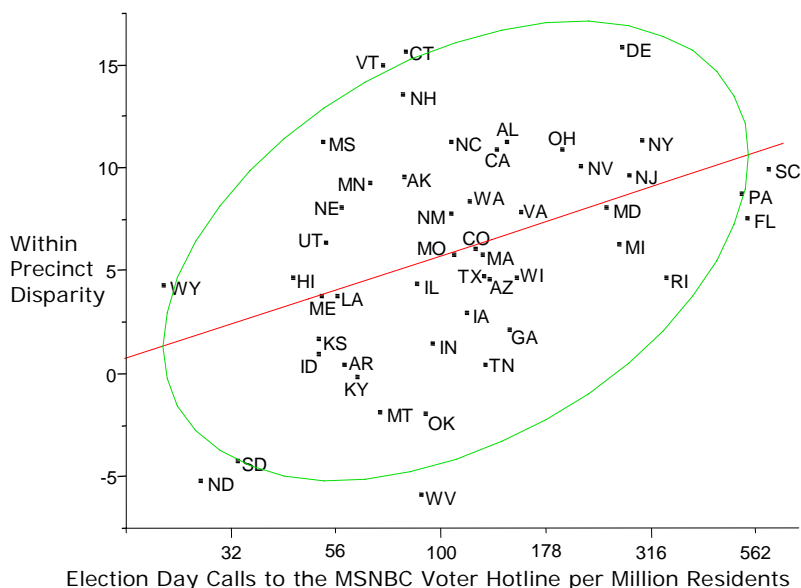
governed the jurisdiction. Because we have been denied the data to examine the effects at the county level, where voting administration takes place, we are forced to look at only state level effects. Yet even here, we detect an important shadow of an effect. Figure 14 illustrates that among states with a Republican governor on November 2, 2004, WPD considerably higher than among states with a Democratic governor. Fully half of the twenty-eight states with a Republican governor have extreme WPDs of 8.0 or higher. Ten—Alabama, California, Connecticut, Mississippi, Ohio, Nevada, New Hampshire, New York, South Carolina, and Vermont—had WPDs of 10.0 or higher. Most of the 21 states with Democratic governors have relatively moderate WPDs of 5.0 or less.

Figure 14. WPD and Gubernatorial Control



Yet one more variable that could have nothing to do with polling error, but everything to do with a corrupted count are election day problems. On Election Day 2004, MSNBC, with the collaboration of the Fels Institute of Government, two electoral reform groups -- one Democratic and one Republican -- and VoterLink Data Systems, produced an Election Incident Monitor. Voters called a toll-free telephone number to redress voting problems. The system recorded their complaints and reported the number of calls by state. Figure 15 illustrates the results on a per capita basis. The correlation with WPD is highly significant ($p=.01$), indicating that those problems did in fact result in corrupted counts.

Figure 15. WPD and Election Administration Problems



4. Reply to Our Critics

For reasons which he will have to explain, Lindeman asks us to consider the exit polls in the absence of all other evidence. In practice, he goes much further yet, asking not to consider exit poll patterns in their entirety, but rather he takes individual points and attempts to show that – in the absence of all other evidence – there may be some alternative explanation.

But even having adopted these bizarre ground rules, we can point out the sophistries. He rejects, for example, the correlation of WPD with Election Day complaints “because many calls concerned issues that seem unlikely to have contributed to corrupted counts. For instance, in Florida, 60% of calls concerned registration or absentee ballot status...” Well, no s__t Sherlock! Of course, the data is very noisy. The fact that the correlation is still strong *despite* the noise suggests that if we could isolate the relevant complaints, the correlation would be far stronger yet. Perhaps someone unfamiliar with conducting research could be excused for such a basic confusion, but anyone of Lindeman’s training and intelligence has to know better.

In its totality the critique is dreadfully weak. Evidence of a corrupted count is overwhelming. Evidence of non-response bias sufficient to cause WPD of 6.5 percentage points nationwide is non-existent; and the theory is piecemeal at best. In practice, the critique is limited

to slim possibilities, e.g., that it is *possible* that Kerry voters are participating at rates of 80% of higher but only in Bush strongholds (Figure 10). Ultimately, the critique is totally dependent on the fact that our data is limited.

Lindeman like Mitofsky, Blumenthal, and the other apologists of the 2004 election results, justify ignoring this vast preponderance of publicly available evidence by relying on what they would have us believe is their trump card: that their own privately held data, which they cannot share, “kills the fraud argument.” (Mitofsky 2005)

The retort would be a laughable were it not so serious a subject. The data needed to properly investigate the integrity of the election has never been made available to independent researchers. Rather, it remains the property of the NEP consortium that commissioned the exit polls, which says it cannot be released. NEP pollsters claim that this is because it could violate confidentiality agreements, i.e., that under some extreme circumstances one conceivably might be able to figure out how one unusual individual in an unusually homogenous precinct may have said he or she voted. The argument is one ludicrous assertion after another.

Aside from the question as to *why* or *whether* any researcher would ever be inclined to go through the trouble of doing this; it's unclear that such identification would be, in fact, be a realistic possibility.

And even if, in the extremely remote circumstances, that someone might think he or she could identify a voter, what harm could it cause? Yet NEP would have us accept that a small, extremely hypothetical risk that a few individuals' confidentiality might be compromised but causing no apparent harm – outweighs the importance of an independent check on our nation's voting procedures and, very likely, evidence of a stolen election.

But that is only the beginning of the sophistry.

Confidentiality could not be a concern in the vast majority of precincts that have even minimal demographic diversity. Why not release precinct identification for these data?

In those few precincts where some individual identification might conceivably be possible, NEP could simply have blurred the *demographic* data. Indeed, given the choice between precinct identifiers – critical to the investigation of fraud -- and demographic data, not only is the relative importance plain as day, but demographic data make no sense at all. After all, what is the point of trying to explain *why* voters purportedly voted as they did, when we cannot even say *how* they voted?

Finally, consider that NEP denied this data to a US Congressional committee and highly qualified and experienced University of Pennsylvania researchers who have experience working with sensitive and national security data, who offered to work only onsite and reimburse NEP for any additional costs incurred. Yet they have given it to a British doctoral student, our discussant, Elizabeth Liddle, and the Election Science Institute (ESI), a start-up enterprise with no record at all of either research or maintaining confidentiality, whose sole employee's dubious qualifications includes no background in research, polling, or political science, but rather,

During the previous 12 year period, while dividing residences between California and Australia, Mr. Hertzberg participated in the management teams of numerous new ventures (contributing to an IPO). In addition, he also founded and successfully developed his own ventures in the automotive accessories, industrial food equipment, information technology, television and direct marketing industries. (Election Science Institute website)

No, it's quite clear that NEP's primary concern is not respondent confidentiality, but rather control over the findings. Indeed, that Liddle could be cast as a neutral "discussant" is, in every sense, beyond the pale. Elizabeth Liddle is an intelligent, articulate, and pleasant woman. But there is a good reason why we want people with experience and a *reputation* at stake in these roles. Not only does she lack even the most meager qualification and professional standing, but her comments and writings are strictly and absolutely restricted as to what Warren Mitofsky will permit her to say,

5. What Do We Do with these Analyses?

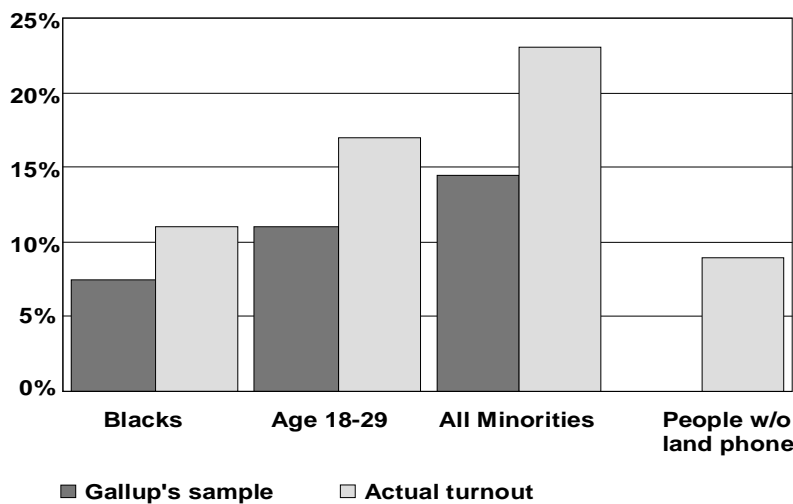
The rest of us cannot know for certain what the withheld data might prove, but the public record indicates clearly that had the votes been counted as cast on November 2, 2004 John Kerry

would have won the victory that was initially reported on Election Day.

The real “fundamentalists” in this debate are those who take the count as inviolable. It’s implicit in everything that the exit pollsters do and say from “correcting” the data to conform with count, to terms such as Within Precinct Error, and “Democratic overstatement.” The most recent three federal elections clearly indicate, however, that this fundamental faith in the inviolability of official results is unwarranted and unjustifiable.

Initially, I did not believe it was possible that the 2004 election was stolen. Like most people, I thought “Why would the Democrats allow it? Why wouldn’t the media cover it? And why wouldn’t pollsters and political scientists be speaking out?”

Well, the first two would be books unto themselves, and not specifically germane to this forum. But pollsters – and academics – are also major enablers. I have another paper (Freeman 2005) that was rejected for presentation on how likely voter cutoff models can systematically skew findings by five-six percentage points. Indeed, to every methodologist from outside this domain, the use of cutoff models is shocking. In one sense, these likely voter models were my first professional interest in the 2004 campaign. Perusing the polls in anticipation of the election, I was astounded by the use of cutoff models. Even if we assume that a pollster can, in fact, predict which voters are most likely to vote, it is most assuredly not the case that a “likely voter” will in fact vote; and that any respondent who falls outside this category will not. For example, a politically active citizen who has never missed an election but who has recently moved will almost certainly not be considered a “likely voter” in the Gallup model. This flaw makes a big difference by disproportionately selecting out the young, minorities, and the mobile, as well as voters with an inconsistent voting history who nevertheless turn out for what they recognize as a meaningful election. Likely voter models do not result in merely a theoretical distortion. The empirical evidence indicates that they produce models sharply at variance with the true electorate.

Figure 16. Distortions in the Gallup Survey Sample for the 2004 Election

Source: Freeman & Bleifuss (2006: 171)

Figure 16: Pre-election polls undersample sub-populations that trend Democratic.

So if systematic fraud enters into the system – and results from 2002 suggest that it has (Freeman & Bleifuss: 79-81) – then pollsters who refuse to question the count will tweak their models to conform. If the goal is to produce results that track the official count and cutoff models do that, then methodology be damned. That may be good, pragmatic business practice but it's terrible science and among the most serious sources of danger to the democracy.

I have already noted another problem germane to this forum, the other enabler of a stolen election –academia. The nation depends on its educated elite to speak out if something is awry. Unfortunately, the academy has adopted a virtual taboo on the questioning of election results, dubbing anyone who would do so, a reckless “conspiracy theorist.”

And so, to the degree that voices such as ours are heard at all, it is in a forum such as this, where we have an impossibly short 15 minutes to challenge deep seated fundamentalism. And if that were not limitation enough, then three panelists will criticize our points or at least raise doubts about them. We have no opportunity to reply to their critiques; rather they have the last three rounds in this forum, including that of the normally neutral “discussant.” So it's almost inevitable that if their viewpoint does not outright prevail, they will succeed in raising sufficient doubts that my observations can be disregarded and that we, as a community of scholars, do

nothing. It's clear that the curtains have been drawn, but it's also clear that if one cares about America, if one cares about democracy, that we come out from behind the professional curtain.

As John Roberts was forced to acknowledge during his confirmation hearings, "The right to vote [and have that vote counted as cast] ... is preservative of all other rights."

Without the right to elect our representatives and, especially, to remove from office those who misuse power, ultimately we have no rights at all.

Those who have devised the current state of electioneering in the US have thus far been able to count securely on academic and professional paralysis. I do not ask you to take my narrative on faith, but neither can it be rejected because Lindeman or Liddle succeeds in raising doubts among one or two out of, literally thousands of indicators. The big picture is that democracy here is in dire straits; that crimes of the highest order have been and continue to be committed; that an overwhelming preponderance of evidence indicates that both the 2000 and the 2004 have literally been stolen; and that your vote is literally being taken from you, and handed over to a secretive cabal of voting machine makers.

Those who would reflexively label such rhetoric as conspiracy theorists are the fundamentalists we need to fear. These fundamentalists (e.g., Blumenthal 2004, 2005; Nightline 2005; Tokaji 2005), however, do ask an interesting question: "How can such a grand theft go undetected without the acquiescence of thousands of participants?" But first we need to clarify: extensive evidence of theft *has* been detected; for people close to the issue to suggest otherwise is a first order dissimulation. The real question is "How can grand theft go unchallenged?" And the answer is that it goes unchallenged because those of us here in this room have not challenged it, or worse, systematically work to paralyze the efforts of those who would.

It's true that grand crimes can only be committed with massive acquiescence. It's my goal that this community stand up and refuse to continue to be accessories to such crime.

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¹ These were not isolated incidents. In her documentary of the 2004 election, "Who Counts" Dorothy Fadiman interviewed scores of voters in Ohio. She relates that in the Youngstown area, every single person she spoke to either directly experience this phenomenon or knew personally someone who did. These numbers are compatible with findings published in Democratic National Committee (2005) report – 26% of all voters and 52% of African American voters in the state experienced problems in the polls.

² Florida Statute 101.5614(5) states that "no vote shall be declared invalid or void if there is a clear indication of the intent of the voter." A century of Florida Supreme Court decisions affirmed that "courts should not frustrate the will of voters if that will can be determined." (Beckstrom v. Volusia County Canvassing Board, 1998). In 1988 the court ruled that voter disenfranchisement is improper where the intent of voter can be ascertained (State ex rel. Chappell v. Martinez), and in Boardman v. Esteva (1975), they ruled, "The right to vote is . . . the right to be heard. . . . By refusing to recognize an otherwise valid exercise of the right of a citizen to vote for the sake of sacred, unyielding adherence to statutory scripture, we would in effect nullify that right." (deHaven-Smith, 2005: judicial precedent: 37, 115–116; Florida Statutes: 37, 48–54.)

A few hours before the U.S. Supreme Court stopped the count, Judge Terry Allen, the judge authorized to oversee the state count, issued a ruling to count overvotes as well as undervotes. In interviews, Allen reiterated his position: "Logically, everything the Florida Supreme Court said was, 'You have to look at the clear intent of the voter.' Lewis said, 'Logically, if you can look at a ballot and see, this is a vote for Bush or this is a vote for Gore, then you would have to count it. . . . Logically, why wouldn't you count it?'" (Isikoff, 2001; Parry, 2001)

³ Maybe you can guard against this particular threat where ballot placement is chosen after the machines are programmed but there are a variety of subtler versions (e.g., "increase the margin of the candidate who is ahead (in machines in safe Republican districts)")

⁴ Edison Media Research and Mitofsky International (2005) "Evaluation of Edison/Mitofsky Election System 2004 prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP)." January 19, 2005 <http://www.exit-poll.net/electionnight/EvaluationJan192005.pdf>