UNITED STATES OF AMERICA

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COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, October 13, 2006

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The meeting was held in Room 540 of 624 Ninth Street, N.W., Washington, D.C., at 9:00 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:
GERALD A. REYNOLDS, CHAIRMAN
ASHLEY L. TAYLOR, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER
MICHAEL YAKI, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER
JENNIFER C. BRACERAS, COMMISSIONER

STAFF PRESENT:
KENNETH L. MARCUS, STAFF DIRECTOR
DAVID BLACKWOOD, ESQ., GENERAL COUNSEL
MANUEL ALBA, PUBLIC AFFAIRS UNIT
TYRO BEATTY, HUMAN RESOURCES DIVISION
STAFF PRESENT (Continued):

MARGARET BUTLER, OFFICE OF CIVIL RIGHTS EVALUATION
CHRISTOPHER BYRNES, ESQ., OFFICE OF STAFF DIRECTOR
PAMELA DUNSTON, ADMINISTRATIVE SERVICES AND CLEARINGHOUSE DIVISION
DEREK HORNE, ESQ., OFFICE OF STAFF DIRECTOR
SOCK-FOON MACDOUGALL, OFFICE OF CIVIL RIGHTS EVALUATION
TINALOUISE MARTIN, OFFICE OF MANAGEMENT
BERNARD QUARTERMAN, ESQ., OFFICE OF THE GENERAL COUNSEL
MICHELE YORKMAN RAMEY, IT SPECIALIST
RICHARD SCHMECHEL, SPECIAL ASSISTANT TO COMMISSIONER MELENDEZ
KIMBERLY SCHULDZ, SPECIAL ASSISTANT TO COMMISSIONER BRACERAS
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Adjourn
(9:10 a.m.)

CHAIRMAN REYNOLDS: Okay. This meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights at 624 Ninth Street, N.W., Room 540, Washington, D.C.

COMMISSIONER YAKI: Zip code?

CHAIRMAN REYNOLDS: No zip code.

With the exception of the Vice Chair, Abigail Thernstrom, all Commissioners are present.

I. Approval of Agenda

The first item on the agenda is the approval of the agenda. I would like to move to amend the agenda under Program Planning. I'd like to delete "Research on Academic Mismatch." That's not ready, and the same would be true for "Procedures for National Office Work Products." That's not ready.

So with that amendment is there a second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any abstentions? Dissents?
(No response.)

CHAIRMAN REYNOLDS: The motion carries.

II. Approval of Minutes of August 18 Meeting

Okay. The second item on the agenda is the approval of the minutes of the August 18, 2006 meeting. May I have a motion approving the minutes?

COMMISSIONER KIRSANOW: So moved.

CHAIRMAN REYNOLDS: A second?

COMMISSIONER MELENDEZ: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

Abstentions?

COMMISSIONER YAKI: Question.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: The August 18th meeting, was that the meeting where all of the votes were voided, a lot of them?

MR. MARCUS: That was one of the meetings, yes.

COMMISSIONER YAKI: Okay, and are the minutes being recalibrated to reflect that?

MR. MARCUS: The minutes do reflect that on page 4.
COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: Okay. Should we vote?

Okay.

III. Staff Director's Report

Okay. Mr. Staff Director, do you have anything to report?

MR. MARCUS: Certainly, Mr. Chairman. I think there are a few things that I'd like to report on.

First, as the Commissioners know, over the last year and a half we've put in place a number of new procedures and new controls, in order to address the significant management and operations problems that had been recognized in numerous audits. Including GAO and OPM audits, and which we've been talking about over the past years.

Our hope is not only to remedy the defects that we've had in the agency, but ultimately to serve as a model of excellence in government administration. And to provide best practices that can be emulated throughout the government.

I don't think that we have reached that yet, with respect to all of our management and operations issues, and we have still quite a number of challenges to deal with, but we do have staff members who are working diligently to try not only to correct past
deficiencies, but to provide best practices.

I'm very pleased that our human resources activities have been recognized through best practices within the last month. In particular, our new Director of Human Resources has put in place a recruitment system to implement the OPM career patterns, which has been recognized by OPM. They have asked our HR Director to be one of three HR leaders to provide best practices in a significant intergovernmental meeting last month. They've also asked to give other sorts of input from the Commission based on our early experience getting very good results from our application of the career patterns.

I think that we are indebted to our new Director of HR, Tyro Beatty, who has come on board and helped us to provide not just a remedy for weaknesses, but for some early best practices that have already been recognized.

CHAIRMAN REYNOLDS: Okay, and would you also talk about the activity, the meeting that was held in Connecticut by the Connecticut SAC?

MR. MARCUS: I'd be pleased to, Mr. Chairman.

I did have the opportunity to travel to Hartford last month to attend the meeting of the Connecticut State Advisory Committee. This is the first meeting
of the newly chartered Connecticut State Advisory Committee, and I think it is one of the most exciting events that we've had in our State Advisory Committee system, in quite some time.

The Connecticut SAC had been dormant for a significant period. I spoke with long time members who had never attended a Connecticut SAC event, simply because, there had not been meetings in the past for resource problems and other issues.

The Connecticut SAC, as you know, was very recently re-chartered by this Commission. It was re-chartered only last month, and I am pleased that the event signaled that we have within the State of Connecticut a newly vigorous presence. The meeting was conducted in the State House in Hartford. It featured participation by the Mayor of Hartford, a senior representative of the Office of the Governor, well known government officials at a municipal level, and a wide variety of speakers representing different perspectives, different political perspectives, perspectives from different stakeholders, different takes on the issue.

The issue was school choice, as a civil rights issue. There were members of the panel who were not familiar with the issue, and I think they learned a
great deal. There were also members of the panel who were rather expert on the topic, and even they learned a great deal.

The panel itself, I think, worked together in an exemplary fashion. It is a new group composed of both returning members and also new members. It is, I would say, an unusually distinguished group of with a wide variety of individuals.

I was really pleased to meet some of these people, who I think are among the leading citizens of the state of Connecticut. They included the Pastor of the First Cathedral Baptist Church in Bloomfield, which is one of the largest churches in New England, and certainly one of the largest predominantly minority churches.

One of the leading civil rights litigators in the state of Connecticut, the President of the Connecticut Institute of the Blind, the Shelby Cullen Davis Professor of American Business and Economic Enterprise, a Chairman of the East End Community Council and a Veteran of the Bridgeport Police Department, a Legislative Analyst for the Connecticut Latino and Puerto Rican Affairs Commission, the Director of the Asian American Cultural Center at the University of Connecticut at Stores, the Indian
Affairs Coordinator with the state's Department of Environmental Protection, a tenured Professor of Economics at the University of Connecticut, the Executive Director of a think tank in Connecticut, and an Environmental Attorney who chairs the Hartford Federalist Society Chapter.

Some of these people had been on the committee before. Many were new, but I think that the energy and vigor and vitality and cooperation that they had there was very pleasing to see. And, I think the members of this Commission would have been pleased, if they had had an opportunity to see them.

They were also, I would say, quite grateful to the Commission for providing the resource and the wherewithal to do it. I would commend Ivy Davis, the Eastern Regional Office Director, for her leadership and Barbara Delaviez, the staff person who spent so many nights and weekends to put this together.

One other thing that I'd like to briefly mention is that, we do not yet have appropriations for the fiscal year. The Commissioners know that this is the first Commission meeting of the new fiscal year. The President's budget, I think, recognized some of the advances we've made in management and operations by requesting a modest increase for the agency. The
increase was intended to enable us to hire two new attorneys, provide a public service announcement, and to provide some modest funds for state advisory committee travel.

Unfortunately, while both Houses of Congress are in the midst of developing our appropriations, at this point, neither chamber is looking at numbers that provide that increase. And in fact, both chambers at this point have numbers that would be a cut in real terms, even without consideration a rescission. So, in future meetings we'll have to talk about projections.

It could be that, some of the things that we were planning to do for this new fiscal year, may have to be scaled down. Including, for instance, the new attorneys, the public service announcement, and some of the expanded SAC travel. And, we'll have to revisit that when we have actual numbers.

CHAIRMAN REYNOLDS: Any other questions? Yes.

COMMISSIONER YAKI: We're under a continuing resolution right now, correct?

MR. MARCUS: That's correct.

IV. Program Planning

CHAIRMAN REYNOLDS: Okay. All right.

Next up, we're going to discuss the work for the
Briefing on the Benefits of Diversity in K through 12 Education.  May I have a motion, that the Commission accept into the record, the panelist source materials for the July 28th, 2006 Briefing on the Benefits of Diversity in Elementary and Secondary Education, that was distributed to Commissioners on September 1st, October 4th, and October 6th?

COMMISSIONER BRACERAS: So moved.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion? Commissioner Yaki.

COMMISSIONER YAKI: Just for the record, did we set a cutoff date for when source materials were supposed to be received? And, were all of the source materials that we had that were distributed received by the cutoff date?

CHAIRMAN REYNOLDS: That's a question for the Staff Director.

MR. MARCUS: I'm sorry. I believe Commissioner Yaki is asking about the Public Comment Period for the comments on the K-12 Diversity Briefing; is that correct, Commissioner Yaki?

COMMISSIONER YAKI: Yes, I am.

MR. MARCUS: The Commission has not established
a Public Comment Period. There was discussion at a prior meeting about whether there should be a 30-day or, I believe, a 60-day period for public comment. As I recall, the Commission adopted the 30-day, rather than, the 60-day. But later determined, that there were quorum issues so that neither, the 30-day nor the 60-day was adopted.

There was a prospect of a notational vote to ratify the 30-day period, but at the request of one Commissioner, that notational vote was not taken. So we have not established either a 30-day or a 60-day period, which is to say there is no Public Comment Period.

However, we have accepted any comments that we've gotten from the public, and I can tell you that within the 30-day period from the time of the briefing there were zero comments received. Within 60 days there were zero comments received. We've received, in fact, no public comment. So the question, whether it should be 60 or 90 days is rather moot.

COMMISSIONER YAKI: I wasn't talking about the public comment. I was talking about the source materials themselves. In other words, one of the things for which a record is open, is that if the panelist says, "Well, I relied on Wikipedia," you
know, whatever it was, and they submit it. That becomes part of the record.

If they choose not submit it, I assume that it goes into the ether, and it's not our job to go and try and pull it together.

So my question is, we received two large packets of information regarding this briefing, and I would like to know exactly when we received each one? And, how many days after the briefing they were received?

MR. MARCUS: We asked the panelists to provide their source materials, and we received them and sent them to the Commissioners fairly shortly after we received them.

COMMISSIONER YAKI: So, I presume that the large packet we received last week, was received some time not too long before that?

MR. MARCUS: That's right.

CHAIRMAN REYNOLDS: And, that information will be included in the records, the information that was provided to the Commissioners.

MR. MARCUS: That's correct.

COMMISSIONER YAKI: All source materials?

MR. MARCUS: All of the --

COMMISSIONER YAKI: So anything referred to --

I'm puzzled by this because when you say the words
"source materials," I just want to know how you define that. Do you define that to be anything that a panelist has cited as part of his or her testimony or material that the panelist has subsequently provided to the Commission, no matter what the date that is, and whether or not that was adequately communicated to every single panelist that that, indeed, is the case.

MR. MARCUS: I'm referring to all of the materials that were provided by the panelists to the Commission and which were subsequently distributed to all Commissioners.

COMMISSIONER YAKI: You're avoiding my question.

MR. MARCUS: I think I'm answering your question.

COMMISSIONER YAKI: I don't think so. My question is, when we ask -- the way that you define source materials would, therefore, allow anyone or should allow anyone to submit materials to the Commission for review regardless of the date. Regardless, of how long after a briefing had been done, outside 30 or 60 days, what have you. Because, certainly the second batch was received I would say more than 60 days afterwards.

The question I'm asking is I want to know what the policy is because this is the first I'm aware
that any source materials by any panelist may be accepted at any time by the Commission for purposes of review, discussion, and what have you, and certainly this is the first time they were ever distributed to Commissioners, whereas in prior meetings I think I made a point that I had never seen some of the stuff that had apparently shown up in one of the reports.

So I'm glad about that, but I'm trying to find out what is the exact policy of the Commission with regard to source materials by a panelist, and it goes to this, which is that if it is an open ended item, I think it behooves us to understand and to know that there should be and can be other opportunities to supplement panelists' testimony with further source materials that perhaps they were unaware of and I was unaware of.

CHAIRMAN REYNOLDS: Commissioner Yaki, I don't believe that our past practice allows for panelists to submit materials indefinitely. I don't think that a panelist would have an opportunity to supplement the record five years after we've published a document.

So I think that your question rests on the assumption that there is this indefinite period, or are you asking the question is there an indefinite
period?

COMMISSIONER YAKI: Well, there appears to be an indefinite period subject to the fact that if something gets published, that somehow becomes the magical cutoff point, but even then if you were in round one of edits of something and then a panelist says, "Oh, I'm sorry. I forgot that I could have done this, and here are 4,000 more pages of social science research that you should be incorporating into this," blah, blah, blah, blah, blah, blah.

CHAIRMAN REYNOLDS: Okay. Ken, do you want to shed some light on what past practices --

COMMISSIONER YAKI: I'm just saying the reason I'm asking this is that it pertains very much to the further discussion I wish to have on the K through 12 briefing and where it goes from here.

CHAIRMAN REYNOLDS: Well, is this the appropriate time to discuss it? Do you want to wait until we -- well, no, let's just get it over with now.

Are you suggesting that we should have a policy that has a deadline for when panelists can submit their materials?

COMMISSIONER YAKI: I think that most bodies that take testimony and take information should establish a deadline, number one.
Number two, if there's a different deadline with regard to public comment versus panelists, that should be differentiated as well because in the -- this is just my own experience -- in the world that I used to live in, a public comment period is a public comment period that is for everyone involved, no matter what the supplemental testimony or what have you. And when that time came for when that 30 days was over, that was over. You couldn't say, "Oh, I'm a panelist. Therefore, I get the opportunity on day 31 or 32."

So, And I think that should be communicated clearly to the panelists as well that this is the magical time because otherwise it delays our review, staff review, whatever review of other materials that are out there.

CHAIRMAN REYNOLDS: Commissioner Yaki, that makes sense, and I think that this conversation is one that was initially started by, I believe, Commissioner Braceras and Kirsanow basically and Commissioner Melendez, the need to have some formal rules in place regarding our briefings.

And we will discuss that, I believe, later in the agenda, but on that particular issue, I agree with you. I think that there needs to be a cutoff.
Now, I don't believe that any panelist has supplemented their testimony, you know, far off into the future. So it's not clear to me that we --

COMMISSIONER YAKI: Well, that's where I would beg to differ. I would say that the large volume of materials that I received in the middle of last week relating to the K through 12 briefing was, indeed, July to August, September, two and a half months practically from the time of the first briefing that these materials showed up, and they showed up a few days around the time that we were supposed to be delivering comments on a first draft of a briefing report.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: So that's the point that I'm making.

CHAIRMAN REYNOLDS: Okay, all right. Well, I think you make good points, and I think that we will cover this topic later on in this meeting.

Okay. Any other comments, questions?

(No response.)

CHAIRMAN REYNOLDS: All right. All in favor say aye.

COMMISSIONER YAKI: Well, no, I still have a question.
CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER YAKI: What source materials? Are we talking about all of the sources materials? The ones that are distributed September 1, 4th and 6th?

CHAIRMAN REYNOLDS: You're asking -- I'm sorry. Rephrase the question.

COMMISSIONER YAKI: We are taking into the record everyone's source materials?

CHAIRMAN REYNOLDS: All of the panelists.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: Okay. All in favor say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?


CHAIRMAN REYNOLDS: Okay. Let the record reflect that all voted in favor with the exceptions of Commissioners Yaki and Melendez. The motion carries.

Okay. May I have a motion that the Commission conduct the Commission briefing and business meeting currently scheduled for November 17th on November 9th?

Under this motion, the Commissioners would be able to provide comments on the draft briefing report circulated on September 29th, 2006 and would vote on the briefing report on November 9th.

Concurring and dissenting statements would be
due on the 9th.

Is there a second?

COMMISSIONER TAYLOR: Did anybody move that?

You need a motion.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: So moved.

CHAIRMAN REYNOLDS: Thank you.

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Comments. Commissioner Yaki.

COMMISSIONER YAKI: I'm going to start off. I think Commissioner Melendez has more detailed comments. I'm just going to start off by saying this is nutty. When we received I don't know how many hundreds, a thousand or so pages of additional source materials in the first week of October on this issue.

When it was received, when it was implied that it was relied upon in great detail for the draft, that we have this artificially compressed time schedule that is ad hoc and does not really follow any sort of formal procedure other than simple expediency in terms of the end game for the deadline with incredibly short times for a dissent to be written given that the vote will not be until the third and then ten days to do a dissent on a document that if I were to estimate has
about three to 4,000 pages of source materials, in
addition to the volumes of testimony during the
hearing.

I think this is a gross misuse of the briefing
process. A gross misuse. There is no process, and I
would just say that I have serious concerns about the
ability, my ability, to write a dissent in a short
period of time, wading through all of these materials,
given that the first draft, which is not going to be
obviously the final draft, was only distributed about
a week and a half ago.

CHAIRMAN REYNOLDS: Okay. In response, you will
have until, assuming that you dissent, November 9th to
write your dissent, and I agree that there is a lot of
material to wade through, and I also agree that the
burden for those who dissent are not the same as the
majority since you'll have to actually do the writing.

But the reason for the dates that have been
selected is that this is an important topic, a topic
that will be heard by the Supreme Court, and I think
that it's extremely important that the Commission
participate in the debate.

CHAIRMAN REYNOLDS: I think, with all due
respect, Mr. Chair, I think the idea of a month from
the time that we saw the first draft to the time a
dissent is supposed to be written when the process should allow us at least a month to review the draft in the first place; I just think regardless of what the deadline is for the Supreme Court, the fact of the matter is that there's an integrity to the process that's going forward, that should go forward and should accompany what we do, and if we're simply saying, "Well, gee, there's something hot going on right now, So we're going to shift all of our gears. We're going to essentially say to anyone who might disagree, well, we're sorry that we and the entire resources of staff and others to write this report for you and look at 6,000 pages of materials, and you have one month to figure out what it is we wrote and then figure out how to do a dissent from that, I think, is unfair.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes. As you know, I sent in the memo to most of the Commissioners. I was more concerned about process as far as -- and time frames also. I know that many times we don't have enough time to respond, especially if things are changing, if material is being sent into us and we're asking a question of, well, what does that actually mean; does it change the opinion of the draft report.
And I ask the question of whether or not even the A1 administrative instruction 1.6 applied to this type, you know, the report process where it actually states in there I believe we should have one month or four weeks to actually comment. I believe that Staff Director Marcus said that he did not feel that that was applicable to the 1.6, Section 14 and all of those different places that basically applied, the time frames and all of those different things.

The other thing is that, you know, the question would be whether or not when we get testimony, if it's just basically writing a report that had everybody's testimony, but if for some reason we start to alter the report, such as in the native Hawaiians, where our own staff starts to put in their own opinions on the outcome of the briefing, you know, then I think that the Commissioners, even myself, should be able to look at that because we have a document that seems to change.

And the question would be when do we actually say that it's a closed report and nothing is going to change, and then we can comment on that. But the way I see it, things seem to gradually be changing with submittals of the panelists, with time frames changing as to when do we actually review what's being
submitted.

So I have a real concern on time frames as to our input, and I recognize that the Supreme Court decisions or Supreme Court hearings are in place and we're on the fast track, but we sure don't want to send something up there that we're not all agreeable to and that's irrelevant to the briefing and not really are just opinions of staff within Civil Rights Commission office here. So I do have a concern.

CHAIRMAN REYNOLDS: I'm sorry, and you --

COMMISSIONER BRACERAS: Can I speak to those concerns?

CHAIRMAN REYNOLDS: Yes. Commissioner Braceras.

COMMISSIONER BRACERAS: Just a bit of history about the process. When the new leadership at this Commission was appointed, one of the first things we did was establish a working group on reform to address some of the procedural issues, and the rules that you cite to are basically the rules that the working group came up with to deal with Commissioner input and time lines for reports coming out of hearings.

And so I agree with the Staff Director that they don't apply to this particular situation. However, I also agree with Commissioner Melendez and Commissioner Yaki that there needs to be a process for these other
types of reports because what we didn't anticipate when we came up with those rules was that the model that we use was going to shift. So we came up with rules for reports that were not now currently making the mainstay of our work.

And I do believe that the spirit of those rules should apply to briefing reports, but one of the reasons that we switched to the briefing report model was not to avoid application of the rules, but in order to be more timely and relevant and potentially be cited more, and all of those other things, to be able to do shorter, quicker, less labor intensive, but more timely topics.

So I think that while we definitely need rules and in many ways the rules will be similar to the ones we've established for larger reports, they do need some revision and tinkering to make them more applicable to a briefing format.

And I'm a huge process person. So I hear your concerns, and you know, my recommendation would be to ask the Staff Director to try to revise the current rules that are in place, revise them in a way that will reflect the needs of the briefing process and shorter time frames so that we can have those rules in place as quickly as possible, hopefully by the
November-December meeting, recognizing that the staff is stretched and that putting together rules takes time.

The only reason I don't recommend that it be done at the working group level is because I think as we've all seen, you know, we all have other jobs and other demands on our time, and I think sometimes, you know, establishing a working group can actually make things take longer.

And so in the interest of addressing your concerns quickly, I would ask the staff director to come up with a set of rules that addresses process within the next two months.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: I appreciate what Commissioner Braceras has said. I was part of that working group on reform and fully participated and felt included as part of that process under her leadership.

I just want to say that Commissioner Braceras described how the briefing issue involved, and actually I remember that I was part of that movement to push the Commission into doing briefings, but to my chagrin, it’s changed.

When we first talked about doing briefings, I
think when you look at the AI, Section 12.01, that pretty much sums up what I believe that briefings were supposed to be. They would be used by the Commission, quote, to provide Commissioners and the general public insight into civil rights issues without the formality of a hearing.

We understood we didn't have the budget to do formal hearings. We talk about that all the time, how much extra it costs, how much more time it takes, how much more staff preparation and what have you.

But again, and maybe this is just my own experience, but in the legislative world that I used to exist in, briefings were just that. They were briefings. They were for people to come give opinion, give their insight, give their testimony, give their what have you on an issue to illuminate it, shed light on it, provoke further thought and debate.

What has happened during that time period and why I'm concerned about what has happened to the briefing process is that they've turned into mini national reports, and I think Commissioner Braceras hit it on the head. It's essentially becoming the same type of thing, except that (a) without the process attached to it and (b) it's more than just this kind of a process. There's an integrity to the
formal hearing or to the formal report process, which
gives a better data wash and review to the materials
that are presented.

I think the worse case in point was the Hawaii
report where we looked at findings and recommendations
that came out of nowhere for most of us in terms of
what the source materials were, who made the
interpretations and what have you.

And I think rather than simply say, "Well,
that's a fault of the staff," I think, no, it's a
fault of how briefings have been converted since the
original intent of this, and if they're being
converted into mini national reports, they need to be
treated like mini national reports for the purposes of
the intellectual and scholastic rigor that goes with
it.

That's why I have a fundamental problem with
this process. For example, the Adarand, which was our
first big report that we did, was a very inclusive
process. I dissented, yes, but I felt like I had
adequate time to review, to study, and that was
without an assistant, which I still do not have.

In this process, a report that is by the Chair's
own admission timed to coincide with a deadline for
essentially reply briefs for the Supreme Court cases
in Seattle and Louisville, I am being given substantially less time to discuss it, to understand it, to review it, to critique it.

And, I mean, my dissent in Adarand was a two to three-month process in the making. It was something that started with the first draft. I started to think about where we were going, what have you.

We got this first draft just what, a week and a half ago, I think? Not much more. We had to have our comments in by what, the ninth or something? I don't know. It was an incredibly short period of time. The last week of September and then the comments were due the first week of October. Here we are barely in the second week.

That to me really violates the spirit of what it is we're trying to do and, I believe, runs a serious risk of tainting the reliability, the academic and scholastic rigor of a report that, again, by the Chair's own statement, he wishes to be heard or be seen or be cited or at least reviewed by those dealing with the Supreme Court cases in Seattle and Louisville.

And, you know, from September 28th, I believe, to November 13th, start to finish, with a passel of materials this big coming in the middle of that to
deal with I think is difficult to justify.

CHAIRMAN REYNOLDS: Well, Commissioners Yaki and Melendez, you've made some arguments that resonate with I would say most of the Commissioners, if not all. I think that in response to your strong arguments, at least some of them, that we will -- well, I agree with most of what you said, but not all -- but in any event, I think that Commissioner Braceras' recommendation is a good one, and I think that it will address many of the process issues that you've just discussed, and in terms of the current issue on the table, I think that rather than have the meeting -- rather than move it to the ninth, we stick with the 17th and provide an additional week after that meeting for dissents and concurrences.

How do you respond to that as an attempt at compromise?

COMMISSIONER YAKI: I need dates. I'm not too sure what you just meant by the ninth versus the -- I thought it was the third.

CHAIRMAN REYNOLDS: What I said was the meeting would take place on the date scheduled, which is the 17th, and that dissents and concurrences would be due on the 24th.

COMMISSIONER BRACERAS: Of?
CHAIRMAN REYNOLDS: Of November.

COMMISSIONER BRACERAS: Of November?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: What holiday does that run into?

COMMISSIONER MELENDEZ: The 24th is Thanksgiving, isn't it?

COMMISSIONER BRACERAS: Thanksgiving?

COMMISSIONER MELENDEZ: The day after Thanksgiving.

CHAIRMAN REYNOLDS: All right, all right.

COMMISSIONER YAKI: Not that I have any aversion to working through the turkey.

CHAIRMAN REYNOLDS: Okay. Well, how about this? Let's make it the 27th.

(Pause in proceedings.)

COMMISSIONER BRACERAS: Can I ask a question?

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER BRACERAS: While we're mulling these dates, is there also a date by which comments on the draft will be due and the second draft circulated if there are going to be changes made, stylistic or what have you, to the current document?

CHAIRMAN REYNOLDS: Okay. Since my picking dates without consulting with staff may cause some
problems, Ken, how would that approach affect you folks?

(The Chair conferred with staff.)

MR. MARCUS: Mr. Chairman, if the meeting continues to be on the 17th rather than the date you had indicated earlier, then we would could do the mail-out of the proposed final on the ninth. If we use the ninth, then we would need to get Commissioner comments on the second.

We can provide a revised draft by the end of next week. We have not at this point gotten a lot of comments from Commissioners. So the revised draft that we would send by the end of next week will not look terribly different from the first draft.

So you would have from the end of next week until approximately the second for your second round of comments, and then the proposed final on the ninth.

CHAIRMAN REYNOLDS: Okay. Does any --

COMMISSIONER YAKI: And then the vote would be on the 17th?

MR. MARCUS: Yes.

COMMISSIONER YAKI: And then the dissents would be due on the 27th?

MR. MARCUS: Twenty-seventh, and I would just say pushing it a little bit there, it's pushing it a
little bit in terms of getting the materials on the
Website in advance of the fifth. It should be enough
time, assuming that GPO maintains its regular schedule
during the holidays.

COMMISSIONER YAKI: Fifth of?

MR. MARCUS: I think we can get it done.

COMMISSIONER YAKI: Fifth of?

MR. MARCUS: December.

COMMISSIONER YAKI: Is there some magic to that
date?

MR. MARCUS: That makes the oral argument the
4th or 5th of December.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Mr. Chair, I just want
to make an observation as a follow-up to the comments
by Commissioner Braceras that we take a look at or the
Staff Director and the staff take a look at devising
rules with respect to the process by which briefing
reports are compiled. I think I wholeheartedly agree
with that recommendation.

The observation is just that in the context of
where the Commission has been and where it is now, the
manner in which briefing reports are put together is
not a stark departure from what had been done prior to
the working group formulating the current process. In
fact, it probably provides as much, if not more, integrity to the process by which hearing reports had been put together in the past.

Not quite, but I just want to note that in the past reports were put together and dissents also in somewhat of a truncated fashion, in some cases to be timely, and I think back to the Florida 2000 report where copious information and data and a need to reconcile conflicting analyses that were quite detailed and complicated were done in a very short time frame.

I think that I may be mistaken. Somebody can correct me, but the dissent was crafted within a month or so of the majority report being issued. That was a significant issue that was being addressed and had the context of a presidential election. There were expert reports, and yet a hearing report was put together, a dissent also.

And I think that the current briefing reports, although I do think we need a response to what Commissioner Yaki has indicated, a process suggested by Commissioner Braceras to address briefings as opposed to hearing reports; I think the end product, while it could be improved, nonetheless is probably as rigorous or close to as rigorous as what the reports
were under the hearing regime previously.

COMMISSIONER YAKI: Is that damning with faint praise?

(Laughter.)

COMMISSIONER YAKI: I mean, with all due respect, one of the -- I mean, this was obviously one of the concerns that I heard when I first joined this body over a year ago and why I wholeheartedly supported Commissioner Braceras' reform efforts to add more layers of review, input, and comment for that.

So I'm sorry if I sounded facetious, but as my wife told me before, "Your on no sleep, Yaki, you really should think twice before you say anything today."

COMMISSIONER KIRSANOW: I think that point is that I'm not so sure that there is a dearth of integrity in the processes by which we are putting together the briefing reports. It can be improved, but I don't think that it necessarily lays bare some kind of huge defects with respect to the briefing reports or the process by which we're getting there.

And I trust staff is doing -- we have disagreements as to the outcomes on some of these briefing reports, but I think the staff is doing a good job in making sure that they have a certain
degree of rigor attached to them.

COMMISSIONER YAKI: Well, I will second the Chair's amended schedule.

CHAIRMAN REYNOLDS: Okay. So just --

COMMISSIONER MELENDEZ: A question I had. You know, on the recommendation to put together a procedure in some manner that is basically outside of the administrative instruction, is that what we're actually going to do?

And how does that become a valid procedure?

CHAIRMAN REYNOLDS: No, I don't think that's what's being suggested. I think that we will --

COMMISSIONER BRACERAS: I didn't hear Commissioner Melendez. I'm sorry.

COMMISSIONER MELENDEZ: Just going back to your recommendation.

COMMISSIONER BRACERAS: I'm still stuffed up from the plane.

COMMISSIONER MELENDEZ: Working on procedures, because I had raised a question that the Staff Director said that we don't really follow the administrative instruction for these briefing reports. The question would be if we're going to work on some other procedure that has to do with review, legal review and everything else having to do with comments,
what basically type of procedure -- is that incorporated into -- because this is the -- you know, it seems like everything within the U.S. Civil Rights Commission, a federal agency basically, just has to it seems document every type of procedure that you have.

And your can’t really -- it's one thing to have kind of informal type, even if they were adopted ourselves, to something that's internal, but when we're sending out documents that are basically used in Supreme Court cases or they are sent to Congress or wherever. It would just seem to me that that has to be in some way incorporated into some type of similar administrative instructions even if, you know, the validity of it --

COMMISSIONER BRACERAS: I think I can answer that question. The thought is that we basically have a framework in place that needs to be tailored to the new model, and the Staff Director's office would take a crack at revising the rules that we have, altering time frames and the like, so that it would apply to the briefing model.

And then that would be brought forward by the Staff Director as soon as possible, but hopefully the next meeting, for presentation to the Commissioners, you know, distributed with the meeting materials
beforehand, and we could vote on it or make changes to it and then vote on it as a Commission, and we would vote to have it incorporated as an administrative instruction.

CHAIRMAN REYNOLDS: Okay. So two issues, I guess the one issue, let’s be clear on the dates. The deadline for receiving comments would be November 2nd. The mail-out would occur on November 9th. The Commission meeting will remain as scheduled on November 17th.

The dissents, the deadline for dissents and concurrences would be the 27th of November.

COMMISSIONER YAKI: Okay.

MR. MARCUS: And the next staff draft will come up by the end of next week.

CHAIRMAN REYNOLDS: Okay. So --

COMMISSIONER YAKI: I seconded that.

CHAIRMAN REYNOLDS: Okay. Very good. All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any dissents?

(No response.)

CHAIRMAN REYNOLDS: Any concurrences? The motion passes unanimously. Thank you for your good work, Commissioner Braceras. I like your
recommendation that we tighten up our -- have some formal policies with regard to how we do our briefings.

Okay. May I have a motion that the Commission accept into the record the materials received for the September 8th briefing on racially identifiable school districts?

Thus far we have received just one letter with several attachments from Nebraska State Senator Ron Raikes, who is the Chair of the Education Committee of the Nebraska legislature.

May I have a motion?

COMMISSIONER TAYLOR: So moved.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Discussion? Commissioner Yaki.

COMMISSIONER YAKI: I wasn't sure what I should do with it. I got a gigantic package from one of the people who was in the audience addressed to me full of materials and other choice objects.

Would that be --

COMMISSIONER BRACERAS: What kind of choice objects?

(Laughter.)
COMMISSIONER YAKI: It wasn't Omaha State's. That's all I can tell you.

I think it was addressed to me, but I think it was also -- it seemed to be intended for the entire Commission. I would like if we could incorporate that. I think we will have it sent on to you forthwith. I just realized that.

CHAIRMAN REYNOLDS: I assume that there are no objections.

MR. MARCUS: We're talking only about documents, correct?

COMMISSIONER YAKI: Yes.

MR. MARCUS: He's keeping the objects.

COMMISSIONER BRACERAS: The objects will remain in your house.

(Laughter.)

CHAIRMAN REYNOLDS: Any other questions or comments?

(No response.)

CHAIRMAN REYNOLDS: All in favor please say -- well, all in favor of the motion as amended by Yaki, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections? Any concurrences?
(No response.)

CHAIRMAN REYNOLDS: The motion carries.

Mr. Staff Director, do you have an update on the campus anti-Semitism public education campaign?

MR. MARCUS: Yes. Thank you, Mr. Chairman.

We continued working with the outside organizations that I've referred to in prior meetings, and in general I think that they are very excited about the work that we are doing.

Staff have prepared a draft set of Web pages that would be included within our general Website, and these Web pages would address the issue of anti-Semitism on campuses. We circulated that for comment to the Commissioners a couple of weeks back. We've also asked for input from various outside groups.

In general, the responses that we have gotten have been very favorable, and they have gotten some very positive kudos to the staff for the quality of work, which I think is great.

Staff is continuing to fine tune the Web pages in response to some useful, constructive criticism, and we will shortly circulate another draft that is revised in response to the comments we've received, and I would hope to have a proposed final of those Web pages available for a vote during the next Commission
meeting.

In addition to the Web pages, the Commission is aware that we have a poster that was approved during the last meeting, and that the image and language from the poster is also being used on a postcard that the Commission previously directed the staff to prepare.

I'll circulate this, but the Commissioners will see that the postcard has essentially the same image and text as the poster. We've added the TDY number for disabled persons as well as an E-mail address for our complaint line. We'll probably increase somewhat some of the text to make it more legible.

So we will have the poster. We will have this. We will be sending out E-mails and have gotten requests to speak with various students and student groups and faculty. So I would say at this point the feedback that we're getting has been very positive.

CHAIRMAN REYNOLDS: Any questions or comments?

(No response.)

V. State Advisory Committee Issues

CHAIRMAN REYNOLDS: Okay. Next up, we're going to discuss the rechartering packages. We have three. May I have a motion to recharter the Georgia State Advisory Committee?

Under this motion the Commission appoints the
following individuals to that committee based on the recommendations of the Staff Director:

Charles Tanksley
Tony Boatwright
Alvin Culbreth
Julius Dudley
Herbert Garrett
Shannon Goessling
William Jordan
Ann Kasun
Luis Eguiarte
Arch Stokes
and Pamela White-Colbert

And with this motion, the Commission appoints Charles Tanksley as the Chair of the newly rechartered Georgia State Advisory Committee. These members will serve as uncompensated government employees, and the Commission, assuming that this motion passes, will appreciate the hard work that they will contribute to this SAC.

Under this motion, the Commission authorizes the Staff Director to execute the appropriate paper work for the appointment.

Is there a second?

COMMISSIONER MELENDEZ: Mr. Chairman, I had a
question, I believe at the last meeting. I had a concern about the rechartering of especially Connecticut, and I believe when we agreed to not block that on a notational voting, there was agreement that we would discuss basically rechartering in general of how that process actually works.

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER MELENDEZ: And maybe that should be done before the vote on these.

CHAIRMAN REYNOLDS: Well, actually I assumed that this would be the vehicle used --

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: -- for that discussion.

So is there a second?

COMMISSIONER YAKI: So moved.

CHAIRMAN REYNOLDS: Thank you.

A second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Okay. The whole process on how the SACs are basically picked all the way down was a concern that I had because when we did look at the Connecticut SACs, there was a number of -- and basically I believe that the recharter decision should avoid, you know, bias and that we should create a
diverse, active, and capable membership of the make-up of the SAC.

I do have a concern as to the process in general. If a person were to basically want to be a State Advisory Committee person, who would that actually occur? Is it a top-down or bottom-up?

Because I know that even with the regional directors not even being in place out in Western Region, I believe, Mr. Pilla there is basically holding down the fort. I think he's basically second in command. I don't think some of the regions even have directors.

As to how the names are actually put forth, I know that the staff director has some involvement in working with the different regional directors as to how that list is put together, and in looking at some of the recharters, you know, some of them basically lack number of women. I believe the outcome of some of those actually have only two women on some of the recharters that we looked at in these packages, and I think the question would be: is it something that's basically determined within each state or is it basically driven by the central office here as to the list, you know, that goes out to the different states?

Because I think that even the State Advisory
Committees themselves, they have no idea as to who's going to be sitting on their board. It's probably somebody else making those recommendations.

I'm just thinking it should be bottom-up, that the people within each respective state probably can put forth names, or how would we as commissioners? Are we supposed to be able to put forth names to these rechartering because we would know basically some of the regions or where we come from?

I just wanted to talk a little bit about the process of getting a more diverse and well rounded --

COMMISSIONER BRACERAS: And if I could just speak sort of generally, and I know the Staff Director can answer the specifics of the process. You know, we do have rules in place, and we did revise our policy for SAC selection and adopt a very specific set of goals and objectives. So there are rules in place.

At the time that we adopted those, our goal was to have race and gender neutral criteria for selection, obviously with the goal of viewpoint diversity on the SACs, and with the goal that, you know, all of the members are interested in and committed to civil rights issues.

But our goal was to strive for viewpoint diversity and to have race neutral criteria because we
felt that, you know, we certainly didn't want to allocate slots on the SACs by quota. So we specifically sought to eliminate rules that might be interpreted that way.

As for how individual members are selected, I know in the past I've, you know, given a name or two of somebody who I thought might be interested. Marti Castro, who's on the list today for Illinois, is somebody that I originally recommended. You know, he's not from my political party. He's much more liberal than I am. He's a community activist, and somebody with whom I share a great interest in issues that affect the Hispanic community, but somebody with whom I often find myself disagreeing with on political matters.

But I knew him to be a person committed to civil rights issues and a person who would be interested in serving, and so I passed his name along, and I'm sure that any other Commissioner, you know, should certainly feel free to do that.

But the Staff Director can speak more specifically about the process, but just to address your concern about whether there is a process, the answer is yes, and I believe a very well thought out one.
And to answer your concern about diversity, we have, you know, developed a policy that's race and gender neutral.

COMMISSIONER MELENDEZ: But I guess you only can have 11 people on each advisory board. Let's say there's 17 that --

CHAIRMAN REYNOLDS: Is that true?

COMMISSIONER MELENDEZ: -- make application, and we look at their resumes, which I think should have something to do with their interest in serving on civil rights because I read some of the one sin Georgia this morning, reading what their interests are and their background and different things, but the question would be how are those actually selected because I know that doesn't seem like the state advisory chairman or whether or not there's five people still on the board and there's six new people coming on, whether or not it's actually the Regional Director that really basically makes a decision narrowing it down from 16 to 11 people or is it the staff director here or is it something that we review the 15 and throw our ten cents into who the 11 should be?

That's what I'm kind of getting at as to who would make that decision so that it could be -- and I
don't know if anybody really looked into it before, but I'm just saying that it's kind of coming to the forefront because these are basically four-year terms now; is that right?

MR. MARCUS: That's correct.

COMMISSIONER MELENDEZ: Four-year terms as opposed to two. So I think --

MR. MARCUS: No, I'm sorry. They remain two-year terms, but we have a pending recommendation to expand it to four-year terms.

COMMISSIONER MELENDEZ: It could end up there. So I'm just saying I think we need to really look at the process and be able to have input if that's part of our role as Commission.

MR. MARCUS: I'd be happy to answer if I may.

COMMISSIONER MELENDEZ: Sure.

MR. MARCUS: There are, it's a very complicated question. So I'll just try and take a stab at it and I'd be happy to take follow-up as well.

We do have a process. As Commissioner Braceras pointed out, it was extensively revised over the course of the last year. So it's a newly reworked process, and it's a process that now intends to be race and gender neutral and to bring in a wide range of viewpoints and to bring fresh new perspectives into
the committees.

The members are appointed by the Commission. The ultimate responsibility in the selection is with the Commissioners. Commissioners vote yes or no, and in the past occasionally Commissioners would, if they were unsatisfied with the proposals, would vote no and give recommendations that the staff go back and find this or that. Sometimes there were no Republicans or no this or not that.

The recommendations are made by the Staff Director. So the Commission typically votes based on the recommendations of the Staff Director.

As Staff Director, I rely on various staff members to assist me in developing my recommendations. The primary people that I rely upon are the regional directors. We have six regions. We have four regional directors. For those two regions where we do not have regional directors, the Staff Director is the de facto acting regional director.

But as Commissioner Melendez points out, in each of those two regions, I have very active senior analysts who are very helpful in coordinating the process for me in those areas.

The way that we have looked at the SACs vary little bit from state to state and region to region.
That has, in part, been based on the different needs. For instance, we have some states where we are building an entire committee from scratch because we have no eligible incumbents.

In other states, we have only a small number. so we have different things we need to look at.

Where we have a number of incumbent members who are being considered for reselection, we have to look at what is their background and what is needed in order to provide balance. For instance, are they all of one party and do we need to get people of another party in? Do they have the full range of skill sets and backgrounds that we're looking for?

Generally speaking, I try to let the different regional staff be as creative as they can and proactive in putting together committees, but I am concerned to instill a sense of urgency because I think it is very important that we move ahead quickly.

As the Commissioner probably knows, under the old process we almost never were rechartering SACs. Most of the time most SACs were not chartered for as far back as anyone in headquarters can remember. So we're trying to rectify that, even though we have fewer resources and less money and staff.

We also did not have the sort of viewpoint
diversity that is called for under the new procedures.

In terms of my involvement, I've tried to encourage and coach the regional staff. I have encouraged Commissioners to provide recommendations to me, and many Commissioners have provided some names. Those who have, I thank you and I encourage you to keep them coming.

For those of you who have not yet provided any suggestions, I would encourage you to please let me know who you are aware of, and as with any manager, my degree of involvement in the different tasks depends on a whole host of factors, including how much time I have available, how well things are going in a particular state, whether a subordinate specifically asks for me to help, whether I think that there's a particular need in a particular region to get more involved, whether I think I have value to add.

The Connecticut SAC I think is an excellent example of one that came together very well, and I think that the Georgia SAC as well as other sacs within that region are also a good example of excellent staff work.

COMMISSIONER MELENDEZ: Right. I guess the question would be I think in the Connecticut SAC there were a couple of women that seemed to be qualified,
you know. So let's take that scenario. Would that be something where a Commissioner would basically lay it on the table and say, "Why weren't these two women who seemed to be qualified not included or selected?"

Basically I don't think we get down to that type of inquiry or we haven't.

COMMISSIONER BRACERAS: I'm sorry. Women who were considered but not selected?

COMMISSIONER MELENDEZ: But not selected.

COMMISSIONER BRACERAS: Or just women you know about who had interest?

COMMISSIONER MELENDEZ: No, they were actually -- I believe they were in the -- could have been selected or appointed by Mr. Marcus or the regional director.

MR. MARCUS: We had a number of people in Connecticut whom we looked at. There were 15 that I recommended. Commissioner Melendez, you pointed out that we need to have 11 members. In fact, 11 is the minimum. Nineteen is the maximum. We have tended for our smaller states, in general, to have numbers that are closer to 11 and for larger often closer to 19.

The 15 that we chose I think were an excellent, well balanced group. In addition to that 15, it is true there were a number of people that we looked at,
including both men and women. I think, Commissioner, you may be referring to a couple of women that the staff actually sent my way. There were also some very talented, interesting men. There was one rabbi, a man who -- we didn't have a rabbi, and I don't know that we've got a rabbi in any committee, and he was very well known.

COMMISSIONER YAKI: We do.

MR. MARCUS: There were the --

COMMISSIONER BRACERAS: We do?

COMMISSIONER YAKI: Yeah, I remember seeing him in one of them.

MR. MARCUS: Okay. A staff member was enthusiastic about the idea of bringing in a rabbi.

There were a couple of women. There was a professor, I think, at Yale, and there's nothing wrong with any of these people. Any of them would have been terrific. It was just a matter of if we accepted all of them, it would have been too many, which means of the expense sometimes of bringing them all together, plus the burden, you know, in terms of the time constraints would have been too much.

In the ideal world I think I might have gone for a number smaller than 15, but it was tough cutting it beyond the 15. So it was just a matter of getting as
close as I could to 11 or 12, but trying to get good
balance, trying to get viewpoint balance, et cetera, et cetera.

CHAIRMAN REYNOLDS: Commissioner Yaki. I'm sorry.

COMMISSIONER YAKI: Go ahead. I'll let Commissioner Melendez finish. I'm sorry.

COMMISSIONER MELENDEZ: And my main concern is, you know, when we're talking about either the top-down, which would basically be you from the top basically setting forth a list out to the regional directors or either the regional directors start getting more involved because they know their certain region and they basically send you a number, a list, and basically you kind of concur with them whether or not these are -- that would be the bottom-up approach.

So if the two women, for example, were put forth by the regional director, I guess that would be the bottom up approach.

COMMISSIONER BRACERAS: It's discretionary. So it can go either way. The names can be generated by Commissioners or by the Staff Director or members of his staff or by the regional directors, and it's within his discretion. There's no rule that requires him to accept the nomination of the regional director.
or that requires him to accept my suggestion. It's within his discretion, and that's a process that we discussed at great length and voted on, and so that's how it works.

CHAIRMAN REYNOLDS: Yeah, I just want to add one thing. The ultimate decision is ours.

COMMISSIONER BRACERAS: Right. We vote as a body, collectively.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: I just want to go on the record as to why I had a problem with Connecticut, and I appreciate what the Staff Director has said. My issue though is that I find it hard to understand that diversity of viewpoint includes three people in the executive board of one organization, which is the Yankee Institute for Public Policy, being of comprising 30 percent or three out of ten of the new nominees.

I have an issue with the fact that the number of women is so low. Yes, you can be race and gender neutral, but I think we should also understand that especially for the State of Connecticut and its place in the history of Supreme Court jurisprudence, having a SAC that is at present 87 percent men and 13 percent women is something that should put up red flags right
away.

And then finally, and I am going to say this as politely as I can, but I don't know if I'm --

CHAIRMAN REYNOLDS: Remember that you haven't had much sleep.

COMMISSIONER YAKI: No, but I have triple screened this so far, but I still don't know if it's going to come out right.

I have a very, very deep issue that a member of the new SAC is someone who heads an organization that is unalterably opposed to the idea of (pause) --

COMMISSIONER BRACERAS: What is the organization?

COMMISSIONER YAKI: -- of same sex unions, the Family Institute of Connecticut. I think that this is an organization whose Website I perused, who I believe and, in fact, I hope one day -- I don't know when that will be -- but I hope one day if I am still a member of the Commission we would have a discussion about the civil rights or lack thereof for the gay and lesbian, transgender community, but I have --

COMMISSIONER BRACERAS: That's not within our statutory mandate.

COMMISSIONER YAKI: Neither was -- neither were the rights of the disabled until we put out a report
on the people that dealt with the challenges faced by
people with disabilities.

COMMISSIONER BRACERAS: I think that is part of
our statutory mandate, isn't it?

CHAIRMAN REYNOLDS: I think it is.

COMMISSIONER YAKI: I think that --

CHAIRMAN REYNOLDS: I think he's making a
different point, but at one point it wasn't. I
believe that --

COMMISSIONER YAKI: No, it was not. It was not.

MR. MARCUS: I have to say there are issues
related to the gay and lesbian community that are
fairly within our jurisdiction.

COMMISSIONER YAKI: And in this we have someone
who advocates and rates legislators, puts out
bulletins, et cetera, that is unalterably opposed to
the rights of same sex unions, and that person is now
in our SAC, and I have a very severe problem with
that.

CHAIRMAN REYNOLDS: Are you suggesting that that
person should have been disqualified, especially in
light of the fact that there are many Americans who
share his view?

COMMISSIONER YAKI: Well, we really don't want
to go down that road, do we Mr. Chair?
CHAIRMAN REYNOLDS: Oh, no, I'm just asking you a question. Do you believe that someone who is opposed to same sex marriage is ineligible to serve in a SAC?

COMMISSIONER YAKI: I think I'm not saying that, I would say for me, I would have asked to have a separate vote on him. And, again, I don't think we want to go down a road that says, well, a majority of Americans may not believe these people or those people deserve these kinds of rights. That's not a place for me to be.

COMMISSIONER BRACERAS: I don't know if that's what the Chairman was saying.

CHAIRMAN REYNOLDS: A fully informed debate having all of the viewpoints represented, and I don't see how we can have a fully fleshed out debate unless all of the voices are represented.

COMMISSIONER YAKI: So does that mean that in 1957 the Civil Rights Commission should have had an unalterable segregationist as part of us?

CHAIRMAN REYNOLDS: I think that all --

COMMISSIONER YAKI: Is that what you're saying, Mr. Chair?

CHAIRMAN REYNOLDS: I am saying --

COMMISSIONER YAKI: Because if that's what
you're saying --

    CHAIRMAN REYNOLDS: No, no, no.

    COMMISSIONER YAKI: -- then --

    CHAIRMAN REYNOLDS: Let me tell you what I'm saying. I am saying that all viewpoints should be heard, and there is no point of view that should be --

    COMMISSIONER YAKI: Viewpoints --

    CHAIRMAN REYNOLDS: -- eliminated from the discussion.

    COMMISSIONER YAKI: -- can be heard, but to be a member of the SAC, to be a member of the Civil Rights Commission family, I have a very, very deep problem with that, and that is my personal point of view.

    I'm not imposing it upon you. I'm not asking you to adopt it. I'm simply saying that I am very proud of the fact that in my history as a legislator I participated in civil unions in terms of officiating at them. I come from a city that embraces that kind of diversity, and it would be anathema for me not to express my objection to inclusion of someone of that mindset as a member of the Connecticut SAC.

    CHAIRMAN REYNOLDS: Commissioner Taylor.

    COMMISSIONER TAYLOR: A process question. Since this is our decision, are we limited to voting on a slate when we are receiving recommendations from the
Staff Director?

CHAIRMAN REYNOLDS: No. I think that any -- if there's an individual --

COMMISSIONER TAYLOR: Right.

CHAIRMAN REYNOLDS: -- that someone has a particular problem with, that they could vote against that particular individual.

COMMISSIONER TAYLOR: Well, from my perspective at least, all of the concerns raised, I think we have a forum to address all of them. That is, when the particular SAC is brought to the table for a vote, if we're not required to accept the entire slate recommendations, we can do exactly what Commissioner Yaki would like to do in this case, focus on individuals, their backgrounds, and question them, and I think that's a good debate to have, and I sense we're a tempest in a teapot here because we have a process in place to have these very discussions on particular SACs, but I don't hear any concern related to the Georgia SAC, which I thought was the motion on the table.

CHAIRMAN REYNOLDS: That's true, but Commissioner Yaki wanted to express his views on certain aspects of the Connecticut SAC, and --

COMMISSIONER TAYLOR: Which we had agreed to as
part of our discussion.

PARTICIPANT: Which I don't want -- if it's a procedural defect, then it would apply to this Georgia discussion, but if it's not a procedural defect, then I don't want us to lose track of where we are on particular SACs, and we can focus on the Georgia SAC when it comes up or the Connecticut SAC when it comes up.

PARTICIPANT: Well, so long as there is an understanding we have a process in place to address the concerns Commissioner Yaki has raised.

CHAIRMAN REYNOLDS: Okay. Additional questions, comments?

COMMISSIONER MELENDEZ: Just a final comment from myself, and the reason I raise this is because, you know, it's the discretion of the Staff Director playing a big role in the whole process. I just wanted to let him know that, you know, we're going to be looking at that, and if the process can be so that we can have input into questionable people on there like we've discussed here, that would be, you know, something we would like to do or, you know, to make sure that -- I'm just trying to make sure that it's well balanced, you know, so that we don't question if it's stacked along party lines or whatever was brought
up or whether or not we don't have enough women, and that's my main concern.

And so that I just wanted to just bring it to the forefront so that we could have the discussion on it and make sure that we could have input into the SACs.

I think we're so busy that sometimes if we just kind of rubber stamp the SACs the way it has been going, but I think that we're going to be -- and I know that we have a number of SACs we still have to recharter. So we've only touched base with some of those. So even if it's in the middle of the process, I think we still need to kind of take into account that there are issues there, and if we can streamline the process or get more input, and that's the reason we brought it up.

MR. MARCUS: Commissioner, I welcome your involvement and share your concern about trying to get the proper balance and want to take the invitation that I've given to all of the Commissioners and make it especially to you that if there are people that you have in mind also or are concerned, please don't hesitate to give me a call and let me know. I'd be happy to work with you.

CHAIRMAN REYNOLDS: And there's very few
decisions made around here where we don't rely on the
Staff Director's judgment. In my view the Staff
Director's judgment has been sound, but more
importantly, there is a checks and balance system in
place. We are the ultimate arbiters of what goes on
around here.

Okay. If there are no additional questions or
comments, all in favor of --

COMMISSIONER YAKI: Wait, wait, wait. On
Georgia?

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER YAKI: I have a problem -- I'd just
like to raise a question about one nominee.

CHAIRMAN REYNOLDS: Which one?

COMMISSIONER YAKI: Mr. Stokes. I find it very
interesting -- I find it very bizarre that someone
would say that discrimination is not a Democrat or a
Republican issue, blah, blah, blah, blah, blah.
"Civil rights should not be used as either a wedge
issue and easy to score political points. It should
be conducted in a manner similar to the building of
our nation's highways."

What the heck does that mean?

CHAIRMAN REYNOLDS: Okay. Well --

COMMISSIONER YAKI: I mean, I'm serious. If
someone thinks that civil rights should be conducted
in a manner similar to the building of our nation's
highways, I don't think that person should be on a SAC
because I don't think that person understands what in
the heck they're talking about.

CHAIRMAN REYNOLDS: Well, I think we agree with
this individual and that civil rights is not a
Republican or Democratic issue.

COMMISSIONER YAKI: But should it be conducted
in a manner similar to building our nation's highways?

CHAIRMAN REYNOLDS: Well, I will admit --

COMMISSIONER BRACERAS: It's not the most artful
description, but I think he's trying to say it's an
American issue. It's not a --

CHAIRMAN REYNOLDS: Right.

COMMISSIONER TAYLOR: It thought he was trying
to say it should be filled by the lowest bidder.

(Laughter.)

CHAIRMAN REYNOLDS: And then he's suggesting
that there are certain ambiguities with that piece of
--

COMMISSIONER YAKI: In that case, with a big dig
there is no end to it.

CHAIRMAN REYNOLDS: If you're suggesting there
are certain ambiguities involved in that piece of the
statement, I agree, but I don't think that that
disqualifies this individual.

Are there any other individuals you would like
to discuss?

COMMISSIONER YAKI: No, for now.

CHAIRMAN REYNOLDS: The whole slate, either the
whole slate or Stokes?

COMMISSIONER YAKI: No, I don't care. I mean,
again, you know, 73 percent men, 27 percent women. I
mean, it's just out of whack.

CHAIRMAN REYNOLDS: So the whole slate --

COMMISSIONER BRACERAS: But we specifically
established a policy to avoid bean counts.

COMMISSIONER YAKI: Of course, of course, but
73/27? I mean you can do better getting socks out of
a drawer in a random thing than doing that.

COMMISSIONER KIRSANOW: Just as a matter of
curiosity, what was the expression of interest in
terms of those who apply to these SAC members? Was
there a 50-50 split between men and women who wanted
to be SAC members or, you know, what was the pool?

COMMISSIONER YAKI: Well, we already know that
in Connecticut there were many more women nominated
than were chosen.

MR. MARCUS: I wouldn't agree with that
characterization.

COMMISSIONER BRACERAS: I thought he said two.

MR. MARCUS: There were a couple of women who weren't chosen. There were at least a couple of men who weren't chosen, and perhaps more than that.

COMMISSIONER YAKI: I think the SAC chair said that he nominated -- he suggested more than a couple. Anyway.

COMMISSIONER KIRSANOW: And I state that, of course, on the premise that, you know, I don't believe we should be bean counting, and I wouldn't necessarily revise my vote depending on what the response is. It's just a matter of curiosity. I don't necessarily think that we can look at the outcome and say 73 percent men and somehow that's flawed until we know, you know, was there some type of affirmative discrimination against women.

COMMISSIONER BRACERAS: But you need to know the full --

MR. MARCUS: Here's what I can say.

COMMISSIONER YAKI: Eighty-seven, 13, 73, 27, 68, 35. That's a pattern and practice to me.

CHAIRMAN REYNOLDS: Oh, come on how.

COMMISSIONER BRACERAS: Oh, please.

COMMISSIONER YAKI: Come on. Seriously.
CHAIRMAN REYNOLDS: Come on now. You're not --

COMMISSIONER BRACERAS: You can't have a pattern
and practice without knowing what the pool is. You
can't just look at the results.

COMMISSIONER YAKI: Well, then we need -- then
all I can do is look at the numbers. If I don't know
what the pool is, if I don't know what the outreach
was, if I don't know what --

COMMISSIONER BRACERAS: So you just want
proportional representation.

COMMISSIONER YAKI: -- how it was done.

COMMISSIONER BRACERAS: I'm saying that you can
surely do a heck of a lot better than three to one.

COMMISSIONER BRACERAS: If you have a
substantive problem with any of these SAC members,
then --

COMMISSIONER YAKI: I have lots of substantive
problems with a lot of --

COMMISSIONER BRACERAS: Then raise them. Then
raise them.

COMMISSIONER YAKI: -- a lot of these SAC
members.

COMMISSIONER BRACERAS: But the fact that
they're not the right sex is -- I'm not even going to
address that.
COMMISSIONER YAKI: Well, I'm surprised you wouldn't address it. I would be very -- I think that -- I think that if the Civil Rights Commission is supposed to be a body that -- well, that gets into the whole philosophical issue.

COMMISSIONER BRACERAS: And we had that discussion when we voted on the SAC rules.

COMMISSIONER YAKI: Which, of course, I opposed, but I just think you can say a lot about blindness, neutrality, what have you, but I'm just telling you that the numbers are completely out of whack.

CHAIRMAN REYNOLDS: Well, you mentioned a philosophical difference, and there is.

COMMISSIONER YAKI: So if these SACs were 99 percent Caucasian, you have no problem with it.

CHAIRMAN REYNOLDS: Or 100 percent women. I want to know what they think. I want to know what their views are. I want to insure that there is a diversity with respect to ideas. That is the important thing.

COMMISSIONER YAKI: Well, we seem to have a lot of people from the Federalist Society in all of these things.

CHAIRMAN REYNOLDS: Well --

COMMISSIONER YAKI: We had three Yankee
Institute in one SAC in one state for ten nominees. Where is the diversity? Where is --

COMMISSIONER BRACERAS: Can I just be perfectly clear about something on the record --

CHAIRMAN REYNOLDS: Hold on here.

COMMISSIONER BRACERAS: -- about the Federalist Society?

CHAIRMAN REYNOLDS: Hold on, hold on, hold on. If you look at the ideological diversity of the SACs, you don't have much. You don't have many members from the Federalist Society or the Yankee Institute. By putting them on these SACs, we are achieving diversity, the diversity that we sorely lack today.

So there is no surprise that there is a spike in the number of members from, say, the Federalist Society, for example, because that viewpoint, that point of view is not currently represented on the majority of SACs.

COMMISSIONER BRACERAS: Let me just speak to that because I think there's some confusion. The Federalist Society doesn't take positions on issues. There is no Federalist Society viewpoint. There never was; there never will be. It's a Bar Association of generally conservative and libertarian lawyers who sometimes have wildly different views from each other...
on things like the War on Terror and other issues, and it's basically a forum for ideas and for circulating conservative and libertarian ideas. There are no platforms. Unlike the ACLU, unlike even the American Bar Association, the Federalist Society does not take positions on issues.

So to say that somebody is a member of the Federalist Society and, therefore, you know, shouldn't be a member of a SAC or it's disturbing that they are a member of a SAC --

COMMISSIONER YAKI: I'm not disturbed that they're members of a SAC.

COMMISSIONER BRACERAS: It tells me --

COMMISSIONER YAKI: I am disturbed -- I am disturbed that of the new nominees there seems to be a preponderance or a disproportion of reliance upon certain organizations for the membership of a new SAC.

I mean --

COMMISSIONER BRACERAS: Well, the Federalist Society --

COMMISSIONER YAKI: Look, Jennifer -- Commissioner Braceras. We're not going to agree on this. This goes into the philosophical red state-blue state and --

COMMISSIONER BRACERAS: That's fine, but I just
want to be clear on the record that membership in the Federalist Society tells you nothing about somebody's (a) political affiliation or (b) ideological views, other than the fact that they generally believe in the principles of limited government and judicial restraint. Other than that it tells you nothing.

COMMISSIONER YAKI: Well, let me just tell you something, that the views of limited government and judicial restraint and the number of federalists whom I've encountered in my lifetime lead me to believe that I pretty much know where they're going to land on most issues. So, yes, you -- and -- and -- and I can say the same thing about --

COMMISSIONER BRACERAS: -- are members of the Federalist Society.

COMMISSIONER YAKI: -- anyone in the ACLU. I can say that about people in the American Bar Association. We can sit here all we want and say that, but the fact is people associate with different groups for various reasons. They wish to do so because the association is in itself part of who and what they are.

So, yes. I mean, fine. You know, pile in all of the federalists and Cato and everyone else and AEI and whoever.
CHAIRMAN REYNOLDS: We will now have diversity.

COMMISSIONER YAKI: But, you know, at the end of the day when you have folks whose entire point of view is to oppose civil rights or civil liberties, then I have an issue.

And, you know, rather than go into --

COMMISSIONER BRACERAS: And what evidence do you have that any of these people oppose civil rights and civil liberties?

COMMISSIONER YAKI: Well, I've already given you one about one in Connecticut, and I'm sure if I did a lot of extra research, which I don't have the time to do nor an assistant to do, on some of the new nominees, I could come up with writings. But I can tell you for sure that when it comes to California, I've got a lot of stuff on a lot of the people there, and I will bring it up, each and every one.

COMMISSIONER BRACERAS: And that's fine, but I just --

CHAIRMAN REYNOLDS: -- you will come loaded for bear for that discussion, I am sure.

COMMISSIONER BRACERAS: I just want to say that, you know --

COMMISSIONER YAKI: I can't sit here and want to, nor would I be, you know, for all of these
different states. I agree with Commissioner Melendez.
I think there is a process issue. I think that the
issue of --

COMMISSIONER BRACERAS: We have a process. You
just don't like it.

COMMISSIONER YAKI: Yeah, pretty much.

COMMISSIONER BRACERAS: But don't say, you know,
you're wondering what the process is and is there a
process and there doesn't seem to be a process.

COMMISSIONER YAKI: No, no, no, no.

COMMISSIONER BRACERAS: There's a process. We
voted for it.

COMMISSIONER YAKI: No, that's not true. The
process by which the actual members are --

COMMISSIONER BRACERAS: There are criteria.

COMMISSIONER YAKI: No, there are criteria for
the individual members. The process by which the pool
is created is what Commissioner Melendez has raised,
which I agree with and where I believe the Commission
can and should do better. You know, I'm sorry, but
the idea that -- I'm going to come straight back to it
-- the idea that we're rolling through a bunch of SACs
today where the ratio of men to women is three to one
just doesn't scour for me.

COMMISSIONER BRACERAS: What's the ratio on this
Commission?

    CHAIRMAN REYNOLDS:  I under --

    COMMISSIONER BRACERAS:  Do you want to resign your seat and let someone else step in?

    COMMISSIONER YAKI:  No, because I'm the only Asian.

    CHAIRMAN REYNOLDS:  Commissioner Yaki --

    COMMISSIONER YAKI:  I'm not going to give that up.

    COMMISSIONER BRACERAS:  Well, but these people bring other things to the table, too, just as you bring your ethnicity to the table. These other people may not bring the right sex to the table, but they bring other things. That's the very point.

    CHAIRMAN REYNOLDS:  The bottom line is --

    COMMISSIONER YAKI:  Let me just say this. If I had the appointment power, it would be a lot different.

    CHAIRMAN REYNOLDS:  -- that after our process, in my view it is going to result in SACs that have a greater amount of diversity in terms of viewpoint. Just doing a before and after picture, what did the world look like before these SACs were reconstituted and now?

    And I think that it is clear that these SACs
will have viewpoints that you may not like, but are
shared by many Americans, and so we will be able to
engage in fully fleshed out debates, and I think
that's a good thing.

COMMISSIONER KIRSANOW: Mr. Chair, I just want
an answer to my question. During the course of the
selection of SAC members, was anyone rejected or, in
contrast, was anyone placed onto the SAC on the basis
of race, sex, national original, color, disability or
other --

CHAIRMAN REYNOLDS: I want to know, too.

MR. MARCUS: Certainly, to the best of my
knowledge, no. I have to say there is one candidate
who is on this who I recommended who I thought was an
African America and later found out -- and I don't
recall exactly why I had that impression.

COMMISSIONER KIRSANOW: Is that the guy from
Seinfeld?

MR. MARCUS: Pardon?

COMMISSIONER KIRSANOW: Is that the guy from
Seinfeld?

COMMISSIONER TAYLOR: There are no African
Americans on Seinfeld.

COMMISSIONER KIRSANOW: I mean the guy who
Elaine was dating that she felt was African American
and then he thought she was Hispanic and --

COMMISSIONER BRACERAS: Oh, he thought Elaine was Hispanic?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: The conversation is degenerating.

COMMISSIONER KIRSANOW: It is, but you know.

MR. MARCUS: He later found out he was white --

CHAIRMAN REYNOLDS: Are you aware --

MR. MARCUS: -- but, of course, couldn't make a changed my mind based on that. So to the best of my knowledge, no one was either excluded or included on any of those bases.

We did reach out to a number of organizations that have particular connections to either gender or race or different sorts of constituencies. We reached out, for instance, to the League of Women Voters and La Raza, the Southern Christian Leadership Conference, the NAACP, the Martin Luther King Center, the Jimmy Carter Center, the African Literacy Program and, yes, the Federalist Society and the Georgia Public Policy Institute as well as several colleges.

PARTICIPANT: So you had outreach. There was no discrimination on the basis of any of the immutable characteristics that I mentioned, and this is what we
came up with.

MR. MARCUS: that's right.

COMMISSIONER MELENDEZ: I just had a comment in
maybe closing the comments, but I think that maybe our
outreach needs to be enhanced to some -- you know, I
think when I look at it, I had even the Native
Americans asking me how do you get on Civil Rights,
even the State Advisory committee, and I really didn't
have an answer for that because I was kind of worrying
about the process.

CHAIRMAN REYNOLDS: Just give me the names.

COMMISSIONER BRACERAS: Submit the names.

COMMISSIONER MELENDEZ: Yeah, but see, I think
the outreach needs to be if that's part of our
strategic goals, is to outreach to enhancing State
Advisory Boards. I think that maybe more work has to
be done there.

CHAIRMAN REYNOLDS: Well, looking at the
organizations that he just rattled off, it appears as
if it was a wide net that was cast and we can always
do a better job. So when we start our process, if any
Commissioner had an organization that they want to
insure is considered or reached to, by all means,
contact the Staff Director.

COMMISSIONER YAKI: Mr. Chair, what I would
request of the Staff Director is that I would like a list of those SACs for which there is currently undergoing outreach for new members, and I would also like the cutoff dates by which those applications should be applied, and if there are any currently in the process of being reviewed that is not too untimely, I'd like the opportunity to see whether or not names could be suggested for them.

But part of the issue, quite frankly, is not just her, give me a name, throw me a name, whatever a name is. Let me just reiterate. We are part time. I have no assistant. We all have our own work to do. It would help focus efforts a lot better if I knew that in two months Washington or -- no, we did Tennessee -- you know, or whatever is coming up down the pipeline. These are the deadlines, blah, blah, blah. That would help focus attention on that better than sort of a scattered shot. Well, who do I know and whatever, whatever, whatever?

MR. MARCUS: Well, may I suggest this, Commissioner Yaki? There are a number where it's imminent, where it's sort of too close because we've already been working very --

COMMISSIONER YAKI: Who are they?

MR. MARCUS: But for -- who are they?
COMMISSIONER YAKI: Yes.

MR. MARCUS: The ones that were really close, of course, California is on the table.

COMMISSIONER YAKI: I don't think you're close at all on that one.

MR. MARCUS: I think we're very close with Virginia, with Maryland, with Arizona. I hope we're close with Wyoming. Those are the ones we're very close.

And when I say "very close," once we have a name, it can take many months in order to get the paper work done. So those ones are very close, but the ones that we're not quite that close where it would be great to get additional names would be ones like --

COMMISSIONER YAKI: Well, rather than say it, I think an E-mail would be great to go out with the deadlines because that would make it a lot easier.

CHAIRMAN REYNOLDS: Yeah, and we wouldn't have to --

MR. MARCUS: That's fine.

CHAIRMAN REYNOLDS: Yeah, I think that that's a good idea.

Are we ready to vote on the Georgia SAC? All in favor of the motion, please say aye.
(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections? Abstentions?

COMMISSIONER YAKI: Oh, objections? You mean no votes? No.

COMMISSIONER MELENDEZ: I abstain.

COMMISSIONER YAKI: I'm voting no.

CHAIRMAN REYNOLDS: Okay. So let the record reflect that --

COMMISSIONER TAYLOR: He obtained.

CHAIRMAN REYNOLDS: Oh, you or --

COMMISSIONER TAYLOR: He obtained.

CHAIRMAN REYNOLDS: Yes. Please let the record reflect that Commissioner Melendez abstained.

Commissioner Yaki votes against the Georgia slate.

The motion carries.

Next up is the recharter package for the Illinois SAC. May I have a motion to recharter the Illinois State Advisory Committee?

Under this motion the committee appoints the follow individuals to that committee based on the recommendations of the Staff Director:

Barbara Abrajano
Nancy Adrade
David Baker
Martin Castro
Sonny Chico
Yvonne Coleman
Louis Goldstein
Sandra Jackson
This is a challenge. Ultra Mandrite (phonetic)
Demetri Kantzavelos
Herbert Morton
John Mauck
Cameron Memon
Gordon Quinn
Cynthia Shawamreh
Betsy Shuman-Moore
Anthony Sisneros
Lee Walker
And Farhan Younus

With this motion, the Commission appoints Lee Walker as the chair of the newly rechartered Illinois State Advisory Committee. These members will serve as uncompensated government employees, and the Commission appreciates the hard work that they will no doubt contribute assuming that this motion passes.

Under this motion, the Commission authorizes the Staff Director to execute the appropriate paper work for the appointment.

Anyone in support of this motion?
COMMISSIONER MELENDEZ: I have a question. Do you need a second before we discuss?

PARTICIPANT: So moved.

CHAIRMAN REYNOLDS: I would prefer -- and is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Thank you.

COMMISSIONER MELENDEZ: Yes, again, along the same lines of what we're talking about, I believe that the regional staff person had recommended Mr. Castro, you know, within that region, and I believe Mr. Marcus had basically decided on Mr. Walker, who is a Republican. So I'm just saying the whole issue just seems to be along party lines as far as stacking some of these, and that's a good example of where from the bottom up you will get a recommendation. Unless you have a valid reason why --

CHAIRMAN REYNOLDS: How as it stacked?

COMMISSIONER MELENDEZ: I mean, I'm just saying --

CHAIRMAN REYNOLDS: What's the ratio of --

COMMISSIONER BRACERAS: The chairman has to be from one part or the other. So is it stacked either way?

COMMISSIONER MELENDEZ: But I'm just saying,
well, give us a good reason why the recommendation coming from the region -- you would think that unless you know him better than the regional person who is in that area --

CHAIRMAN REYNOLDS: Well, I do. He's my pick. I know Lee Walker for quite a long time. He's been involved in the civil rights movement for a long time. He marched with Abernathy and company. He runs a coalition out of Chicago. He's a big supporter of school choice.

I think that he would be a fantastic chairman, and that's why I recommended him.

COMMISSIONER MELENDEZ: So what --

CHAIRMAN REYNOLDS: The imbalanced chair --

COMMISSIONER MELENDEZ: So what would be wrong with Mr. Castro then? Do you have to basically come up with why wouldn't you go with the recommendation of their regional director in that area?

MR. MARCUS: May I address that?

COMMISSIONER MELENDEZ: Sure.

MR. MARCUS: I got the packet from the regional director which had various recommendations, including Mr. Castro for chair. I looked at all of the different recommendations, and considering each potential person for chair as well as Mr. Castro.
Given that Mr. Castro was the recommendation of the director, he was sort of the first person I looked at, but I also wanted to look at others.

I asked the regional director for the reasons why he rather than anyone else, and one of the leading recommendations was that it was because it was a Commissioner recommendation. Because Commissioner Braceras had mentioned him, that sort of gave him an advantage, and there were one or two other things that she mentioned also.

Walker was someone who I knew also had Commissioner recommendation, although that Commissioner recommendation might not have been known to the regional director.

I called both of them. I called both Castro and Walker, and I had several days before the mail-out to get a response and to talk to both of them. Walker I was able to talk to and had a very good conversation. I knew a little bit of his background. I had the recommendation from the Chair and from my discussion of him and what I had seen from others and talking to the regional director, he seemed to have the level of commitment and energy to be a very good chair.

Mr. Castro did not return my phone call during that period. Now, I later heard that he was on
travel, and he more recently returned my call, and so now we're playing phone tag, but the main reason that I wasn't able to go with him was that I wasn't able to communicate with him.

One thing I find with State Advisory Committees is that the members are often difficult to contact, just as Commissioners are, because they have other jobs, and so I try to be persistent in trying to reach people.

On the other hand, all else being equal, the ability to reach someone who is supposed to be the eyes and ears in the Commission certainly weighs in favor of them. So that together with the different, very positive things that I had been hearing from Mr. Walker sort of weighed in favor of Mr. Walker.

But I would want to emphasize that I've heard only good things about Mr. Castro as well, and hope that he continues to serve as a valued member of the committee.

COMMISSIONER BRACERAS: I mean, with all due respect, Marti Castro is fabulous, and he was my recommendation for the SAC, and had he been selected as chair, I'd be thrilled with that. But I'm willing to defer to the Staff Director's discretion, and if both of these individuals are good people for the
post, then as between the two, the Staff Director's
decision that accessibility -- I'm sorry?

COMMISSIONER YAKI: Nothing.

CHAIRMAN REYNOLDS: Just a shot.

COMMISSIONER BRACERAS: What did he say?

CHAIRMAN REYNOLDS: Oh, no, nothing. Just he's
a Republican.

COMMISSIONER YAKI: No, I said, "Pick the
Republican."

CHAIRMAN REYNOLDS: "Pick the Republican."

COMMISSIONER BRACERAS: The bottom line is I
would have been happy either way, and I'm willing to
leave that decision to the Staff Director. I would
have been thrilled to see Marti Castro as chair, but
I'm not going to oppose it just because --

COMMISSIONER MELENDEZ: Right, and I don't have
a problem with the authority of the Staff Director
being the final say, you know what I mean? But what
I'm saying is as you know, when we first started
discussing the SACs and I also recommended that we
kind of include that in the strategic plan, and you
also know what was said about us, and it almost sounds
like they were saying that they're kind of left out,
that their decisions don't mean anything, and it
probably goes to the regional officers, too.
I'm just saying that at some point we might want to, wherever they make the recommendation, we might want to support that recommendation. Otherwise if we keep overriding that recommendation, then we'll probably get more letters from people saying that this is a top-down, do as we say, and we don't care about what the SACs say or what the regional directors say.

That's my only point, and you know, even though we brought these up as certain issues, I just want us to be aware of that whole bigger picture as we move forward.

CHAIRMAN REYNOLDS: Well, I think it is important that we entertain seriously the suggestions by all the folks involved in the process, but if you're suggesting that these decisions be made by either the current or former members of SACs or the folks in regional offices, then I'd have to disagree with you.

I think that the ultimate decision is ours and that we rely heavily on the judgment of the Staff Director, and I think that that process does not eliminate input from current and former members of SACs or the regional offices.

Commissioner Yaki.

COMMISSIONER YAKI: Yes. Using a value neutral
approach to this, given the fact that this is a very active state with the presuming hopefully will be a very active SAC, I think that having some continuity in leadership would be important, and I am going to make a substitute motion to nominate Mr. Castro as the Chair of the Illinois SAC.

COMMISSIONER MELENDEZ: I would second that motion.

COMMISSIONER BRACERAS: Do we know that he's interested?

COMMISSIONER YAKI: Presumably he is --

MR. MARCUS: I believe he is. I believe that he would not -- I believe that he is interested.

COMMISSIONER YAKI: Presumably he would not have been submitted by others if he had not given an indication that he would have.

CHAIRMAN REYNOLDS: Okay. Conversation.

Mr. Castro, is he currently on the SAC?

COMMISSIONER BRACERAS: Un-huh.

COMMISSIONER YAKI: Yes, he is.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: I mean, I'm indifferent, honestly, except that I don't necessarily feel that we should be disrupting, you know, the discretion of the Staff Director, but --
CHAIRMAN REYNOLDS: Well --

COMMISSIONER BRACERAS: -- I'm a big fan of Marti Castro. I gave $400 to his congressional campaign. You're not going to see a fight from me if he becomes the chair.

CHAIRMAN REYNOLDS: I would say that we just vote on the motion as the original motion. I see no reason to undo the choice made by the Staff Director. There will be many instances where there are multiple strong candidates and a decision is made. Unless we can find some type of flaw in the Staff Director's process or some type of animus, then I think that we should just -- at least I would recommend that we defer.

COMMISSIONER YAKI: Point of order.

COMMISSIONER KIRSANOW: I think the process is that we vote on a substitute motion.

COMMISSIONER YAKI: Right. Point of order. The substitute motion takes precedence over the main motion.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: I was going to address the substitute motion.

COMMISSIONER YAKI: Is there a second?

PARTICIPANT: Second.
COMMISSIONER MELENDEZ: And what I was saying, the issue is there has to be some give and take on this Commission, you know, and this might be one of the give-and-takes because if for some reason -- and we could lose the vote on this, but what you'll see is like Commissioner Yaki said. I don't have time to get involved with every one of these SACs, but if we are not happy and there is no compromise or no give and take on here, then what you'll see is we'll really get into these SACs and every one of these we come up, we'll focus off of whatever else there is, and we'll start to put more effort into really scrutinizing every one of these, and that's where we're actually going.

CHAIRMAN REYNOLDS: I think that that's each Commissioner's prerogative. If you'd like to spend a lot of time pouring over each of the candidates, I think it would probably be a good thing. The more information the better.

And in terms of compromise, this Commission has, I think, bent over backwards to try to meet, to try to respond to all dissenting views. We've always tried to -- all on a regular basis, we try to come up with compromises.

What we don't do is just say, "Let's vote." We
work at trying to find compromises. Most of the time we're successful. Some of the time we're not. So --

COMMISSIONER YAKI: I would agree.

COMMISSIONER MELENDEZ: Let me ask what does Staff Director's -- what do you think about changing to Mr. Castro as far as could it go either way as far as you're concerned or you still -- because it sounds like it's the Chairman that's basically recommending. Maybe you thought about Mr. Castor. Maybe it's the Chairman that's basically pushing you to change your mind and go in a different direction.

CHAIRMAN REYNOLDS: Push you? Did I twist your arm?

MR. MARCUS: No. Mr. Walker is my recommendation and he is my enthusiastic recommendation. I've heard and read very positive things about him. He really seems to be a leader in his community. He's very well regarded. He's been very active in a number of issues related to civil rights. I think he's going to be tremendous.

Mr. Castro I've also only heard good things about. I think either one of them would be great. I think we are very fortunate that both gentlemen are willing to serve and serve without compensation in the relatively task less job. If I had had an opportunity
to speak with Mr. Castro, if he hadn't been traveling as part of his busy law practice, I really don't know. I mean he might have impressed me every bit as favorably as Mr. Walker, but it's hypothetical at this point.

So I would say I enthusiastically recommend Mr. Walker, but I've heard only good things about Mr. Castro.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: This is a process that I think requires some level of deference to the Staff Director. I would differ in the Chair in the sense that I don't feel bound and limited by the need to have a member of this Commission identify a flaw in the Staff Director's logic in order for me not to defer to him.

CHAIRMAN REYNOLDS: That's fair. I agree.

COMMISSIONER TAYLOR: Frankly, sometimes there may be calls that we make where Commissioner Yaki makes a recommendation, for example, or asks a position, and I in the interest of maintaining the collegial nature of this body agree with.

Having said all of that, I'm going to vote against the substitute motion because of the Chair's involvement with this individual and his desire to see
him serve as chair. You know, absent that personal involvement, I'd be more inclined, frankly, to go with Commissioner Yaki's recommendation, but given the Chair's personal involvement, I'm going to vote against it.

I want to put another caution, if I could, however. Commissioner Melendez indicated that he was concerned that there would be an effort to stack these, and I don't think that's true in any respect. The process is open, and again, but for the personal involvement of the Chair, I'd be inclined to support Commissioner Yaki's motion, but I can't for that reason.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: I concur in large part with comments made by Commissioner Taylor. I'm encouraged, actually by the process as described by Commissioner Braceras, the Chair, and the Staff Director as to how we arrived at the recommended motion pertaining to Mr. Walker.

We had a Republican Commissioner who had recommended a Democratic chair. The Staff Director vetted the two, made a diligent effort to make sure that he received comments from both of them, and possibly because of time constraints couldn't receive
sufficient input to make a determination with respect to Mr. Castro.

Mr. Walker doesn't seem to have any deficiencies or defects that would disqualify him from this process. So I think this has been a process that was fair and open, transparent, and I'm also inclined to vote against the substitute motion because I don't defer to the Staff Director, but I think he has spent a lot more time on this issue than I have, and I don't know anything about Mr. Castro other than what I have just heard here today and what's in the materials.

And clearly, the Staff Director has spent more time on this than I have.

CHAIRMAN REYNOLDS: Two comments. When I recommended Mr. Walker, I assumed that he was a Democrat, and he marched with King and Abernathy, and from that generation most of the black leaders were Democrats. My assumption turned out to be wrong.

And as for Mr. Castro, he is imminently qualified to be the chairman of that SAC, and in fact, if he is still on the SAC and interested in the job the next go-round, my presumption is he will have my vote.

COMMISSIONER KIRSANOW: I would call the question.
CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: Point of information. On SACs are there chairs and vice chairs or is it just chair?

MR. MARCUS: Typically we have chairs. Vice chair is not a typical designation. I can't say we don't have any in the 51, but typically we have a chair.

COMMISSIONER YAKI: Well, what happens, for example, when a chair is unable to fulfill his or her duties?

MR. MARCUS: Well, that's a good question. The process is to name an acting chair. For instance, there was a motion to name an acting chair in Maine a couple of months ago.

COMMISSIONER YAKI: Well, I would just say listening to the Chairman and his strong feelings about Mr. Walker, I'm inclined to withdraw my motion, but I would suggest that perhaps in this instance where we have two people very qualified, very interested, perhaps we can in this instance create the chair/vice chair category so that they can both function at a high level and hopefully working with each other, and I would ask that we create a chair and vice chair position in the State of Illinois, with the
chair being Mr. Walker and the vice chair being Mr. Castro.

CHAIRMAN REYNOLDS: Okay. Second?

COMMISSIONER KIRSANOW: I'm not opposed to that. I'm sorry if there's any discussion. I just don't know if that's kind or presumptuous of us. You know, it may be that Mr. Castro would see that as a demotion or an insult. I don't know. We haven't contacted him.

CHAIRMAN REYNOLDS: Well, we can do it contingent upon a conversation with him.

Comments? How does everyone feel about this?

(No response.)

CHAIRMAN REYNOLDS: Okay. I'm comfortable with the motion and will support it. So let's vote on the -- where are we now?

COMMISSIONER YAKI: Amended Yaki substitute motion.

CHAIRMAN REYNOLDS: Thank you. The amended Yaki substitute motion.

COMMISSIONER KIRSANOW: Could we restate it?

COMMISSIONER YAKI: That we accept the recommendation of the Staff Director for Lee Walker to be named as Chair; that we direct the Staff Director to ask Mr. Castro if he would be willing to serve as
vice chair of the Illinois SAC and if so, to create that position, and entitle them there forthwith.

CHAIRMAN REYNOLDS: All in favor? I'm sorry.

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Okay. We have a second here. We've already had our discussion. We get to vote now. All in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any dissent, objections, abstentions?

(No response.)

CHAIRMAN REYNOLDS: Okay. That motion passes. However, it was not clear --

PARTICIPANT: We still have the slate portion.

CHAIRMAN REYNOLDS: Yes, that's right. It's finished with the slate. Okay. Now, let's vote on the remaining recommendations. Do we need additional discussion?

(No response.)

CHAIRMAN REYNOLDS: Okay. All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Okay. Please let the record reflect that with the exception of Commissioner

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Melendez, all Commissioners present voted for the motion. The motion carries.

We'll take a five-minute break.

COMMISSIONER MELENDEZ: Actually I'm sorry. I wanted to abstain on the remainder.

CHAIRMAN REYNOLDS: Oh, okay. Please let the record reflect that with the exception of Commissioners Yaki and Melendez, all of the other Commissioners voted in favor. The motion carries.

Let's take a five-minute break.

(Whereupon, the foregoing matter went off the record at 11:09 a.m. and went back on the record at 11:26 a.m.)

CHAIRMAN REYNOLDS: Let's go back on the record.

We have the rechartering package for Utah. Commissioners Yaki and Melendez, if there are an insufficient number of blacks on that committee, it's not our fault.

May I have a motion that the Commission recharter the Utah State Advisory Committee?

Under this motion the Commission appoints the following individuals to that committee based on the recommendations of the Staff Director:

Charlene Arbon

Glen Bailey
William Coleman
Virginius Dabney
Marco Diaz
Michael Homer
Robyn Kaelin
Daniel Levin
Edward Lewis
Joan Milner
Rosa Maria Martinez
David Parker
Betty Sawyer
Filia Uipi
Robert Whitehorse
And Jennifer Yim.

With this motion, the Commission appoints Mr. Uipi as chair of the newly rechartered Utah State Advisory Commission. These members will serve as uncompensated government employees, and the Commission appreciates your hard work, assuming that this motion passes, that they will contribute.

Under the motion the Commission authorizes the Staff Director to execute the appropriate paper work for the appointment.

Does anybody want to hand me this motion?

COMMISSIONER TAYLOR: So moved.
CHAIRMAN REYNOLDS: Thank you.

COMMISSIONER KIRSANOW: Second.

COMMISSIONER YAKI: I'm just going to say the same objections as before.

COMMISSIONER MELENDEZ: I would ask the Staff Director how this dialogue went with the regional director.

CHAIRMAN REYNOLDS: I had no input into this one. I don't know many people from Utah.

MR. MARCUS: I'm sorry, Commissioner. How did my conversation --

COMMISSIONER MELENDEZ: How did that one go as compared to the others as far as the Utah?

MR. MARCUS: In this one, we reached out to a number of organizations, including the Utah Governor's Office, the State Foreign Commission's Office, the University of Utah, at least one or two members of Congress, the NAACP, the Asian Association of Utah, the Utah Rasa Political Action Committee. We reached out to a number of different groups and have what I think is a fairly diverse, balanced group in a number of respects.

The regional director's recommendations looked pretty good to me. I made a number of efforts to reach out and identify candidates to see whether I was
coming up with the same one as the regional directors were coming up with different ones.

In the State of Utah, I frankly did not come up with very much, certainly different than the regional directors, and I know he was working on it very hard. Fortunately we were able, since this was at the end of the fiscal year and we had a little extra money, I was able to send the regional director to Salt Lake City to do some recruitment.

I think at that point we were a little weak on -

COMMISSIONER YAKI: You sent him on a mission?

MR. MARCUS: -- we were a little weak on lawyers. So he was able to recruit lawyers, and the package basically seemed to be balanced.

I looked at all of the candidates, and especially Mr. Uipi. I interviewed Mr. Uipi by phone, had a very good conversation with him. He certainly seemed to be committed to the mission of the SAC. Everything that I heard from him seemed to be very positive, and so I was able to make the recommendations essentially based on what the regional director had suggested.

CHAIRMAN REYNOLDS: Additional conversation?

(No response.)
CHAIRMAN REYNOLDS: Okay. All in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections? Abstentions?

(Show of hands.)

CHAIRMAN REYNOLDS: Let the record reflect that Commissioner Yaki abstains. The remaining Commissioners voted in favor of the motion. The motion passes.

Okay, folks. We are done.

COMMISSIONER KIRSANOW: One thing. I just wanted to acknowledge my former assistant, Chris Jennings, who left the employ of the Commission about a month ago to take a position in Baghdad. The Commission was a bit too stressful for him. He had done tremendous work on my behalf in nearly three years, and he was an extraordinary assistant, assisted me in preparation for testimony and nomination of a couple of Supreme Court Justices before the Senate Judiciary Committees, done Yeoman's work, and I shall miss him.

COMMISSIONER YAKI: What's he doing in Baghdad?

COMMISSIONER KIRSANOW: He's assisting with the continued formation of the government.

COMMISSIONER BRACERAS: Who was he employed by?
COMMISSIONER KIRSANOW: I can't remember what the name of the entity is.

COMMISSIONER BRACERAS: Is he already there?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Okay. Well, folks, we will reconvene at one o'clock. Please try to get here on time.

The briefing, as you know, will be covered by C-SPAN, and it would be great if we could start on time.

(Whereupon, at 11:31 a.m., the meeting was recessed for lunch, to reconvene at 1:00 p.m., the same day.)

VI. Briefing on Voter Fraud and Voter Intimidation

CHAIRMAN REYNOLDS: Okay, folks. Let's get started.

I guess I start off by welcoming our panelists. I would ask everyone to silence their cell phones.

On behalf of the Commission on Civil Rights, I welcome everyone to this briefing on voter fraud and voter intimidation. The Commission frequently arranges such public briefings with presentations from experts outside of the agency in order to inform itself and the nation of civil rights issues.

At this briefing a panel of experts will advise the U.S. Commission on Civil Rights on the frequent
allegations of voter fraud and intimidations that have questioned federal and state elections in recent years. Purported incidents of voter fraud include non-citizens voting, eligible voters casting two or more ballots or impersonating other voters and other types of fraud.

Claims of voter intimidations have involved officials purportedly challenging voters in minority areas with requests for identification and providing incorrect information on voter eligibility.

This morning we are pleased to welcome four experts on various aspects of voter fraud and voter intimidation.

First, we have Robert Pastor, currently a professor of international relations at American University and former Executive Director of the Carter-Baker Commission, more formally known was the Commission on Federal Election Reform.

Second to speak will be Thor Hearne, a member and principal of the law firm of Lathrop & Gage in St. Louis, Missouri. He was the national election counsel for the Bush-Cheney ticket in '04, and general counsel to the American Center for Voting Rights.

Third will be Donna Brazile, Chair of the Democratic National Committee's Voting Rights
Institute and former campaign manager for the Gore-Lieberman ticket in 2000.

Finally we'll have John Fund of the *Wall Street Journal* and author of a 2004 book *Stealing Elections: How Voter Fraud Threatens our Democracy*.

I welcome all of you on behalf of the Commission, and we'll introduce everyone and describe your activities, and then we'll call on you according to the order which I have given for the record.

First up we will have Robert Pastor, who has been the Vice President of International Affairs and a professor of international relations at American University since 2002. In addition, Dr. Pastor is the Executive Director of the Commission on Federal Election Reform, co-chaired by Jimmy Carter and James Baker.

From 1985 until he arrived in American University, Dr. Pastor was the professor of political science at Emory University and a fellow and founding director of the Carter Center's Latin American and Caribbean Program and the Democracy and China Election Projects.

He has held many other prestigious positions in government and academia. He was a Peace Corps volunteer in Malaysia, a Fulbright Scholar in Mexico,
a Straus Visiting Professor at Harvard University, and
the creator of the Humphrey Fellows Program.

Dr. Pastor is author or editor of 16 books,
including *Toward a North American Community*, *Exiting
the Whirlpool*, *U.S. Foreign Policy Towards Latin
America*, and others.

Second we have Thor Hearne. Thor currently
serves as counsel to the American Center for Voting
Rights Legislative Fund. Prior to joining the
legislative fund, he served as the national election
chief counsel to President Bush's reelection campaign
for 2004 and in 2000, he was the Missouri counsel to
the Bush campaign.

Hearne was served as legal counsel in too many
other political candidates and campaigns on the
federal and state level. Mr. Hearne testified before
the U.S. House Administration Committee hearing in
March 2005 regarding the presidential election in
Ohio.

Mr. Hearne also testified before the Missouri
Commission to investigate the 2000 Missouri general
election and allegations of fraud in the city of St.
Louis.

More recently, Mr. Hearne served as an academic
advisor to the bipartisan Carter-Baker Commission on
Election Reform. Mr. Hearne also served as the attorney and law clerk in the U.S. Department of Education for the Office for Civil Rights during the Reagan Administration.

He received his law degree from Washington University Law School and his B.A. from Washington University in St. Louis.

Third we’ll have Donna Brazile, who is the Chair of the Democratic National Committee’s Voting Rights Institute, and an adjunct professor at Georgetown University in Washington, D.C.

Ms. Brazile is the former campaign manager for the presidential election for the Gore-Lieberman ticket in 2000 and the first black American to lead a major presidential campaign.

Prior to joining the Gore campaign, Ms. Brazile was Chief of Staff and press secretary to Congresswoman Eleanor Holmes Norton of the District of Columbia. She is a weekly contributor and political commentator on CNN's Inside Politics and American Morning.

In addition she is a columnist for Roll Call Newspaper and appears regularly on MSNBC's Hard Ball and Fox's Hannity & Colmes. A veteran of numerous national and statewide campaigns, Ms. Brazile worked...
on several presidential campaigns for Democratic candidates.

In addition, Ms. Brazile has served as a senior lecturer and adjunct professor at the University of Maryland and a Fellow at Harvard's Institute of Politics. Ms. Brazile is a recipient of numerous awards and honors, including *Washingtonian* magazine's 100 Most Powerful Women in Washington, D.C., *Essence* magazine's 50 Most Powerful Women in America, and the Congressional Black Caucus Foundation's award for political achievement.

She is currently the founder and managing director of Brazile & Associates, a political consulting and grassroots advocacy firm based in the District of Columbia.

Finally, we have John Fund, who writes the weekly "On the Trail" column for Opinion.com, for the *Journal*, and he is author of the 2004 book *Stealing Elections: How Voter Fraud Threatens our Democracy*.

Mr. Fund joined the *Wall Street Journal* in April of 1984 as Deputy Editorial Features Editor. He became an editorial page write specializing in politics and government. In October of 1986 and was a member of the *Journal's* editorial board from 1995 to 2001. Mr. Fund worked as a research analyst for the
Mr. Fund attended California State University where he studied journalism and economics.

Panelists, thank you very much for carving out this time from your busy schedules. We will start with Professor Pastor.

You'll have ten minutes.

DR. PASTOR: Thank you very much, Mr. Chairman and members of the Commission. It's an honor to testify before you today on these very important issues of fraud and election and intimidation in the context of broader election reform.

For the last 20 years I've worked on improving the electoral process in the United States and throughout the world. At American University we sponsored the Carter-Baker Commission on Federal Election Reform, issued a report with 87 specific
recommendations as to what is needed to improve our process.

The subject of your hearing today demonstrates why it is both necessary and difficult to make progress on these reforms. For many Republicans, the principal problem is electoral fraud, and for many Democrats, the issue is voter intimidation and the impediments to voting.

For many Republicans, the solution is voter IDs, and for many Democrats, voter IDs are the problem, not the solution.

For our commission, which was roughly divided between Republicans, Democrats and independents, we all believe that a free election requires both valid integrity and access, and that voter IDs are a part of the problem -- a part of the solution, but if they become the entire part of the solution, then they actually become the problem.

The other parts to the solution include expanding access through an affirmative role by the states to provide free voter IDs and to expand the base of registered voters to take steps to insure there is no intimidation and also to examine other kinds of election fraud and take steps against them.

Without going into the full recommendations, let
me try to summarize the broad approach that the
Carter-Baker Commission took. Let me say having
observed elections all over the world, I've seen crude
efforts to manipulate elections and to intimidate
voters on a national scale. Fortunately this does not
occur in the United States, and one reason is that our
system is so decentralized that it's frankly
impossible to manipulate the electoral system on a
nationwide basis. Indeed, it's hard to persuade states
and counties to accept uniform requirements that
Congress has mandated.

There is some forms and some fraud and some
intimidation in U.S. elections, and the perception may
be growing, albeit from each group, that each problem
is getting worse. Any fraud and intimidation
represent egregious assaults on our democracy, and we
need to take steps to stop both, but we also need to
recognize that we face a wider range of election
related problems. We need to, for example, establish
nonpartisan, autonomous, professional election
administration in our states. It does not exist
today.

We need paper audits and electronic security and
more accurate and up-to-date and interoperable
registration lists. We need to undertake all of these
reforms to build greater confidence in elections.

In our report, we identify numerous recommendations, first to improve access to elections through improved registration for our citizens, including Americans with disabilities and those working or serving abroad.

We need to restore voting rights to otherwise eligible citizens who have been convicted of a felony. We need greater voter education so that more people can understand their responsibility to vote and make it easier for them to do so.

With regard to election fraud, our Commission judges that it's, frankly, difficult to measure, but that it occurs. The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in charges of multiple voting, of providing full information on felon status, other offenses as well.

Some cases, of course, are never pursued because the difficulty of obtaining sufficient evidence for prosecution or because many people believe that this is a victimless crime. In truth, election fraud usually attracts public attention and comes under investigation only under very close elections.
We recommend steps that the Department of Justice should undertake to deal with that.

Absentee ballots remain the largest source of potential voter fraud. Our Commission recommended that state and local jurisdictions should prohibit a person other than voter from handling absentee ballots. The practice of allowing party workers from delivering absentee ballots should be eliminated. States should also make sure that absentee ballots received by election officials before election day are kept secure until they are counted.

The practice of challenges may contribute to ballot integrity, but it can also have the effect of intimidating eligible voters. New procedures are, therefore, needed to protect voters from such intimidating tactics, while also offering opportunities to keep the registration rolls accurate and to provide observers with meaningful opportunities to conduct the elections.

States need to provide and define clear procedures for challenges which should mainly be raised and resolved before the deadline for voter registration.

In addition to the penalties set by the Voting Rights Act, it should be a federal felony to engage in
any act of violence, property destruction or threat
that is intended to deny any individual the right to
vote. To deter systemic efforts to deceive or
intimidate voters, the Commission recommended federal
legislation to prohibit any individual or group from
deliberately providing the public with incorrect
information about election procedures for the purpose
of preventing voters from going to the polls.

A good registration list will insure that
citizens are only registered in one place, but
election officials need to make sure that the person
arriving at a polling site is the same one that is
named on the registration list.

In the United States where 40 million people
move each year, we believe that some form of
identification is needed. We were concerned, however,
over the expanding and proliferation of voter ID
requirements and believe that this could be the source
of discrimination.

Therefore, we recommended a single uniform ID
which used the real ID card as the basis for doing
that, which also requires proof of citizenship or
lawful status. But it's also essential for the states
to play an affirmative role to insure that those
people who do not have a driver's license have access
to a free photo ID, and indeed, that mobile offices at
a much more enhanced role by states is undertaken so
that we use the real ID as an opportunity to expand
voter registration lists and, therefore, expand voter
participation.

We believe that this is possible, but it
requires an affirmative role by the state.

To verify the identity of voters who cast
absentee ballots, the voter's signature on the
absentee ballot can be matched with a digitalized
version of the signature that the election
administration maintains.

CHAIRMAN REYNOLDS: Two minutes. You have two
minutes remaining.

DR. PASTOR: Thank you. I'm just about there.

There are also concerns that IDs might be a step
towards a police state, but the truth is most advanced
democracies have national identification cards.
Still, nonetheless, we recommend new institutional and
procedural safeguards, including ombudsmen to assure
people that their privacy, security and identity will
not be compromised by ID cards. The cards should not
become instruments for monitoring behavior.

In conclusion, fraud and intimidation of any
kind and magnitude is unacceptable in a free electoral
process, and if the perception is growing that both
are getting worse, then additional safeguards are
absolutely essential.

The Carter-Baker Commission offered dozens of
recommendations to address the two issues, as well as
others that confront the full gamut of problems facing
the U.S. electoral process, including the need to
establish nonpartisan, professional, and autonomous
election systems in each state and oversight over the
source codes and verifiable paper audits for
electronic machines.

To implement these goals requires that party
leaders in each legislative body recognize that access
and integrity are two sides of the same problem, and
both need to be protected.

Thank you, sir.

CHAIRMAN REYNOLDS: Thank you.

Mr. Hearne.

MR. HEARNE: Thank you, Mr. Chairman.

It is truly an honor to be here, as Mr. Pastor
mentioned, Professor Pastor mentioned, and I
appreciate being invited.

I also am very grateful that this Commission is
looking into this at a time when our nation is on the
cusp of a midterm election. Our national attention is
focused on elections, how we are going to conduct our elections.

Let me note Bob Pastor mentioned the Carter-Baker report. I had the honor of being one of the many academic advisors that assisted in that effort, and that was, I consider, a high point in the process of developing bipartisan consensus on election reform.

Bob Pastor himself really labored heavily on that project, as did many others, and I would commend that in my recommendation to this Commission as being a very thoughtful consensus of bipartisan recommendations from various leaders, including folks such as Andrew Young, Lee Hamilton, President Carter, Secretary of State Baker, and many others who shared and participated in that work. It is an outstanding product, and it is one that I think, again, has some recommendations that are of very significant value to this Commission.

But as a Commission, the Carter-Baker Commission noted, as anyone who is looking at recent polls can see, we have a situation in this country where there is a confidence problem in our elections. Most voters do not have confidence or a significant number of voters do not have confidence that their vote will be fairly and accurately counted, that they will have a
fair and accurate opportunity to participate in the
election, and that lack of confidence translates into
a lower participation by voters.

And both of those, confidence and participation,
are features that we think, I think should be
addressed and I appreciate, again, this Commission
doing that.

Let me address -- and I will not read my
prepared remarks since I presented those to the
Commission. I will spare you from that and just
simply hit a few high points that I noted that I
believe are particularly compelling, as one who has
been in the election area, in the election law
practice for some time.

Specifically, the most important initial step
(and HAVA, the Help American Vote Act, took
significant strides in this direction), is a current
and accurate voter roll. The most likely reason an
eligible citizen will be denied their opportunity to
cast a ballot is when they go into their polling
place, they find that their name is not on the voter
roll. An error in the voter roll, however it gets in
there, can deny or disenfranchise a legitimate voter
from casting a ballot.

Voter rolls in my home State of Missouri, right
now the Department of Justice is suing our state because we have voter rolls that in some cases have 150 percent of the voting age population listed on the voter roll. Clearly it is not an accurate voter roll.

Just this Monday in Missouri we find the St. Louis Post Dispatch front page story was the suspect voter registration cards, thousands of registration cards, fraudulent registration cards submitted to the City of St. Louis Election Board.

Yesterday, or the day before, the Kansas City Star ran a headline where thousands of fraudulent registration forms were submitted in Kansas City. In 2004, we had a situation where a fellow named Chad Staton was paid in crack cocaine to submit fraudulent voter registration cards in Defiance County, Ohio. Those registration cards included ones for Dick Tracy and Mary Poppins.

Whether somebody does or doesn't cast a ballot in the name of those fraudulent registrations, that entire process undermines our public confidence. When you read the paper and you see that thousands of fraudulent registrations are submitted, when you see that the election is administered in a way where we don't know if the voter rolls are accurate, our citizens are losing confidence in the process.
Carter-Baker recommendations go a long way to addressing that and having some very sound policies that states and the federal government should adopt. But, as I said, a current, accurate, single statewide voter roll this year, in '06, is the first year that HAVA has that requirement, and hopefully, we will go a long way to doing that.

Making sure that state election officials properly fund that so every eligible, registered, legitimate voter has their name appear properly on the voter role is a good thing. Taking steps to prevent people from trying to "game the system" with fraudulent registration forms is also a good step and recommendation to prevent people from doing that.

Both Democrat and Republican election officials testified in the aftermath of Ohio in '04 that what they found was large numbers of fraudulent registration forms were dumped on them right at the deadline, and that had the following effect. It made it more difficult for them to process those registration forms accurately. It also potentially prevented some of them from being added to the voter role in a timely manner.

I think voter registration forms, as the Carter-Baker Commission recommended, should be submitted...
within several days after they are collected, maybe seven days to ten days. That means that we will have less likelihood of a registered eligible voter being denied the opportunity to be accurately added to the voter roll. It will also allow election officials to do their job more accurately.

Bob Pastor mentioned the issue of voter identification. I understand that that's a contentious issue in the country right now, but it shouldn't be, and I regret that in some cases it has become one. I think the Carter-Baker recommendation had a sound recommendation. Let's transition into a government reliably issued photo identification. We use that to rent a video, to get on a plane, to cash a check. It has become a ubiquitous feature of our life today to have that kind of identification.

Every poll ranges between 80 percent and 90 percent of the public support that kind of confidence building measure. Now, we need to be very mindful that we should not impose a requirement if we do not provide the means for everyone to meet that requirement to vote, which means that that card which specifies citizenship and identity of a voter also has protections to make sure they get access to them, have ready access to them, the free photo ID, and that it
is without any charge to anyone seeking to obtain that in order to vote.

What you will find is some bipartisan consensus united on the need for photo identification, and in the perspective that I've had, the conversations that I have had with those who support that, Republican, Democrat, civil rights leaders as well, is they see a photo identification card as a means to increase participation. In fact, there has been a study by the economist John Watt that found that when you have greater confidence in the election process, you have greater participation.

And specifically, while not looking at photo ID, but looking at voter identification provisions, what Professor Lott found was you actually had greater participation by voters when you had a new identification requirement than those the participation before, and that study is attached to my testimony to this Commission. That is the kind of common sense measure I think we need to support.

Again, we need to do it in a way that makes sure everybody has access to that, that when we do it that way, it should increase confidence.

There are some voters who seek to participate in the election who don't, who choose not to because they
fear when they go in somebody will not recognize their name. Maybe they have an unusual name. Maybe it's not a common name. Maybe they fear somebody doesn't recognize their signature.

If you give these voters a card with their picture on it and say you go into the polling place, you present this card to the election officials, and this will guarantee your right to cast a ballot, that increases participation. That increases confidence, and that's something that should enjoy bipartisan support.

I also note, as in Donna's prepared remarks, she said the same point, that --

CHAIRMAN REYNOLDS: Two minutes remain, sir.

MR. HEARNE: Thank you.

-- that increased confidence equals increased participation. So I think that should be our theme that we seek to embrace.

Finally I will just note some other specific recommendations in terms of the administration. I share many of the points that were mentioned by other panelists in their prepared testimony, but the need to have confidence in our election technology, our voting machines, how the votes are tabulated, we need to have provisions in place so that we don't have arbitrary
decisions of election officials determining the outcome.

Voters should believe at the end of the election that they were the ones who decided the outcome; that this was not decided by judges and lawyers or election officials acting in an arbitrary manner. We need to have clear, consistent, uniform rules for the conduct of our elections throughout the process.

Some states have taken -- and I will note two, Missouri being one with their Voter Protection Act, sweeping election reform in the State of Missouri modeled on Carter-Baker recommendations. A similar state, Pennsylvania, signed by Governor Rendell, the Pennsylvania Voter Accessibility Act. Move polling places out of locations in homes where previously in Philadelphia they had polling places in people's basements or locations where they could not readily vote. That changed under the Pennsylvania law.

That's the kind of broad, bipartisan election reform that I would recommend to this Commission to consider for their recommendations.

Thank you very much.

CHAIRMAN REYNOLDS: Thank you.

Ms. Brazile.

MS. BRAZILE: Thank you so much, Mr. Chairman.
I had to put a smile on my face when Thor mentioned some voter polling places in the basement. Before Katrina the polling place at my home in New Orleans was in our basement, and it's no longer there. So I just wanted to let you know a natural disaster solved that problem.

But, Mr. Chairman, members of this Commission, I'm honored to be here. I have spent my entire adult life starting at the age of nine going door to door trying to encourage the participation of all citizens to be engaged in the electoral process, to register, to participate.

I started long before I turned 18, quite frankly, because I was excited about the prospects that one candidate in my community had promised to build a playground, and here I was, a young kid that enjoyed athletics and sports, and when I had the opportunity to go door knocking encouraging my friends, their parents and others to sign up, I felt it was my civic obligation and duty to get people involved.

We won that election, and we got our playground, and at the age of 12 I became an assistant coach. I've been hooked on politics ever since.

But clearly, in my lifetime I have seen barriers
come down. I have seen new barriers come up to voter participation by ordinary citizens. The barriers that came down were perhaps the barriers that took the longest to come down, the barriers that prevented people because of their race, because of their age, from voting.

The barriers that are still erected, sometimes invisible barriers today, are the barriers for ordinary citizens to even find out about how to get involved, how to register, and of course, the barriers now that when most voters go to the polling booth, they find people there who are somehow or another paid by political operatives to tell them that this is not election day. Election day is another day, or if they hadn't paid their parking fines or their child support payment, perhaps they should turn around and come back another day.

On election day in 2000, I was in Florida with my former boss, the candidate for the Democratic nominee, Al Gore, and as my practice on election day, I'm often on radio stations across the country encouraging people to go out and vote.

Now, that morning I'll never forget it as long as I live. I heard citizens call into various stations saying, "My polling site is not open," or, "I
attempted to go to my polling station and my name has been inadvertently removed. I voted in the primary several months ago, but no my name is not there. What should I do?"

And of course, later that morning I heard from my own sister who resided in the State of Florida, and she asked me, "How many forms of ID do I need to vote?"

Here it is, my sister. I'm one of nine kids, number seven, and she said, "Donna, I have my voter registration card. I have my driver's license, and yet they said my name is not there. I have to produce another ID."

Well, my sister had to produce a third ID, which was a utility bill.

Mr. Chairman, members of this committee, it is my experience as somebody who has worked on campaigns at all levels in our country that the barriers should not exist. The barriers to citizen participation should not be erected just for partisan gain, and what I've seen over the years is barriers erected for one particular candidate, one particular party to try to suppress the vote, to encourage people not to turn out, to threaten them and to use other forms of intimidation. I understand that there's a great
concern about number of perhaps ineligible citizens who show up at the polls on election day, and there are many of them, I'm sure, who think that for some reason they were registered and just show up.

But we know that it's all too common in our democracy that certain individuals are showing up with the best of intentions to try to participate, and in other cases they were told that once they filled out a form and showed their ID when they registered, that everything was fine and they trusted some citizen or some nonpartisan organizations to submit their forms on time.

But they did not expect in the case that we learned in 2004 in Ohio; they didn't expect that once they showed up that the machines would be inoperable or worse, that they would have to stand in line up to five hours in some cases in Kenyon College ten hours in order to vote.

I submitted my testimony for the record. Following the 2004 election, I was quite concerned. I didn't want to go through another election cycle where I heard the complaints from ordinary people about whether or not the machines would work, whether or not the poll workers would be trained, whether or not they would be stopped before election day.
And so we undertook a study at the Democratic National Committee's Voting Rights Institute to find out what exactly happened. We wanted to not just hear from some of the experts or the partisans. We wanted to hear from the people themselves.

And so in the weeks following the election, we went out and tried to get from those who were actually on the ground what had happened on election day. We conducted a comprehensive study to determine the accuracy, the validity, and the problems surrounding the 2004 election. Simply, we wanted to know what happened. What was the experience of voters when they went to cast their ballots?

Ohio may have experienced the most extreme and widespread problems. It can be viewed as a microcosm for several battleground states. The types of problems reported in Ohio were reported in other states, but of course, as many of you know, in battleground states we have more of those problems. Thor mentioned Missouri. I can give other examples of states where citizens experience confusing problems at the ballot box, being removed from the polling station, having them show ID when, in fact, in many states that there is no requirement to show ID once they have voted, however, even maintains that once you
have shown your ID to vote, you didn't have to show it again.

And yet it was disturbing to find out that many African Americans had to produce ID when the law did not stipulate unless they were first time voters. All of this is in the report by the Democratic National Committee's Voting Rights Institute, along with the Lawyers Committee for Civil Rights, the House Democratic Caucus, which also conducted a study on some of the problems that they found in Ohio and elsewhere.

But before we try to address the issue of voter fraud, which I do believe and I condemn it every day of my life, let us commit to a policy of voting as civil rights for all citizens of the United States and design and implement policies that further that right and goal without erecting more barriers that could substantially dilute the participation of Americans.

Today as we speak, 25 days before the election, over 54 million Americans are not registered to vote. The highest concentration of those not registered but eligible are minorities, 40 percent of Hispanic Americans, 30 percent of African Americans. We need to find ways to encourage the participation of all individuals to get involved in the electoral process.
and not set up new barriers to their registration.

The Brennan Center, which put out a report this summer on voter suppression came up with five ways, five threats that is now hampering citizens' ability, and they are the restrictions to voter registration drives. We saw that take place this year in Florida and Ohio where Secretaries of State and statewide officials put barriers to nonpartisan organizations to conduct voter registration drives.

We also know that there are barriers as relates to --

CHAIRMAN REYNOLDS: Two minutes.

MS. BRAZILE: I've got you. Two minutes.

There are also barriers as it relates to some citizens being purged inadvertently. There were studies that came out of Florida. Up to 30 percent of those who were purged were, you know, primarily located in Democratic precincts or it was substantially more minorities.

We also know that proof of ID as proof of citizenship when it's not required is another tactic to suppress and intimidate voters, and also voting machine security.

And I have here with me today some materials from not just some of the organizations, a broad array
of organizations calling for emergency paper ballots since Congress failed to act on any meaningful election reform, and also a statement from ACORN addressing some of the allegations around voter fraud.

Let me say in closing, Mr. Chairman, that I do requirements which are illegally administered, and basically dilute voting participation for individuals should not be required unless we can come up with some systematic way to encourage those citizens who may not have access to motor vehicle places and other government issued places to have access to those different requirements.

We should find a uniform way where there's having a clean voter registration list and encourage other proof of eligibility, but we should not erect more barriers that would hinder people's ability.

And lastly, according to USA Today several days ago, the Election Administration Commission, which is responsible for implementing HAVA, has produced a commission and produced a bipartisan report on voter fraud. This report, which is caught in the newspaper, is very -- did not find many instances of voter fraud, has not been released publicly. I would hope that this Commission would encourage the Election Administration Commission to release that report to
the public.

CHAIRMAN REYNOLDS: Thank you, Ms. Brazile.

Mr. Fund.

MR. FUND: Thank you.

I want to thank the Commissioners for addressing this important issue because we may be only three weeks away from repeating the 2000 Florida election debacle, although this time not in one but in several states with allegations of voter fraud, intimidation, and manipulation of voting machines added to the generalized chaos we saw in Florida.

It's time to acknowledge the U.S. still has in many places a haphazard election system that is more befitting an emerging nation than the world's leading democracy.

Walter Dean Burnham has called our system the world's sloppiest electoral process. How sloppy? Just ask the residents of Maryland last month who saw their primary election thrown into chaos after electronic voting machines couldn't be activated. Thousands of voters gave up and went home surrendering their right to vote.

Now we have the prospect of both candidates for governor in Maryland, the Republican Governor Bob Ehrlich and the Democratic challenger, Mr. O'Malley,
calling on voters to cast their ballots by absentee. This shows a complete lack of confidence in our election system, and this presents us with two possible problems.

If Donna Brazile and others are legitimately worried about voter intimidation, the easiest ballots to intimidate voters over are absentee ballots because they're cast outside of the purview and the authority of election officials, and we have a long history in this country of people being intimidated either by their spouses, their relatives, their employers, union officials, or others into casting an absentee ballot a certain way. More absentee ballots equals more voter intimidation.

In addition, absentee ballots are the most easy method to commit voter fraud, again, because they're cast outside the view and the authority of election officials.

The 2000 Florida recount was more than merely a national embarrassment. It left a lasting scar on the American political psyche. Indeed, the level of suspicion is such that many Americans are convinced that politicians can't be trusted to play by the rules and will either commit fraud or intimidate voters at the slightest opportunity.
Now, the 2000 election did result in some modest reforms at the federal level, such as the Help America Vote Act of 2002, but the implementation has been slow. Although I will say one positive outcome of the HAVA Act is that Donna Brazile's sister, if she did not produce all of the ID that she thought she needed to produce, would have been allowed under HAVA to request a provisional ballot. That provisional ballot would have been counted later after she had established her eligibility.

So under the current system if you don't have the ID, you're allowed a provisional ballot. That provisional ballot will be counted if you are, indeed, an eligible voter.

America's election problems go beyond the strapped budgets of many local election offices. More insidious are flawed voter rolls, voter ignorance, lackadaisical law enforcement, and the shortage of trained volunteers at the polls.

Something like 70 percent of our poll workers are going to be retiring in the next year. It's an old person's occupation. We need to find some way to bring young people, college students, high school students into the process.

All of this adds up to an open invitation for
errors, miscount or fraud. Reform is easy to talk about, but difficult to bring about. Many of the suggested improvements, such as requiring voters to show ID at the polls, are bitterly opposed. Others such as improving the security of absentee ballots, which Professor Pastor mentioned, are largely ignored.

And of course, the biggest growth sector of our election industry has been the turning of election day into election month through a new legal quagmire, election by litigation. Every close race now carries with it the prospect of demands for recounts, lawsuits, and seating challenges in Congress. Some people joke that they're waiting for the day that the politicians can just cut out the middle man and settle all elections in court.

That gallows humor may be entirely appropriate given the predicament we face. The 2000 election may have marked a permanent change in how an election can be decided. We need to restore public confidence.

Ironically, Mexico and many other countries have election systems that are more secure than ours. It wouldn't be possible in Mexico to have a situation that we have in many of our American cities where the voter roles have more names on them than the U.S. Census lists as the total number of residents over the
age of 18.

Philadelphia's voter roles, for instance, have jumped 24 percent in the last ten years at the same time the city's population has declined by 15 percent. Something is going on there, and it probably does not lead us to greater accuracy at the polls.

In the U.S. at a time of heightened security and rules that require us to show ID to travel and to enter most federal buildings, only about 25 states require some form of documentation in order to vote. A recent Wall Street Journal-NBC News poll confirms every other poll that I've seen on this subject. It found that over 81 percent of those surveyed supported the requirement to show photo ID. This included two-thirds majorities of African Americans, two-thirds majorities of Democrats, two-thirds majorities of Hispanics.

In fact, I will make a stipulation I normally don't. If you can bring me evidence of a major public policy question which has the levels of support that we see on photo ID, 81 percent and greater, I'll make a donation to your favorite charity. There simply, you don't get beyond 81 percent. You simply don't.

Andrew Young, who is the former U.N. Ambassador and the former Mayor of Atlanta, makes a very good
point about photo ID. Of course we have to make sure
this is accessible. Of course we have to make sure
this is accessible. Of course we have to make sure
that it's free to anyone who can't afford it. Of
course we have to make sure that it's not another
barrier.

But there's also an advantage to photo ID. In
modern 21st Century America if you don't have photo
ID, you are cut out of the mainstream of American
life. You can't really travel. You can't really
apply for a job. You can't really do a lot of things
in life that, frankly, would bring you into the
mainstream and make your life more rich.

Andrew Young points out we are helping the poor.
We are helping the indigent. We are helping many
people out of the mainstream of American life if we
get them a photo ID. They need to have it to be fully
participatory in America's life.

Election fraud, whether it's phony voter
registrations, illegal absentee ballots, shady
recounts or old fashioned ballot box stuffing can be
found in every part of the U.S. Fraud can be found in
rural areas and in major cities. If you want to find
some interesting witnesses for voter fraud, I suggest
you go to St. Louis and Detroit where we've recently
had Democratic primaries for mayor.

In these Democratic primaries, the losing candidates have presented some compelling evidence of either massive voter official incompetence or outright fraud. Freeman Hendrix, the losing candidate for Mayor of Detroit in the Democratic primary in the last election, says that the election was conducted under conditions of massive fraud. There's an ongoing FBI investigation into that, and he has called for photo ID at the polls, and he's a Democrat and a minority.

Investigations of voter fraud are inherently political because they often involve touchy situations which people, frankly, don't want to address fully, conditions that harken back to the great debates we had over the civil rights struggle in the 1960s.

And I want to address that because we fought a great civil rights hurdle in the 1960s to make sure that poll taxes and other barriers to voting would be dropped and would never again stain America's conscience. We need to continue that struggle. It's one of the reasons we just extended the Voting Rights Act for the next 25 years.

But I would remind people that there is another civil right at stake here. When voters are disenfranchised by the counting of improperly cast
ballots or outright fraud or, frankly, the incompetence of election officials, their civil rights are violated just as surely as if they had been prevented from voting. The integrity of the ballot box is just as important to the credibility of elections as access to the ballot box is.

Voting irregularities have a long pedigree in America, stretching back to the founding of the nation. Many people thought that those bad, old days had ended, just as many people think that there no longer is any form of voter intimidation.

That's not the case. Voter intimidation does continue. Voter fraud does continue. Let me give you an example of how historical ghosts can come back to haunt us.

In 1948, pistol packing Texas sheriffs helped stuff ballot box 13, stealing a United States Senate seat and sending Lyndon Johnson on his road to the White House. That's been documented in Robert Caro's biography.

CHAIRMAN REYNOLDS: Less than two minutes, sir.

MR. FUND: Amazingly, 56 years later came the 2004 primary election in that same part of Texas with Representative Sero Rodriguez, a Democrat and chairman of the Hispanic Caucus in the U.S. House, charged that
during the recount a missing ballot box once again appeared in south Texas with just enough votes to make his opponent, the Democratic nominee, by 58 votes.

Political bosses, such as Richard J. Daley or George Wallace, may have died, but they do have successors. Even after Florida 2000, the media and others tend to downplay or ignore stories of election incompetence, manipulation or theft. Allowing such abuses to vanish into an informational black hole in effect legitimizes them.

The refusal to insist on simple procedural changes, such as requiring a photo ID, improving absentee ballot procedures, secure technology, and more vigorous oversight, accelerates our drift towards more chaotic and contested elections.

In conclusion, I would remind you that I never expected to live in a country where officials in places like Miami and other cities would hire the Center for Democracy, which normally oversees voting in places such as Guatemala or Albania, to send election monitors to south Florida and other places in the 2002 and 2004 elections. Scrutinizing our elections the way we have traditionally scrutinized voting in developing countries is unfortunately a necessary step in the right direction.
Before we get the clearer laws and better protections, we need to deal with fraud and voter mishaps. We need to have a sense of the magnitude of the problem we have. I hope and trust that you as Commissioners of this body can help in that process.

CHAIRMAN REYNOLDS: Thank you very much.

And I must say that I am struck by the amount of consensus that I heard from all of the panelists. I think that everyone shares the concerns regarding accessibility and also the integrity of the ballot box.

At this point I'd like to open up the floor for questions. Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Thank you, Mr. Chairman.

First of all, I want to commend the staff for putting together a splendid panel, and I want to thank the panelists for great presentations.

And I've got several questions, but I'll just ask one for now. And this, I think, would be to Mr. Hearne.

Section 2 of the 14th Amendment is often viewed as a predicate for the proposition that states have the prerogative setting standards for voting qualifications. Do you see any problem, 14th Amendment problem, with having a uniform photo ID
standard nationwide?

    MR. HEARNE:  Well, certainly both in the Senate as well as in the House there has recently, within the past several months been two bills, one passing the House, the other being the McConnell amendment offered in the Senate that would have established a uniform federal ID.

Those were requirements that would have applied only to federal elections. So in that sense, it is something that would only be applicable under those provisions to federal elections. I think that's an appropriate action for the Senate, and I do not believe it's inconsistent with the Constitution scheme of devoting to states the responsibility or conducting elections.

    However, what I would also say is I would also look at these kind of state election reforms as examples that certainly the federal government can embrace appropriately as well.

    COMMISSIONER KIRSANOW:  As you probably know, at about the same time that that act was passed by the House but was referred to the Senate, I think it was the Georgia or Fulton County, Georgia court struck down a very similar Georgia photo ID. It wasn't simply photo ID, but that was the primary component of
that piece of legislation; struck it down as violative of the 14th Amendment.

And I'm not sure if you're familiar with the features of them. I'm pretty sure you are.

I think some of the rationale had to do with the fact that those photo IDs could be obtained or would be obtained from DMVs, and that not every state or -- I'm sorry -- not every county within the state had a DMV, and so it put a disproportionate burden on those residents of counties where there wasn't DMV.

Given that that piece of legislation, that state legislation in Georgia, at least is under challenge, what, do you have any opinion as to whether or not that legislation complies with 24th, 15th, 14th Amendment or the Voting Rights Act?

MR. HEARNE: Certainly. In terms of Georgia, I would note two things. Judge Murphy's decision that you're speaking of, you know there's two pieces of Georgia legislation. I won't go through the back and forth. The initial piece of the Georgia photo ID legislation, the problem was, it was found by the court, it was not as accessible to a lot of people, as you mentioned, as it should be, and I certainly support making sure that any photo ID is accessible to everybody.
The reason Judge Murphy struck it down, and he said in his opinion, there's no problem with the state having photo ID. There was nothing wrong with photo ID as the basis in his opinion. What he said in his opinion was he said the problem here in Georgia was and the reason he enjoined it was you had a photo ID requirement and then you have an election two months later. And even if you make it free, not everybody is going to be able to get it in two months.

So I would suggest instead a situation similar to the Carter-Baker recommendations, which is where you require photo ID in the federal legislation, where you have a lead time of two years or so. You know, so many be can discuss that, whether it's two years or a year or three years or whatever, but a reasonable period of time for somebody to obtain the ID. That eliminates that objection.

So, again, the Georgia case did not conclude that photo ID is impermissible. It just said that when you have it, you had better make sure that people have the ability to access that ID for free.

COMMISSIONER KIRSANOW: Right, and the Federal Election Integrity Act, I think, doesn't become operative until I think the 2008 election, so it gives that two-year lead time you're talking about.
MR. HEARNE: That is correct, and so that objection would be eliminated in that federal legislation.

COMMISSIONER KIRSANOW: Thank you.

Thank you, Mr. Chairman.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes. Thank you for coming today, first of all.

Because the identification card seems to be what many people term intimidation, I think it was mentioned at 81 percent or so of America prefers or is in favor of an ID, national card or something like this. I don't know if the other percent includes many minorities, including Native Americans. There's actually an article that came out a couple of weeks ago. There was a report just two weeks ago of how an elderly Navajo woman, a woman who only speaks Navajo named Agnes Laughter was blocked from entering her chapter house to vote because she didn't have ID.

By Arizona and federal law, she should have been given a provisional ballot. She then would have three to five days to return to the polls with a form of identification. But when asked, Ms. Laughter said she didn't know if she could get back with an ID in three days' time, living in a remote area. So she was told
to wait outside.

Clearly, the polling workers did not understand the law in this case, but this case also shows the bigger problem that many Native Americans face in new voter ID requirements. Unlike many other citizens, Native Americans often do not carry official ID. They may not be able to use mail-in voting procedures because they need language assistance, the 203 of the Voting Rights Act, and the remoteness of many tribes make it particularly difficult to procure official identification.

My question is in a scenario like this, how can voter ID requirements be written or rewritten so that it will allow American Indians, like Agnes Laughter, to have their votes counted? That is a scenario that has actually happened.

Anyone.

MS. BRAZILE: Well, just recently in the State of Arizona, the Ninth Circuit Court of Appeals rejected Arizona's Proposition 200 law that would require voter identification at the polls on November 7th. It's already having an impact in Arizona and other states where many of these state laws have been overturned not just in Georgia, but also in Missouri.

Just recently Judge Callahan struck down
Missouri's new identification law saying it's an unconstitutional infringement on the right to vote.

The problem you have with all of these new so-called voter integrity proposals to stop voter fraud is that it impedes citizens' access to the ballot. Many of these citizens don't have another day to come back to show ID, and they are often told when don't come with an ID that they must go home and get an ID rather than, oh, here's a provisional ballot.

So this is, again, a problem that, you know, we have to address and urge the citizens to stay, to go ahead and fill out a provisional ballot and to make sure that these poll workers who may have not gotten the information, that they're not -- some citizens are not required to show ID, if they showed ID at the time of registration.

So the problem for that citizen, like many other citizens is that unfortunately they would be disenfranchised. They would be told to go home and not come back, and they will not be given a provisional ballot.

MR. FUND: I would just add to that I was born in Arizona. I have many relatives there and am certainly familiar with the situation regarding Native Americans there. Some of those communities are
extremely remote.

There are some special provisions. I would reiterate what I said. We certainly need better trained poll workers. Obviously that was a bureaucratic mistake. We need to correct that.

Secondly, one of the things that's certainly possible in those tribal areas is that you can have some way if they forget their ID card, some way that they can provide proof of it. The local tribal office can have a fax machine. You could fax a facsimile of the ID to the local authorities so that they actually would not have to travel to a government agency.

You can also perhaps have a tribal leader vouch for them and sign an affidavit confirming that they have their ID presented to them locally, and they would confirm that to other government officials.

There are certainly ways to do that, but I don't think you should take these unusual cases in very small rural areas and make that as the basis for a blanket condemnation of the photo ID law because I think there are ways you can address it.

CHAIRMAN REYNOLDS: Professor Pastor.

DR. PASTOR: Yes. I think there are two distinct issues that are at the heart of our discussion right now on identification. First is
whether voter identification at the polls is a legitimate and, indeed, a helpful way to improve the integrity of the vote, as well as access.

And the second one is what's the best process. If you assume that the answer to the first question is yes, this is legitimate, what's the best process to achieve that outcome?

I think on the first, it's helpful to realize that of roughly 120 democracies in the world, more than 100 have good, fraud proof voter ID. Mexico undertook it with a very widespread, expensive operation. They even have photo IDs on the registration list. So Haiti did it. Iraq has done it. I think the United States has the capability of doing it, but we haven't done it before.

And I think there is a legitimate reason to have people identify themselves as the person on the voter list.

The second question is the harder one for America right now, is how do we get there. There are undoubtedly some people who think that pressing this issue forward quickly may, in effect, restrict the franchise. There's no doubt that if this is imposed and you only have the two month time frame to get a photo ID, that this is virtually impossible in many
cases.

So we need to both have a longer lead time and, more importantly, the Carter-Baker Commission made very clear states have to play an affirmative role in making sure that people who don't have driver's licenses can get a free photo ID.

This is going to take time, and it's going to be very expensive. When we explored different options in the Carter-Baker Commission of how to do this, we rejected a national identification card only because we thought that if that's going to happen, it should probably happen for security related reasons, and it would be very expensive. We estimated it would cost $11 billion to do that.

It turns out that the real ID, which is the instrument that the Carter-Baker Commission recommended to be used may actually cost as much, according to the National Association of Secretaries of State, which would cause us all to rethink the process by which we do this.

It won't be easy to do. There are many people who don't have birth certificates, for example, in this country, and getting one may not be easy in all cases. But I think if this Commission on Civil Rights were to recommend that photo IDs are a legitimate form
of identifying voters, but what's not legitimate is to go ahead with this without a good, extended process, without the adequate resources, without an affirmative role by the states, then we shouldn't do it.

But if we view this as legitimate, we need to find the resources to do so.

Now, in our recommendation, we suggested using the real ID card, which is a driver's license that is upgraded by the 2005 law. And we estimated that roughly 88 percent of the eligible American citizens have driver's licenses, which is more than those who are registered. It's more like 72 to 73 percent.

So if, in fact, you used the driver's license, the upgraded driver's license, the photo ID, to register those additional people you've already expanded the registration base.

If on top of that, you have an affirmative role by the state to go out by mobile vans to old homes, to minority communities, to places in which we know are under registered, you offer still another opportunity to expand the number of people who would be registered and would be eligible to vote as well.

So, in effect, the ID with the right system can be used to expand access to voting and expand those who are registered, at the same time.
improving the registration list beyond where it is today.

    MS. BRAZILE: I just want to highlight what Mr. Pastor was saying, and that is 30 percent of Georgians over 75 do not have a driver's license. The Brennan Center for Justice also concluded that fewer than three percent of Wisconsin students -- that's another state that's trying to go to ID -- less than three percent of students have driver's licenses listing their current addresses. The same study found that African Americans have driver's licenses at half the rate of whites, and the disparity increases among younger voters or only 22 percent of black men age 18 to 24 had a valid driver's license.

    So this could be, again, another form of discrimination and disenfranchisement unless we have a process that is fair and open to everyone and not just to go to Ken and have the resources to purchase an ID.

    CHAIRMAN REYNOLDS: Commissioner Kirsanow.

    COMMISSIONER KIRSANOW: I just want to follow up on what Professor Pastor said in terms of the cost of this.

    I think when the Congressional Budget Office had estimated how much implementation of the National Federal Election Integrity Act would cost, which act

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would provide ID for free to those who swore that they were indigent and could not afford one, and the cost was estimated to be about $20 per ID, they thought that the overall cost of that based on current likely voters and registrants would be about -- I may be mistaken. I read this quite some time ago -- in the neighborhood of $300 million.

But you said that you thought that the real ID component would cost $11 billion, and I'm curious as to how you came up with that estimate.

DR. PASTOR: No, I didn't. I was referring to a report that's just come out by the National Association of Secretaries of State and National Governors Association, as well. I think the problem is that when the real ID Act was passed, I think they clearly underestimated. I mean, it was, to a certain extent, an unfunded mandate. It shifted the burden to the states to come up with the process by which to determine who would get the photo ID and what the terms would be.

The Department of Homeland Security has the responsibility to set guidelines for determining lawful status. Up until this moment, they still have not done that. So we don't know for certain exactly what is required of the states, and we won't know
until the Department of Homeland Security makes it
clear how to determine lawful status, what people need
to do to show that, and how much it will cost for the
states to do it.

So we have two very wide estimates, the one that
you mentioned, and the one that's just come out in
this report, but we really don't know what the cost is
because the Department of Homeland Security has still
not set the guidelines for determining who gets a real
ID card.

CHAIRMAN REYNOLDS: Okay. Do states have
standards for hiring poll workers?

I mean specifically what I specifically have in
mind are situations where you have polling workers who
consistently give bad advice or make mistakes or who
intentionally deceive people, and so are there
standards for deciding who gets to become a poll
worker? And are there any type of sanctions for the
inability to correctly apply the rules?

And that's for anyone.

MR. FUND: Well, the most important thing, of
course, is the level of training, and as I mentioned,
we're seeing a growing shortage of poll workers around
the country because people lead busy lives and
increasingly it's left to the retired. And many of
them, with the growing complexity of elections and the
growing burdens of trying to comply with all of these
laws and regulations that have been heaped on them,
don't want to do the job anymore, and we frankly have
to invest more in our poll workers.

Right now many states pay them $20 in cab fare
or less. Some states do a better job of that. I
think that can be encouraged. We also encourage young
people, college students and high school students to
participate perhaps for credit, as well as for some
compensation.

The easiest way to make sure that a poll worker
does not misinterpret the rules or make a foolish
error which prevents someone from voting is to have
more than one poll worker there who has been
adequately trained. Therefore, they can check each
other.

It's highly unusual in sophisticated precincts
where you have several poll workers that a poll worker
will turn someone away and not be countermanded by the
supervisor or someone else who usually has a much
higher level of training.

I'm not saying that mistakes don't happen, but
I'm saying there are safeguards that can be built into
the system with enough resources and, frankly, enough
training that will minimize that to a very large extent.

MS. BRAZILE: And I want to say that, you know, I've been an election day volunteer on numerous occasions when I wasn't working for a particular campaign or candidate, and many of these poll workers are, as John mentioned, honest, decent Americans that they're trying to do the right thing, but unfortunately many states and counties do not have the resources to properly train them on new election procedures, on new election technology or, you know, essentially in some cases many of them are overwhelmed by just the number of people who are showing up now and voting.

So I don't want to put all of the burden on them. They are good, wonderful Americans who are often in many cases volunteering their time with a couple of dollars for cab fare and lunch, but we really need to upgrade and professionalize our voting operations and our voting apparatus across the country.

MR. HEARNE: Mr. Chairman, I would echo that observation. My experience with poll workers is that these are patriots. These are people who are there. What limited resources are paid to them, they're not
there for that. They're there because they believe in
the system, and they're trying to contribute.

I would note that many states though have rules
that make it very difficult. For example, an election
worker, a poll worker can only be from a certain
jurisdiction, which limits the number of potential
people who can do it.

Some states have a requirement that says if
you're going to be a poll worker, you have to work the
whole day, which means you are sitting from 7:00 a.m.
until 7:00 in the evening. Some reforms in that
process. Again, the Carter-Baker recommendation, as a
number of them, would make it much easier for the
election officials to find poll workers and for the
poll workers to do their job.

One final point also in the Carter-Baker
recommendations is to have when you do have a problem,
and I would echo that the poll workers themselves,
it's more often if there is a problem that the poll
workers are responsible for, it's more often because
of incompetence or poor training, to have the ability
of the parties to participate in the candidates, to
participate with observers who are there in order to
monitor the process.

I know the Democrat party as well as the
Republican party generally have observers and the right under different states to put observers in polling places in order just to monitor the process. So if a problem does come up, you can get attention to it quickly. If a voting machine breaks down, you want to address it quickly before people are disenfranchised.

DR. PASTOR: Yes, I would agree with what has been said, but the average -- that poll workers are dedicated individuals -- but the average time for training is about two hours, and when you realize the rules differ so dramatically from state to state and county to county, it's impossible for a poll worker to really know all of the rules properly.

When we send election observers around, and I went around with them in 2004, we just focused on two or three issues like provisional ballots. Every single polling site I went to had implemented those provisions differently.

And the other thing about poll workers is the average age is 72 years. So if you're talking about people having to be there from 7:00 to 7:00 p.m. and then work to reconcile the vote count at the end of that, these people are very tired at the end of that day. It's very hard.
At American University we're recruiting 100 poll workers to go out to our polling sites in Washington to work with D.C. elections in order to get both younger people in there and people who are a little bit more technologically advanced than the average 72 year old.

In Mexico, they look at poll workers like they look at jury duty. It's a civic obligation. Ten percent of the people in a precinct are called to be trained. From that they take a small percentage of the very best people. Average citizens, totally trained when they go out there on election day. That would be a good model for us as well.

We need to focus on poll workers. You're absolutely right to focus on that right now. We're not doing enough to train them. We're not doing enough to get citizens actively engaged in that, and frankly, the decentralization of our system makes it very hard for poll workers to really know what the proper rules are.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Thank you. And thank all of you all for coming.

I wanted to actually echo a lot of comments that have been made about the poll workers, and I come at
this having served as counsel to Bob McDonnell when there were over a million votes cast, and as you all probably know, the margin of difference was 360 votes, and it was an historic event, and being a lawyer, I was, frankly, glad to be involved and in the middle of it.

But I'm glad to say that I saw no fraud in Virginia. I saw a lot of sloppiness, and at the poll worker level what I saw was a lot of folks who were well intentioned, well meaning, hard working senior citizens who were tired, confused, and you are only able to get to the nub of the matter when you had the partisans on both sides looking over their shoulders, but that only happened during the recount process really.

So I want to echo all of those comments because it was really my sense, and it really manifested itself, I thought, in the fluctuations we saw, at least, from the more sophisticated jurisdictions like an Henrico County outside of Richmond, which is somewhat affluent. Very little fluctuations in voting patterns versus the City of Richmond or Newport News, where you would flip two or 3,000 votes, and you would dig into it, and it was just error because of the training and different things in those communities.
So at least in Virginia, at least, I really saw the problem one of training.

One thing that bothered me, however, related to electronic voting because the question -- and this was a question the three-judge panel had to grapple with -- in Virginia law at least there was not a requirement that you had to show error relative to this electronic voting machine. In fact, the law was silent on the issue, and that put the issue before the three judge panel.

I wanted to get all of you all's thoughts on electronic voting machines and whether or not you would, for example, require some type of paper trail be mandated or, if not, whether or not for purposes of a recount or questioning the vote tally, you would require some type of finding of error relative to that electronic machine.

It really is a question, and I don't know where most states are, but it's a question that has not been answered in Virginia.

DR. PASTOR: Well, since the year 2000, the number of machines that are electronic have gone from roughly ten percent to 40 percent. If you include optical scans as electronic machines, it has gone to 80 percent.
So we focused on that to a great degree, and again, to realize the vulnerabilities of electronic machines.

In the Carter-Baker Commission we recommended that there should be a voter verifiable paper audit trail because as we know, electronic machines like computers do freeze up, and if you don't have a paper audit trail, you don't know if you've lost votes. You don't know if votes have been manipulated.

We also recommended that there be an audit of a certain percentage of those machines, say, two percent, so as to assess whether or not the machines and the paper coincide with each other and to be able to test that over time so that there wouldn't be a bias in that system.

I think these are very important steps that need to be taken with regard to electronic machines because there's a huge accident waiting to happen.

In North Carolina, there was a vote on the Agricultural Commissioner in 2004 in which the number of votes separating the two leading candidates was less than the number of votes that were lost as a result of electronic machines that broke down, and if we think of that perhaps happening on a statewide or a national basis, this would be a terrible tragedy.
So we need to move quickly to think about implementing a verifiable paper audit trail and also to make sure that the source codes, that there's adequate oversight by state election commissions and by the Election Assistance Commission to make sure that the source codes of those electronic machines cannot be manipulated and won't be manipulated.

MR. FUND: I would just add to that every time that you have had technological advance in vote counting, you have brought with it suspicion and concerns, many of them legitimate, some of them conspiratorial. Electronic voting machines are no different.

We certainly have to spend more time and attention. I've examined the background of some of the procedures of the voting machine companies. Some of these companies I, frankly, wouldn't hire. I think it's a relatively new industry. There are going to be some new entrants. I think quality control has to improve.

One of the things we have to always ask ourselves is why is it there are these concerns about electronic voting machines? In part it's because unlike ATMs, voting machines are produced on a much cheaper basis with much less sophistication.
In fact, the average electronic voting machine only costs about 15 percent as your local ATM machine bill because the ATM machine deals with money.

I would submit to you --

COMMISSIONER YAKI: Of course, that's not what they sell it to the local government at.

MR. FUND: Of course not.

(Laughter.)

MR. FUND: That's why we need competing bids.

I submit the votes are at least as valuable as money, probably far more so. We need to spend the resources to make sure the electronic voting machines do what they say they do.

Now, having said that, clearly I think some of the fears about Manchurian computer programmers in the back room manipulating the system and coming up with completely different results are somewhat overblown. I would remind you we have used optical scan computing equipment to count the votes from optical scan ballots from 25 to 30 years now. There has not been one documented case of those counting systems, of those computer systems, which bear a lot of resemblance to the electronic voting machine computers, ever having been manipulated to change an election result. There has not been one documented case of that. So let's
I'd also cite you Joe Andrew who is the chairman of the Democratic National Committee. In fact, he was hand picked by Bill Clinton. He is the only chairman I know of a national political party who comes from a technology background, and he has cautioned us that while there certainly are legitimate concerns over electronic voting machines, not to go too far.

He mentions, for example, that the Leadership Conference of Civil Rights has generally supported electronic voting because study after study has found that the voters who are most likely to be helped by these machines are (a) the disabled because they can vote without assistance; (b) the less educated, the machines resemble ATMs and are very easily used; (c) lower socioeconomic groups who often trust machines more than people; (d) the truly elderly because you can increase the type size; and of course, people who do not have English as a first language because the machine could easily be programmed to accommodate any number of languages, and citizens are often more comfortable voting on those machines.

So we have to get the machines right, but the machines are a significant technological advance. If we get it right, they're going to make voting a lot
CHAIRMAN REYNOLDS: I have a question for Professor Pastor.

Wading through the Carter-Baker report, one of the more significant recommendations is this notion of moving responsibility from localities to the state and then further up to the federal government, this concept of interoperability.

It seems to me that in theory, I think, that, well, it's an interesting idea, but if there is resistance from the localities, from this shift in power, in responsibility, I don't see how it will work.

Could you just discuss how we would overcome the barriers to the localities wanting to maintain the traditional control and responsibility that they've had?

DR. PASTOR: It's an excellent question, sir, and I think it really goes to the heart of our electoral problems because in the United States our electoral system is so decentralized that it has become dysfunctional. We don't have one election for President. We don't even have 50 elections for President, which is what the founding fathers anticipated in the Constitution. We actually have
13,000, and we discovered that, of course, in the State of Florida in 2000 when the counties were the ones that were really in charge, and they were often implementing basic rules and standards in very different ways from each other, and were responsible for everything from the design of ballot to the training of poll workers and everything else.

In the Help America Vote Act, by giving money to the states through the Election Assistance Commission, I think the intention was to help encourage the states to impose uniform standards and, most importantly, a single registration list which would be interactive and which would be top-down.

CHAIRMAN REYNOLDS: Have all of the states accepted money?

DR. PASTOR: All of the states have accepted the money, but they haven't all implemented it in the way that I believe it was intended with regard to registration lists.

One of the biggest problems we have with the registration list, that Thor and others have pointed to is that up until very recently, most of the registration lists were all decided at the county level. The states had devolved responsibility to the counties and municipalities and hadn't integrated the
registration lists, and as a result you had grossly inflated registration lists or inaccurate registration lists.

The idea of HAVA was that there should be a statewide, interactive top-down registration list. It's not clear that all of the states have done that. The states had devolved authority and responsibility for elections for one good functional reason, which is that each county has to concentrate on the bottom of its electoral ballot, and therefore, you need to program at that level.

And, secondly, they didn't want to put any money behind this either, just as the federal government didn't put one cent behind any of these elections until the Help America Vote Act.

But if we are going to really modernize our electoral system, it's our belief that the states are going to have to assert a lot more responsibility for this process and also to transform the administration of elections so that it's more nonpartisan rather than bipartisan, that it's impartial, that it's autonomous, it's independent, and it's professional.

All of these qualities don't really exist in many of the states right now. So I think increasingly we feel the importance of focusing on administration
and encouraging the states to play the role that the founding fathers initially intended for them to play, which is to be primarily responsible for statewide systems rather than to decentralized the process to the locality level.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes, thank you very much, Mr. Chair. Thank you very much, panelists.

I guess I'll just be out front. I start off looking at this as even in this discussion today there's been kind of a kitchen sink approach to the whole idea of there's something wrong with the way we vote, and people throw out voter regs. People throw out polling fraud, absentee, whatever it is. I'd like to try and parse that out a little bit, much as the U.S. Election Assistance Commission tried to parse it out.

And, Mr. Chair, I don't know what our jurisdiction is over that or not, but if that report is being bottled up, I wonder if we can use our subpoena power to get it out.

CHAIRMAN REYNOLDS: I agree.

COMMISSIONER YAKI: But I just want to let's go through it piece by piece. There's been a lot of talk about deadwood on the voter reg. rolls, more people
than there are actual numbers in the population. What hard evidence do we have that any of that has resulted in people widespread, rampant, people voting who shouldn't be voting because of where they are on the registration list?

And let me just step back and say I know this stuff from my own experience pretty well in California, having run and won, and done many things in many elections, watched how county registrars have to validate the incredible initiative process in California. I've seen Bruce Springsteen registered five times. I've seen Mick Jagger registered. I've seen all of these people who put their names on. They generally get caught.

But I'm just wondering what do we know? Where's the hard evidence saying that there's a correlation between these vast disproportionate numbers of registration in an area and actual voter, people using those names and going to the polls and voting?

MR. FUND: Well, I'm a Californian, and I'll just give you two examples very recently from California. The City of Compton, where the mayor's race has been embroiled in all kinds of federal investigations. There have been documented examples of massive fraud using absentee ballots, and the City
of Industry where there's an ongoing federal investigation along with a state investigation that the city has basically suppressed voter registration from some candidates. It's a small area, largely commercial. The city council is in league with various interest groups there, primarily the large commercial industry, to prevent people from voting and to prevent them from ousting the incumbent establishment.

Those are just two cities in one state.

COMMISSIONER YAKI: Okay, fine. But I think you just proved my point because you start talking about -- the first thing you started to talk to was absentee fraud, which is a wholly different creature than registration fraud.

You don't have to have --

MR. FUND: It was also registration fraud in Compton, and I can give you the specifics on it.

COMMISSIONER YAKI: Well, then I'd like to see, one, how it's done and, two, what kind of prosecutions have been brought. I mean, do you know how many prosecutions have been brought over time?

MR. FUND: No. Let me be very clear about this. One of the things that we have found, at least I have found in my interviews with prosecutors are they put a
lot of these cases on the bottom of their pile, and
for a very simple reason. It's a political hot
potato. You are guaranteed to anger half of the
political establishment if you bring a voting fraud
case. If you prosecute a Republican, you're going to
anger the Republicans. If you prosecute a Democrat,
you're going to anger the Democrats. And, of course,
there's the racial component. If you investigate
areas in which some people might be involved, you're
going to be often accused of having ulterior motives
in that respect.

I have quotes in my book from several
prosecutors who say they are very leery of prosecuting
these cases. One of the things that you find even the
prosecutions we do have, almost all of them are plea
bargained so that the person will serve only community
services or perhaps a fine. There are almost no cases
in which someone actually goes to jail.

I have talked to poll workers and people
involved in the business who say the prosecution of
voting fraud is at such a low level and so seldom
leads to jail time that, frankly, for many people it's
just the cost of doing business.

COMMISSIONER YAKI: But let me just ask you this
then. In the context of absentee voter fraud, how

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does an ID card do anything to prevent that?

MR. FUND: Well, you need to have both, and I said that in my testimony. Photo ID at the polls is important. I also think we frankly, as a public policy question need to ask ourselves do we really want the situation in which every year there's a growing number of people who cast absentee ballots.

In 1980 only five percent of Americans voted absentee or early. Now it's between 25 and 30 percent. Oregon has abolished the polling place. You wake up on election day in Oregon. If you haven't voted by mail, you're going to find it very difficult to vote.

Washington State is moving in that direction. California, over 40 percent of the ballots are cast absentee. I think we have to question whether or not we want to continue that process and literally have people voting over an entire month.

You know, when does election day become election month, and is that, frankly, constitutional? That issue, I think, will eventually have to be addressed with the courts.

We need ballot security for absentee ballots as well. Professor Pastor has mentioned that you can take the signatures on an absentee ballot and compare
them for their digital equivalent. You can also using very simple technology require someone to put their thumbprint on a ballot and have that as a permanent record to see if the absentee ballot matches the real person.

You need both. You need --

COMMISSIONER YAKI: Well, let me go to the second question then. I mean, one of the things that the Election Assistance Commission report seemed to indicate is that there is a greater potential for absentee ballot fraud amongst all the different things that people talk about.

Where is the evidence of polling place fraud, of people on election day assuming different identities and going?

And I guess part of it is, you know, all of this gets to the little outrage part of America, which is why is someone doing that, but I guess part of it has to do with context as well. I mean, with all due respect to Mr. Pastor, I get a little offended when someone says, "Well, Mexico does it better than us."

Well, if you had Mexico's voting system 20 years ago, you darn well would have changed it radically because of the way that elections were administered, but taking that aside, you take these instances, and
they become anecdotal. They become, well, I know this person or Mickey Mouse came or what have you.

The fact is over how many periods of time and over how many electoral votes have been cast in the past ten years and what percentage of those can anyone estimate. What percentage of those had to do with out and out, quote, unquote, fraud, and then what type of fraud?

Because, again, that goes under the question of why are we choosing all of these different remedies that may not be appropriate for what it is we're trying to guard against.

MR. HEARNE: Let me answer your question.

CHAIRMAN REYNOLDS: I'd just like to add Commissioner Yaki raised a very interesting point, and I would like to add that I think that he's basically saying that this is an empirical question, and I think that that question could be posed to both sides of the equation, both voter intimidation and voter fraud.

Do we have a baseline? Do we have sufficient evidence to quantify the nature of the problem?

That's one question, but I guess the follow-up thought is that in this era of very close elections, it doesn't matter because even if it is a very small percentage, it could make a significant difference on
whether the President is President Gore or President Bush.

MS. BRAZILE: But so could a machine that is not functioning properly.

CHAIRMAN REYNOLDS: I agree.

MS. BRAZILE: So could a machine that could be tampered by using a palm device. That's why all of these issues should be looked at in terms of electoral reform comprehensive to clean up our electoral process.

But I would urge the Commission to have that report released as soon as possible from the Election Administration Commission. We should denounce voter fraud wherever we see it. If we know about a fraud, if we see it happening, if we see some citizens attempting to vote twice, there is a penalty for anybody attempting to hack the system or to register twice or vote twice, a penalty, $5,000. That's why voter fraud is rare. That's why you rarely read of instances of voter fraud.

And let me just say in 2000 in Missouri, the Secretary of State claimed that 79 voters were registered with addresses at vacant lots, but there was an investigation later, and they found out that they were people who actually lived in those houses.
The problem we have in America today is that our voter registration lists are incomplete. They're inaccurate, and they haven't been cleaned in such a long time who knows who's on those. I'm sure Bruce Springsteen, Mary Poppins, Santa Claus and everybody else. Until we get serious about how we conduct elections in this country, we will continue to have problems.

MR. HEARNE: Mr. Chairman, let me answer the one question.

Commissioner Yaki, you asked the question about how many people have voted in person illegally that ID would have prevented. Detroit Free Press did a study in Michigan last December. They found more than 120 people cast ballots in the name of dead people.

Now, you might say 120 fraudulent votes that could have been prevented by ID aren't enough, but tell that to the citizens of Washington State where they decided their governor's race by about that margin.

You find very close as we saw in Florida, thin margins, as Chairman Reynolds is noting. Thin margins in elections are deciding not only who's our President, who's our governor, who's our Senator being decided. So 120 votes, as were found by the -- and
that was in a limited sample in Michigan.

Now, by definition, a ballot cast at a polling place in the name of a dead person is a ballot cast fraudulently by somebody who, if they had to present a photo ID, would likely have been prevented from doing it. So it is a kind of reasonable common sense reform to stop documented cases of vote fraud.

Donna, you mentioned the case in Missouri. With the study that we did after the 2000 election, that election by the Democrat Secretary of State, at that point Becky Cooke, found that 48 people just appeared at different polling places and cast a ballot illegally without ever being authorized to do so.

So it is a documented fact when we look for it that it happens. Now, many states don't have an ID requirement at all. So it can go on very easily. The only thing in St. Louis, Missouri that would prevent Ritzy the Dog from casting a ballot that would void mine or some other voter in Missouri is the fact that somebody coming to the polling place pretending to be Ritzy Mekler, who we found was a cocker spaniel, had to first provide an identification.

That's why it's a confidence building. That's why we actually find that these kind of ID requirements, again, when we make sure everybody gets
one and we have it for free; when we have that, you
find it actually increases participation in the
elections as the Professor Lott study found.

MR. FUND: Donna is, I think, very right. Not
all of the allegations ultimately pan out, and I think
we have to be discriminating.

However, remember we're dealing both in the case
of voter intimidation and in the case of voter fraud
with illegal behavior. So just to point to the number
of prosecutions, just to point to the number of people
who caught at it, since it's illegal behavior, you're
not going to catch the entire problem.

To say that it's rare is the same thing as to
say that we don't know the full extent of the drug
problem in this country because it's illegal. You're
not going to know all of it because people are not
going to volunteer information about it. It's in the
shadows.

I've actually seen academics --

COMMISSIONER YAKI: I really have --

MR. FUND: I've actually seen academic studies -
-

COMMISSIONER YAKI: To compare voting to the
drug problem is just a stretch.

MR. FUND: Commissioner Yaki, it's illegal
behavior and it's in the shadows. One of the things I have seen academic studies that have actually purported to show that the level of --

COMMISSIONER YAKI: So is taking a bribe. Go ahead.

MR. FUND: To repeat, I have seen academic studies that have actually purported to show that the level of voter fraud in this country is very small, simply by going out and interviewing people in the election process.

I'm sorry. You're going to have people who commit these activities, whether they're intimidation or whether they're fraud, who are not going to admit it, and in addition, the election officials are not exactly going to demonstrate or talk about the frailties in their system because that reflects poorly on their own behavior and their own performance.

COMMISSIONER YAKI: I just want to ask one question about the photo ID bill that's floating in the Senate now after it passed the House, and I'd like to get your honest opinions about it because I seem to have heard that all of you, and maybe I'm wrong, believe that, one, it's a good idea; two, there's some issues regarding accessibility -- I'm not saying all.

You know who I'm talking to, Ms. Brazile -- there are
issues of accessibility that you think might be something that would be worth addressing.

So one of the question is whether or not you think that having this kind of new photo ID, whether it's getting a birth certificate, whether it's producing this kind of stuff, given the statistics and given the fact that when you look at the demographics of who would probably be impacted the most, it's lower income. It's minorities. It's people whose English is not their first language.

How do we get accessibility to those folks? How do we do it in terms of money? How do we do it in terms of outreach?

And given the fact that HAVA has been under funded by $800 million anyway, what realistic shot is there that that's ever going to happen and should we care, which I think we should.

DR. PASTOR: I think we should as well. Let me answer both your first question and the second question.

The first question is how much fraud is there out there. My answer to that question is we don't know. We don't know. I mean we could know if we really cared, by doing something very simple that most countries do, which is they have a poll book at each
election site, and they register every irregularity that occurs during the course of the day.

For example, one time I went to vote, and I found that somebody had already voted under my name. Now, I had no recourse at that point to find out why this had occurred, whether there was some error or whatever else, and the polling station itself didn't keep any record of it. So we wouldn't know whether it's a large number, whether it's no number or whatever.

My personal view is that we're likely to see a small number if it occurs. We don't know how much, but even a small number is important because if there's a close election, it makes a big difference, and it's also --

COMMISSIONER YAKI: And I'm not disagreeing with that.

DR. PASTOR: Okay.

COMMISSIONER YAKI: The second question is a critical one that you just asked, which is if these voter ID requirements are legislated without adequate funding, without adequate time to make sure that they are implemented in a way that's fair, accessible, and indeed, can enlarge the area of registration, is this a good idea?
And my answer is no, and I think that's where the Carter-Baker Commission -- the Carter-Baker Commission was very clear in saying that we should do a voter ID, but we have to do it in the right way, and the right way means to expand the registration list to make sure that a photo ID is accessible to people who normally wouldn't have it or have a driver's license or whatever else.

So I think if this panel could all agree that those two elements are absolutely central to going forward with this and that you can't go forward with one without the other, than I think that would be a step forward.

I think if this Commission were to issue a similar statement along those lines, I think it would be very positive, too.

MR. FUND: I would agree briefly with Bob Pastor that the two do go together, that you do, in fact, need to make the ID accessible, and I think that that's a concern. I mean, as the judge in Georgia said, there's no problem with ID. The issue is to make sure that it is available to everyone.

Let me cite the Missouri case. In Missouri, the Missouri legislature provided for nine mobile vans to go around particularly to nursing homes. They also
provided that there were more than 200 locations throughout the state, one in every county, and those mobile vans would go into particular neighborhoods, and there was a two-year transition period.

Some may say they should have done even more to provide the free ID. My point is that when the legislature makes that kind of accommodation to make sure everybody does have free ID, that should take the partisanship out of the equation when we make sure that people do have it.

And as Andrew Young said, that's why he embraced the concept, because what we're doing is we're going to those very same people, and we're saying not only do you now have a free ID that allows you to vote. It will increase your participation and confidence in voting.

But it will also allow you to participate in all the other things that we do in modern life that require an ID. That's a good thing. That's a good thing to enable and empower those people.

PARTICIPANT: A quick question. When you say "free ID," let me just ask you: do you mean that the actual ID itself is free? If you need any predicate documents to get that ID? How does that work out?

MR. FUND: Yeah, there's two things. One, in
our report we decided to build on the real ID law. The real ID is the driver's license. Okay? Now, a lot of states require you to pay for a driver's license and presumably you would do that, but if you don't have a driver's license, then we recommend the equivalent of the real ID, which would be given to people free, which would serve the same purpose, not for driving but for identification purposes.

Secondly, it's very important that this affirmative role by the state has to be incorporated in it. Historically the United States is one of the few democracies that doesn't go out to register voters. It's passive. It lets voters come in.

We take this a very large step, and Republicans, including Secretary Baker, accepted this importance of this step, for the state to play an affirmative role to go out with mobile offices to certain areas which traditionally are likely to not have identification cards of any kind. So that requires additional money to do that and additional personnel and resources as well to do that properly.

MS. BRAZILE: The Constitution prohibits any form of payment in terms of voting, and as long as there are millions and millions of Americans who do not have access to getting the form of ID that would
make them, therefore, eligible to vote and participate, we should not impose this burden on states and local government, which by the way have failed already in implementing HAVA.

By not fully funding HAVA and the mandates that they've imposed on the states, what we have now in some states, we have just inconsistency in how the rules are applied in different areas, different counties, different neighborhoods.

So I'm opposed to the real ID provision until we have such a system in place so that every American has access to it and not just some Americans.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ:  Yes.  The Election Assistance Commission has that people support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Sometimes it seems like they're focusing on fraud investigations, but little is done on intimidation, that people direct you to the wrong polling place and nothing really -- they're not held responsible for those things.

The question is what additional criminal laws are needed and how can this be made a high priority for the Department of Justice.
MR. FUND: Well, I would just submit that I think resources are spent on tracking down voter intimidation. If you go over to the Justice Department, the Civil Rights Division, you will find dozens and dozens of lawyers there, close to 200, and their responsibility is to make sure that the Voting Rights Act is enforced, and to make sure that prosecutors go out and investigate claims.

A task force was sent down to Florida after 2000 by Attorney General Janet Reno. There are a lot of people there, but if you want to find an attorney there whose sole job is to investigate allegations of voter fraud at the federal level, you'll find one human being, one person.

So I would submit to you we need resources spent on both, but I think if anything there's an imbalance now.

MS. BRAZILE: There's no imbalance. There's no imbalance. On election day both in 2000 and 2004, there was direct contact to the Justice Department on instances of voter intimidation and voter suppression. I can recall there were calls, and this is under the Clinton administration, there were calls directly to the Justice Department reporting unauthorized personnel blocking access to polling places in some
areas in Leon County in Florida.

Senator Barack Obama has introduced S. 1975, which is called the Deceptive Practices and Voter Intimidation Prevention Act of 2005, which would make it a crime punishable up to one year in prison and a fine up to $100,000 for knowingly deceiving a person regarding the time, place, or manner of election in any federal election, or qualifications for restrictions on voter eligibility for any federal election with the intention to prevent such person from exercising their right to vote.

I was home in Louisiana in 2002 to help my Senator, Mary Landrieu in her re-election. That was my last election, and I was driving down Canal Street and an individual walked out. He was paid. I don't know who he was paid by, and said, "Election day is Tuesday."

Election day was that Saturday. It was a runoff election. So people are paid, and I said, "Yo, man, you can go to jail for passing out that information," and when I told him he could go to jail, he said, "I didn't know."

So the truth is that unfortunately these schemes happen. I can tell you as somebody who has managed and run campaigns all my life, all my life, I have
seen some of the craziest things happen on election
day, but I have told my staff if anybody, any
volunteer, any paid worker or unpaid worker is ever
captured suggesting that any American should vote on
another day other than that election day, they would
be fired instantly and be turned into the proper
authorities.

So this happens unfortunately in our country.
I've seen it up close and personal, and we should
outlaw it, and we should make it a national crime for
people to knowingly stop and prohibit people from
voting.

MR. FUND: I can support that as well, but let
me just make one point about the 2000 Florida
election. Yes, there were reports of police cars in
one instance setting up a road block to try to catch
someone, and that was close to a polling place. There
were reports of other people being blocked from
voting. There were reports made to the Justice
Department. I agree.

But there were ten weeks in which Attorney
General Janet Reno and the Clinton administration
investigated those allegations. Please bring me the
report. Please bring me the report which found any
substantial substance to those allegations. Bring me
the Justice Department report.

   It does not exist.

MS. BRAZILE: This own Commission investigated and went into Florida back in 2000, following that election and heard directly from some of those individuals.

MR. FUND: The Justice Department has far more resources --

CHAIRMAN REYNOLDS: Okay, okay.

MS. BRAZILE: I just want to note that this Commission did its job.

CHAIRMAN REYNOLDS: Okay. Mr. Hearne and then Commissioner Kirsanow.

MR. HEARNE: I will briefly say Donna and I share a concern over this point. The concern about voter fraud and intimidation is a very real concern. It does unfortunately happen. It's an ugly practice, and it needs to stop.

Missouri passed, picking up on the Carter-Baker recommendation, Missouri adopted a statute to increase the felony for any effort just as you proposed, Donna, in our Missouri Voter Protection Act exactly as was recommended in Carter Baker that would say it is an additional very serious felony, the top category of felony for somebody to intentionally misdirect
somebody in the polling place or otherwise to try to interfere with somebody exercising their right to vote.

It is wrong in this country, in the United States of America that any person anywhere, any state, any city wakes up on election day and tries to exercise their constitutional right to vote and faces some impediment in doing that or somebody who has a scheme to try to prevent them. That is to be deplored and seriously prosecuted, and I absolutely think there's unanimity about our concern over that.

Again, you know, there's some good proposals to do that. The organization I represent, the American Center for Voting Rights, did a study of the '04 election and found some instances of voter intimidation. Those were reported.

It doesn't matter by who those activities are engaged in. It shouldn't happen at all by anybody ever.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Thank you.

The Civil Rights Commission did go down to Florida after the 2000 election after there were scores of reports about voter intimidation and fraud, and the Commission heard considerable testimony and
was able to glean two instances in which there may have been some blockage of voting.

One was the empty State Trooper car that was across the street from a polling place. That was the extent of it.

The other one was the traffic check point two miles away and not even on the same road as another polling place, which check point actually stopped -- the allegation was that there were a certain number of people who were stopped, and the people who were stopped were people with broken tail lights and the usual check points.

So the Commission did go down there and despite all of the allegations, that's the extent of what we were able to find and the Justice Department wasn't able to find anything else.

That's not to say there wasn't anything, but we have to look at the empirical evidence, but my concern goes more to Mr. Fund raised the issue of absentee ballots. We have been concerned about a photo ID and what kind of safeguard does photo ID present if we have absentee ballots and there's proliferation of that.

The Miami election of 1998, the mayoral election was set aside because of irregularities with respect
to absentee ballots, and just as an aside, in Florida, again, race decided for President by 579 votes, and the Miami Herald was able to discern 2,000 people voting illegally. That changes the election or could have the potential for changing the election.

With respect to the absentee ballots, does Mexico have biometrics that they attach to their ballots or the registration lists?

And if so, has there been any consideration given or assessment done either by the Carter-Baker Commission or elsewhere as to what the cost of any kind of biometric protection either at the polling place or by absentee ballot. It seems to me that they would also encourage -- Ms. Brazile, you were talking about multiple forms of identification having to be produced. Sometimes poll workers aren't aware of the fact that provisional ballots may obviate that need, but if you've got one uniform standard that is immutable, that no one can effectively even challenge you, that that might be a means by which you can insure both integrity and also access.

But I'm concerned about has there been a cost assessment associated with that.

DR. PASTOR: First off, with regard to Mexico, and Mr. Yaki is absolutely right, Mexico -- I started
observing Mexican elections in 1986 and learned everything I needed to know about electoral fraud.

(Laughter.)

DR. PASTOR: The Mexicans had perfected dozens -- in fact, they had more words for electoral fraud than Eskimos have for snow.

Because of that, however, they leaped over a 20-year period to a system that is significantly more advanced than ours, frankly, right now. They do have biometric identification cards, which were introduced and which 99 percent of the voting population have them.

They have, as I said, not only biometric voter cards, which they actually use for everything now because they're so fraud-proof, but they also have photos in the registration list of each of the people, too.

They have not historically had a problem with absentee ballots, until this last election where, for the first time, they allowed people in the United States and abroad to vote, but only a very small percentage did, but they still needed their voter card, and also they had some special sites for voting as well.

With regard to the United States, 40 million
Americans now need biometric cards for security-related reasons, and I think that number will increase over time as well. We did look into the cost of it, and it's very expensive. There's no question.

We looked into a national identification card system and estimated that it would cost $11 billion to do, but if you link that to a census, which of course is coming up for the year 2010, that costs about $8 billion. You connect the two, and you can do it at significantly reduced costs as a result of it, but it would be expensive to do that.

COMMISSIONER KIRSANOW: How does that work in the absentee ballot context? Is there a biometric signature affixed to the ballot itself which is then checked against the voter registration roll?

DR. PASTOR: Yes. Most states, now when you do register, you register with a signature that can be digitalized, and therefore, when the absentee ballot comes in and there's a signature on that, you can -- at the county level most states do have a machine that can assess that that's the same signature as the original one on your registration.

COMMISSIONER KIRSANOW: Have you considered any libertarian objections to having some kind of procedure such as that? It's not a fingerprint, but
nonetheless, it's something that is specific to the person.

And also, Mr. Fund had mentioned the conspiratorial nature of new technologies as applied to voting. You can just imagine the conspiracies that may arise when people think that their signatures are somehow digitalized and might be broadcast to users that shouldn't have them.

DR. PASTOR: Well, we recommend a series of procedural and institutional safeguards that go back to the basic privacy laws that have had to deal with that, you know, for regular commerce as well, but there is that risk. There's no question about it. The issue for public policy is how do you minimize that risk and how do you introduce safeguards and prohibitions on abuse.

MR. FUND: I am very concerned about absentee ballots and their spread. At current trends, we're going to have a nation half of which votes on election day and half of which votes outside election day. I question whether that's what the Founding Fathers or even what the rest of us would want.

In addition, and I repeat this from my original testimony, if you want to talk about voter intimidation, have somebody have an absentee ballot.
They are subject to intimidation from all kinds of people around them, their spouse, their relatives, the local political boss, their employer, their local union official.

There were documented cases in Philadelphia during a very close state senate election in the 1990s in which poll workers went door to door, political poll workers went door to door in Hispanic neighborhoods saying (speaking Spanish), "This is the new way to vote." They would hand them an absentee ballot, and the person would have to mark it in front of them, and the implication was that various political blandishments and various political favors that were traditionally given out in that neighborhood were not going to be dispensed unless the absentee ballot was filled out there right on the spot in front of a political worker.

COMMISSIONER KIRSANOW: Similar allegations were made in Florida, too, with respect to that type of intimidation. My day job, which I'm moonlighting right now, is with the National Labor Relations Board, where we try to avoid mail ballot elections for some of the same reasons you mentioned.

And there is also the component of if you've got a mail ballot that is sent in a month before the
traditional election day, there's a kind of overarching Madisonian concern about, well, the person hasn't been fully informed about the debate between two candidates or a couple of propositions before he has even cast a ballot. It's a prejudicial vote, in a sense. He's simply making that determination without being fully informed.

And aside from the cost, I have one kind of macro question, and that is we have been talking in somewhat of an informational vacuum here about possibly voter intimidation, fraud, suppression, but is there a baseline by which we can measure whether or not those things are either increasing or decreasing?

I know it seems that all of these concerns seem to be much more heightened since the 2000 election was so close, but if we take that as the, do you sense that these concerns are increasing? Are they decreasing? Are we on the way to solving some of these things?

MS. BRAZILE: I see it as increasing over the past few years. Look. I've been trying to rally Democrats since at least in the mid-1980s to look at patterns of voter intimidation. As many people of color and others began to register in large numbers, I found problems. Some problems existed because
individuals were, after being registered, they were told they were no longer eligible. Some of it has to do with felony, disenfranchisement, which, you know, unfortunately disproportionately impact minorities and poor people.

Some of it has to do with the fact that when they registered to vote, they didn't fill out the form completely, and when they went to actually vote, they were told that they could not.

So I see some of the problems increasing. Clearly, in 2004 with some of the voter intimidation, suppression problems that occurred even weeks before election day, I tried to at the time in 2004 work with Ed Gillespie, work with the Republican party so that we can as party operatives have polling monitors at the polling places in a nonpartisan way, knowing that we were both deploying thousands and thousands of lawyers on election day.

So I think the best and the most effective way to deal with these problems and what we're doing at the Democratic National Committee -- I'm sure the Republicans are doing something similar -- is that we're trying to educate people far in advance of election day to, one, check their status, to see, to make sure that they're on the voter registration
rolls.

Secondly, if they're experiencing any problems, to call that 1-800 number so that we can try to rectify the problem before election day. On election day itself the majority of the calls that we get to our 1-800 numbers are people who are lost. Their polling place has changed. They don't know where to go and vote. No one told them they could cast a provisional ballot.

And then, of course, we have had instances where they've arrived and there are no ballots or the machines have malfunctioned or there are some other problems.

So we try to document all of this. We try to turn it into the proper authorities in real time, and then we try to find ways to educate the general population in the future.

MR. HEARNE: I would agree real briefly and note that as we've seen, and, Chairman, you've noted that we've seen increasingly elections decided by very narrow margins, and with that you see particularly in those battleground states increasing efforts of some to “game the system” one way or another.

Donna made a point, and I think it's one that I certainly share, and that is there is a role for both
political parties to exercise responsibility by working to educate their supporters to work together. I know Ed Gillespie in the last election called on Terry McAuliffe to jointly put out some teams to try to resolve the problems.

These issues, I think, as Donna has identified transcend partisanship because we need at the end of the day, whether it's a Republican or Democrat who won the election, all of the citizens need to be confident that they, the citizens, the voters were the ones who made that decision, not somebody gaming the system.

So that really does transcend partisan interests in my view.

DR. PASTOR: I'm not sure that fraud and intimidation are increasing, but I am sure that the perception is that they are, and that's as significant in the electoral process as the reality, which we're going to always have difficulty ascertaining.

The good news, however, is that that's because people are paying more attention and that they're watching things much more closely in the electoral process since 2000 than they ever have before, and that's a positive things because that's compelling this Commission and all of us to work on the full range of problems that we face and hopefully modernize
our system because I think the problem with the United States is we were complacent for far too long with our electoral system. We didn't pay attention.

The fact people are paying attention now is a good thing, provided it's a motive for us modernizing the system.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Well, actually my question was for Mr. Fund as soon as he gets back. So I'll pass for the time being.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: Yes, I was hoping Mr. Fund would be here also, but the three remaining panelists could address this.

We've had HAVA in place for a few years now. We've got the Electoral Assistance Commission. We've got the example that we wish to avoid of 2000 and in 2004 and the concerns about that, Washington State, a lot of things where there have been litigations surrounding elections.

We're about a month away from the midterms of 2006. In your opinion -- and I know this is something difficult of definite ascertainment -- in your opinion are we better prepared right now for having a cleaner election than we were in the past or do we face some
significant problems in the 2006 election?

MR. HEARNE: I will venture a quick prophecy here, and that is that 2006, in answer to your question, has some tools in place with HAVA, single statewide voter roll, some improved processes, some new technology. It all should help us to have more comfort in our election process.

That said, '06, this midterm election will be the first year in which an immense new system of conducting elections is implemented, whether it's a statewide roll or new technology as mentioned. That raises, just the novelty of the way we're running the election in '06 compared to all of these prior years, that raises the greatest likelihood of real problems in the voter rolls particularly, as well as the machines, as people saw in Maryland.

That would be the concern I think we have this year. It isn't that we're not moving in the right direction, but this is our transition year for HAVA in many ways, and that raises some real concerns.

DR. PASTOR: We're not prepared for November 2006, and there will be major problems. Hopefully people will not just vote on the close races, which is what we tend to do. If the election is not close, people just walk away and don't ask the hard questions.
about whether the system is working.

There are, as Thor pointed out, a few areas where we are a little bit better off. You've got a provisional ballot that you didn't have before, for example, but there are a lot of other areas that we're a lot worse off because of the expansion of electronic machines and the lack of paper verifiable audit trails, the lack of adequate training, the confusion over the sets of rules, and more importantly, the fact that we are paying more attention.

We will find a lot more things wrong than we had found in the past, not necessarily because there are more things wrong, but we're watching for them now.

MS. BRAZILE: As I mentioned earlier in my testimony, there's a citizen led campaign to encourage states and localities to have emergency paper ballots on hand for many of these jurisdictions that will be using these new voting systems for the first this fall. That is one of my major concerns, these new voting systems.

We saw it in Maryland. The Washington Post reported the machines had to be rebooted. Many of the access cards didn't show up on time. That created problems. Some of the machines failed to communicate properly with other units.
In Massachusetts just recently in their primary, the scanners did not work.

In Ohio there was a report out by the Cuyahoga County Commission that their electronic scanners were useless and delayed results for several hours and almost a week before they had all of the reports there.

In Illinois, in March they had problems with their new technology cards, the results to be reported four weeks late.

El Paso, Texas, I can go on and on.

The problem with these new voting machines that have problems that can be tampered with, we don't know the source codes for many of them. This is a problem that I think is going to cause a lot of election anxiety this coming November.

But by and large, I think the Democratic party, I know, and I know many of the nonpartisan groups out there are trying to educate people. The National Association of Secretaries of State are encouraging voters to check to make sure that they're on the voter registration rolls before they show up.

And, again, we're calling on people to exercise their right to vote and to request a provisional ballot if they are told that their name is not on the
registration rolls.

CHAIRMAN REYNOLDS: Okay. A quick question. We haven't discussed this issue, at least not in depth, but the issue of felons regaining their rights to vote. Would any of the panelists like to discuss that issue?

MS. BRAZILE: Well, there's no question that there's a disproportionate number. I'm a southerner, and there was recently a case in Alabama, I believe, where this issue of American citizens who have paid their dues to society, paid their debts back are still disenfranchised. Over a third of African American men in the deep South are ineligible to vote because they lost their voting rights when they had a felony or misdemeanor conviction.

I think it's time to re-enfranchise these Americans. Again, the Brennan Center for Justice, I like their reports because they're nonpartisan. It doesn't put all of my partisan spin on it, but there's an estimated 5.3 million Americans who are barred from voting because of felony conviction. A disproportionate number of African American and Latino communities are impacted by this, and it's time that we find ways to re-enfranchise these citizens.

I know some States like Iowa and Virginia,
they're finding ways to have these citizens reapply for their citizenship so that they can once again have a voice in the electoral process.

But this is a problem and we should find ways to address it.

CHAIRMAN REYNOLDS: Professor Pastor, any comments?

DR. PASTOR: Yes. The Carter-Baker Commission also came out clearly in favor of restoration of voting rights for eligible citizens who have been convicted of a felony, though it also singled out the felony would not include a capital crime or one which requires enrollment with an offender registry for sex crimes once they've served their full sentence, including any terms of probation or parole.

So, in short, we do believe that restoration of voting rights for people who have committed felonies, with the exception of these two elements.

CHAIRMAN REYNOLDS: So the report contains two exceptions.

DR. PASTOR: That's right.

CHAIRMAN REYNOLDS: Would it be permissible for states to entertain standards and consider other types of felonies that would bar ex offenders for either a longer period of time or permanently?
DR. PASTOR: Well, the statement that I just mentioned represented a compromise among the Commission members. That was sort of carefully crafted and --

CHAIRMAN REYNOLDS: I can imagine the work that went into that.

DR. PASTOR: -- and so I think I'll just let -- if you're asking about the Commission's recommendation on that, I'll just leave it with that, if I could.

MS. BRAZILE: And I will submit for the record the report from the Brennan Center that also show that 80 percent of the American people favor returning voting rights to citizens once they've completed their sentences for felony convictions, and the United States is the only democracy in the world that disenfranchises people who have completed their sentences.

So I would like to submit this for the record, sir.

CHAIRMAN REYNOLDS: Sure, sure. Commissioner Kirsanow.

COMMISSIONER KIRSANOW: There was some illusion to the difficult -- not some. There was a lot of illusion to the difficulties surrounding new techniques, new standards for voting, and that that
may prompt problems down the road in the future.

There are a number of studies that indicate that many of the difficulties that we find in balloting, for example, in Florida 2000, was a result of first time voters being unfamiliar with the ballot, and there was a recommendation, I think, made that the parties, for example take it upon themselves to educate voters.

But is there ever been any recommendations? This seems to me to be Civics 101, something we should be teaching in third, fourth, fifth grade. If there's a new implementation of the voting procedure, we should be teaching kids, hey, look. We've got a new procedure. Here's how it works, or people in high school who are about to become voters.

Has that been recommended by the Carter-Baker? Because I didn't read the whole report.

MR. HEARNE: There has been a few points I would note. Speaking for myself, I think it is a very good thing for people to take children to polling places, to encourage them, to model voting behavior, and for example, in Missouri we recently amended our state law to expressly allow parents to bring their children to the polling place. That's a good thing. Previously they were prohibited under some state laws.
So states can do some certain things. I know the Carter-Baker Commission -- I can let Bob address that -- there was certainly very much of a desire that we provide education and sufficient resources, particularly with new technology so that everybody gets to use it, particularly those who are technologically challenged, older people who are not as familiar with technology need to know this year these voting systems.

And I think that's incumbent on local election officials to make sure they do. Where they have the ability to go into community centers or nursing homes and provide a demonstration of the technology, and again, as you were mentioning, particularly the new generation of individuals coming along.

One final quick point I would note is in the process, again, particularly with new technology, particularly if you get into recounts, another factor that I have certainly seen and you saw in Florida is the need for a consistent standard for conducting the election, not just running the election, but if you get into any disputed issues, recounts, things of that nature, to have a system in place that does not create opportunity, advertent or inadvertent, for election officials to exercise arbitrary discretion.
COMMISSIONER KIRSANOW: Don't you think that Bush-Gore decision almost mandates that? Maybe in a way that may be somewhat difficult, but --

MR. HEARNE: I actually read it slightly differently. I read Bush-Gore saying that under the equal protection clause what we need to do is to make sure a state unifies and standardizes their procedures within the state.

So in my home State of Missouri, whether I'm voting in St. Louis County or whether I'm voting in Kansas City or Springfield, that those votes of whomever are cast are going to be counted, processed the same way, and if there's a recount, that the process for reviewing them is the same.

And also that it's not open to just the discretion of the election officials at that time.

One final point I can't let go by. Donna, you mentioned the need for paper back-up ballots. I fully support that. That is a very important procedure, particularly this year as we get into that technology, to have that kind of fail safe voting in place so we don't disenfranchise any voter.

DR. PASTOR: There are studies that people are intimidated from voting by electronic machines and by the complexity of the process. They are just almost
afraid to come to vote because they don't want to be embarrassed.

And in our electoral system where the rules are so different from county to county and from state to state, we don't have the opportunity that a lot of countries have where they spend a lot of money to show everybody exactly how to vote, you know, what the process is like. And they do it on television for 20 or 30 minutes.

We don't have that luxury when there are so many different machines and so many different standards within counties and whatever else. So to a certain extent if they could have just statewide uniformity and much more civic education on television because that's where people are going to get it, not in the voter guide because a lot of poor people don't read the voter guides.

I think that's absolutely critical to the process. Civic education is key. The Help America Vote Act was the first time that the federal government gave money for civic education to the states, and the states used it, and there are many studies that suggest that it really did help voter participation because people got a little bit more comfortable in explaining how the process was going to
work.

MS. BRAZILE: You know, unfortunately, the burden of election protection, voter education, voter registration is placed on our candidates and our major two-party system. We don't have often third party organizations who are willing to go out there and register voters, to educate them, and then to turn them out to the polls. The system is now such that it's so partisan out there, it's so highly charged that many of these groups either opt out of participating or it's left to some small minister in a church who's still willing to go out there and do what I call the Lord's work and encouraging people to get out and vote.

So until we have a uniform system in place, until we fully properly fund our election personnel, until we fully encourage every citizen to take part in our electoral process, we're going to have problems at the polling place.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much.

One brief statement and then I want to just ask Mr. Fund a question, but we've talked a lot about how this whole aura of electoral issues, whether there are problems, whether it's intimidation, whether it's
fraud, whether it's registration, whatever, undermines confidence in our voting system, and I guess part of me doesn't want you to answer because I really need to ask Mr. Fund this last question, but perhaps after that.

How much, as somebody who has been in politics not as long as Ms. Brazile or as successful as Ms. Brazile, but certainly as someone who has been there and done campaign work at the national and state levels, one of the things you find when you go out and you talk to people is that the level of rhetoric, the way that negative ads have taken over, the way that campaigns are being waged has also had an impact on really how people feel about the electoral system and their willingness to participate in that process, given that it's a question of just who is my least worst choice.

That being said, to Mr. Fund, I just wanted to finish on this one question that I had asked the others regarding the idea of a national voter ID or ID card or real ID or house ID, whatever you want to call it, and the fact that at least amongst the three people before you, if it were to come to pass and it's still not sure if it will, the fact that it must be free and that the predicates to getting it must be
free in order to insure accessibility to it, I just wonder if you agreed with that as well.

MR. FUND: I don't believe that you have to have a system in which all 300 million Americans or all 220 million who are eligible to vote don't have to pay anything for an ID card. I would submit to you that the actual ID card itself should be free. I think if you have to provide some documentation and you have the means to do so, I think a small, modest charge would be possible.

If you wish to declare that you do not have the resources, I think that would be a very simple procedure of just signing a statement to that effect, no questions asked.

So I would submit to you free to anyone who feels if they need it to be free or wish it to be free, but I don't believe Ted Turner, I don't believe Bill Gates --

COMMISSIONER YAKI: No, I understand.

MR. FUND: -- I don't believe those people should necessarily be given a free birth certificate.

COMMISSIONER YAKI: But at least a minimal means test if someone says I can't give --

MR. FUND: Absolutely.

COMMISSIONER YAKI: -- 20 bucks to get my birth
certificate or 75 bucks to get my driver's license. I just can't do it. You would say they could get that.

MR. FUND: Yes, but I do think that the actual problem has been exaggerated. The vast majority of Americans have some form of photo ID identification, and I think in the vast majority of cases that can be converted into the ID that meets the security requirements that we're going to have in the next few years.

Obviously this has to be phased in.

COMMISSIONER YAKI: I guess my concern is that the vast majority does include some of my majority, or non-majority.

MR. FUND: I think provisions have to be made for them, and remember over 100 nations, as Professor Pastor has pointed out, have encountered this problem. Over 100 nations, and I can assure you the vast majority of them have lower per capita incomes than we do. They somehow have found a way to do that.

I believe best practices are here. Professor Pastor is a noted expert on this, and I think that he and his colleagues in academia have probably gone out and done studies or can do studies on how to square having a population that can't afford these documents and yet 100 nations have been able to establish
COMMISSIONER YAKI: And I would just kind of go back to the point I made before my question to you, which is that we can talk about how 579 votes, 2,000 votes were found to be whatever. We don't know how many non-votes were not cast because of intimidation. We don't know how many votes were turned away because of whatever. We don't know how many votes weren't cast because people just have no faith in the system entirely.

From the candidates, to the parties, to whatever and how we overcome that I think is the greater barrier to full participation, not just whether or not we catch Harry Houdini voting three times in Michigan or someone blocking a roadway and saying, "Sorry. The election was yesterday. It's all canceled."

Beyond that, the bigger problem is how do we get Americans to believe that this is something really worth investing in. I mean I hate to say this. I'm someone who just became a permanent absentee voter because I couldn't stand going to my polls anymore and waiting and watching these folks who admittedly are good, patriotic Americans, but just bumbling up the process with machines and the lines were just getting incredible.
Now, on the other hand, if we were in a situation, as they did in the first election in South Africa, where people were waiting eight hours in the hot sun to vote and they had 99 percent turnout, I'll take that.

MR. FUND: Sure.

COMMISSIONER YAKI: I'll take that.

MR. FUND: Well, I want to echo the comments in your statement because we do have a problem. We rank 139th out of 163 democracies in the rate of voter participation. If we continue to see voter participation decline, we're going to have voting left to the zealous or the self-interested few, and the more we have those people vote and other people of goodwill not vote, the more we're going to see harshly personal campaigns that dispense with any positive vision of our national future.

And some people would say the current election resembles that.

MS. BRAZILE: I agree on that one. Less than 12 percent of Americans participated this past year in the primary election, and we all know based on previous elections that the average turnout in off-season election mid-term is 37, 38 percent.

So this is a real problem. You know, many
Americans feel overwhelmed as it is, and when they hear of these new barriers, these new restrictions, these new regulations, it intimidates certain people, and we need to be cognizant of that when we put forward new ideas to improve our democracy.

MR. FUND: I want to echo what my friend Donna said, and that's this. Let's look at what the customers are telling us, first time voters when you turn 18. Only 11 percent of 18 and 19 year olds vote in their first election. They're telling us something. They're telling us that the process isn't meaningful to them or that they no longer feel as if it has anything to do with their daily lives or that they've lost confidence in it because they're just awash in cynicism.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: This is a relatively narrow question. A couple of months ago we just reauthorized temporary provisions of probably the most successful piece of civil rights legislation that we've seen, the Voting Rights Act. Commissioner Melendez referred briefly to one of the provision, Section 203. That one is primarily -- not primarily, but in large part -- dealing with bilingual ballots for Native Americans. But there's also the
correlative 211 which deals with bilingual ballots
that's based on a certain calculation of the
percentage of perceived bilingual speakers in a
particular jurisdiction.

Has anyone done an assessment as to whether or
not -- let me back up. During the testimony before
the Senate Judiciary Committee prior to
reauthorization of temporary provisions of the Voting
Rights Act, there was some concern about the
complexity of certain ballot propositions, and when
you translate them you don't necessarily get an exact
translation from English to, say, Tagalog or English
to some other language.

Has there ever been an assessment done as to
whether or not that presents a vehicle for either
error or fraud that is the bilingual ballot and
anything that may be lost in translation?

DR. PASTOR: I'm not aware of such a study.

PARTICIPANT: Good question.

DR. PASTOR: And I think it's a very good
question. I think translating those referendums from
legalese into English is a far more difficult problem
I find, but I don't know the answer to your question.

So I don't know whether they've really looked at that
closely.
As you know, some of the referendum are very convoluted in English.

COMMISSIONER KIRSANOW: I have to read them three, four times, actually, the Constitutional amendments.

DR. PASTOR: So to be able to assure that they are translated properly if we can't understand them, well, is still a large problem.

COMMISSIONER KIRSANOW: I know in one case in New York, for example. This wasn't about composition. It had to do with two candidates for a particular office, and I can't recall which language the translation was made into. It may have been into Chinese, but I'm not sure, but they transposed the party affiliations from Republican to Democrat and vice versa.

You can imagine in New York City the poor Democrat who then became a Republican. You know, he may not be very happy about that.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: I just wanted to put a little humorous story on that from the great multi-lingual City of San Francisco that I used to represent with such great joy, but one of the interesting things had to do with how you took someone's name and put it
in Chinese characters.

   And I actually came up with the basic policy
that it would essentially be phonetic because Chinese
characters all have their own particular
pronunciations. And the reason we did that is because
a couple of people decided to take great liberties
with their names and create whole new Chinese names
for themselves. Some of them were resembling ancient
Chinese leaders of old history that people would
recognize and go, "Oh, this must be the relative of,"
you know, whoever it was.

   So we had to put a stop to that because people
were taking great creativities that they can only do
in San Francisco.

   CHAIRMAN REYNOLDS: Okay. On that note, I would
like to conclude.

   DR. PASTOR: I'm sorry. May I just correct one
thing? At several points in time I referred to these
estimates on the real ID law of being as much as $11
billion, and I said that it was a report by the
National Association of Secretaries of State.

   That's incorrect. I just found it. It was from
the National Governors Association and the National
Conference of State Legislatures. So I'd just like to
correct that part of the record.
CHAIRMAN REYNOLDS: Thank you.

Well, I would like to thank all of the panelists for an excellent, excellent presentations. I think that his has been quite enlightening, and with this era of close elections, this conversation is sorely needed, and with any luck we can continue this process that we've started to improve the efficiency of our national and state and local elections.

Thank you.

(Whereupon, at 3:29 p.m., the meeting and briefing were concluded.)