

U.S. COMMISSION ON CIVIL RIGHTS

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HEARING ON ALLEGATIONS OF ELECTION-DAY
IRREGULARITIES IN FLORIDA

+ + + + +

THURSDAY
JANUARY 11, 2001

+ + + + +

TALLAHASSEE, FLORIDA

+ + + + +

The Commission convened at 9:02 a.m., in the Capital Ballroom, Holiday Inn Select, 316 W. Tennessee Street, Tallahassee, Florida, Chairperson Mary Frances Berry, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON
CRUZ REYNOSO, VICE CHAIRPERSON
CHRISTOPHER EDLEY, JR., COMMISSIONER
YVONNE Y. LEE, COMMISSIONER
ELSIE M. MEEKS, COMMISSIONER
ABIGAIL THERNSTROM, COMMISSIONER
VICTORIA WILSON, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR
EDWARD HAILES, ACTING GENERAL COUNSEL

NOTE: *This is an unedited transcript of the full and complete proceedings of the U.S. Commission on Civil Rights in the matter of its "Hearings on Allegations of Election-Day Irregularities in Florida" held January 11-12, 2001. This is not a verified copy of the transcript. According to federal regulations, persons who have presented testimony at a Commission proceeding may ask within 60 days after the close of the proceeding to correct errors in the transcript of their testimony. Such requests shall conform to their testimony as presented at the proceeding.*

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P-R-O-C-E-E-D-I-N-G-S

1
2 CHAIRPERSON BERRY: This hearing of the
3 United States Commission on Civil Rights will now come
4 to order.

5 Let me first point out that Gwen McKinney,
6 who is standing in the back, is our press officer.
7 She's waving her hand -- wave your hand, Gwen. She
8 will take care of the care and feeding of the press.

9 There will also be a formal press
10 availability at 12:45, at which I will talk to the
11 press. There may be other availabilities during the
12 day at other time, but that will be formal ones. And
13 if any of you need anything concerning your
14 responsibilities, you may ask Gwen McKinney.

15 The next thing I do is to swear in the
16 court reporters, clerks, interpreters and signers.
17 May I please have all of the court reporters, clerks,
18 interpreters and signers come forward.

19 (Whereupon, the court reporters were
20 sworn.)

21 CHAIRPERSON BERRY: Also, before returning
22 to your seats, could a sign interpreter ask if anyone
23 is in need of interpretation at this particular time.

24 (Whereupon, the sign interpreter
25 complies.)

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CHAIRPERSON BERRY: The answer is no.
Okay, thank you.

Good morning again, and welcome everyone to this public hearing of the U.S. Commission on Civil Rights here in Tallahassee, Florida.

I am Mary Frances Berry, Chairperson of the Commission and I will be presiding over this hearing, scheduled for today and tomorrow.

Scheduled testimony will commence at 9:30 a.m. today -- at 9:00 a.m. today -- what time tomorrow, counsel?

ACTING GENERAL COUNSEL HAILES: 9:00 a.m.

CHAIRPERSON BERRY: 9:00 a.m. tomorrow, and will conclude at 5:00 p.m. today and 4:00 p.m. tomorrow, as indicated on the agenda.

Before I detail the purpose and scope of this hearing, I would like to introduce myself further and then allow other members of the Commission to introduce themselves.

I have a day job as the Geraldine R. Segal Professor of American Social Thought and Professor of History and Adjunct Professor of Law at the University of Pennsylvania in Philadelphia, Pennsylvania where I teach courses in history of American law.

And now, I will ask the Commissioners to

1 introduce themselves, beginning with the Vice Chair,
2 who is accustomed to introducing himself.

3 VICE CHAIRPERSON REYNOSO: My name is Cruz
4 Reynoso, I'm accustomed to introducing myself.

5 (Laughter.)

6 VICE CHAIRPERSON REYNOSO: I teach law at
7 the University of California at Los Angeles and I'm
8 associated as special counsel with the law firm of
9 Kaye, Scholer, Fierman, Hays & Handler.

10 CHAIRPERSON BERRY: And he is also a
11 former member of the Supreme Court -- Justice on the
12 Supreme Court of California, which he was too polite
13 to mention.

14 Commissioner Lee.

15 COMMISSIONER LEE: Good morning. I'm
16 Yvonne Lee from San Francisco, California. I'm also a
17 consultant specializing in Asian community affairs.

18 COMMISSIONER MEEKS: I'm Elsie Meeks, I
19 was born and raised and still live on the Pine Ridge
20 Indian Reservation in South Dakota. I've been
21 involved in Native American community and economic
22 development, both locally and nationally for about the
23 last 15 years.

24 CHAIRPERSON BERRY: Commissioner
25 Thernstrom.

1 COMMISSIONER THERNSTROM: I'm Abigail
2 Thernstrom, I am newly appointed to this Commission.
3 I am a Senior Fellow at the Manhattan Institute in New
4 York, a member of the State Board of Education in
5 Massachusetts where I live. I've been writing on
6 issues of race and ethnicity for more than 20 years
7 and indeed in 1987 published a book on the subject of
8 these hearings today, the book was entitled Who's
9 Votes Count, Affirmative Action and Minority Voting
10 Rights, a Harvard University Press book. And
11 subsequently, a co-authored book that --

12 CHAIRPERSON BERRY: Commissioner
13 Thernstrom, if you name all your books, all the other
14 Commissioners will want to name all theirs.

15 (Laughter.)

16 CHAIRPERSON BERRY: Which will take us all
17 day.

18 COMMISSIONER THERNSTROM: Well, I'll be
19 happy to stop. I was simply going to name this one
20 other, American Black and White, One Nation
21 Indivisible came out a few years ago. That was going
22 to be the end.

23 CHAIRPERSON BERRY: Thank you.
24 Commissioner Wilson.

25 COMMISSIONER WILSON: My name is Victoria

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1 Wilson. I live in New York, where I publish books for
2 Alfred A. Knopf --

3 VICE CHAIRPERSON REYNOSO: Don't name them
4 all.

5 COMMISSIONER WILSON: In fact, I was going
6 to ask you, Madam Chair, if I could name them all.

7 (Laughter.)

8 COMMISSIONER WILSON: And that would be
9 quite a list since I've been there for more than 25
10 years, where I am Vice President and Associate
11 Publisher and a senior editor at Alfred Knopf.

12 CHAIRPERSON BERRY: Thank you. And
13 finally, I would like to introduce our Staff Director
14 Les Jin, who is sitting right next to Commissioner
15 Wilson; and our General Counsel Edward A. Hailes, Jr.

16 **Opening Statement**

17 CHAIRPERSON BERRY: Today, the Commission
18 begins its formal investigation into allegations by
19 Floridians of voting irregularities arising out of the
20 November 7, 2000 presidential election. This hearing
21 is the first that the Commission is conducting in the
22 state of Florida to examine whether eligible voters
23 faced preventable problems at the polls in casting
24 ballots and having ballots counted in this closely
25 contested election.

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1 We are here to find out what happened.
2 This hearing will help the Commission to determine
3 whether allegations of irregularities at the polls are
4 true and accurate. And if they are true and accurate,
5 we hope that the evidence will lead us to the persons
6 responsible for these irregularities and form the
7 basis for remedies.

8 This hearing represents a continuation of
9 the Commission's commitment to ensuring that eligible
10 persons have the opportunity for meaningful
11 participation in the political process. The U.S.
12 Commission on Civil Rights has the statutory authority
13 -- indeed the obligation -- to investigate written
14 complaints alleging that the right to vote and to have
15 votes counted has been denied.

16 As a person who teaches history of
17 American law, I am keenly aware of the fact that the
18 history of voting in the United States is the history
19 of barriers erected and erased. The struggles to gain
20 the right to vote by those who were locked out have
21 taken place in court, on the battlefield, within the
22 family, in the streets, in state legislatures and in
23 Congress. As a result of these legendary efforts,
24 today at the beginning of a new millennium, African-
25 Americans, women of all races and ethnicities,

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1 language minorities, persons with disabilities,
2 proferter list persons and even some without
3 traditional homes or residencies have the right to
4 vote. the right to vote makes all persons, rich and
5 poor, weak and strong, educated and uneducated, equal
6 before the ballot box.

7 As Barbara Jordan, the memorable and
8 powerful conscience of Congress, once stated,
9 "Citizens' participation is the author of democracy's
10 legitimacy. Voting is the individual citizen's
11 highest act."

12 We know that in elections across the
13 country, there may, from, time to time, be instances
14 of irregularities, but these should be the exception
15 and not the rule. And we also should not take those
16 exceptions to mean everybody does it, so who cares.

17 And so in focusing on this highest act,
18 the Commission has received troubling reports of an
19 inordinate number of low --

20 (Brief power interruption.)

21 CHAIRPERSON BERRY: Let me find where I
22 stopped.

23 I had just pointed out that Barbara Jordan
24 had said that "Citizens' participation is the author
25 of democracy's legitimacy." And that this Commission,

1 in focusing on this highest act, has received
2 troubling reports of a large number of low moments, or
3 an inordinate number of low moments in Florida on
4 November . 7, 2000, involving problems at polling
5 places, ranging from administrative inefficiency to
6 intimidation and possible discrimination.

7 We also point out that five counties in
8 Florida, because of a history of discrimination, are
9 still covered by the Voting Rights Act and have to
10 submit their changes in any matters having to do with
11 voting to the courts or the Justice Department.

12 Anyway, sadly, these problems may have
13 dashed the hopes of countless registered voters to
14 cast ballots and to have their ballots counted in this
15 historic election. I strongly believe that every
16 sensible person agrees that in this democracy, every
17 eligible, registered voter's ballot counts and should
18 be counted. The very validity of our political system
19 depends on this important principle.

20 This hearing will focus attention on many
21 of the allegations that have been reported to the
22 Commission. We will attempt to address such
23 allegations as improper voter list purging procedures,
24 balloting complications that may have produced over-
25 votes and under-votes, outdated election equipment in

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1 poor precincts that may have led to racial gaps and
2 voided votes, police roadblocks near polling sites,
3 lack of language assistance when required and
4 requested, accessibility difficulties for persons with
5 disabilities, and other concerns that scheduled
6 witnesses will present at the hearing.

7 As required by law, notice of this hearing
8 was published in the Federal Register on December 13,
9 2000, having been previously made publicly available
10 electronically on December 11, 2000. A copy of this
11 notice will be introduced into the hearing record. It
12 has been supplied to all persons scheduled to appear
13 here today.

14 The authority of the U.S. Commission on
15 Civil Rights to conduct hearings emanates from the
16 1957 legislation which established it as an
17 independent, bipartisan federal agency of the United
18 States government. Among the Commission's duties are
19 to appraise the laws and policies of the federal
20 government, to study and collect information, to serve
21 as a national clearinghouse for information, all in
22 connection with discrimination or denial of equal
23 protection because of race, color, religion, sex, age,
24 disability, national origin or in the administration
25 of justice.

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1 In the area of voting rights, the
2 Commission is authorized to investigate allegations of
3 deprivations as a result of any pattern or practice of
4 fraud of the rights of citizens of the United States
5 to vote and have votes counted.

6 To enable the Commission to fulfill its
7 duties, Congress has empowered the Commission to hold
8 hearings and issue subpoenas for the attendance of
9 witnesses and the production of documents. Consistent
10 with Commission practice, all witnesses within its
11 jurisdiction have been subpoenaed to attend this
12 hearing. It has nothing to do with whether people are
13 willing to come, unwilling to come, afraid to come or
14 whatever. All witnesses within our jurisdiction have
15 been subpoenaed to attend this hearing.

16 So today, we begin to examine these
17 allegations of improprieties at the polls. We have
18 about 30 witnesses for this two-day hearing. These
19 witnesses have been selected due to their knowledge of
20 and experience with the issues. We will hear sworn
21 testimony from witnesses about their personal accounts
22 in seeking to cast ballots in Leon County and
23 surrounding counties. We expect to hear a great deal
24 more testimony as we travel elsewhere in the state.
25 In particular, we will have increased amounts of

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1 testimony from people of color, Latinos, Asian-
2 Americans and the like, and other people of color, as
3 we travel about elsewhere in the state, perhaps more
4 than today.

5 The officials that we have here, large
6 number of public officials, include the Governor of
7 the state, the Secretary of State, the Attorney
8 General for the State of Florida and the supervisors
9 of elections for several counties.

10 In addition, we will hear from academics
11 and other concerned specialists who have studied the
12 topics of our investigation, so that we can use their
13 information for our recommendations.

14 In addition to the scheduled witnesses, an
15 important part of what we do is to have an open forum
16 at the end of each day's session for people who would
17 like to give testimony and who have not been slated as
18 particular witnesses.

19 Today's hearing is only the first public
20 phase of the Commission's work. Many of the witnesses
21 have been compelled to turn over relevant documents to
22 the Commission to assist with this investigation. The
23 Commission will examine the documents and the sworn
24 testimony in relation to the allegations for the
25 purpose of making findings and recommendations that

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1 will form the basis for corrective action.

2 Before I proceed, I want to stress the
3 functions and limitations of this Commission. As the
4 Supreme Court of the United States explained, this
5 Commission does not adjudicate, it does not hold
6 trials or determine anyone's civil or criminal
7 liability, it does not issue orders, nor does it
8 indict, punish or impose legal sanctions. It does not
9 make determinations depriving anyone of life, liberty
10 or property. In short, the Commission does not and
11 cannot take any action which will affect an
12 individual's legal rights. We can, in fact, find
13 facts, which may be used for legislative or executive
14 action or may be turned over to prosecutorial branches
15 as it makes sense to do so.

16 I'm certain that my colleagues join with
17 me in the hope that this hearing will lead to a
18 heightened level of public awareness about voting
19 rights, responsibilities, remedies, procedures, and
20 will educate the nation on existing problems at the
21 polls, and encourage remedial action.

22 And what we really want to do is to make
23 sure that we aid in guaranteeing the right to vote, to
24 have votes counted and to secure the maximum
25 participation of citizens in this democracy.

1 Also, I need to say something about the
2 technical aspects of the hearing. First, the record
3 will remain open for 60 days for including of
4 materials sent to the Commission at the conclusion of
5 this hearing. Anyone who has relevant information,
6 who desires to submit it to us, may do so during this
7 time period, in accordance with this rule.

8 Second, you may notice the presence of
9 federal marshals in the audience. The Commission's
10 procedures require their attendance at all of our
11 hearings. These marshals have developed security
12 procedures that will help preserve the atmosphere of
13 dignity and decorum in which our proceedings are held.

14 Federal law protects all witnesses before the
15 Commission. It is a crime punishable by a fine of up
16 to \$5000 and imprisonment of up to five years to
17 interfere with a witness before the Commission.

18 I would also like to acknowledge the work
19 of our staff. The staff has swiftly and diligently
20 put into place the building blocks that were necessary
21 for us to start this process, in record time.

22 I want to thank you for your attention and
23 indicate that I intend to adhere strictly to all the
24 times set forth in the agenda; that is, if all the
25 electricity works.

1 I now please direct your attention to Vice
2 Chair Reynoso, who will read a statement of the rules.
3 Vice Chair Reynoso.

4 **Statement of Rules**

5 VICE CHAIRPERSON REYNOSO: Thank you,
6 Madam Chair.

7 At the outset, I would like to emphasize
8 that the observations which are about to be made
9 concerning the Commission's rules constitute nothing
10 more than brief summaries of significant provisions.
11 The rules themselves should be consulted for a fuller
12 understanding. Copies of the rules which govern this
13 hearing may be obtained from a member of the
14 Commission staff upon request. Scheduled witnesses
15 appearing during the course of this hearing have been
16 supplied a copy. Staff members will also be available
17 to answer any questions that arise during the course
18 of the hearing.

19 The Commission is empowered by statute to
20 hold hearings and act at such time and places as it
21 deems advisable. The hearing is open to all and the
22 public is invited and urged to attend.

23 As Commissioner Berry indicated, all
24 witnesses appearing today within the Commission's
25 jurisdiction have been subpoenaed for this hearing.

1 Everyone who testified or submits data or evidence is
2 entitled to obtain a copy of the transcript on payment
3 of costs. In addition, within 60 days after the close
4 of the hearing, a person may ask the person to correct
5 errors in the transcript of his or her testimony. Such
6 request will be granted only to make the transcript
7 conform to the testimony presented at the hearing.

8 If the Commission determines that any
9 witness' testimony tends to defame, degrade or
10 incriminate any person, that person or his or her
11 counsel may submit written questions which, in the
12 discretion of the Commission, may be put to the
13 witness. Such person so has a right to request that
14 witnesses be subpoenaed on his or her behalf.

15 All witnesses have the right to submit
16 statements prepared by themselves or others for
17 inclusion in the record, provided they are submitted
18 within the time required by the rules.

19 Any person who has not been subpoenaed may
20 be permitted, at the discretion of the Commission, to
21 submit a written statement in this public hearing.
22 Any such statements will be reviewed by the members of
23 the Commission and made a part of the record.

24 The Chair has already advised you that
25 federal law protects all witnesses at the Commission.

1 These witnesses are protected by Title 18 of the U.S.
2 Code, which makes it a crime to threaten, intimidate
3 or injure witnesses on account of their attendance at
4 government proceedings. The Commission should be
5 immediately informed of any allegations relating to
6 possible intimidation of witnesses. I emphasize that
7 we consider this to be a very serious matter and that
8 we will do all in our power to protect witnesses who
9 appear at the hearing.

10 Finally, I should note that the rules were
11 drafted with the intent of ensuring that the
12 Commission hearings be conducted in a fair and
13 impartial manner. In many cases, the Commission has
14 gone significantly beyond Congressional requirements
15 in providing safeguards for witnesses and other
16 persons. We have done so in the belief that useful,
17 fair facts are best developed in an atmosphere of calm
18 and objectivity. We trust that such an atmosphere
19 will prevail at this hearing. Let me stress, however,
20 that with respect to the document of every person in
21 this hearing room, whether testifying or not, all
22 orders of the Chairperson must be obeyed. Failure by
23 any person to obey the order of Chairperson Berry or
24 the Commissioner presiding in her absence will result
25 in the exclusion of the individual from this hearing

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1 room and criminal prosecution by the U.S. Attorney, if
2 required.

3 As previously noted, unless otherwise
4 indicated, each session of this hearing will be open
5 to the public. All are indeed welcome to attend and
6 indeed urged to attend.

7 Thank you very much, Madam Chair.

8 CHAIRPERSON BERRY: Thank you, Vice Chair.

9 At this time, I want to invite our State
10 Advisory Committee Chair from Florida to come forward.

11 The Commission has advisory committees in
12 all the states and the District of Columbia.. These
13 are citizens who give their time to the work of the
14 Commission and who have been associated with work in
15 the area of civil rights, many of them for many years,
16 and we very much appreciate the work that they do.

17 So I would like to invite June Littler, I
18 see her before me, who is, in addition to a
19 longstanding career as a catalog and reference
20 librarian at Santa Fe Community College has been very
21 active in numerous professional and civic
22 organizations, including the American Library
23 Association, the American Association of University
24 Women, League of Women Voters. And she is, in terms
25 of party affiliation, she is a Republican -- I'll

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1 point that out.

2 Thank you very much for coming forward,
3 Ms. Littler, and please proceed.

4 **Welcome**

5 MS. LITTLER: Thank you and good morning.

6 VICE CHAIRPERSON REYNOSO: Good morning.

7 MS. LITTLER: On behalf of the Florida
8 State Advisory Committee, I bid you welcome to Florida
9 and especially to our State Capitol, Tallahassee. We
10 wish you well in your quest, both here and in south
11 Florida.

12 During our last regular meeting on
13 November 14 in Orlando, in the confusing early days of
14 the election mess, the Committee discussed some of
15 what had transpired. For example, in Jacksonville,
16 Duval County, 27,000 ballots were thrown out, there
17 were 5000 under-votes and 22,000 over-votes.

18 In Tampa, Hillsborough County, some blacks
19 received more scrutiny than others. More than one
20 picture ID was required.

21 In Gainesville, Alachua County, it was
22 reported that some military absentee voters were not
23 properly informed of voting procedures, particularly
24 deadlines regarding absentee ballots.

25 In Miami, Dade County, there were

1 excessively long lines and waiting which served to
2 discourage many voters. Two picture IDs were required
3 when only one was really needed. Both problems were
4 worse in the Haitian communities, along with language
5 problems. Butterfly ballots were confusing. Overall,
6 we saw the need for reform, nationwide and statewide.

7 Other feedback I get is that citizens are
8 fed up with inefficiency in an area that can so easily
9 be streamlined. Most of us all want to vote the same
10 way and at the same time -- no staggered time zones
11 please. We've had enough of the show biz media
12 clamoring to be the first with the results. Let's get
13 the vote done accurately and finished at the same
14 time, no matter what time zone the voter is in.

15 Besides the matter of training election
16 supervisors and poll workers properly, please note
17 that the voters themselves bear responsibility of
18 learning what is expected of them and how to do it
19 properly. This is a government of the people, by the
20 people and for the people. Voters who are confused
21 should know, it is within their right; indeed it is
22 their responsibility to ask for, demand, and receive
23 instruction for any new technology being used, and
24 hopefully before election day.

25 As distressed as Floridians have been

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1 because of the stranger than fiction turn of events in
2 the last election, we hope your efforts to determine
3 exactly what happened will bring about a national
4 consensus to reform electoral procedures.

5 Thank you for being here.

6 CHAIRPERSON BERRY: Thank you very much
7 for being here and thank you for all the work you do
8 on the State Advisory Committee, we appreciate it.

9 **Allegations of Voting Irregularities**

10 CHAIRPERSON BERRY: Now we will have our
11 first panel. On the first panel, we will hear from
12 persons who experienced difficulties during the voting
13 process. We will hear allegations of voting
14 irregularities of various sorts. During this time, we
15 will also be asking representatives of the Florida
16 Democratic and Republican State Parties to come
17 forward with documents that we requested by subpoena
18 duces tecum.

19 I would like to ask our General Counsel
20 Mr. Hailes to call the witnesses who are here today.

21 ACTING GENERAL COUNSEL HAILES: Good
22 morning, Madam Chair, Commissioners.

23 At this time we will ask Mr. John Nelson,
24 Ms. Roberta Tucker, Mr. or Apostle Willie D. Whiting,
25 Jr. to please come forward.

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1 CHAIRPERSON BERRY: Mr. Nelson, Ms. Tucker
2 and Mr. Whiting, Jr., please come forward.

3 ACTING GENERAL COUNSEL HAILES: Ms.
4 Roberta Tucker.

5 (No response.)

6 CHAIRPERSON BERRY: While they proceed, in
7 the interest of time, to ascertain the whereabouts of
8 the other panelists, counsel, do you want me to ask
9 the marshals to see if they can locate them or how
10 would you like to proceed?

11 ACTING GENERAL COUNSEL HAILES: Yes, we
12 would like to locate the witnesses.

13 CHAIRPERSON BERRY: We will ask that
14 efforts be made to locate them. And while we're doing
15 that, we will ask the witness present -- in the
16 interest of time, instead of waiting -- to stand and
17 raise his right hand and to give the oath. You are?

18 MR. NELSON: John Nelson.

19 CHAIRPERSON BERRY: Okay, Mr. Nelson,
20 could you raise your right hand while I give you the
21 oath?

22 Whereupon,

23 JOHN NELSON

24 appeared as a witness herein, and having been first
25 duly sworn, was examined and testified as follows:

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1 CHAIRPERSON BERRY: Thank you very much.
2 You may be seated.

3 Counsel, you may proceed with questioning
4 Mr. Nelson.

5 EXAMINATION

6 BY ACTING GENERAL COUNSEL HAILES;

7 Q Mr. Nelson, again for the record, will you
8 give us your full name, your county of residence and
9 whether you are a registered voter in the State of
10 Florida.

11 A My name is John Nelson, I reside in
12 Jefferson County and I am a registered voter in the
13 State of Florida.

14 Q Thank you very much. And you did speak to
15 a member or members of our staff about your
16 experiences on election day. Will you please tell the
17 Commission for the record what your experiences were
18 on that day?

19 A I did speak with a member of the staff and
20 the question asked basically were what did I observe
21 at the voting place, and basically I indicated that I
22 did observe a couple of -- well, actually one voting
23 place where I vote, there was a law enforcement
24 vehicle at that place, which was a little unusual, it
25 was an FHP vehicle. And upon my leaving and going

1 back through town, at another voting place, there was
2 another law enforcement vehicle which was FHP.

3 Q Can you tell us the specific location of
4 the polling place?

5 A One was at the precinct 6 in Jefferson
6 County, which is on Water Street -- actually Tiger
7 Lane -- and the other would be on, if I'm not
8 mistaken, North Washington, if I'm not mistaken on the
9 address of that.

10 Q Okay, and the polling place on Water
11 Street is your polling --

12 A It's Tiger Lane.

13 Q -- on Tiger Lane, that's your --

14 A Yes, it's my polling place.

15 Q Okay, and what caused you to go to the
16 other polling place?

17 A Well, actually I have to pass through that
18 area going back, because I take the interstate coming
19 to Tallahassee and of course, again, I observed a law
20 enforcement vehicle at that place.

21 Q And can you describe the law enforcement
22 vehicle and the reason why you thought that was
23 unusual for it to be there.

24 A Yes, normally I usually vote early in the
25 morning before I come to Tallahassee, and of course,

1 once you vote there a number of times and you're not
2 accustomed to seeing a law enforcement vehicle, it
3 normally brings some kind of curiosity to your
4 attention. And again, going through downtown, you see
5 the same thing, it makes you wonder why the vehicle is
6 there, what is wrong.

7 Q And the vehicles, were they occupied or
8 unoccupied?

9 A They were unoccupied, I didn't see anyone
10 in the vehicle.

11 Q And again, could you describe the vehicles
12 more specifically?

13 A Basically, if you're looking at a law
14 enforcement vehicle, FHP, it's distinct in color, two-
15 tone color, black with more like a cream yellow and
16 normally would have FHP or state trooper on it.

17 Q Did you happen to talk to any official
18 about the presence of those vehicles at the polling
19 place?

20 A No, I didn't.

21 Q And again, you found that unusual?

22 A Yes, I've never seen it before during the
23 time I've been voting.

24 Q And approximately what time did you notice
25 those vehicles?

1 A Approximately 7:30, quarter to eight.

2 Q And the polling place was open at what
3 time?

4 A Normally in Jefferson County, they open at
5 7:00 and I'm usually there about 7:30.

6 Q Okay. And if you know, the racial
7 composition -- the composition or percentage of
8 registered voters in that precinct?

9 A I'm not sure of the racial composition of
10 the polling place; however, on most occasions, you
11 have a large number of African-Americans voting at
12 that particular polling place.

13 Q More than 40 percent?

14 A Well, I guess yes, possibly; I don't know,
15 I'm not sure.

16 Q Okay. And you actually did vote that
17 morning?

18 A Yes, I did.

19 Q And you were asked to produce
20 identification?

21 A Yes, as a matter of fact, there was a line
22 that morning. To my recollection, there was a person
23 that came outside that was asking the people in line
24 to produce two pieces of identification; one, the
25 voter registration and some other picture ID.

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1 Q Okay. And if you know, because you are --
2 you're described by our staff as active in the
3 community, and if you know, is the type of
4 identification and the number of pieces of
5 identification that were requested usual for that
6 particular polling place?

7 A No, I don't think so, because generally in
8 prior voting situations, I've always just produced my
9 voter registration card and that has been sufficient.

10 And of course, asking for two piece of identification
11 was a little unusual.

12 Q So was this the first time you were asked
13 for two pieces of identification in order to vote?

14 A To my recollection, I believe so.

15 ACTING GENERAL COUNSEL HAILES: Madam
16 Chair, I have no further questions of this witness.

17 CHAIRPERSON BERRY: All right, why don't
18 we swear in the other witness who is here.

19 ACTING GENERAL COUNSEL HAILES: Mr.
20 Whiting?

21 CHAIRPERSON BERRY: You're Mr. Whiting,
22 right?

23 MR. WHITING: Yes.

24 CHAIRPERSON BERRY: Could you please
25 stand? Would you raise your right hand, please?

1 Whereupon,

2 WILLIE D. WHITING, JR.

3 appeared as a witness herein, and having been first
4 duly sworn, was examined and testified as follows:

5 CHAIRPERSON BERRY: Thank you very much.
6 Please be seated.

7 EXAMINATION

8 BY ACTING GENERAL COUNSEL HAILES:

9 Q Will you please state for the record your
10 full name, your title and the county of your
11 residence, and tell us whether you are today a
12 registered voter in the State of Florida?

13 A My name is Apostle Willie David Whiting,
14 Jr., born and raised here in Tallahassee, Florida.
15 Pastor, House of Prayer Church, 1515 Polarosa Road,
16 registered voter here in Leon County.

17 Q Apostle Whiting, you are a registered
18 voter in Leon County at this time -- do you know
19 whether you're a registered voter in Leon County?

20 A Don't know.

21 Q And the reason why you have a question
22 about it, according to your statements to your staff
23 is because you experienced some difficulty in voting
24 on November 7. Can you describe your experience on
25 that day at the polling place?

1 A Before the polls closed, in the evening,
2 November 7, my family and I went to John Wesley United
3 Methodist Church, is our precinct, and near the corner
4 of Blairstone Road and Old St. Augustine, precinct 42.

5 We normally vote there all the time, this is our
6 residential section, don't live that far from there.

7 So when we got there, my wife, my daughter
8 and my son, we went to get in line. As we usually do,
9 the polling clerks asked us for our voter registration
10 card. My wife and daughter had new cards, my son and
11 I did not. When we don't have our voter registration
12 cards, we are allowed to use our driver's license for
13 identification purposes. The polling clerks then
14 check their records to see if we are listed there.

15 By me being the head of our household, I
16 got in line first. But my name was not in the record
17 book. The polling clerk asked me to see another
18 polling clerk five or ten feet from me that had
19 another master roll book. I went to her, my family
20 proceeded to vote, under my directions, of course.

21 The polling clerk then checked her master
22 book and she didn't find my name either, so she became
23 concerned. She called Leon County, as far as I know,
24 the courthouse, to check the records there and maybe
25 after four or five minutes or so, she got ahold of a

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1 supervisor. The supervisor did not want to speak to
2 her, the supervisor wanted to talk to me.

3 The supervisor then asked me for my name
4 and I gave it to him. And he asked me had I been to
5 court. I thought it unusual, but I had been to court,
6 so I said to him yes, I've been to court. He said
7 well what were the findings, I said well, I was a
8 federal juror.

9 He said well, no, you couldn't have been
10 because we have you listed as a convicted felon, you
11 have been purged from our system, you've lost all your
12 civil rights.

13 So I asked him if I needed a lawyer. He
14 said well, let me check further. He went away from
15 the phone and after a few minutes, he came back to the
16 phone and said there's been a mistake. There is a
17 Willie J. Whiting born July 27, 1950, two days after I
18 was, middle initial is J.

19 I said well, do we have the same social
20 security number? Couldn't answer that. Do we have
21 the same driver's license number? He then asked to
22 speak back to the polling clerk again and he gave her
23 a number that she could give to me or give me a card
24 to proceed to vote.

25 So I did vote that night, but I was purged

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1 from the system. I was somewhat concerned because he
2 said that this happened the 27th of October of '99.
3 I've never spent a night in jail anywhere. And my
4 concern was if I should have been stopped in between
5 that year, what could have happened.

6 So I don't know if I'm a registered voter
7 today, but I did vote that night and I don't know how
8 far it reaches when your name is purged from the
9 system and you lose your civil rights..

10 Q Apostle Whiting, let me ask you this, were
11 you required to bring any type of documentation to the
12 poll worker before you were allowed to register to
13 vote that day, did you have to produce your birth
14 certificate?

15 A Driver's license.

16 Q Just your driver's license. Based on your
17 driver's license alone, you were permitted to vote --
18 ultimately you were permitted to vote that evening..

19 A Yes.

20 Q Okay. Between October of 1999 and
21 November 7 of 2000, were you ever notified that you
22 had been purged from the voting list?

23 A No, sir.

24 Q You received no notice in the mail, no one
25 informed you that you had been -- your name had been

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1 taken from the voting list?

2 A No, sir.

3 Q And before you left the polling place that
4 night, were you told that your name would be
5 reinstated on the voting list?

6 A No, sir.

7 Q And that is the reason at this point, you
8 don't know whether you're a registered voter, but you
9 were allowed to vote that day.

10 A Yes.

11 ACTING GENERAL COUNSEL HAILES: Okay,
12 thank you very much, Apostle Whiting.

13 CHAIRPERSON BERRY: Ms. Tucker?

14 MS. TUCKER: Yes.

15 CHAIRPERSON BERRY: Could you please stand
16 and raise your right hand while I give you the oath?
17 Whereupon,

18 ROBERTA TUCKER
19 appeared as a witness herein, and having been first
20 duly sworn, was examined and testified as follows:

21 CHAIRPERSON BERRY: Thank you very much.
22 Please be seated.

23 EXAMINATION

24 BY ACTING GENERAL COUNSEL HAILES:

25 Q Good morning, Ms. Tucker.

1 A Good morning.

2 Q For the record, will you please give your
3 full name and your county of residence and tell us
4 where you are employed and -- at this time, just
5 please answer those three questions.

6 A My name is Roberta Tucker, I live in Leon
7 County and I'm employed with the State of Florida.

8 Q Okay, and you did talk to a member of our
9 staff, did you not?

10 A Yes.

11 Q And you mentioned that -- what I believe
12 you characterized as something unusual happened on
13 November 7. Will you please describe to the
14 Commission for the record your exact experience on
15 November 7, 2000?

16 A I was on my way to vote and on Oak Ridge
17 Road between my house and where I go to vote, there
18 was a roadblock and there were approximately five
19 highway patrolmen there. They stopped me, he asked me
20 for my driver's license. I gave him my license, he
21 just looked at them and handed them back to me and
22 told me to proceed, to go ahead.

23 I went ahead and voted, I got to my job, I
24 called the NAACP because I was curious about the road
25 stop. And I explained to them what had happened and

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1 they said they would look into it, because I didn't
2 feel that it warranted a roadblock there and I was
3 intimidated by it and I was suspicious of it and
4 that's why I reported it.

5 Q And approximately what time was that on
6 November 7?

7 A I would say approximately about 10:00, a
8 little bit before 10:00.

9 Q And you were on your way to the polling
10 place?

11 A Yes.

12 Q And is that a route you generally travel?

13 A Only if I'm going like to the grocery
14 store or someplace like that.

15 Q Okay.

16 A Or to vote.

17 Q But have you seen a police presence at
18 that location before?

19 A Never.

20 Q And you were just asked for your driver's
21 license?

22 A That's all.

23 Q You were not asked for your vehicle
24 registration card?

25 A No. Nothing was checked, my lights or

1 signals or anything that they usually check was not
2 checked.

3 Q And you observed other cars being stopped
4 too?

5 A I can't say exactly because I had to look
6 for my driver's license and I was looking down and
7 when I gave them to him and he gave them back to me, I
8 went ahead. I don't know if there were other cars
9 stopped there or not.

10 Q Okay. Please describe in your own words
11 your sense of intimidation.

12 A Well, it was an election day and it was a
13 big election and there were only white officers there
14 and like I said, they didn't ask me for anything else,
15 so I was suspicious at that, you know, and -- I don't
16 know, it was just suspicious to me.

17 ACTING GENERAL COUNSEL HAILES: Madam
18 Chair, I have no further questions at this time.

19 CHAIRPERSON BERRY: All right, let me note
20 that Commissioner Edley has arrived and I gave other
21 Commissioners an opportunity to introduce themselves,
22 so you may do so at this time. Say who you are.

23 COMMISSIONER EDLEY: Christopher Edley,
24 I'm a Commission member, professor at Harvard Law
25 School.

1 CHAIRPERSON BERRY: Thank you.

2 COMMISSIONER EDLEY: I'll spare you the
3 rest.

4 CHAIRPERSON BERRY: You could name all
5 your books.

6 Now what we'll do is see if any
7 Commissioners have any questions for the witnesses,
8 and I am going to start with the Vice Chair.

9 VICE CHAIRPERSON REYNOSO: Yes, Mr.
10 Nelson, you indicated -- or at least I have some notes
11 of an interview the staff had with you apparently
12 where you indicated that in addition to seeing a
13 police presence in your precinct, if I understand the
14 notes, they indicate that you saw a police presence in
15 other precincts also, or at least one other?

16 WITNESS NELSON: One other, there was a
17 vehicle. I didn't see the individual, just the
18 vehicle presence.

19 VICE CHAIRPERSON REYNOSO: But that was at
20 a precinct other than your own?

21 WITNESS NELSON: That is correct.

22 VICE CHAIRPERSON REYNOSO: And is that
23 what you described earlier as a car parked there, but
24 you didn't see any officers inside the car?

25 WITNESS NELSON: That's correct.

1 VICE CHAIRPERSON REYNOSO: Did you find
2 that presence unusual in terms of your experience?

3 WITNESS NELSON: Yes, I did. And as a
4 matter of fact, that's the thing that actually raised
5 the curiosity as to what possibly was happening or was
6 there a problem or something of that nature.

7 VICE CHAIRPERSON REYNOSO: And for how
8 many years have you been voting?

9 WITNESS NELSON: I'm 52 years old, for
10 many, many years.

11 VICE CHAIRPERSON REYNOSO: So you've voted
12 quite a few times.

13 WITNESS NELSON: Yes, I have, at all times
14 really.

15 VICE CHAIRPERSON REYNOSO: Thank you very
16 much. That's the only question I have at this point,
17 Madam Chair.

18 CHAIRPERSON BERRY: Okay, Commissioner
19 Lee.

20 COMMISSIONER LEE: For Mr. Nelson, when
21 the supervisor came out to inform the voters that they
22 would need two IDs, was there any explanation given?
23 And also, was there any prior public notices given
24 prior to November 7 that there was a change of ID
25 requirements?

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1 WITNESS NELSON: Well, I didn't get any
2 notice at all whether there was a change, and it was a
3 poll person, I guess a worker, that the person did
4 come out and advise all the people in the line that
5 they needed to have two forms of ID. Of course,
6 again, that has never happened to me, because I vote
7 frequently and once I go into the poll, generally I
8 would produce my voter registration card and that's
9 sufficient. So to me, that was unusual and I guess
10 that's -- and I didn't see -- no one gave me any prior
11 notice to that.

12 COMMISSIONER LEE: Thank you.

13 CHAIRPERSON BERRY: Yes, the Vice Chair
14 wants to follow up.

15 VICE CHAIRPERSON REYNOSO: Yes, I just
16 wonder, sir, whether you by chance have ever seen a
17 document published by the Florida Department of State
18 entitled "Florida Registration and Voting Guide: Your
19 Vote is Your Voice." I have a copy before me. Have
20 you or any members of your family ever received in the
21 mail or seen this -- a document entitled as I just
22 read it?

23 WITNESS NELSON: I have not seen it, nor
24 do I recollect my family receiving one at all.

25 VICE CHAIRPERSON REYNOSO: Thank you for

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1 the follow up question.

2 CHAIRPERSON BERRY: All right.

3 Commissioner Meeks.

4 COMMISSIONER MEEKS: Yes. For Ms. Tucker,
5 have you voted in the same precinct for a number of
6 years?

7 WITNESS TUCKER: Yes.

8 COMMISSIONER MEEKS: And had you ever been
9 stopped before?

10 WITNESS TUCKER: No.

11 COMMISSIONER MEEKS: Have you ever seen a
12 checkpoint there before?

13 WITNESS TUCKER: No.

14 COMMISSIONER MEEKS: Okay.

15 CHAIRPERSON BERRY: Yes, Commissioner
16 Thernstrom.

17 COMMISSIONER THERNSTROM: Well, we've
18 obviously heard this morning of some irregularities
19 and obviously mistakes were made I suspect in every
20 state in the nation mistakes were made. Ms. Little
21 referred to the need for reform nationwide and
22 statewide, and I commend Governor Bush for setting up
23 a bipartisan task force to look into irregularities,
24 with the expectation that there will be legislative
25 proposals and recommendations.

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1 But the question is, of course, precisely
2 how much of an exception -- the Chair referred to
3 irregularities must be the exception, not the rule.
4 And the question, of course, is precisely how much of
5 an exception the problems in Florida were and the
6 problems to which you refer were. Are there patterns
7 and practices of voting rights irregularities.

8 Your testimony this morning does raise
9 serious questions of concern, but the question is are
10 they of an exceptional nature that is particular to
11 Florida and I wondered, you know, whether you have any
12 sense of a larger picture beyond the one that you have
13 -- the personal stories that you have so eloquently
14 spelled out.

15 CHAIRPERSON BERRY: Are you directing your
16 question at a particular witness?

17 COMMISSIONER THERNSTROM: To any member of
18 the panel.

19 CHAIRPERSON BERRY: And your question is
20 are they aware of any irregularities that occurred
21 other places in the country?

22 COMMISSIONER THERNSTROM: No, or any -- is
23 this part of a pattern and practice, because that
24 really is the bottom line question.

25 CHAIRPERSON BERRY: In Florida or in the

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1 country?

2 COMMISSIONER THERNSTROM: They would only
3 know about Florida.

4 CHAIRPERSON BERRY: That's your question.

5 Okay, are you familiar, any of you, with
6 anyone else who either told you about, which would be
7 hearsay, or aware from your personal knowledge of any
8 other incidents that might have occurred?

9 COMMISSIONER THERNSTROM: I mean we need
10 to establish a record of a pattern of irregularities
11 here. Isolated incidences, you know, are isolated
12 events.

13 CHAIRPERSON BERRY: Commissioner
14 Thernstrom, we heard the question. Let me just say to
15 the witnesses so that they're not confused, the
16 Commission's authority reaches individual allegations
17 of abuse of voting rights and not even pattern and
18 practice. We are, of course, interested in pattern
19 and practice and I welcome your answer to the
20 question, but we are just as interested in the
21 deprivation of rights of an individual under our
22 statute, which specifically gives us that authority,
23 as we are a pattern and practice. So any individual
24 complaint that comes to our attention will get an much
25 attention as numerous ones. But you may go ahead and

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1 answer the question.

2 Are you aware of any others that you'd
3 like to tell us about, even if it's hearsay, since the
4 questions have been asked?

5 WITNESS NELSON: John Nelson, I'm not
6 aware.

7 CHAIRPERSON BERRY: Okay.

8 WITNESS WHITING: Judge, I'm only aware of
9 what I heard.

10 CHAIRPERSON BERRY: Right, what you heard.

11 WITNESS WHITING: Through the media.

12 CHAIRPERSON BERRY: Okay.

13 WITNESS TUCKER: And I've heard on the
14 radio where one particular individual had to drive all
15 the way to Tampa or somewhere like that to vote
16 because she couldn't vote here in Tallahassee.

17 CHAIRPERSON BERRY: Okay. Who else --
18 yes?

19 VICE CHAIRPERSON REYNOSO: I just had a
20 follow up question. Have any of you been contacted by
21 the commission set up by the Governor to testify or
22 give testimony before them?

23 WITNESS TUCKER: I have not.

24 WITNESS NELSON: I have not either.

25 WITNESS WHITING: Nor have I.

1 CHAIRPERSON BERRY: Okay. Commissioner
2 Wilson.

3 COMMISSIONER WILSON: This is for Roberta
4 Tucker.

5 Did you ever find out what the roadblocks
6 were for?

7 WITNESS TUCKER: They had an article in
8 the Tallahassee Democrat and it said it was a random
9 checkpoint and that it was not authorized by their
10 supervisor.

11 COMMISSIONER WILSON: It was a random
12 checkpoint but it wasn't authorized.

13 WITNESS TUCKER: It was not authorized.

14 COMMISSIONER WILSON: Okay, for Apostle
15 Whiting, my question is -- I have two questions for
16 you. The first is how did you feel when you were told
17 that your civil rights had been revoked? I'm just
18 curious to know what that feels like when you've been
19 told that you were a convicted felon and you no longer
20 have your civil rights.

21 WITNESS WHITING: Well, I reflected upon
22 African-American history, every last bit of it. So it
23 didn't feel good. I was slingshotted into slavery,
24 that's how I felt, and I thought of all the things
25 that had happened to African-Americans that I knew

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1 about, and I thought of all the possibilities of what
2 could have happened had I been stopped by the wrong
3 police officer, the possibility of being a felon --
4 that's what I thought about. Didn't feel good.

5 COMMISSIONER WILSON: Thank you. My
6 second question is have you since found out or checked
7 to make sure that your name has been taken off that
8 list of convicted felons?

9 WITNESS WHITING: No, ma'am.

10 COMMISSIONER WILSON: Is there a reason
11 why you haven't sought that out?

12 WITNESS WHITING: There is. I believed
13 that I'd get an opportunity to share. I wanted to,
14 but I was opposed. Let me see if I can explain that.
15 Had I went and found out or tried to find out --
16 maybe I wouldn't have -- but now something will come
17 of it, because you are asking the question. It'll
18 reach much further coming from you than from me.

19 COMMISSIONER WILSON: Well, then I'm going
20 to ask the question.

21 WITNESS WHITING: Yes. I didn't need to
22 find out any earlier, I don't need to know, because
23 you will find out.

24 CHAIRPERSON BERRY: Is that your question?

25 COMMISSIONER WILSON: Yes.

1 CHAIRPERSON BERRY: Okay. Commissioner
2 Edley, do you have any questions?

3 COMMISSIONER EDLEY: No, thank you.

4 CHAIRPERSON BERRY: All right, I have a
5 series of them, but counsel, you first wanted to say
6 something?

7 ACTING GENERAL COUNSEL HAILES: Just to
8 explain, Madam Chair and Commissioners, that we have
9 just asked a few fact witnesses this morning to
10 present their personal encounters. We know there are
11 many more and we hope through subpoenaed documents to
12 find out about additional complaints of voting
13 irregularities and elsewhere in the state. So these
14 witnesses who have given their own significant
15 personal encounters do not report the totality of
16 complaints that we know about and will pursue.

17 CHAIRPERSON BERRY: All right, thank you
18 very much. A series of questions.

19 The first question is for Mr. Nelson.
20 Could you please help me in describing the vehicle
21 again that you had your encounter with the car?

22 WITNESS NELSON: Yes, the vehicle I
23 observed, I assume that's what you're referring to.

24 CHAIRPERSON BERRY: And you have to speak
25 up a little bit, I'm having trouble hearing you.

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1 WITNESS NELSON: Okay. The vehicle that I
2 observed, it's distinct in color, again it's a two-
3 color vehicle, black and you would describe it as
4 cream yellow, of that nature. It stands out by
5 itself.

6 CHAIRPERSON BERRY: Was it a highway
7 patrol vehicle, a sheriff's department vehicle or, to
8 your knowledge and information and belief, what kind
9 of vehicle do you think it was?

10 WITNESS NELSON: It was a highway patrol.

11 CHAIRPERSON BERRY: A State Highway Patrol
12 vehicle?

13 WITNESS NELSON: Correct.

14 CHAIRPERSON BERRY: And this was -- tell
15 me again the time -- a State Highway Patrol vehicle at
16 --

17 WITNESS NELSON: The time had to be
18 between 7:30 and 7:45 at the polling place which would
19 be precinct 6 on Tiger Lane in Jefferson County.

20 CHAIRPERSON BERRY: Okay. And so you're
21 sure it wasn't a sheriff's department?

22 WITNESS NELSON: No, it was not.

23 CHAIRPERSON BERRY: You've seen highway
24 patrol cars before.

25 WITNESS NELSON: Oh, yes, I have.

1 CHAIRPERSON BERRY: Okay, so you know them
2 when you see them.

3 WITNESS NELSON: Yes.

4 CHAIRPERSON BERRY: All right. The other
5 thing that I wanted to ask is how did you feel about
6 observing this? What were your visceral reactions?

7 WITNESS NELSON: Well, quite naturally it
8 catches -- it gets attention because any time at a
9 polling place, there's a law enforcement vehicle, you
10 wonder why it's there. I know that a law enforcement
11 person votes just as well as any other individual, but
12 again, when you don't see that, as many times as I've
13 voted, it catches your attention.

14 CHAIRPERSON BERRY: When you were inside
15 the polling place, did you see any state highway
16 patrolman voting or coming from voting, or anything
17 like that going on?

18 WITNESS NELSON: No, I didn't -- I did
19 not.

20 CHAIRPERSON BERRY: You did not. Did
21 anyone -- you said that no one, you received no notice
22 that the law in Florida had changed and now there were
23 two pieces of ID required at the polling place, if I
24 heard you correctly; you didn't receive any notice
25 like that.

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1 WITNESS NELSON: To my recollection, I did
2 not.

3 CHAIRPERSON BERRY: Do you know anybody
4 else who received a notice saying that the state now
5 required two pieces of identification?

6 WITNESS NELSON: I do not.

7 CHAIRPERSON BERRY: And when you described
8 the information about the identification, I thought
9 you said two pieces and something else, but I didn't -
10 -

11 WITNESS NELSON: No, it was two pieces.

12 CHAIRPERSON BERRY: Two pieces of
13 identification, and what would these two pieces
14 consist of possibly? A picture --

15 WITNESS NELSON: A picture --

16 CHAIRPERSON BERRY: -- a credit card or
17 what?

18 WITNESS NELSON: Well, first of all, voter
19 registration card and some picture ID is the way it
20 was described to me.

21 CHAIRPERSON BERRY: I see. And did anyone
22 say why they were asking for this?

23 WITNESS NELSON: No, they did not.

24 CHAIRPERSON BERRY: What had occurred to
25 make this something that was necessary? There was no

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1 announcement or anything in the polling place?

2 WITNESS NELSON: No explanation.

3 CHAIRPERSON BERRY: Okay. This other
4 question I have is for you, Apostle. Let me just say
5 that as you described it, you made what I would call a
6 concerted effort to get yourself in a position that
7 you could vote. In other words, you were told you
8 were a felon and were on the list, right, and you
9 couldn't vote?

10 WITNESS WHITING: Right.

11 CHAIRPERSON BERRY: And you didn't just
12 say well, fine, I can't do anything about that and
13 you're wrong, and if you won't let me vote, I'm going
14 home. You then took two or three other steps in order
15 to put yourself in a position that someone would say
16 that you could vote. If I heard you correctly, you
17 mentioned whether you had to hire a lawyer. Did you
18 mention that to the supervisor?

19 WITNESS WHITING: Yes.

20 CHAIRPERSON BERRY: Was it at that point
21 when the supervisor went away from the phone, as I
22 heard you, and then finally came back and said okay,
23 you could vote and gave you some kind of number that
24 let you vote?

25 WITNESS WHITING: Yes.

1 CHAIRPERSON BERRY: But as I heard you,
2 the supervisor did not ask you for any other kind of
3 information, did he, in making that determination?

4 WITNESS WHITING: No.

5 CHAIRPERSON BERRY: I mean, at that point,
6 did he ask you something else like where you grew up,
7 what were you doing at different times of day or made
8 further inquiries on the day in question when you were
9 supposed to have committed this crime, where were you
10 and what were -- nothing like that?

11 WITNESS WHITING: Nothing, no.

12 CHAIRPERSON BERRY: Just when you said do
13 I have to get a lawyer, he went away and came back and
14 said here's a number and you can go. And so as far as
15 he knew, you still could have been a felon, which
16 you're not, but he was now permitting you to vote.

17 WITNESS WHITING: Yes.

18 CHAIRPERSON BERRY: Whereas before, they
19 were not permitting you to vote.

20 WITNESS WHITING: That's exactly right.

21 CHAIRPERSON BERRY: Let me ask you this --
22 let me ask you a hypothetical, which one should never
23 do, but I'll do it. And you'll answer it, I hope.

24 If someone else, who were less persistent
25 than you, and who were more easily intimidated or less

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1 aware of things like hiring lawyers and this and that
2 and the other, came in and they told them they
3 couldn't vote because they were a felon and they were
4 sorry, and they called somebody and said you're a
5 felon, you can't vote. What is the likelihood that
6 this could have happened to somebody else who were
7 less -- who was less prescient than you and that they
8 might have been just turned away and gone away, as the
9 stories we have heard from people?

10 WITNESS WHITING: Well, it's very likely,
11 very well could have happened.

12 CHAIRPERSON BERRY: Uh-huh. So that the
13 other complaints that we have from people that this
14 happened to them and they went away, based on your own
15 experience, you would say that there may be a
16 substantial likelihood that such a thing could have
17 happened?

18 WITNESS WHITING: Yes. Might I add
19 something?

20 CHAIRPERSON BERRY: Please, you may add
21 whatever you wish.

22 WITNESS WHITING: The supervisor may have
23 been intimidated by me referring to an attorney.

24 CHAIRPERSON BERRY: Uh-huh.

25 WITNESS WHITING: Therefore, he would have

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1 known that I was capable of doing that, just while
2 mentioning it, he wouldn't have known if I was
3 capable, but that I had prompt a situation that
4 prompted him to realize that I had access to an
5 attorney.

6 CHAIRPERSON BERRY: Uh-huh. Well, one
7 thing we do know is that whatever system and procedure
8 that was used was so faulty that you could have been
9 sitting here as a real felon and in fact they let you
10 go.

11 WITNESS WHITING: Yes.

12 CHAIRPERSON BERRY: Based on what you
13 described, right?

14 WITNESS WHITING: Yes.

15 CHAIRPERSON BERRY: So that in terms of
16 some kind of rational approach to making the
17 determination that happened to you that day, there
18 seems to be a decided sense of irrationality. Would
19 you agree with that? Do you agree?

20 WITNESS WHITING: Yes, he -- it could have
21 happened to anyone, as you've said. By the same
22 token, I could be sitting here today as a convicted
23 felon, because there was -- he still did not ask me
24 for my driver's license number, nor social security
25 number -- still didn't ask for those forms of

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1 identification.

2 CHAIRPERSON BERRY: Did your family
3 observe all this? Was your family there with you?

4 WITNESS WHITING: Yes. They observed it,
5 all of it, and other people there at the polling
6 observed it. They kind of even joked about the idea
7 of me being a felon, because it was -- you know, when
8 you're approached like that, you know, you're taken
9 back, I mean you're taken. Because this is what he
10 said and so, you know, it's a strange kind of feeling
11 and, Judge, if I were to say, you know, you're a
12 convicted felon, I mean --

13 CHAIRPERSON BERRY: In front of a lot of
14 people.

15 WITNESS WHITING: In front of a lot of
16 people.

17 CHAIRPERSON BERRY: And I can't vote.

18 WITNESS WHITING: I mean yes, it's like
19 having a bad credit card, you know, when you're in a
20 hotel restaurant.

21 (Laughter.)

22 VICE CHAIRPERSON REYNOSO: That's worth
23 than being an ex-con.

24 WITNESS WHITING: I mean, it's pretty bad.

25 CHAIRPERSON BERRY: Did your wife ask you

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1 what crimes you'd committed?

2 WITNESS WHITING: Well, my family really
3 thought that none of us should vote after that. See,
4 when I was there first and my family didn't want to
5 vote because they was not going to allow me to vote.
6 But I encouraged them to go ahead and vote.

7 CHAIRPERSON BERRY: Well, do you think an
8 appropriate reaction to all this that happened to you
9 was for some people -- and if it happened to other
10 people -- to decide that they just simply won't try to
11 vote again? I mean if it's that much of a hassle and
12 if people are going to say you're a felon when you're
13 not and you're going to be embarrassed at the polls or
14 asked for two IDs when you don't need them and you
15 don't have them and nobody else is, that maybe you
16 should just stay at home and not vote.

17 WITNESS WHITING: That's really one of the
18 fears that I have for future elections, is that might
19 as well just stay home, that it's not worth getting
20 involved in.

21 I believe that -- I'm not a scientist and
22 I don't know much about formulas, but someone is
23 trying to create a formula, maybe they've already
24 created a formula. Maybe it's been this way a long
25 time, but if you can understand what I'm saying in

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1 this language that I'm speaking, is that it seems -- I
2 mean if we use this, what happened in this past
3 election, could I do this again? Could this happen to
4 me next time? I mean if I stop people at the polls
5 before they get to the polls, if I set up all kind of
6 schemes and this and that. I'm not saying that we
7 will actually find this out, but if this was to happen
8 again, would it prove to us that someone has a
9 formula? You're not understanding me, Judge.

10 CHAIRPERSON BERRY: Oh, I understand you.

11 I like to overstand --

12 (Laughter.)

13 CHAIRPERSON BERRY: I understand
14 perfectly, I understand what you're saying, but you
15 may explain it further if you wish. Go ahead.

16 WITNESS WHITING: Well, --

17 CHAIRPERSON BERRY: And if that were the
18 case, what?

19 WITNESS WHITING: Well, then like we would
20 be able to win again.

21 CHAIRPERSON BERRY: I see. All right, I
22 understand perfectly what you're saying.

23 I had a few questions also -- I wanted to
24 ask you what -- I'm trying to ascertain the vehicle
25 that stopped you, how would you describe it? Could

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1 you describe the vehicle to the best of your
2 recollection? Ms. Tucker, I'm sorry, would you
3 describe the vehicle, to the best of your
4 recollection?

5 WITNESS TUCKER: I'll say there were
6 approximately --

7 CHAIRPERSON BERRY: It was a law
8 enforcement vehicle, right?

9 WITNESS TUCKER: They were on foot. The
10 vehicles were parked on the side of the road.

11 CHAIRPERSON BERRY: Okay, did you see the
12 vehicles?

13 WITNESS TUCKER: They were Highway Patrol
14 vehicles.

15 CHAIRPERSON BERRY: They were Highway
16 Patrol. You're certain of that.

17 WITNESS TUCKER: I'm certain.

18 CHAIRPERSON BERRY: And you don't think
19 they were engaged in a checkpoint to check people's
20 licenses and lights, because in Florida, they do have
21 this procedure whereby the State Highway Patrol
22 announces ahead of time through the media, that's what
23 the law says --

24 WITNESS TUCKER: Correct.

25 CHAIRPERSON BERRY: -- and then they stop

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1 people at the specific checkpoint. And they're
2 supposed to be checking their lights and brake lights
3 and all that sort of stuff, and licenses.

4 WITNESS TUCKER: Correct.

5 CHAIRPERSON BERRY: Did you hear any
6 announcement on the air that there would be a
7 checkpoint at that place?

8 WITNESS TUCKER: No, I did not.

9 CHAIRPERSON BERRY: You did not. Do you -
10 - after what happened to you, did you discuss this
11 with anyone and had other people heard an announcement
12 that there would be a checkpoint and that you somehow
13 just missed it and didn't know?

14 WITNESS TUCKER: No, no one else.

15 CHAIRPERSON BERRY: But you are sure it
16 was a Highway Patrol.

17 WITNESS TUCKER: Yes, I am.

18 CHAIRPERSON BERRY: And why did -- tell me
19 again, why specifically would the presence of police
20 officers be -- or law enforcement officials who were
21 Highway Patrolmen according to your testimony -- why
22 would that intimidate you since police are supposed to
23 be, you know, the guardians of all our rights and if
24 they were there, you would assume they were there for
25 some purpose to guard your rights that morning or

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1 whatever time of day -- what time of day was it?

2 WITNESS TUCKER: It was approximately
3 10:00 in the morning.

4 CHAIRPERSON BERRY: Ten o'clock in the
5 morning?

6 WITNESS TUCKER: Uh-huh.

7 CHAIRPERSON BERRY: Why would you feel
8 that there was something suspicious about it and that
9 you felt some intimidation and therefore, you even
10 went so far as to report it?

11 WITNESS TUCKER: On this particular
12 highway, it's not a lot of traffic and I've never seen
13 a checkpoint there before and it was just suspicious
14 to me.

15 CHAIRPERSON BERRY: Because you hadn't
16 seen it before?

17 WITNESS TUCKER: No.

18 CHAIRPERSON BERRY: Was there some tension
19 surrounding election day or something, or leading up
20 to it, or something you'd heard or felt or was there
21 some air of tension around this, or it's just that
22 this was unusual because you saw this in a place that
23 you hadn't seen it before and therefore, you thought
24 somebody ought to know about it and find out what was
25 going on?

1 WITNESS TUCKER: Right, that was exactly
2 how I felt.

3 CHAIRPERSON BERRY: Not any particular
4 tension about the days leading up to the election or
5 election day or turnout or anything like that that you
6 were aware of.

7 WITNESS TUCKER: No.

8 CHAIRPERSON BERRY: Okay. And do you
9 think -- the same question I asked the Apostle, do you
10 think that these kinds of incidents that occurred,
11 according to your testimony, the three of you, to you
12 and if they indeed happened to other people who have
13 given -- who have filed complaints and allegations, do
14 you think that these are reasons for people to worry
15 about voting next time or that they shouldn't vote?
16 It's the same question I asked him. What should be the
17 attitude about these situations?

18 WITNESS TUCKER: There should be concern,
19 but it should not stop you from going ahead and
20 voting. But you should be concerned about it.

21 CHAIRPERSON BERRY: Okay, all right. Does
22 anybody else have anything else. Well, Vice Chair and
23 then Commissioner Edley.

24 VICE CHAIRPERSON REYNOSO: For Reverend
25 Whiting, I was just curious in terms of your responses

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1 to the questions by the Chair in terms of the roadway
2 -- the discussion you had with the supervisor. If I
3 remember your earlier testimony, you indicated that
4 the supervisor indicated to you that the individual
5 who had been convicted of a felony was a Willie J.
6 Whiting, but you would be at best Willie D. Whiting,
7 would you not?

8 WITNESS WHITING: That's right.

9 VICE CHAIRPERSON REYNOSO: Did he ask you
10 whether you were the Willie J. Whiting? And as I
11 remember your testimony, that's before you raised the
12 issue of having to see an attorney. Did he ask you
13 whether or not you were the Willie J. Whiting?

14 WITNESS WHITING: He asked me had I been
15 to court. Whether or not he asked me whether or not I
16 was Willie J., not pinpointing that. He did ask me
17 had I been to court.

18 VICE CHAIRPERSON REYNOSO: He asked you
19 whether you had been to court, did he ask you whether
20 you were Willie J. Whiting?

21 WITNESS WHITING: I don't remember. He
22 said -- when the lady put me on the phone and he asked
23 me was I Willie Whiting, but not Willie J. nor even
24 Willie D.

25 VICE CHAIRPERSON REYNOSO: Okay, but later

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1 and before you mentioned having to see an attorney,
2 you did -- as I heard your testimony, you indicated
3 that he made clear to you that it was Willie J.
4 Whiting, is that right?

5 WITNESS WHITING: He said, when he came
6 back, there is a Willie J.

7 VICE CHAIRPERSON REYNOSO: And at that
8 point, did you indicate to him that you were Willie
9 David Whiting?

10 WITNESS WHITING: Yes.

11 VICE CHAIRPERSON REYNOSO: And he didn't
12 ask you whether you were the same or whether you ever
13 went by the name of Willie J.?

14 WITNESS WHITING: No, no. No, not that I
15 went by.

16 VICE CHAIRPERSON REYNOSO: It's just --
17 unless you also went by the name of Willie J., it just
18 seems odd to me, frankly, that (1) that you were
19 dropped from the rolls when you're Willie D., not
20 Willie J., and (2) that the supervisor at that point
21 would not have said, gee, apparently we've made a
22 mistake since you're Willie David and the ex-felon is
23 Willie J. So I just wanted that clarification. Thank
24 you, Madam Chair.

25 CHAIRPERSON BERRY: All right.

1 Commissioner Edley.

2 COMMISSIONER EDLEY: Ms. Tucker, please,
3 if you indicated this in your testimony before I
4 arrived from the airport, just say so, but could you
5 talk a little bit about the NAACP, why you decided to
6 call them rather than, for example, calling some
7 government office?

8 WITNESS TUCKER: I guess because I felt it
9 was a civil rights issue, you know, and they were the
10 first person -- the first organization that came to
11 mind, was the NAACP.

12 COMMISSIONER EDLEY: Have you been active
13 yourself in the NAACP? .

14 WITNESS TUCKER: No, I have not.

15 COMMISSIONER EDLEY: Had you heard any
16 information from the NAACP announcing to the public
17 that if they encountered problems to call?

18 WITNESS TUCKER: No.

19 COMMISSIONER EDLEY: Thank you.

20 CHAIRPERSON BERRY: All right --

21 COMMISSIONER EDLEY: And -- I'm sorry, let
22 me -- what contact have you had with the NAACP since
23 you made that phone call?

24 WITNESS TUCKER: I've got several calls
25 from them.

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1 COMMISSIONER EDLEY: Really?

2 WITNESS TUCKER: And I've sent them
3 statements about what happened.

4 COMMISSIONER EDLEY: Okay, interesting,
5 thank you.

6 CHAIRPERSON BERRY: And so when you
7 thought of civil rights, you thought not of some state
8 agency, but of calling the NAACP. That's very
9 interesting.

10 WITNESS TUCKER: I just thought they
11 should be aware of it, because I felt like it was sort
12 of discriminatory and that's why I called them.

13 CHAIRPERSON BERRY: Let me ask then in
14 that -- because I have another couple of minutes I can
15 ask questions. All of you -- this brings to mind for
16 all three of you, what agency in the Florida state
17 government would you call up if -- or advise anybody
18 else to call up -- if they had a civil rights issue or
19 problem or something happened under civil rights? Do
20 you know what agency in Florida to call up, or is
21 there some place to call people and ask them to do
22 something? Are you aware of what part of the Florida
23 government or your county government or whoever it is
24 that you would call -- if you wanted the government --
25 we have a booklet at the U.S. Civil Rights Commission

1 called "How to get Uncle Sam to Protect your Civil
2 Rights." That's the feds. Who in the Florida
3 government, what's the agency, who's the person who
4 stands out in your mind as the one to complain about
5 if there's a civil rights issue that you have, or
6 problem? Are you aware of who that is, any of you?

7 WITNESS NELSON: No, I'm not aware, but I
8 basically would seek the information, if I needed to
9 find information on who is who and who handles what in
10 state government, basically I believe there's an
11 information number that you can call and they would
12 more than likely direct you to that particular agency.

13 CHAIRPERSON BERRY: Uh-huh.

14 WITNESS NELSON: Of course, if I had a
15 problem being involved as a community leader, I know
16 who locally to deal with those kind of problems,
17 basically I would refer it to them and in turn what
18 would happen, they would normally be referred to an
19 agency in state government if needed.

20 CHAIRPERSON BERRY: And since the election
21 with all of the publicity about allegations of voting
22 irregularities, has anything come out from the Florida
23 state government to citizens reminding them that
24 there's someplace you can complain to if in fact you
25 feel that your rights have been violated, and that you

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1 don't just have to go to the NAACP or whatever, that
2 there's this Florida office that's out there to serve
3 the citizens that would be happy to hear from you if
4 you've got -- have you gotten a flier in the mail or
5 an e-mail message or voice mail message or anything
6 else from any kind of government agency reminding you
7 of this and telling you please get in touch with us if
8 you have a problem?

9 WITNESS WHITING: No, I have not.

10 WITNESS TUCKER: I have not either.

11 CHAIRPERSON BERRY: None of you have?

12 WITNESS NELSON: No.

13 CHAIRPERSON BERRY: Okay, does anyone --

14 COMMISSIONER THERNSTROM: I have one last
15 question on this specifically. Ms. Tucker, your
16 failure to call a state agency suggests that you had
17 some distrust of state authorities. Is there some
18 specific reason why you didn't trust that process of
19 going to a state office?

20 WITNESS TUCKER: Are you directing that to
21 me?

22 COMMISSIONER THERNSTROM: Yes.

23 CHAIRPERSON BERRY: You do not have to
24 agree with her that you distrusted the state --

25 COMMISSIONER THERNSTROM: No, you don't.

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1 (Laughter.)

2 COMMISSIONER THERNSTROM: No, you don't
3 have to agree obviously, but not calling them could
4 suggest that.

5 COMMISSIONER WILSON: Nor do you have to -
6 - excuse me -- nor do you have to accept that it was a
7 failure to call. It was a decision on your part to
8 call.

9 COMMISSIONER THERNSTROM: A decision, your
10 decision.

11 CHAIRPERSON BERRY: So you may answer
12 however you wish, there's no caveats.

13 WITNESS TUCKER: I just felt like I would
14 get more results if I talked to them and they would
15 probably follow through more so if I contacted anyone
16 else.

17 COMMISSIONER THERNSTROM: And you felt
18 that -- had you had some specific experience in the
19 past of contacting state authorities that you felt you
20 would not get an adequate response?

21 WITNESS TUCKER: No, I haven't.

22 CHAIRPERSON BERRY: Okay... Anybody else
23 have anything else? Anything else come to mind while
24 we're here? Commissioner Wilson?

25 COMMISSIONER WILSON: No.

1 CHAIRPERSON BERRY: Yes, Vice Chair.

2 VICE CHAIRPERSON REYNOSO: I do have one
3 again follow up question for Ms. Tucker. You
4 indicated you called the NAACP because you felt that
5 it was a civil rights issue, but you indicated also in
6 your testimony that you weren't sure whether other
7 folk were also being stopped as that was a street that
8 was not really that well traveled. Why did you think
9 it was a civil right issue? Is that an African-
10 American community?

11 WITNESS TUCKER: Yes, it is, it's
12 predominantly a black community.

13 VICE CHAIRPERSON REYNOSO: Is that why you
14 thought --

15 WITNESS TUCKER: And that's the route that
16 most of them have to take to go to that voting poll.

17 VICE CHAIRPERSON REYNOSO: Oh, I see,
18 okay, so there was a precise reason why you thought it
19 was civil rights --

20 WITNESS TUCKER: Right.

21 VICE CHAIRPERSON REYNOSO: -- i.e., not
22 much traveled, certainly there was a police stop and
23 that's an area where it's predominantly African-
24 American and the voters predominantly African-American
25 have to travel -- go by that street to go to the

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1 voting place.

2 WITNESS TUCKER: Correct.

3 VICE CHAIRPERSON REYNOSO: Okay, I just --
4 it was not clear to me earlier. Thank you very much.

5 WITNESS TUCKER: May I ask a question?

6 CHAIRPERSON BERRY: Yes, you may ask a
7 question.

8 WITNESS TUCKER: I was contacted by the
9 Florida Highway Patrol, that they were doing an
10 investigation themselves. Does any of you know if
11 that was completed?

12 CHAIRPERSON BERRY: Well, we have
13 testimony from the Florida Highway Patrol tomorrow and
14 we will ask the Florida Highway Patrol about that.

15 COMMISSIONER WILSON: I have a question
16 for you. You were contacted by the Highway Patrol?

17 WITNESS TUCKER: Yes.

18 COMMISSIONER WILSON: And what did they
19 ask you?

20 WITNESS TUCKER: They wanted to set up a
21 meeting with me.

22 COMMISSIONER WILSON: And did you --

23 WITNESS TUCKER: No, I did not go through
24 with it.

25 COMMISSIONER WILSON: You said I decline

1 to have the meeting?

2 WITNESS TUCKER: No, I didn't say I
3 declined, I just never called them back.

4 COMMISSIONER WILSON: Okay.

5 (Laughter.)

6 CHAIRPERSON BERRY: Well, we will ask the
7 -- someone has to remind us to make sure -- let's all
8 remind ourselves to ask the Florida Highway Patrol
9 person when we come back tomorrow. We might also ask
10 the Governor since I think the Florida Highway Patrol
11 reports to him, if I'm not mistaken, since he's the
12 chief executive officer of the state.

13 Does anyone else have any questions for
14 the witnesses? Yes?

15 COMMISSIONER EDLEY: This last thing about
16 this call from the Highway Patrol, what was the
17 content of their message to you? I mean did you feel
18 as though this was a good thing that they were trying
19 to figure out what had happened, did you feel -- or
20 did you feel that this was intimidating in itself to
21 hear from them?

22 WITNESS TUCKER: No, I felt they honestly
23 really wanted to find out what happened.

24 COMMISSIONER EDLEY: What had gone on,
25 okay. Thank you.

1 CHAIRPERSON BERRY: All right, well let me
2 thank the witnesses very much and there are sign-out
3 procedures that -- yes, did you want to say something
4 else?

5 WITNESS WHITING: Yes.

6 CHAIRPERSON BERRY: Oh, you can. Go right
7 ahead.

8 WITNESS WHITING: I want to say this, a
9 few days, and I don't remember, maybe it was a week or
10 so later, maybe you can help me understand the purging
11 system in your fact-finding. I knew that after I
12 heard there was a report on the news that there had
13 been a contractor to purge the system. So I knew that
14 -- I felt then that I was a part of that system.
15 That's one thing.

16 The other thing is like I'd like for you
17 to say tomorrow when you speak to the Florida Highway
18 Patrol, I grew up in Tallahassee, haven't always been
19 here but I grew up here as a little boy. And I
20 believe -- now I don't know this to be a fact, but the
21 way that I feel -- I believe that most of us in
22 Florida have always had high respect for the Florida
23 Highway Patrol. Maybe not like any other law
24 enforcement in the state of Florida, but certainly the
25 Florida Highway Patrol. I've never known them to act

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1 this way. But somehow or another I feel now that
2 they've touched that feeling as to certainly how I
3 feel about the Florida Highway Patrol.

4 Let me say this, if you can imagine
5 growing up in your state or your city, how you might
6 feel about law enforcement. I've always felt good
7 about the Florida Highway Patrol, even when I got a
8 speeding ticket, I felt good about it. I've never saw
9 them under that light, saw them as being
10 professionals.

11 But that's been tampered with, so I'd like
12 for you to tell them that.

13 CHAIRPERSON BERRY: Okay, we can ask them
14 about those feelings.

15 WITNESS WHITING: You can tell them that.

16 CHAIRPERSON BERRY: And the contract that
17 you mentioned about the purging, we have subpoenaed
18 the contract and we will have testimony concerning
19 that contract for the purging during the course of
20 this hearing, so we're following up on that. Okay?

21 WITNESS WHITING: I thank you.

22 CHAIRPERSON BERRY: We will make sure of
23 that.

24 All right, anybody else thought of
25 anything?

1 (No response.)

2 CHAIRPERSON BERRY: Before I say again,
3 thank you very much for your testimony and taking the
4 time to come to us. You are now excused. We have
5 some sign-out procedures for witnesses and a member of
6 our staff will assist you through them. Thank you very
7 much for coming.

8 WITNESS WHITING: Thank you.

9 WITNESS TUCKER: Thank you.

10 (Witnesses excused.)

11 CHAIRPERSON BERRY: We will have a break
12 for 10 minutes -- oh, we can't do it, we've got the
13 documents, sorry, we cannot take a break. Somebody
14 wanted to, but we can't.

15 Okay. At this time, we request that the
16 representatives from the Florida Democratic and
17 Republican Parties, both of whom were subpoenaed to
18 provide documents for the Commission, come forward to
19 present these documents.

20 Mr. Hailes, please proceed in accepting
21 the documents and entering them into the record.

22 ACTING GENERAL COUNSEL HAILES: Will the
23 two officials from the Democratic and Republican
24 Parties come forward at this time?

25 CHAIRPERSON BERRY: Would you give us your

1 names please?

2 MR. WILSON: My name is Jamie Wilson, the
3 Executive Director for Republican Party of Florida.

4 CHAIRPERSON BERRY: Okay.

5 MR. POE: Bob, Chairman of the Florida
6 Democratic Party.

7 MR. WATSON: Screven Watson, Executive
8 Director of the Florida Democratic Party.

9 MR. BEERMAN: I'm Eric Beerman, General
10 Counsel for the Republican Party of Florida.

11 CHAIRPERSON BERRY: All right, could you
12 please raise your right hands.

13 Whereupon,

14 SCREVEN WATSON

15 BOB POE

16 JAMIE WILSON

17 ERIC BEERMAN

18 appeared as witnesses herein, and having been first
19 duly sworn, were examined and testified as follows:

20 CHAIRPERSON BERRY: Thank you very much,
21 you can be seated. Mr. Hailes.

22 ACTING GENERAL COUNSEL HAILES: Madam
23 Chair and Commissioners, these persons have come
24 forward not to present sworn testimony except as it
25 relates to the subpoenas duces tecum that were served

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1 on their respective offices and we simply want to ask
2 each of them again for the record to identify
3 themselves and their titles at this time.

4 CHAIRPERSON BERRY: Do it again, please,
5 starting on the right.

6 WITNESS WATSON: Screven Watson, Executive
7 Director of the Florida Democratic Party.

8 WITNESS POE: Bob Poe, Chairman of the
9 Florida Democratic Party.

10 WITNESS WILSON: Jamie Wilson, Executive
11 Director of the Republican Party of Florida.

12 WITNESS BEERMAN: Eric Beerman, General
13 Counsel for the Republican Party of Florida:

14 CHAIRPERSON BERRY: All right.

15 ACTING GENERAL COUNSEL HAILES: And again,
16 Madam Chair, just for the record, I want to mention
17 the specific documents that we requested, and it's for
18 both parties.

19 Any and all documents and communications
20 describing any allegation or allegations of the denial
21 of the right to vote or allegations that this right
22 was in any manner impeded in the September 5, 2000,
23 October 3, 2000 and November 7, 2000 elections.

24 Any and all documents and communications
25 regarding the number and categorization of complaints

1 by type of allegation and/or type of complainant.

2 Any and all documents and communications
3 comparing the number and categorizations of complaints
4 by type of allegation and/or type of complainant in
5 other elections.

6 BY ACTING GENERAL COUNSEL HAILES:

7 Q And I would just like to ask each of you
8 to indicate whether you have produced the documents
9 that have been subpoenaed. Mr. Poe first.

10 A (Witness Poe) Yes, we have.

11 Q And they are a true and accurate
12 representation of the documents we did request by
13 subpoena?

14 A (Witness Poe) Yes, they are.

15 Q And will you produce them at this time to
16 our records clerk, Ms. Jenny Kim Park.

17 (Document were proffered to the clerk.)

18 Q And did you produce the documents that
19 were requested by subpoena?

20 A (Witness Wilson) Yes, Commissioner, we
21 have some documentation here, keeping in mind that we
22 were subpoenaed late last week, and we have done as
23 much as we could, a diligent effort to produce as much
24 as we can right now. We also have further requests of
25 staff, we've had some staff changeovers as happens

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1 after elections, and we've also had some folks on
2 vacation, so we would like to be able to provide the
3 Commission with additional documentation as we receive
4 it.

5 But we have provided as much as we
6 possibly can right now.

7 Q Okay, and can you give us a time frame for
8 when you will complete --

9 CHAIRPERSON BERRY: No longer than the
10 next 30 days.

11 A (Witness Wilson) We would hope to have it
12 by next week.

13 A (Witness Beerman) We've been in touch
14 with Mr. Foreman of your staff about it and we're
15 working diligently with him and we have pretty much
16 worked it out -- within the next several days
17 probably.

18 Q Can you both give us just a very general
19 brief description of the documents that you have
20 produced today?

21 CHAIRPERSON BERRY: The type of documents.

22 A (Witness Wilson). The types of documents
23 that we have produced have been requested of our
24 staff, anyone that received either faxes, e-mails,
25 written -- any letter in written format, to either

1 advise or complain about any problem that they thought
2 happened in the past election.

3 Most of the documentation that you will
4 receive is predominantly post-election. You will be
5 able to see that most of this information are
6 complaints, some from Republicans, some from
7 Democrats, about anything that happened in the
8 election. And very little documentation from anything
9 prior to the election.

10 So we have just done as much as we could
11 to provide you with some information. And anything
12 that we received around the election time and the five
13 weeks of fun that we had afterward.

14 CHAIRPERSON BERRY: And you will in fact
15 produce the remaining documents within the next 10
16 days?

17 WITNESS WILSON: We certainly -- well,
18 we'll be prepared to do that, yes.

19 CHAIRPERSON BERRY: Thank you.

20 BY ACTING GENERAL COUNSEL HAILES:

21 Q Mr. Poe.

22 A (Witness Poe) Yes, we received numerous
23 complaints from around the state on voting
24 irregularities, people who were denied access to the
25 polls, people who had problems in voting, language

1 issues, access issues.

2 And we have given you most of the
3 documents -- we've given you all the documents that we
4 have here in Tallahassee. There are some documents in
5 south Florida which we are getting and should have to
6 you within the next 10 days. And some of those are
7 just raw complaint data, others we had affidavits
8 taken, so there's a variety of types of documents that
9 we have given you today.

10 ACTING GENERAL COUNSEL HAILES: Thank you
11 very much.

12 CHAIRPERSON BERRY: Okay, thank you very
13 much. The witnesses are excused. And there are sign-
14 out procedures for witnesses and a member of our staff
15 will assist you through them. Thank you very much.

16 ACTING GENERAL COUNSEL HAILES: And I
17 should say for the record that we would like, Madam
18 Chair, at this time to receive those documents into
19 the record and have them numbered consecutively by the
20 records clerk.

21 CHAIRPERSON BERRY: Without objection, so
22 ordered.

23 COMMISSIONER EDLEY: Madam Chair, may I
24 just ask, if we have questions for these state
25 officials, will there be an opportunity to ask them in

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1 writing or some way?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER EDLEY: In other words,
4 beyond these documents, I was just interested whether
5 they've been at all involved in advocating an increase
6 in resources for voting machinery and the like,
7 whether the parties have been active in that arena.
8 Is that something we can handle after the fact through
9 the staff?

10 CHAIRPERSON BERRY: Can we handle this by
11 writing or do we need to ask them here?

12 ACTING GENERAL COUNSEL HAILES: We can do
13 it in writing for the record. The record is open for
14 60 days.

15 COMMISSIONER EDLEY: Okay.

16 CHAIRPERSON BERRY: You may receive
17 inquiries from us in writing concerning the matters
18 that Commissioner Edley referred to.

19 WITNESS BEERMAN: We'll be glad to help
20 with any questions that you have.

21 CHAIRPERSON BERRY: All right, thank you
22 very much.

23 (Witnesses excused.)

24 CHAIRPERSON BERRY: Could we have Mr.
25 Bruce Minnick and Mr. Jai Howard come forward?

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1 What we're going to do is -- could you
2 please raise your right hands?

3 Whereupon,

4 BRUCE MINNICK

5 R. JAI HOWARD

6 appeared as witnesses herein, and having been first
7 duly sworn, were examined and testified as follows:

8 CHAIRPERSON BERRY: Thank you. You may be
9 seated. Counsel proceed with questioning.

10 ACTING GENERAL COUNSEL HAILES: Madam
11 Chair and Commissioners, Attorney Advisor Joyce Smith
12 will ask questions of these witnesses at this time.

13 ATTORNEY ADVISOR SMITH: Thank you, Madam
14 Chair.

15 EXAMINATION

16 BY ATTORNEY ADVISOR SMITH:

17 Q Good morning, Ms. Howard, Mr. Minnick.

18 A (Witness Howard) Good morning.

19 A (Witness Minnick) Good morning, Ms.
20 Smith.

21 Q Thank you for joining us today.

22 A Ms. Howard, I understand that you've
23 prepared a statement that you'd like share today?

24 A (Witness Howard) Yes, ma'am.

25 CHAIRPERSON BERRY: Could you speak up

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1 just a little bit, so I can hear you.

2 WITNESS HOWARD: Would you like me to go
3 ahead and read that?

4 CHAIRPERSON BERRY: Please do.

5 WITNESS HOWARD: Good morning. I stand
6 before you today representing over 12,000 students at
7 Florida Agricultural & Mechanical University. I am R.
8 Jai Howard, a senior biology, pre-dentistry student
9 and I currently serve as the Vice President of the
10 Florida A&M University Student Government Association.

11 I'm here today to inform you of the
12 preparations, actions and reactions of many FAMU
13 students regarding recent events surrounding the 2000
14 presidential election.

15 FAMU students have always been very active
16 in registering students to vote; however, the
17 importance of this presidential election led to more
18 organized efforts by many student clubs and
19 organizations. The Student Government Association was
20 an integral part of such preparation with the
21 execution of a program called operation Big Vote.
22 Just to summarize this, with the help of other
23 students, we -- it began as an effort to increase both
24 voter registration and voter education throughout our
25 campus, began as early as July 2000 with a program

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1 called TOPS, which is a Total Orientation Program for
2 new Students, in which incoming freshmen come for a
3 week and we register them to vote. Resumed in late
4 August once we began school and it lasted up until
5 October 10, the last day to register.

6 It consisted of dorm storms where students
7 go and knock on the doors of all the dorms and campus
8 apartments through campus, as well as citywide to
9 different apartment complexes that have a high
10 percentage of college students living there. We took
11 registration cards daily to the courthouse, sometimes
12 even twice a day if we had a lot, so that this
13 information could be processed in a timely manner.

14 In addition, Reverend Jesse Jackson was a
15 visitor to our campus on October 10, which was the
16 last day of elections, and Ion Sancho even came to our
17 university that evening and extended the time from
18 which I think it was 5:00 to later on during that
19 assembly, which lasted 'til about 10:00. Since he was
20 there, we had other students who were able to vote.

21 We also had a joint effort with Arrive
22 with Five, the AFL-CIO, the NAACP, and other campus
23 organizations with all students from Florida A&M,
24 Florida State University and Tallahassee Community
25 College who went to vote one week early on October 31

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1 at the county courthouse.

2 The students of FAMU decided to take
3 action on the day following the elections due to many
4 concerns that a large number of our students had
5 concerning discrepancies in the vote. On November 8,
6 we had a town hall meeting, which is a regularly
7 scheduled meeting, by our Student Government
8 Association, where we had large numbers of students
9 with problems, who had problems in voting, including
10 one student who had two voter registration cards with
11 two different precincts, some students who received no
12 voter registration cards, switching of precincts
13 without prior notification, missed information at
14 precincts and students who had attempted to register
15 numerous times and never received registration and
16 were never entered into the system.

17 This led to a silent protest on our
18 state's capitol two days following the election, where
19 we went to just seek some answers about what we could
20 do as far as the large number of students on our
21 campus who had so many problems. We were able to
22 speak briefly with State Attorney General Bob
23 Butterworth and made attempts to speak with Secretary
24 of State Katherine Harris.

25 The reactions after our protest included

1 no information received by our Secretary of State, and
2 we are currently seeking ways to assist other
3 organizations besides yours and state attorneys and
4 advocacy groups, as well as our organization of
5 Operation Big Vote, Part 2, for the upcoming election.

6 CHAIRPERSON BERRY: Thank you, very much.

7 Could we have Mr. Minnick make his
8 statement if he has one?

9 BY ATTORNEY ADVISOR SMITH:

10 Q Mr. Minnick, have you prepared a
11 statement?

12 A (Witness Minnick) Not specifically, but I
13 would be -- I can give you one shortly, a very short,
14 brief statement and explain to you why I'm here, if
15 you would like me to do that.

16 CHAIRPERSON BERRY: Yes, why don't you do
17 that in summary form.

18 WITNESS MINNICK: I've been subpoenaed to
19 be here before you at the Commission here. I'm an
20 attorney, I'm a civil rights lawyer in Tallahassee,
21 Florida, formerly an assistant attorney general,
22 served under Jim Smith. You'll hear from him later.
23 He's presently chairing the Governor's commission --
24 bipartisan commission looking into the voting problems
25 in Florida.

1 I have been involved in civil rights for
2 20 years and am currently both defending and
3 prosecuting civil rights claims and have also been
4 involved in the elections and Voting Rights Act area
5 for 30 years.

6 In that capacity, I was retained by an
7 organization in Fairfax, Virginia called the National
8 Coalition of Students with Disabilities, Education and
9 Legal Defense Fund, to bring an action in Florida in
10 the federal district court here, Northern District,
11 Tallahassee Division, against the election officials
12 of Florida, which include the Governor Jeb Bush and
13 the supervisor -- excuse me -- the Secretary of State
14 Katherine Harris, and the Director of the Division of
15 Elections, who works for Ms. Harris in the Department
16 of State. His name is Clay Roberts.

17 The original suit also included Bob
18 Crawford, who is Florida's Agriculture Commissioner,
19 because he had, at that point in time when we sued
20 Florida, when we sued these people, Mr. Crawford had
21 been designated by the Governor as a fill-in or a
22 stand-in for him as Chairman of the Florida Elections
23 Canvassing Commission. Mr. Bush, Governor Bush,
24 declared that he thought he had a conflict being the
25 Chairman of the Elections Commission -- Canvassing

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1 Commission. That's the commission that actually
2 certifies the vote in Florida, the final authority in
3 Florida. It's a three-member commission, it's
4 composed of the Governor, the Secretary of State and
5 the Division -- the Director of the Division of
6 Elections.

7 Mr. Crawford, who is the Department of
8 Agriculture, Commissioner of Agriculture in Florida,
9 was designed as a stand-in and he was on the masthead
10 and a defendant in that action, but not very long,
11 because the District Court the day -- two days
12 following the filing of the complaint in the Northern
13 District Court, denied our ex parte motion for a
14 temporary restraining order to stop the Commission,
15 the Canvassing Commission, from certifying the
16 elections on behalf of the class of people that my
17 client -- that I represent, including my client, and a
18 class of individuals, disabled people in Florida, of
19 which there are some, I think you'll hear later this
20 afternoon, some 99,100 disabled unregistered voters in
21 the state of Florida.

22 My corporate client, the National
23 Coalition of Students with Disabilities, represents
24 primarily students that attend universities and junior
25 colleges throughout the nation. They have been

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1 involved for several years trying to encourage states
2 such as Florida to implement and otherwise fully
3 comply with the National Voter Registration Act of
4 1993. In 1993, the Congress enacted the NVRA and gave
5 the states three years to implement its provisions.
6 It's commonly referred to as the Motor Voter Act and
7 that is a misnomer in many regards. And in fact,
8 Florida has enacted a portion of that -- or has
9 implemented a portion of that act, the motor voter
10 part of it, which allows people registering to drive
11 in Florida to also register to vote in Florida. That
12 is one aspect of the National Voter Registration Act.

13 There are many other aspects and the part
14 that concerns us in our lawsuit is that part --

15 BY ATTORNEY ADVISOR SMITH:

16 Q So Mr. Minnick -- I'm sorry to interrupt -
17 -

18 A (Witness Minnick) Excuse me.

19 Q -- then the point of your lawsuit, the
20 specific allegation that you've raised in federal
21 court would be what?

22 A (Witness Minnick) Is that there are a
23 substantial number, approximately 50,000 unregistered
24 disabled people in Florida who are not being
25 adequately served by the State of Florida in

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1 accordance with the provisions of the National Voter
2 Registration Act.

3 The National Voter Registration Act
4 requires Florida to designate offices all over the
5 state as places where people who are disabled, and
6 actually received services for disabled people, those
7 offices must be designated by Florida as places where
8 those disabled people may get help and assistance in
9 registering to vote.

10 As it relates to my client's student
11 disabled, there are offices of student disability
12 services on every campus of the ten universities and
13 all of the junior colleges, to my knowledge. Very few
14 of them, if any, are making any effort whatsoever to
15 inform their disabled students, as they are required
16 to do under the Act, that that office will assist them
17 in registering to vote in Florida. Some of them are
18 out-of-state -- some of these students are out-of-
19 state residents coming to Florida to attend her
20 universities, but most are in-state students. These
21 students -- excuse me.

22 Q. . . . Sorry, go ahead.

23 A These students are -- the Act requires
24 Florida to provide the actual documentation and
25 instructions and assistance to register these

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1 students. They may want to register absentee from the
2 counties in Florida that they live in, they may want
3 to register in Leon County, for example, if they
4 attend FAMU or Florida State University.

5 My client, the National Coalition, has
6 made extensive investigations and review and has found
7 that there are few, if any, universities in Florida
8 that are doing anything in that regard. And that is
9 one aspect of the suit. The suit is much broader than
10 that though.

11 Q Thank you. So then it would be fair to
12 assume that your litigation is going to have far-
13 reaching impacts, you said some 50,000 students at
14 least could be certified as members of your class?

15 A (Witness Minnick) That's what we -- the
16 National Organization on Disability, the Vice
17 President of which organization will testify here
18 today, will tell you that there's somewhere in the
19 neighborhood of 100,000 disabled people in Florida who
20 are not registered to vote.

21 Q Thank you.

22 A They are in fact included in this class of
23 people, in addition to the students that we are
24 representing through the National Coalition. As I
25 said, the suit is much broader than just disabled

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1 students, it is disabled citizens, under the theory
2 that disabled people who are blind, in wheelchairs,
3 whatever, need assistance. We do assist them.
4 Florida does a magnificent job of painting blue
5 parking stripes on the lots outside so they make sure
6 they can get up close to the buildings. We think that
7 voting is equally as important as getting -- being
8 able to park your vehicle close to a building.

9 ATTORNEY ADVISOR SMITH: Thank you.

10 CHAIRPERSON BERRY: Do you want to thank
11 him?

12 ATTORNEY ADVISOR SMITH: Yes, I'd like to
13 thank you, Mr. Minnick, for your testimony and if
14 there are any other documents or any other information
15 that you'd like to have submitted to the
16 Commissioners, we would accept that at this time.

17 CHAIRPERSON BERRY: Yeah, let me just say
18 that we wanted both of you here, because the disabled
19 issue is often overlooked in this discussion about the
20 voting and that's why we'll have other testimony
21 today. And so we wanted the Commissioners to be
22 informed, and the public, about this issue. And, of
23 course, the issue of the students at FAMU is a major
24 one, so that's why we had your testimony here.

25 We're not going to have any questions for

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1 you at this time but we will send you some questions
2 and put your testimony in the record and proceed.

3 We want to thank you very much for coming
4 and there are some procedures on the way out. Counsel
5 -- if you will see a lawyer on the way out and you may
6 put in the record anything that you have.

7 WITNESS MINNICK: I would like to put a
8 copy of the amended complaint class action demand for
9 jury trial in the record, as you speak. It may be
10 subsequently amended, but we are in the very, very
11 early stages of the case right now and -- but you will
12 hear a lot more about it. It is our goal to register
13 all 100,000 unregistered disabled people in Florida
14 within the next six months.

15 CHAIRPERSON BERRY: And Mr. Minnick, if
16 you would like to prepare a more formal statement and
17 submit it for the record, you may do so.

18 WITNESS MINNICK: Thank you.

19 CHAIRPERSON BERRY: Thank you very much
20 for coming.

21 WITNESS MINNICK: I appreciate that.

22 (Witnesses excused.)

23 **Responses to Allegations and Election Reform**

24 **Proposals**

25 CHAIRPERSON BERRY: Our next witness is

1 the Governor of Florida, the Honorable John Ellis
2 Bush. Would you please come forward, Governor Bush?

3 Could you please remain standing for the
4 moment and raise your right hand while you take the
5 oath?

6 Whereupon,

7 JOHN ELLIS BUSH

8 appeared as a witness herein, and having been first
9 duly sworn, was examined and testified as follows:

10 CHAIRPERSON BERRY: Thank you very much.
11 Please be seated.

12 Normally Commissioners ask questions.
13 We've agreed that for this session, which is truncated
14 in part -- that is shortened -- because we had asked
15 Governor Bush to come tomorrow, but he is busy all day
16 at the good work of Martin Luther King celebrations,
17 and today, he only had a limited amount of time to
18 come.

19 And so counsel has a number of questions
20 that he needs to ask, so we have -- we're going to
21 move to the questions, given your time constraints,
22 and ask Commissioners to hold any questions they might
23 have or give them to me and I'll see if I can sort
24 them out or we will submit them later.

25 Also, could we ask people in the back of

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1 the room not to let their cell phones ring, if
2 possible, have them vibrate or do something. We would
3 appreciate that.

4 Counsel, please proceed.

5 EXAMINATION

6 BY ACTING GENERAL COUNSEL HAILES:

7 Q Good morning, Governor Bush.

8 A Good morning.

9 Q We did issue a subpoena for documents that
10 we believe are under your control and possession. Did
11 you bring those documents with you to this hearing?

12 A I believe we have brought some documents.
13 We have been working with your legal staff to comply
14 with the wishes of the entire set of documents and I
15 believe we don't have everything, we're still --
16 particularly on the e-mails, we have received, I think
17 only exceeded by the Secretary of State in terms of
18 the input that we received about the election, we're
19 received thousands of e-mails and we're still sorting
20 through those but we have documents that we have
21 provided you and we will continue to work with your
22 staff to provide all the information you need.

23 Q We would like to receive into the record
24 the documents that you did bring, if you will attest
25 that they are a true and accurate representation of

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1 the documents that we subpoenaed and to have a time
2 frame for receiving the additional documents. Can you
3 tell us how long you believe -- you can consult --

4 CHAIRPERSON BERRY: We need a date certain
5 by which we will receive them.

6 WITNESS BUSH: Well, the letter that I
7 believe we received was 30 days. If we can get it
8 done earlier than that, we would obviously do it as
9 quickly as possible to help you with your work.

10 We're delighted that you're here, by the
11 way.

12 I didn't get to have an opening remark,
13 but I'm pleased that you're here and --

14 CHAIRPERSON BERRY: If you have any --

15 WITNESS BUSH: -- we welcome you to
16 Tallahassee.

17 CHAIRPERSON BERRY: If you have any
18 opening remarks, you will submit them for the record,
19 and we're sorry we don't have time.

20 Go ahead.

21 BY ACTING GENERAL COUNSEL HAILES:

22 Q I have three categories of questions. The
23 first concerns your authority, in the position of
24 Governor, over elections. And Article IV, Section
25 1(a) of the Florida Constitution vests the supreme

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1 executive power in the Governor and provides that the
2 Governor shall take care that the laws be faithfully
3 executed.

4 Given these mandates, what, if anything,
5 did you do to ensure the election laws were faithfully
6 executed during the November election?

7 A Well, to be clear about this, the statutes
8 in our state and our Constitution provides the direct
9 supervision of elections to the Secretary of State,
10 who traditionally has delegated that authority to the
11 Division of Elections officer.

12 In addition to that, we have 67
13 constitutionally elected supervisors of -- I guess 66
14 are elected and one is appointed -- but they're
15 constitutionally endowed to carry out the elections at
16 the local level.

17 As Governor, my duties relate to
18 certification of the election as well as was mentioned
19 before, being chairman of the canvassing board, which
20 I recused myself on. Given the unique circumstances
21 of this election in November, I felt it was
22 appropriate to do so.

23 So, from the technical or from the
24 implementation side of this, it is the responsibility
25 of the Secretary of State, as part of our Constitution

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1 -- we have a little bit of a unique situation here, we
2 have seven independently elected constitutional
3 officers of this state that have different departments
4 that report directly to them. Our cabinet system is a
5 vestige of the 19th century and we're actually
6 reforming it now, but it puts us in a fairly unique
7 situation.

8 As it relates to general laws, governors
9 have the moral authority I think to make sure that the
10 laws, not only the state laws, but I believe also
11 federal laws, are upheld, which is once again why I'm
12 delighted that you're here to sort out any of the
13 discrepancies that might exist, so that we can work
14 together to build a world class election system for
15 Floridians that might be a model for the rest of the
16 country.

17 Q Yes. And my question still is, what, if
18 any, actions did you take to ensure that those laws
19 were faithfully executed? I presume the Secretary of
20 State reports both to you, as a member of the cabinet,
21 and her constituents.

22 A No, no. The cabinet presides over the
23 Department of Motor Vehicles jointly, the Department
24 of Revenue, the Florida Department of Law Enforcement,
25 but the Division of Elections, the Secretary of State

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1 is responsible for that department directly.

2 Now, again, I mean, the Governor has
3 responsibility for funding, but in this case again,
4 the -- in our state, the funding to provide for
5 adequate training or for the machines that would be
6 used to count the votes have been done by local county
7 commissions, have funded this. Now we're going to
8 change this I hope with the election task force that
9 we've set up, recognizing that some counties handled
10 this job, because of their machines, in a way that
11 yielded a dramatically different result than others,
12 and we are assuming some responsibilities that
13 historically have not been the responsibilities of
14 state government.

15 So you will see, I hope, in the Florida
16 legislature this year a response to what happened in
17 November and I believe that the task force
18 recommendations will be carried out and we will have a
19 different system than the one that we've historically
20 had.

21 Q So we understand for the record that, as
22 it relates to the November 7 election, you had no
23 authority and no responsibilities and took no actions
24 with regard to the election?

25 A The preparation for the election?

1 Q Yes.

2 A No, the -- again, the Secretary of State
3 and the 67 supervisors of election were responsible
4 for that and they carried out their duties.

5 Q Did you have any communications with the
6 Secretary of State before the election regarding
7 preparations for the election?

8 A I don't recall having any conversations
9 with her, no.

10 Q And any member of your staff have any
11 communications with the Secretary of State or the --

12 A Prior to the election?

13 Q That's right.

14 A I'm not aware of it, but it could have
15 very well happened.

16 Q And you are aware about the substantial
17 increase in registered voters in Florida prior to the
18 November 7 election?

19 A Very encouraged by it. And in fact, this
20 election -- as a practitioner now, not as a governor -
21 - was quite exciting in terms of the passion and the
22 enthusiasm and the turnout. It was extraordinary on
23 both sides, and there was -- as is normally the case,
24 by the way, during presidential election years --
25 there was an increase in voter registration. I don't

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1 remember the exact percentages, but it was, as it has
2 been I think probably in almost every case,
3 presidential elections do drive people to be
4 interested in the political process.

5 Q And as it relates to that anticipated
6 substantial increase in voter turnout, you had no
7 reason to have discussions with the Secretary of State
8 or persons in her --

9 A No, because I think the increase was no
10 different than in previous years, if you take an
11 average, I'm not sure -- what was different was the
12 turnout itself, the percentage turnout, the number of
13 -- the increase in registered voters I'm not sure was
14 significantly different than previous election cycles.

15 Q When did you first learn of alleged
16 irregularities in the November 7 election?

17 A I think the first time I learned of
18 alleged irregularities was when I -- on the day after
19 the election, where there were some reports of -- in
20 fact, you've had witnesses here related to the Florida
21 Highway Patrol -- that was the first evidence or first
22 concerns that came to my attention. And in fact, I
23 met with Attorney General Butterworth that afternoon
24 as part of a joint press conference where I recused
25 myself as a member of the canvassing board the day

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1 after the election. And in my conversation with him,
2 asked him if he was going to investigate this, and he
3 had already, he'd already done -- the Attorney
4 General's office had done a preliminary investigation
5 and the report was that there was no organized
6 wrongdoing. That's not the exact term, but there was
7 a term that was used. And so then there was a full
8 investigation of the -- done by the Florida Highway
9 Patrol that I believe you have a copy of now, where
10 they went into -- had interviews with all of the
11 people that were cited, a majority of whom were white,
12 two miles away from the voting in Wakulla County, I
13 believe.

14 So that was the first incident --

15 Q I'm sorry, the persons who were stopped --

16 A Not the persons stopped, the persons that
17 were -- received citations.

18 Q Okay, so you don't know the number and'

19 A It's --

20 Q -- races of persons who were stopped --

21 A --I think it's in -- I'm sorry.

22 Q -- at the checkpoint.. You just know the
23 number of persons that were issued citations?

24 A That basically -- I learned that after the
25 fact. This report, I received a summary of it just

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1 recently, and I think many more were stopped, say 110
2 or 120. There were citations given and I believe the
3 Florida Highway Patrol went back, at the request of
4 the Attorney General -- but you obviously will ask him
5 that -- to determine what happened in those -- when
6 those folks were stopped.

7 That was the first incident of alleged
8 wrongdoing. And then, you know, it would be very
9 difficult during the course of the 40 days that ensued
10 thereafter, not to hear of allegations because we were
11 24-7 here in Florida, we were ground zero for the news
12 media and there was all sorts of speculation and
13 allegations made.

14 Q Well, apart from media accounts, did you
15 receive any official reports from any state officials
16 about alleged irregularities in the election?

17 A From officials?

18 Q Yes, elected and appointed officials.

19 A There may have been some correspondence
20 that I'm not aware of, but we will make sure that we
21 receive -- we will send you those as part of the
22 request for information that you received.

23 I had no conversations with any officials
24 about alleged wrongdoings that I can recall.

25 Q Any party officials, either Republican or

1 Democratic Party officials, did you receive any
2 accounts from any party officials?

3 A Again, I don't remember having any
4 conversations specifically about alleged
5 irregularities, but as I said, I didn't have to
6 receive any direct communication, because there were
7 enough in the newspapers to be concerned about it.

8 Q And as a result of these allegations, you
9 took some actions. Will you describe the actions you
10 took in response to the allegations that you heard
11 about?

12 A Well, I've asked for a briefing on the
13 alleged concern that felons were voting and that non-
14 felons were not allowed to vote because they were
15 allegedly felons. And I received a briefing on that
16 to see how the statute that was passed two years ago
17 in response to some concerns in the City of Miami, was
18 carried out. And I had a briefing with the supervisor
19 -- or the Division Director of Elections, Mr. Roberts,
20 and the Director of the Florida Department of Law
21 Enforcement, concerning that.

22 I was concerned, that people were
23 restricted their right to vote, that they were
24 allegedly a felon, and the process may not have
25 worked. And also very concerned about people who were

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1 felons that were allowed to vote because the process
2 didn't work.

3 I believe tomorrow you have a chance to
4 meet with the people who were obligated or who had the
5 responsibility to carry out that statute and you can
6 see exactly what the process was for a year period
7 prior to the election, about how the lists were
8 created for each county.

9 Q Were there any other allegations that
10 specifically prompted you to launch the task force?

11 A No, because again, I was confident that
12 with the Attorney General investigation that's ongoing
13 and the Department of Justice investigation that is
14 ongoing, that those were the proper authorities to
15 deal with these issues. From my perspective, my
16 responsibility was to look into the future and see
17 what flaws in our election system could be rectified
18 by statute.

19 And so from early -- after the election,
20 shortly after the election, I began to think about how
21 we could quickly build a bipartisan task force to deal
22 with the issues of machines for vote counting as well
23 as some of the inconsistencies related to manual vote
24 counts and the inconsistencies that came up during the
25 judicial process about inconsistencies in the laws

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1 that created the conflict that was played out in the
2 courts.

3 And so several -- I think probably 10 days
4 after the election or maybe even earlier, we began to
5 discuss with people around the state the possibility
6 of a task force that would deal with these issues
7 after the eventual -- after the process ended and a
8 candidate was named president.

9 Q A candidate?

10 A My brother.

11 Q Your brother.

12 A In case you didn't know, it's --

13 (Laughter.)

14 Q Just for the record.

15 A That's right. I don't look much like him.
16 I look like my mother.

17 Q I see. Will the task force have the
18 opportunity and the obligation to examine allegations
19 that people of color were disenfranchised during the
20 November 7th election?

21 A I believe they will. I think that the
22 main -- the executive order we signed, the focus is on
23 the three things that I mentioned, which relate to the
24 machines, because the counties that had -- used, for
25 example in Leon County, you're going to hear from the

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1 supervisor here, Leon County uses an optical scanning
2 device that's a paper ballot filled in by pencil.
3 It's sent into a machine and it's rejected if there's
4 an under-count or an over-count, as I understand it.
5 And so therefore, there's an automatic built in part
6 of the process to provide some built-in education, if
7 you will, for voters. In addition to that, they have
8 modems that go from the precinct -- this is done at
9 the precinct level -- and as I understand it, they
10 have modems that send this information, once the polls
11 close, directly to the central office and their
12 results were done with very small error rates over I
13 think by 7:20 or 7:30 in the evening.

14 That provides a stark contrast to other
15 counties where they were using these punch card
16 machines and the counts were ongoing through 3:00 or
17 4:00 in the morning. So --

18 Q When you say other communities, are you
19 referring to people of color communities?

20 A No, I'm talking about counties that,
21 again, the supervisors of elections and the county
22 commissions are responsible for the voting equipment.

23 And they've had, historically as I said, in our state
24 the responsibility to fund the elections, both the
25 machines as well as the education and the supervising

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1 of the elections.

2 Q And the task force, do you know the budget
3 that is in place for this task force?

4 A I'm afraid I don't.

5 Q Okay.

6 A By the way, I do think -- they are having
7 public hearings. They held one already this Monday
8 and Tuesday and they're going to hold hearings, as I
9 understand it, in three other cities in the state, I
10 believe Jacksonville, Miami and one other city.

11 Q Have you put any restrictions on the work
12 of the task force, apart from the time frame in which
13 they are to report back to you?

14 A No, it's fairly flexible. I believe you
15 have the executive order as part of the information
16 that we provided and it provides a guidepost, if you
17 will, for the task force to act.

18 But again, the main focus is to recognize
19 that if we can bring clarity to this, use the proper
20 equipment, machines, fund it because it's going to
21 require -- it is a high priority in our state and it's
22 going to require the legislature, in conjunction
23 hopefully with Washington, D.C., but if not, we'll go
24 it alone here, with local governments to build a world
25 class election system that is using equipment that

1 makes it easier for people to vote.

2 And again, two other issues that I think
3 are important is that in the case of a very close
4 election, it seems to me that we should have a
5 consistent standard based on some of the judicial
6 rulings that were created as a part of this election,
7 there should be a consistent standard across the state
8 so we don't see these agonizing pictures of volunteers
9 or members of local canvassing boards with what appear
10 to be excruciating painful expressions on their face
11 trying to determine the intent of a voter that may
12 have been -- taken place 30 days before. We can
13 create a consistent standard I think that will
14 alleviate that.

15 And then finally in our particular case in
16 our state, as was evidenced by some of the judicial
17 rulings, there are two statutes that came in conflict
18 in -- during the course of this, and I think it's
19 appropriate to make some recommendations there.

20 So that's the principal mission of this
21 task force and I think it will alleviate a lot of the
22 problems if the legislature, and I believe they will,
23 will fund their recommendations.

24 ACTING GENERAL COUNSEL HAILES: Thank you
25 very much.

1 CHAIRPERSON BERRY: I have three questions
2 that I've been handed by Commissioners that I need to
3 ask before we let you go, Governor.

4 The first question is that in the answers
5 to counsel's questions, you emphasized your lack of
6 responsibility or the absence of responsibility under
7 the Constitution of your state for the implementation
8 of the right to vote and election procedures, pointing
9 out to us that the Secretary of State and the county
10 supervisors are responsible for the implementation and
11 that you have a moral authority, if I heard you
12 correctly, to be concerned.

13 WITNESS BUSH: Well, I just want to make
14 sure that I'm clear on this. What I -- in response to
15 the question, the duties to carry out the election
16 itself are not the responsibility of the Governor. I
17 love -- hey, I have lots of responsibilities, I love
18 my job, I'd love to take that on as well, but this is
19 not what the -- what our system has created. I have
20 duties as Governor that go beyond the mechanical
21 aspects of elections and that's the point I was trying
22 to make.

23 CHAIRPERSON BERRY: Another question,
24 first of all, did you have any conversations with your
25 brother, the Governor of Texas, in the days leading up

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1 to the election about the heavy registrations in some
2 districts in Florida or on the day of the election or
3 that evening, about turnout and any difficulties that
4 may exist during that period?

5 WITNESS BUSH: Well, as was mentioned
6 previously, the registration process in our state ends
7 a month prior, so we didn't -- I did not have any
8 conversations with my brother about the level of
9 registration.

10 We did talk about the election, I was the
11 chairman of his campaign, he was interested in what
12 was going on in Florida, as was I. There was a little
13 pressure put on me, you may remember, in the press
14 about doing my part. And just as Attorney General --

15 VICE CHAIRPERSON REYNOSO: Having to do
16 with Thanksgiving and a dinner.

17 WITNESS BUSH: There you go, exactly
18 right.

19 And he was here a lot and we talked a lot
20 about the campaign, because it was --

21 CHAIRPERSON BERRY: I was not interested
22 generally, the question was not generally --

23 WITNESS BUSH: I'm glad.

24 CHAIRPERSON BERRY: -- about conversaticns
25 with your brother. The question was did you have any

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1 specific conversations about the high degree of
2 registration in some particular precincts where there
3 were large numbers of people of color, or did you on
4 the day of the election or in the days after that
5 before the count was concluded, did you have
6 conversations with your brother, the Governor of
7 Texas, concerning the allegations about irregularities
8 in voting? That's the question.

9 WITNESS BUSH: No. No, I didn't.

10 CHAIRPERSON BERRY: You did not.

11 Okay, the other question is did you cause
12 your staff to have any conversations with the
13 Secretary of State or her staff concerning
14 preparations for the election or the GOP party
15 affiliates, did you cause any of them, officials, to
16 contact her concerning preparations for the election?
17 She was co-chair, as I understand it, of the
18 campaign, is that right?

19 WITNESS BUSH: She was, among -- I think
20 there were six co-chairs.

21 No. I think I answered that question,
22 maybe I didn't, I thought I did say that I had not had
23 contact with her related to the preparation for the
24 election.

25 CHAIRPERSON BERRY: Did you cause any

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1 member of your staff or are you aware --

2 WITNESS BUSH: No.

3 CHAIRPERSON BERRY: -- that any member of
4 your staff --

5 WITNESS BUSH: No, no.

6 CHAIRPERSON BERRY: -- or did you have any
7 member of your staff who is a liaison with the
8 Secretary of State in her official capacity, or do you
9 have no one on your staff who involves him or herself
10 at all with what the Secretary of State is doing?

11 WITNESS BUSH: Well, Reg pointed out that
12 as it relates to -- the only contact we had was
13 related to the certification of electors, which is
14 part of my official duties, and again, I believe we
15 provided that information that we certified both the
16 slate, the Democratic Party slate of electors as well
17 as the Republican slate, and sent that letter to her
18 as part of my official duties.

19 CHAIRPERSON BERRY: On a routine, daily,
20 monthly, weekly or on a routine basis, is it the case
21 that there is no one in the Governor's office or
22 anywhere on the Governor's staff who concerns
23 themselves with keeping abreast of matters having to
24 do with the province of the Secretary of State,
25 including voting and voting procedures and what might

1 be going on there?

2 WITNESS BUSH: Well, it would be the legal
3 office in some cases. We have -- again, in our
4 cabinet system, we have -- I have a cabinet aide that
5 interacts with the cabinet aides of each of the
6 elected officials that comprise Florida's cabinet.
7 And so Colleen Castille, who would be the chief
8 cabinet aide for the Governor, would be someone who
9 would have routine contact with the Secretary of
10 State's office. I'm not aware of -- go ahead.

11 CHAIRPERSON BERRY: Could we ask you
12 whether included in the communications that we asked
13 you for under the subpoena duces tecum are any
14 communications that Colleen Castille had as a member
15 of your staff with the Secretary of State or her
16 office during the 30 days leading up to the election,
17 concerning the election itself? And if not, we may
18 vote now to subpoena them, if you have not in fact
19 included such or if you're not willing to.

20 WITNESS BUSH: No, I'm more than happy to,
21 but there aren't any.

22 CHAIRPERSON BERRY: She had no
23 communication with the Secretary of State during that
24 period or the office --

25 WITNESS BUSH: You asked for letters. We

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1 have checked -- the request that you made was not
2 exclusive of anybody, so our efforts are to provide
3 all the information you've asked for. And as I said,
4 I'm not aware of every conversation that people on my
5 staff have had with the Secretary of State's office.
6 I guarantee you that in a month's period of time, that
7 Colleen Castille, as the chief cabinet aide, would
8 talk to the chief cabinet aide of the Secretary of
9 State, just as she would have talked to the chief
10 cabinet aide of the Attorney General and the
11 Comptroller and others.

12 CHAIRPERSON BERRY: We also asked for
13 phone calls, Governor, logs of phone calls.

14 WITNESS BUSH: Well, we --

15 CHAIRPERSON BERRY: So that would include
16 any phone calls that Colleen Castille had with the
17 office of the Secretary of State.

18 WITNESS BUSH: And we will provide that.
19 As I said, this is work in progress because of the
20 volume of the request. And I assure you that we have
21 every intention of complying with your request.

22 CHAIRPERSON BERRY: Right. And Governor,
23 if you, as I understand your testimony, and I
24 understand it from reading the Florida Constitution
25 too and listening to our counsel, have no direct

1 responsibility for the matter of voting and the
2 election system, why did you involve yourself in the
3 felony purge issues, which has to do with the election
4 system and, as you testified, asked for a briefing on
5 it and no other part of the --

6 WITNESS BUSH: Well, because I have a
7 responsibility as a leader to deal with problems as
8 they arise. I don't have the direct responsibility,
9 for example, to deal with the issues of canker that
10 occur; that is, the Secretary of the Department --
11 Commissioner of Agriculture, but that does not mean as
12 Governor of this state, if residents are concerned
13 about people coming in to take away contaminated trees
14 or the citrus industry is concerned about that
15 contamination getting into the commercial groves, I
16 have a responsibility to provide leadership.

17 So in the case of the felons, the felon
18 issue, after the election, it was clear, based on
19 press reports, that this was an area where there was
20 some concern. Supervisors of election, according to
21 press reports, did not accept the lists that were
22 vetted by the Florida Department of Law Enforcement
23 and this entity that was contracted with by the
24 Department of State. There was allegations, as
25 mentioned, of non-felons not being able to vote. So I

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1 was interested in this and I wanted to make sure that
2 if the law that was passed by the Florida legislature
3 several years ago needed to be dealt with in a
4 different way, if there were some inconsistencies or
5 problems, it's incumbent upon me, even though I don't
6 have the direct responsibility to deal with these
7 issues, to show leadership, and that's why I had the
8 meeting.

9 CHAIRPERSON BERRY: Pursuant to Section
10 102.109(1) of the Florida statute, you are empowered
11 to appoint special officers to investigate alleged
12 violations of the elections laws. Have you appointed
13 any special officers?

14 A No, I haven't.

15 Q Do you intend to appoint any?

16 A If there is a reason to do so, I will, but
17 given the fact that the United States Department of
18 Justice is investigating these matters, that you all
19 are here, which we're very grateful for, and that the
20 Attorney General is doing the same; until their
21 findings come out, I believe that we're on the right
22 path. And again, if the task force does its job
23 appropriately, which I believe it will, and the
24 legislature responds, we will have a chance to deal
25 with what we've learned over the last 60 to 90 days

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1 and improve our election system and allow it to be a
2 model for the other 49 states.

3 CHAIRPERSON BERRY: We have no reason to
4 believe, perhaps you know something we don't know,
5 that the Attorney General -- you mean of the United
6 States or the State of Florida, which attorney general
7 --

8 WITNESS BUSH: State of Florida.

9 CHAIRPERSON BERRY: -- are you referring
10 to? I thought you mean the U.S. Attorney General.

11 WITNESS BUSH: My friend, Bob Butterworth,
12 here in Florida.

13 CHAIRPERSON BERRY: All right, we'll ask
14 him about that.

15 The other thing is I asked you about the
16 felony purge issue because if you pick that one as the
17 one that you would look at for the concerns -- for the
18 reasons you gave us, is it that you consider the other
19 allegations so insubstantial that they do not merit
20 you giving them the same kind of time and attention,
21 or why did you select that one from among all the
22 other allegations that have been made?

23 WITNESS BUSH: Well, because this one is
24 one that was -- a statute was created to deal with an
25 issue of a previous election and there were

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1 allegations made, I remember one particular article
2 that went into length about concerns about the
3 implementation of that statute. And that is not to
4 say that this was done at the exclusion of other
5 allegations, not at all.

6 CHAIRPERSON BERRY: There's also Article
7 VII, Section 8 of the Florida Constitution that says
8 that state funds may be appropriated to the several
9 counties as may be provided by the general law.

10 Have you requested in your various budgets
11 that you submitted to the Florida legislature, any
12 specific funds to be provided to counties to
13 supplement the budget for voting systems in view of
14 the fact that it has been documented that there are
15 disparities in the kind, type of equipment that is
16 available and some counties feel that they are
17 fiscally more able than others, being poorer than
18 others and having lower tax base -- have you at any
19 time made a specific request for appropriations from
20 the legislature for this purpose?

21 WITNESS BUSH: We intend to do it based on
22 the recommendations of the task force that's been
23 created. Our legislative session starts in March and
24 I'm waiting for the recommendations of the task force
25 to deal with the statutory changes that I mentioned as

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1 well as suggestions of funding. And based on those
2 recommendations we will work with the Florida
3 legislature to fund those -- that machinery.

4 Now just as an aside, the place where
5 these machines are that have created the problems are
6 not necessarily in the poorer parts of the state.
7 They're in some large urban counties, but no one would
8 suggest that Palm Beach County is an impoverished
9 county, thankfully for the residents there, they do
10 quite well.

11 CHAIRPERSON BERRY: Depends on what part
12 of Palm Beach you're in, as you know, whether it's
13 West Palm, Palm or where.

14 WITNESS BUSH: Well, the people that are
15 in charge of the funding of the programs, it's a
16 county that has grown and they have ample resources.
17 It's not from a lack of resources, it's that county
18 governments have belief that this was not as high a
19 priority as funding children's programs or doing other
20 things that I consider to be important as well.

21 CHAIRPERSON BERRY: Do I understand your
22 answer, Governor, to be that the counties in question
23 have sufficient resources to do this on their own and
24 that is why you have not requested any appropriation
25 in the past, but you may do so now?

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WITNESS BUSH: No. It's been the tradition of this state that the implementation of the supervising and the implementation of elections have been done at the local level. And based on what we have learned, it is clear that the state needs to act to create, I believe, a more standardized approach to go against that tradition. And as you mentioned, we have the authority to fund these programs. Even if we didn't, we could change the statute I believe to allow us to do so and we intend to do that, based on the recommendations of this bipartisan task force.

How that -- the form in which that will play out in the legislature, I think will first be determined by the recommendations of the task force. They just started their work. They will complete their work early enough for the legislature to make their -- to deliberate on this and I'm confident, I'm absolutely confident, that there'll be strong bipartisan support for funding for machines that will lessen the problems that we faced in this election. And I might add I think that that will be a model -- I hope a model for other states as well, that were it not for the fact that the election -- if the election was as close in those states as it was in our state, you would see these similar problems emerge probably

1 in other states as well.

2 So this is a national issue and I hope
3 that we'll be a part -- a participant in creating a
4 national solution.

5 CHAIRPERSON BERRY: So that your attention
6 to these matters has been riveted by what happened in
7 that, if I understand you correctly, you had no reason
8 to believe before the election that matters having to
9 do with voting in the state of Florida were matters
10 that you should, as Governor, make a high priority and
11 sit down and review, because you had no reason to
12 believe that there were the kinds of issues that had
13 been raised as a result of the election. Is that
14 basically it?

15 WITNESS BUSH: No. If it relates to the
16 mechanics of voting, going to the polls on election
17 day and counting the ballots over a period of time, to
18 be fair about it, the answer to your question is no.
19 But no one else that I'm aware of in this state came
20 to me and said Governor Bush, we're going to have a
21 very close election and we're going to spend 45 days
22 having the entire world look at us and you're going to
23 be counting, you know, pregnant chads and indented
24 chads -- no one that I'm aware of came to me and said
25 we have a serious problem we need to deal with in

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1 advance of this.

2 So we have responded to the realities of
3 what we were confronted with on November 7 with a
4 thoughtful plan to I believe make recommendations to
5 the legislature to deal with the problems.

6 CHAIRPERSON BERRY: I would be happy to
7 let you go with that answer, except that I must ask
8 you did the Secretary of State or the Division of
9 Elections call to your attention, since they keep the
10 files on registrations, that there was this
11 concentration in certain areas of the state, there
12 were these increases and that, in connection with the
13 machine problems, the mechanics, might create some big
14 problems in the state -- did any of them alert you or
15 your staff cabinet liaison --

16 WITNESS BUSH: Colleen Castille.

17 CHAIRPERSON BERRY: -- that in fact this
18 was something that you ought to pay attention to?
19 Because we're going to ask them whether they alerted
20 anybody. So did they send a memo or an e-mail or call
21 up or say, hey guys, you know we're cruising for a
22 bruising here.

23 WITNESS BUSH: That would have been a term
24 that we probably would have used.

25 CHAIRPERSON BERRY: Oh, maybe not, I'm

1 sorry. I mean we might run into problems --

2 WITNESS BUSH: That's a technical term.
3 No, I did not have any direct communication with
4 anybody from the Department of State's office about
5 this.

6 Now in review of the documentation that
7 we're preparing, you know, I doubt that we did, but if
8 we did, we'll provide it for you.

9 CHAIRPERSON BERRY: Okay. All right, we
10 are, as you know, just beginning our investigation and
11 we had wanted to have more time with you, but we were
12 willing to accommodate you and we reached an
13 accommodation, and we're grateful that we did, but
14 when we have our hearings in other parts of the state,
15 are you willing to come voluntarily, even though you
16 are in Tallahassee and that's where our subpoena power
17 reaches, which is why we're here today for this
18 purpose, within 100 miles -- are you willing to answer
19 questions that will be put to you in writing
20 concerning these matters after we examine the
21 documents and are you willing to submit to further
22 questioning at a later time if need be.

23 WITNESS BUSH: If I can help you in your
24 efforts, I'd be more than happy to do so. Obviously
25 if you ask questions in writing, I'm more than happy

1 to answer those as well.

2 As I said, I'm committed, along with our
3 partners in the Florida legislature, with the input
4 from practitioners at the local levels,
5 superintendents, the judiciary, other people who have
6 an active interest in the voting process, to make
7 recommendations to our state that will be a model, and
8 that's going to be where my focus is and obviously
9 along with my regular duties as Governor of the state.

10 CHAIRPERSON BERRY: All right. Thank you
11 very much, Governor, for coming.

12 WITNESS BUSH: Thank you.

13 CHAIRPERSON BERRY: There are some sign-
14 out procedures. We thank you very much -- the lawyers
15 will tell you that.

16 And we will have a break for ten minutes.

17 (A short recess was taken.)

18 **Looking Ahead: Best Practices and Procedures**

19 CHAIRPERSON BERRY: Would you please stand
20 and remain standing and raise your right hands?

21 Whereupon,

22 JONEL NEWMAN

23 CURTIS GANS

24 JIM SMITH

25 MARK PRITCHETT

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1 appeared as witnesses herein, and having been first
2 duly sworn, were examined and testified as follows:

3 CHAIRPERSON BERRY: Thank you very much,
4 please be seated. Counsel.

5 ACTING GENERAL COUNSEL HAILES: Good
6 morning. I'm going to ask each witness to now state
7 your full name and your title and your organizational
8 affiliation for the record.

9 WITNESS NEWMAN: Good morning. My name is
10 JoNel Newman, I'm an attorney with the Florida Justice
11 Institute in Miami. I am also here on behalf of a
12 newly formed Florida Equal Voting Rights Project of
13 the ACLU, which is undertaken in conjunction with the
14 Florida Justice Institute and Florida Legal Services.

15 WITNESS GANS: My name is Curtis Gans, I'm
16 Director of the non-partisan Committee for the Study
17 of the American Electorate based in Washington, D.C.

18 WITNESS SMITH: My name is Jim Smith, I'm
19 a Tallahassee attorney, co-chair of the Governor's
20 Task Force on Election Procedures, Technology and
21 Process.

22 WITNESS PRITCHETT: My name is Mark
23 Pritchett, I'm Executive Director of the Governor's
24 Task Force on Elections and also Executive Vice
25 President with the Collins Center for Public Policy,

1 which is staffing the task force.

2 ACTING GENERAL COUNSEL HAILES: Mr.
3 Pritchett and Mr. Smith, you were asked by subpoena to
4 bring documents with you to this hearing. Are those
5 documents in your possession?

6 WITNESS PRITCHETT: Yes, sir.

7 ACTING GENERAL COUNSEL HAILES: And you're
8 prepared to submit them to the Commission to be made a
9 part of our record?

10 WITNESS PRITCHETT: Yes.

11 WITNESS SMITH: Yes, sir.

12 ACTING GENERAL COUNSEL HAILES: And they
13 are a true and accurate depiction of the records that
14 we did request by subpoena.

15 WITNESS PRITCHETT: Yes, sir.

16 ACTING GENERAL COUNSEL HAILES: At this
17 time, Madam Chair, I would ask that those documents be
18 received into the record and that they be marked by
19 the records clerk consecutively.

20 CHAIRPERSON BERRY: Without objection, so
21 ordered.

22 ACTING GENERAL COUNSEL HAILES: And all of
23 the witnesses, Madam Chair and Commissioners, have
24 been asked to discuss election reforms and best
25 practices and we'd like at this time for them to

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1 briefly discuss election reforms and best practices,
2 beginning with you.

3 CHAIRPERSON BERRY: Do we have a time
4 limitation before we begin the questioning, Mr.
5 Hailes?

6 ACTING GENERAL COUNSEL HAILES: Yes, given
7 the time frame, we're running a little over, I would
8 suggest three minutes, and we do have questions. And
9 you can respond to and present some of the information
10 that you want to discuss in response to questions from
11 both me and the Commissioners.

12 CHAIRPERSON BERRY: And your statement
13 will be included in the record.

14 ACTING GENERAL COUNSEL HAILES: That's
15 right.

16 WITNESS NEWMAN: Good morning. I'd like
17 to thank the Commission for the opportunity to address
18 it.

19 The project that I am working on is
20 designed to devote significant public interest
21 resources in the state of Florida to comprehensive
22 statewide electoral reform that is sensitive to the
23 concerns of Florida's racial and language minorities
24 and to those who live in poverty, considerations that
25 are probably long overdue in this state.

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Coming out of the November 7 election, we heard two overriding categories of complaints. First, that not every eligible elector who went to the polls to cast a vote on election day was permitted to do so. Second, that not all the votes cast by the eligible electors were counted. Both of these practices disproportionately excluded racial and language minorities from the election process in Florida.

Many people, most of the members of this panel, are addressing the second concern, which has to do with technology, and rightly so. But I wish to focus on the first, that not every eligible voter was able to vote in the last election because it would be a serious mistake for anyone to believe that the problems we have seen in Florida can be completely resolved by investing in new technology alone.

The problem of not every voter being able to cast his or her vote is the most insidious because it's the least obvious, it's the hardest to quantify and it has the most lingering discriminatory impact. When new or vulnerable voters from traditionally disenfranchised groups are wrongly prevented from going to the polls and from voting, they feel often a humiliation and a stigma or a disaffection that has the effect in many cases of causing them never to

1 return to the voting booth.

2 The complaints we heard concerning
3 barriers to voters being prevented from voting include
4 the following:

5 The first was numerous individuals who
6 were refused the opportunity to vote when they arrived
7 at the polls because they weren't on the list of
8 electors. In many instances it seems that this
9 occurred either because election officials had not met
10 their obligation to process their mailed in
11 registration applications in a timely manner or
12 because the voters were wrongfully purged or placed on
13 an inactive list and there was no adequate system in
14 place in many precincts to determine those voters'
15 ultimate eligibility to vote.

16 Second, many eligible voters were
17 prevented from voting by election officials who abused
18 voter identification requirements. Elections
19 officials then illegally refused to permit those
20 voters to sign an affidavit and vote as required by
21 Florida statute. Many language minority voters were
22 effectively prevented from casting a ballot because
23 elections officials refused to provide bilingual
24 ballots or assistance on election day and many persons
25 who were not literate were denied adequate assistance

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1 in casting their ballots, and remarkably many were
2 forced to vacate the voting booth within five minutes,
3 which is in fact provided by Florida law.

4 Because practices and rules have been
5 permitted by the State Department of Elections to vary
6 so widely among counties, it is likely that the
7 obstacles faced by voters also vary quite widely. And
8 because of this, we have begun our own investigation,
9 looking separately at all 67 counties. We have done a
10 Public Records Act demand of all 67 counties to
11 determine what the practices were and what the
12 particular barriers faced were in different
13 jurisdictions.

14 But even in advance of our completing
15 this, there are a number of practices and changes that
16 could and should be implemented uniformly throughout
17 the state, that would go a long way toward eliminating
18 the barriers to voting faced by many groups in Florida
19 who are isolated by race, language or poverty.

20 The necessity for each of these reforms
21 can be summarized by a single message. It should not
22 be difficult to vote in this country. Voting should
23 not require running a gauntlet. Extensive poll worker
24 training is absolutely essential and uniform
25 enforcement, as well as uniform standards regarding

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1 permitting electors to vote is vital. Florida
2 statutes need to be clearer and more generous
3 regarding permitting electors to vote by affidavit or
4 provisional ballot in instances in which they do not
5 appear on the rolls or do not have photo
6 identification.

7 Election day registration should be
8 allowed. Florida statutes and practices need to be
9 more carefully correlated the National Voter
10 Registration Act with respect to maintenance and
11 availability of the inactive list and the registration
12 process. The language assistance that is so
13 important, and other necessary assistance needs to be
14 provided at all polling places.

15 We need to increase the poll hours, we
16 need to develop, through the Division of Elections, a
17 voter bill of rights that should be displayed in every
18 polling place and should be displayed in languages as
19 necessary. The five minute limit on the voting booth
20 time must be repealed. And finally, ex-offenders
21 should have their civil rights restored in this state.

22 Florida leads the nation in disenfranchising felons
23 and in prosecuting children as felons.

24 ACTING GENERAL COUNSEL HAILES: Thank you
25 very much. And in response to questions, you may be

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1 able to give us more from your statement --

2 WITNESS NEWMAN: Thank you.

3 ACTING GENERAL COUNSEL HAILES: -- which
4 will be received in the record.

5 Mr. Gans.

6 WITNESS GANS: Madam Chair and members of
7 the Commission, I am very grateful for the inquiry.
8 Counsel will have to decide as to whether -- it is
9 likely to exceed three minutes -- it will be worth
10 hearing. I do not have written testimony, although I
11 will be delighted to provide some at a later point.

12 ACTING GENERAL COUNSEL HAILES: Okay.

13 WITNESS GANS: Out of every bad, some good
14 can come, and I think one of the goods that will come
15 is that people will seriously look at our election
16 system and try to make changes.

17 I don't have, and I told both your
18 counsel, anything to add specifically on the issue of
19 Florida. But it does strike me that a lot of the
20 problems that exist in Florida exist all over the
21 country and need to be addressed.

22 Understanding that elections will be
23 forever a state and local matter because in the
24 majority of elections what is up is state and local,
25 not federal. On the other hand, it is clear that one

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1 of the things we need is a standard for ballots. I
2 hope Congress establishes a standard for federal
3 ballots, not a standard ballot because we're going to
4 have different systems, but size of type, spaces
5 between candidates, size of places, you know, to mark.

6 I don't think Theresa LePore was badly motivated but
7 I don't think we want another election with butterfly
8 ballots.

9 I think we want to move, and I hope both
10 federal and state governments will provide the
11 resources to move to the better technologies. I don't
12 say the best technologies, but what we need to do is
13 make sure that the 2002 election -- not even the 2004
14 election -- is devoid of punch card ballots and
15 perhaps also voting machines. What we need in terms
16 of a standard is something that will both accurately
17 count and leave a paper trail and I will leave it to
18 people better than I, you know, to decide on what
19 those systems are. But we need the resources for
20 everybody to adopt one of those systems.

21 We need some standard for what will
22 trigger recounts, what type of recounts, you know, and
23 what will govern those recounts -- 35 days were spent
24 on that issue and it was never resolved in this state.

25 We need monies for the training of poll

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1 workers and the hiring of poll workers so that (a)
2 they can render assistance and then there will be
3 adequacy of poll workers.

4 In this election, thousands of people, not
5 only in Florida, but in other places, who registered
6 at motor voter places, motor vehicle license bureaus
7 and in social service agencies were not on the rolls
8 when they came to vote. We need to find out what that
9 problem was, whether there was any systematic problem
10 and, you know, indeed find out how to address it.

11 On the obverse of that coin, we have
12 millions of people on the voting rolls across the
13 country who should not be on because they have died or
14 moved. We need to create an equitable system of
15 cleaning the list by state run agencies and not by
16 private contractors, you know, that will guarantee
17 that the lists are accurate on election day. And in
18 order to do that, I think we need the monies so that
19 each state has a computerized centralized voter file
20 so that you can do both the list cleaning and the
21 updating that is part of the NVRA, which is, you know,
22 as people move, that they are automatically moved to
23 their new address, if they move within the state.

24 We have several things that we need to do
25 with regard to polling places. We need to make them

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1 handicapped accessible. Jim Dickson will talk about
2 the miserably low percentage of places that are not
3 handicapped accessible, you know, at this time,
4 despite a law that is aimed at making them handicapped
5 accessible.

6 We should have longer hours. You know,
7 people want to create election day holiday, I think
8 that will hurt turnout, absent data to support that,
9 but ideally every state ought to have New York's
10 hours, 9:00 a.m. to 9:00 p.m., three hours on both
11 sides of the work cycle.

12 We ought to have adequate polling stations
13 within polling places. There is no excuse for long
14 lines. The only reason we have long lines is we have
15 too few people -- too few polling places.

16 And I agree with my colleague on the left,
17 that essentially people who have served their time
18 ought to have the right to vote.

19 We have problems with voter information.
20 North Carolina and several other states distribute
21 free of charge to every registered voter information
22 about how to vote, what your rights are with voting
23 and that ought to be done in every state. California,
24 Oregon, Washington and Alaska provide voter
25 information pamphlets that tell people the biographies

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1 of the candidates, their self-described issue
2 positions, the pros and cons of ballot propositions by
3 proponents and opponents distributed to every
4 registered voter. That ought to be adopted
5 nationally.

6 ACTING GENERAL COUNSEL HAILES: Mr. Gans,
7 let me just ask you at this time to --

8 WITNESS GANS: Can I just do one more
9 point?

10 ACTING GENERAL COUNSEL HAILES: One
11 additional point, thanks.

12 WITNESS GANS: The one additional point is
13 that we have got to get the networks to stop declaring
14 winners based on exit polls and sample precinct
15 analysis. And that does not mean uniform poll
16 closings because they declared George Bush the winner
17 in Florida six and a quarter hours after the polls
18 closed. They declared Al Gore the winner in New
19 Mexico after the polls closed. Uniform poll closings
20 will not solve the problem, we need not revise our
21 entire electoral system for the convenience of the
22 networks, to do what they shouldn't do in the first
23 place.

24 Thank you.

25 ACTING GENERAL COUNSEL HAILES: Thank you

1 very much.

2 Mr. Smith.

3 WITNESS SMITH: Madam Chairman, members of
4 the Commission, I'm delighted to be here. I served as
5 Florida's Attorney General from 1979 to 1986 and as
6 Secretary of State from '87 to the end of 1994. Each
7 year as Secretary of State, I was required to submit a
8 report to the legislature and each year, my number one
9 priority was election reform.

10 I found out quickly that everybody in
11 elected office loves to talk about election reform.
12 When it really gets down to the business about doing
13 something about election reform, it's pretty much lip
14 service. And so we find ourselves now, after what I
15 like to characterize as a 150-year storm event, with a
16 post-election mess; but really an opportunity, I think
17 a very unique opportunity, to have certainly our
18 legislature and hopefully the attention of other
19 states and other legislatures around the country focus
20 on elections.

21 I suspect that had what occurred in
22 Florida happened in most other states in the United
23 States, we would have found very similar problems and
24 perhaps in many states worse situations than existed
25 in Florida.

1 Governor Bush called me after the election
2 and asked would I agree to co-chair a task force to
3 report back to him and the legislature by March 1.
4 Because of my history, I was frankly delighted to be
5 asked and happy to have, as I have said, this unique
6 opportunity to bring to the attention of our
7 legislature deficiencies which I hope will be
8 corrected.

9 We had our first meeting this past Monday
10 and Tuesday and I am happy to report that I think
11 already we -- I sense a real cohesion of the group
12 that we will recommend a uniform technology, that we
13 have the same kind of voting equipment statewide. I
14 think probably we're moving in the direction of
15 looking at the opt-scan system at the precinct level,
16 which exists in some counties in Florida. And in
17 those counties, they have had excellent results in
18 terms of abnormalities. In fact, the only aberrations
19 they've had have been in counting absentee ballots.
20 They've been virtually perfect in recording votes.
21 Certainly the punch card system in Florida, I think,
22 has reached the point where it's lost any public
23 confidence that it ever had. I think we're going to
24 see that system by the boards quickly.

25 On the issue of people showing up to vote

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1 feeling like they were registered and being turned
2 away, I'm hopeful that we would recommend what some
3 states do now, and that is have a provisional ballot
4 where, without any question, they could go ahead and
5 vote. Those votes would be put -- the ballots would
6 be put in an envelope off to the side and then counted
7 -- ascertained whether or not the individual really
8 was properly registered -- and then they could be
9 counted.

10 And I can go on and on. For the most
11 part, I agree with what the other speakers have said,
12 90 percent of what you all have alluded to we talked
13 about in our first task force meeting. We have
14 meetings scheduled for Fort Lauderdale, Orlando and
15 Jacksonville. We have two hours of public testimony
16 at each one of those meetings. But our thrust really
17 is not to try to answer a question or maybe anticipate
18 one. You know, we're really not conducting an
19 investigation.

20 Certainly if we hear of specific
21 occurrences that need to be investigated, we would
22 refer them to you or, if appropriate, to a U.S.
23 Attorney. We do not have any subpoena power. You
24 know, we really don't have investigators, we are
25 really trying to focus on the process of clearly we

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1 had 37 days of 24 hours a day TV that showed us
2 vividly where we have deficiencies in the system.
3 We're going to focus on those situations so that we
4 can report to the Governor and legislature and have
5 action taken in the legislature this year.

6 ACTING GENERAL COUNSEL HAILES: Mr.
7 Pritchett, before you begin -- Mr. Smith, let me just
8 ask you, as a former Attorney General and Secretary of
9 State, do you believe you have the authority as a now
10 task force to ask the Governor or the legislature for
11 subpoena authority if you believe you need it?

12 The Governor, in his earlier testimony,
13 said that this task force has an opportunity and an
14 obligation to look into allegations that people of
15 color were disenfranchised in the last election.
16 Could you request, can the task force request subpoena
17 authority?

18 WITNESS SMITH: You know, I'd have to go
19 look at the -- do some research on that. I'm not sure
20 that we could really be empowered with subpoena power
21 without some action of the legislature.

22 You know, additionally, I think given a
23 March 1 lifetime for this task force and, you know, as
24 a former Attorney General knowing how long
25 investigations sometimes take, I think -- you know I

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1 rally think we can provide a better service by looked
2 at recommendations to be made about technology, about
3 the process, about how we conduct elections, and leave
4 investigative matters, you know, to you, to the U.S.
5 Attorneys, to other agencies that really are equipped
6 with resources and the training. We have to go hire
7 investigators, I mean there would be a whole lot of
8 things that I think realistically with a March 1
9 deadline that we could not do very well.

10 I think the issues though that I've
11 touched on, we can do well. I think we're going to
12 have consensus and we can do that by March 1.

13 ACTING GENERAL COUNSEL HAILES: Mr.
14 Pritchett.

15 WITNESS PRITCHETT: Thank you, Madam
16 Chairman and members of the Commission, thank you for
17 the opportunity to speak before you and to answer your
18 questions about looking ahead, best practices and
19 procedures in Florida's election process.

20 My opening remarks will be brief and focus
21 on the role of the Collins Center for Public Policy,
22 as staff to the Governor's Select Task Force on
23 Election Procedures, Standards and Technology.

24 I am Executive Vice President of the
25 Collins Center for Public Policy, Inc., a private,

1 non-partisan, non-profit corporation with our primary
2 offices located in Miami and Tallahassee. President
3 Rod Petree is in Miami and I handle a lot of the
4 affairs here in Tallahassee. That's why I'm speaking
5 before you today.

6 The Collins Center also has a sister
7 organization which is a statewide research center
8 hosted by Florida State University. Our non-profit
9 corporation is conducting the work of the task force.

10 The Collins Center was named after the late Governor
11 Leroy Collins, Governor of Florida during the 1950s
12 and 1960s. As many of you all know, Governor Collins
13 was a courageous leader. After his death in 1991, the
14 Florida legislature recognized Leroy Collins as
15 Floridian of the century for his statewide and
16 national leadership in civil rights, education,
17 economic development and public television.

18 The Collins Center continues Governor
19 Collins' legacy of uncompromising integrity in
20 government and business. The quality and objectivity
21 of our work exceeds the bounds of a traditional think
22 tank. The Collins Center has earned the respect of
23 Florida's leaders and funding from such prestigious
24 organizations as the John D. and Katherine T. McArthur
25 Foundation, the Ford Foundation, the John S. and James

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1 L. Knight Foundation, along with major corporations
2 and government agencies.

3 The Collins Center work is organized into
4 four broad headings -- increasing economic
5 opportunities for all Floridians --

6 ACTING GENERAL COUNSEL HAILES: Can you
7 tell us more about the work of the task force? That's
8 why we asked you to come today.

9 WITNESS PRITCHETT: I sure will.

10 ACTING GENERAL COUNSEL HAILES: Thanks.

11 WITNESS PRITCHETT: The work of the
12 Governor's Select Task Force is part of our
13 Revitalizing Civic Institutions Program and our work
14 focuses around meeting preparation, communication,
15 research coordination and report writing.

16 Our staff is well-qualified to conduct
17 this research. Already we have focused our research,
18 along with the work of the Task Force, into nine major
19 areas -- voter education and responsibility, voter
20 registration, election dates and times, ballot design,
21 voting systems, polling places, absentee ballots,
22 recounts, contest certification of election results
23 and election administration.

24 That will be the focus of our research
25 over the next 50 some odd days.

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1 This concludes my opening remarks and
2 thank you again for the opportunity to address the
3 Commission.

4 ACTING GENERAL COUNSEL HAILES: Let me
5 just ask you real quickly --

6 CHAIRPERSON BERRY: Without objection,
7 we'll put your remarks, your statement in the record.

8 WITNESS PRITCHETT: Thank you very much.

9 EXAMINATION

10 BY ACTING GENERAL COUNSEL HAILES;

11 Q You said one of the categories that you
12 will be focusing on will be polling places --

13 A (Witness Pritchett) That's correct.

14 Q -- in the sense that there may be
15 inconvenient locations for --

16 A (Witness Pritchett) We'll be looking at
17 locations, directions to polling places, training of
18 polling workers -- poll workers in the polling place,
19 those kinds of issues that have been raised.

20 Q And do you have on your staff voting
21 rights experts that are familiar with Section 5 of the
22 Voting Rights Act and its application to locations of
23 polling places and notification requirements?

24 A (Witness Pritchett) For our next meeting,
25 we'll be focusing on that process and we feel like we

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1 can ask national experts to help us as well as a lot
2 of our Florida supervisors of elections that are well
3 versed in this area.

4 Q Thank you very much.

5 A (Witness Pritchett) Thank you.

6 Q Mr. Smith, let me ask you this, when were
7 you first contacted by the Governor's office to be one
8 of the co-chairs of this task force?

9 A (Witness Smith) I don't remember the
10 precise date, but it was shortly after the election.
11 I think as time went on, it became very obvious that
12 the public in Florida had certainly lost great
13 confidence in the punch card system and I think the
14 Governor, you know, wanted to move quickly, obviously
15 wanted to have recommendations to present to the
16 legislature this year so that as we approach the 2002
17 election, at least we can have equipment and polling
18 places that will record votes accurately and if we do
19 have a recount situation, that can be done in a timely
20 way.

21 And you know, hearing his remarks a little
22 bit this morning, you know, Florida has, really by
23 design -- it's been debated many times -- had a very
24 decentralized voting system, and I think it's become
25 obvious as we move into the 21st century that that

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1 decentralized system just won't work with a population
2 of over 15 million people and a need for speed and a
3 need for accuracy and those kinds of things. In this
4 election, we had the unfortunate circumstance that the
5 margin of error that really I think this would hold up
6 in every state of, you know, two-three percent error
7 rate, you know, greatly exceeded the closeness of the
8 election, which was 6 million votes margin -- I think
9 it was 544 votes. You know, we've got to have a
10 better system and we can do that. I think the
11 technology is there. We're going to be careful not to
12 be locked into a technology. We need to have, I
13 think, reports to the legislature every two or three
14 years advising them of changes in technology and cost
15 and fortunately, through the Opti-Scan system that I
16 mentioned earlier, can probably be put in place in
17 Florida at a cost of \$35 or \$40 million. And with a
18 \$50 billion state annual budget, you know, \$35-\$40
19 million is not a staggering amount of money. So I'm
20 very confident we can do that.

21 Q And did the Governor contact you directly
22 or someone from his staff?

23 A (Witness Smith) I had a call first from
24 Cory Tilley, who is the Deputy Chief of Staff I think,
25 to ask would I come over and talk to the Governor,

1 which I did, and again, given my history as Secretary
2 of State, I was delighted to have this very unique
3 opportunity.

4 Q And were any limits, restrictions put on
5 the work that the task force would perform?

6 A (Witness Smith) No. I think the
7 Executive Order is plain and I think it's very
8 understandable, and I think its intent is to try to
9 focus us in the areas of technology and the process,
10 so that we could meet a very, very short time line to
11 report to the legislature by March 1.

12 Q And how was the decision made to select
13 certain sites for the meetings you will hold around
14 the state?

15 A (Witness Smith) The co-chair Tad Foote,
16 who is the President of the University of Miami, he
17 and I and Mark, basically talking in conference calls,
18 you know, chose dates and places.

19 We felt like Fort Lauderdale, because it's
20 halfway between Dade County and Palm Beach County
21 where we had problems, would be a convenient location,
22 so that we could have people that wanted to come and
23 appear in the time for public testimony, to do that.

24 We chose Orlando because it's central
25 Florida, that's a reasonable location.

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1 And the task force, in the meeting this
2 week, decided that we really should hold a meeting in
3 Duval County, which we will do.

4 Q And why did you reach that decision
5 regarding Duval County?

6 A (Witness Smith) Some of the task force
7 members had strong feelings that because I think Duval
8 perhaps had more ballots -- about 27,000 in raw
9 numbers -- that didn't make it through the machine,
10 that we ought to provide an opportunity there for
11 people that want to testify about that to do so.

12 Q Thank you very much.

13 Mr. Gans, over the years, you've looked at
14 voter turnout figures. Were you surprised by the
15 turnout in Florida in the November 7 election?

16 A (Witness Gans) Well, you have to start
17 off with the fact that the Florida turnout was not
18 particularly high. It was a little higher than it was
19 two years ago, but it was not particularly high.

20 Q Was it higher in particular communities
21 than others?

22 A (Witness Gans) I can't look at that. And
23 the reason you can't look at that is you don't have
24 very good, you know, denominators for the community.
25 But as a state, despite the closeness of the election,

1 it was not a significantly high turnout and surely not
2 a record turnout for Florida. It was higher than '96
3 but '96 was a low-interest election.

4 In fact, nationally, our turnout only went
5 up 2.2 percent, despite the fact that in percentage
6 terms this was the closest election in 125 years and
7 in numerical terms, the third closest election in 125
8 years.

9 Q What are some of the factors, if you know,
10 about even what you characterize as a slight increase
11 from '96 to 2000?

12 A (Witness Gans) Oh, I think it's evident
13 that most of the increase was held in the 16 or 17
14 battleground states and that leads you to the
15 conclusion as to what was different about the
16 battleground states and the non-battleground states
17 and what seemed to be different is that in the
18 battleground states, you had significant grassroots
19 mobilization around various groups; you know, African-
20 Americans, Christian Fundamentalists, labor unions,
21 you name it. And I think when the only figures that I
22 trust, which are the Census Bureau's current
23 population survey on registration and voting, come out
24 and that's unfortunately anywhere from eight to 18
25 months from now, it will show that the increases are

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1 largely going to be amongst those groups.

2 Q Ms. Newman, let me ask you this, what
3 specific agencies of the state do you believe have the
4 responsibility to respond to some of the
5 recommendations that your organization is pursuing?

6 A (Witness Newman) The Division of
7 Elections, which is presently within the jurisdiction
8 of the Secretary of State, has a great deal more
9 authority than it uses. There is -- there was a very
10 good example coming out of this election, which has to
11 do with voter identification rules. The statutes were
12 amended in 1998 to say that the Division of -- persons
13 should be required to show photo ID at the polls, such
14 as a Florida driver's license or a state issued photo
15 ID card, and then they left it to the Division of
16 Elections to come up with a list of all photo ID cards
17 which would be acceptable. The Division of Elections
18 never exercised that authority and in fact left it up
19 to the individual supervisors in all 67 counties to
20 come up with their own lists.

21 In the meantime, in the five preclearance
22 jurisdictions, the Justice Department said we have to
23 see the final list from those five counties before we
24 can preclear it. So then the Division of Elections
25 recommended to the supervisors of elections that they

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1 not enforce it at all. That didn't happen, and it
2 certainly didn't happen within any regularity.

3 So the Division of Elections has a great
4 deal more authority than it needs to assume and it
5 needs to exercise. Some of the proposals, such as
6 repealing the statutory five minute time limit in the
7 voting booth obviously called for legislation. But
8 there are a great number of areas of authority within
9 the state Division of Elections that have not been
10 used.

11 A (Witness Smith) Perhaps one of the things
12 that y'all might want to inquire about that would be
13 really helpful, would be to try to find out why the --
14 I think over the last four years -- the number of
15 employees in the Division of Elections has shrank from
16 65 to 37. And I think that clearly makes the ability
17 to supervise and give direction, you know, very, very
18 difficult. And there may be good reasons for that,
19 but that is a fact and perhaps ought to be looked
20 into.

21 Q Ms. Newman, did you have anything else to
22 add regarding the ongoing investigations by the
23 Attorney General's office? Do you have any
24 information -- has your organization been contacted by
25 the Attorney General and asked for information?

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1 A (Witness Newman) You're speaking about
2 the State Attorney General's office?

3 Q The State Attorney General's office.

4 A No. In fact, until today, I was unaware
5 that there was an ongoing Attorney General's office
6 investigation. But I welcome it, I think it is
7 certainly due.

8 Q Okay. Mr. Pritchett, how will members of
9 the public access the findings of the task force?
10 Will that information be housed by the Collins Center?

11 A (Witness Pritchett) Mr. Hailes, during
12 the process, we have a website that's devoted to that.

13 In addition, we have a telephone number --
14 unfortunately it's not a toll-free number, there
15 hasn't been enough funding designated for that -- but
16 we have an e-mail address and we're constantly in
17 communication with newspapers throughout the state to
18 keep everything open as possible during the process.

19 And then after the process, after the
20 report is written, we will be submitting that to the
21 Governor, the legislature and the Secretary of State,
22 and I'm sure they'll be publishing that in mass
23 numbers.

24 Q Okay. What is the budget of the task
25 force?

1 A (Witness Pritchett) I have proposed a
2 budget, I have no official approval yet on the budget,
3 but in discussing this with our co-chairs, they said
4 it's fine and it's around \$200 to \$250,000 for the
5 four meetings, for the report writing and that type of
6 thing.

7 Q Okay.

8 A (Witness Pritchett) It's a budget, that's
9 it, nothing is approved yet.

10 Q Mr. Pritchett or Mr. Smith, just a brief
11 question, either one or both of you can answer
12 regarding the research methodology that you will
13 utilize in reaching findings and making conclusions.

14 A (Witness Smith) I happen to be a member
15 of the Collins board and I'll let Mark respond, but my
16 suggestion, you know, was to use the Collins Center to
17 staff this because of the really tremendous job they
18 do in the research area.

19 A (Witness Pritchett) Thank you, Jim.

20 There is some pressure here to do a good
21 job. We feel it at the Collins Center.

22 Basically we provided the nine areas, the
23 framework for looking at all these different areas,
24 and what we're trying to do is somewhat of an
25 inductive method and that is pull information from the

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1 research, we're pulling information from our task
2 force members, from various organizations around the
3 state, citizens that contact us that have suggestions
4 and we try to out them in these different areas. And
5 in terms of research we're also bringing in experts
6 throughout the country to provide us with information
7 for us.

8 So we're pulling this all together and
9 then organizing it under these main headings,
10 reviewing this with our co-chairs, and then creating
11 agendas and an outline for future writing of the
12 report.

13 ACTING GENERAL COUNSEL HAILES: Madam
14 Chair, I have no further questions at this time.

15 CHAIRPERSON BERRY: All right, I'm going
16 to recognize Commissioners, but before I do that, I'm
17 going to point out on the numbers issue, we have
18 information that black voters numbers increased by
19 nearly seven percent statewide and that white
20 registration grew by 3.6, and that the turnout in
21 Florida of black voters increased to 16 percent
22 compared to 10 percent in the last presidential
23 election. So that is what Florida was faced with,
24 which may or may not have been the same in some other
25 states.

1 Let me turn to Commissioners.

2 Commissioner Edley, do you have any questions?

3 COMMISSIONER EDLEY: Thank you, Madam
4 Chair.

5 What statutory penalties, if any, exist
6 under Florida law for the kinds of violations -- let
7 me put this to you, Ms. Newman -- the kinds of
8 violations that you think may have occurred? Are
9 there civil penalties, are there criminal penalties?
10 I mean, for example, an official in a polling place
11 who does not make an affidavit ballot available.

12 WITNESS NEWMAN: I think absent any
13 intentional allegations regarding that polling
14 official's intent versus being poorly trained, poorly
15 educated, poorly informed as to what the proper law
16 and procedure to follow were, there is probably only a
17 declaratory or injunctive relief available under
18 Florida statutes, but I'd much like to duck this
19 question and refer it to the former Attorney General
20 and Secretary of State --

21 (Laughter.)

22 WITNESS NEWMAN: ~~Secretary of Florida~~ for his --
23 based on his vast expertise.

24 WITNESS SMITH: Thanks.

25 (Laughter.)

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1 WITNESS SMITH: You know, I think these
2 people, poll watchers, are minimum wage, it's hard to
3 get them. And so all of a sudden you have stiff
4 penalties, you know, you're not going to have people.

5 But one of the things that has become abundantly
6 clear is the really poor job that's being done in
7 training of poll workers. You know, that's got to
8 change, it's going to take some resources.

9 You know, but you go after election after
10 election after election and nothing happens, and so
11 people just kind of take it for granted. And the
12 training of poll workers is going to receive a lot of
13 attention, a very strong recommendation that
14 supervisors be provided the resources that are needed
15 so that there can be proper training.

16 COMMISSIONER EDLEY: Well, just on that
17 issue, we heard quite a bit from the Governor about
18 this tradition of local financing and local
19 responsibility. And this seems a little mysterious to
20 me. Why such a tradition? What are the alleged
21 benefits of that practice and why has the practice, in
22 your judgment, persisted in the face of what must have
23 been apparent to most observers that there were
24 disparities as you moved between communities in terms
25 of the quality of the infrastructure for democracy.

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1 So why this emphasis on local control when the right
2 to vote is far from a matter of local sufferance?

3 WITNESS SMITH: Well, I think, you know,
4 unfortunately, many southern states had a history of
5 wanting a very fragmented system of government growing
6 out of reconstruction. Our cabinet system came from
7 that. We've had, you know, a history in this state,
8 you know, of county officials -- you know, supervisors
9 of election, for example, ought to be non-partisan
10 offices. Okay? They're not now. And that I think
11 would be another recommendation of this task force,
12 that they be non-partisan offices. And I think this
13 year that's going to be accepted.

14 But it's not been an easy struggle. As the
15 Governor said, we have in recent years, you know, seen
16 serious reform of the cabinet system. Most people
17 have felt for many years that the Governor of the
18 state, you know, should have much greater power than
19 the Governor of this state has. When I started in
20 state government in 1968, the Governor had to have his
21 budget approved by an elected cabinet, the Governor
22 couldn't even submit his budget or her budget to the
23 legislature, it had to be approved by the elected
24 cabinet. That was changed with a revision of our
25 Constitution in 1968, and we have seen since 1968, I

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1 think, steady progress towards trying to modernize the
2 system of government in Florida. We're not quite
3 there yet.

4 COMMISSIONER EDLEY: Let me just ask, the
5 premise of my question I suppose was that people --
6 surely people must have realized, observers must have
7 realized that there have been disparities in the way -
8 - in the quality of the infrastructure as you move
9 from community to community. Is that the case? Were
10 people generally aware of it and also relatedly, is
11 there anything -- is your task force in its research
12 going to do anything more than what we've seen in
13 press accounts to document the magnitude of the
14 disparities, including any class or racial
15 correlations?

16 WITNESS SMITH: We, sir, -- you know, as
17 we develop information like that, we will certainly
18 report it. You know, in fairness to supervisors of
19 election, it's a mixed bag and we've heard already
20 some testimony of supervisors who have asked county
21 governments to give them, you know, more modern voting
22 equipment and those requests have not been accepted.
23 And we have, frankly, I think many that, you know,
24 just kind of rock along and in truth, you know, these
25 issues haven't been talked about a lot until after

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1 this election.

2 And that's why I say we are in a very
3 unique time and a unique opportunity, I think to make
4 some very, very significant changes.

5 COMMISSIONER EDLEY: Have you formulated a
6 view as to the implications of the principle of
7 uniformity that the United States Supreme Court
8 managed to discover in the equal protection clause
9 with respect to voting procedures? What do you think
10 the implications of that principle might be for your
11 work?

12 WITNESS SMITH: Well, I don't think the
13 U.S. Supreme Court or the Florida Supreme Court
14 ordered, you know, for example, that we have uniform
15 technology, but I think they strongly suggested and
16 we're going to strongly suggest to the legislature
17 that we need uniform technology statewide and
18 procedures, you know, or we're going to likely have,
19 as we have close elections, challenges where equal
20 protection will be an obvious problem.

21 COMMISSIONER EDLEY: Apart from the
22 machines, what about --waiting lines? -- What about
23 differences in the way in which identification is
24 requested? Do you think that those things fall within
25 the scope of --

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1 WITNESS SMITH: Sure, absolutely. Yeah,
2 and we had, you know, apparently -- I've read press
3 reports and I haven't heard any testimony in the task
4 force about this, that in some counties at 7:00, you
5 know, the poll people would say okay, that's it, you
6 can't vote. And clearly, the intent is if you're in
7 line at 7:00 those lines stay open until you have the
8 opportunity to vote. And in some counties in Florida,
9 that in fact happened. But we need to make it
10 abundantly clear, I think, you know, about those
11 situations.

12 You know, clearly our state -- our statute
13 for contesting election results and all never
14 contemplated a close election in a presidential race
15 or a statewide race. And we have the Division of
16 Elections now working on a rewrite of that to
17 anticipate that that may occur in the future.

18 COMMISSIONER EDLEY: Okay, and just
19 quickly, do any of you have information for us
20 regarding the prevalence nationally of the practice of
21 contracting out to private firms the business of
22 purging voter rolls or checking for felons? Any of
23 you know anything about the national practice in that
24 regard?

25 WITNESS GANS: No, but you have people who

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1 will be here this afternoon who do.

2 COMMISSIONER EDLEY: Okay, and let me ask
3 you, Mr. Gans, as a nationally recognize --
4 internationally recognized expert on these issues, do
5 you just impressionistically agree with the assertions
6 that we heard from the Governor, and I think we've
7 heard from several people, that the problems in
8 Florida probably are not different in magnitude from
9 the problems that would be revealed by an
10 excruciatingly close election elsewhere?

11 WITNESS GANS: Well, I think if the
12 election had hinged this time on New Mexico --

13 COMMISSIONER EDLEY: Right.

14 WITNESS GANS: -- you would have had, you
15 know, the same problems and perhaps more.

16 There are places whose elections run
17 considerably more smoothly, but -- and probably places
18 in which there are not quite as many potential
19 barriers for minorities. But there are -- many of the
20 problems having to do with lines, machines, inadequate
21 training of, you know, poll workers, differential
22 types of ballots, inadequate hours, inadequate
23 training. When I mentioned about the differential
24 between people registering at motor voter and not
25 being on the rolls, I got reports from at least 12

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1 states that that had occurred. The inflation of
2 registration was -- I mean, I think you would find
3 that in lots of places.

4 There are issues here, you know, that were
5 raised that need investigation, particularly by this
6 Commission but they're probably not the technological
7 issues. I mean, you know, they're more of the
8 roadblock, the felon, you know, whether people were
9 asked at the polls or told at the polls that if they
10 didn't -- hadn't provided accurate information and
11 then voted, they might be guilty of a felony. I don't
12 know whether those things happened, you're going to be
13 investigating them, but you know, those would be
14 things specific to this situation. You know, the rest
15 of what we are talking about is not specific.

16 COMMISSIONER EDLEY: Let me just close
17 with a recommendation to your task force. Mr.
18 Pritchett, you suggested that you believed that a
19 great many of the county supervisors probably have
20 expertise with respect to the Voting Rights Act and
21 Section 5 of the Voting Rights Act. That strikes me
22 as extraordinarily implausible because it's a
23 complicated area of law and so I would just -- that
24 might be one thing that the task force would want to
25 look at, whether that is the case or whether it needs

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1 to be the case.

2 WITNESS SMITH: Could you give us a name --
3 could you give us a name of a --

4 CHAIRPERSON BERRY: Not in -- he's not
5 going to hookster a particular name in this setting,
6 but I'm sure he'd be willing to speak to you after
7 this.

8 COMMISSIONER EDLEY: I mean, do they in
9 fact know what the Voting Rights Act requires, that's
10 all I'm asking.

11 WITNESS SMITH: Sure

12 WITNESS PRITCHETT: That's going to be at
13 our next meeting, we'll cover that area.

14 CHAIRPERSON BERRY: Commissioner Wilson.

15 COMMISSIONER WILSON: Thank you, and thank
16 you all for coming.

17 Mr. Smith, when you were the Secretary of
18 the State, did the issue of voting reform come up and
19 specifically the creation of statewide standards?

20 WITNESS SMITH: You know, I'd be very
21 happy to give you all my annual reports in my eight
22 years as Secretary of State and I think you'd be
23 pleased at the far-sightedness of the leadership in
24 that office at that time.

25 (Laughter.)

1 CHAIRPERSON BERRY: I think we'd be
2 interested in seeing it.

3 WITNESS SMITH: And I've got to tell you,
4 I took my jobs, all of them, very seriously, in my
5 public service and I was very disappointed that while
6 we had great lip service, we didn't get much action.

7 But on your specific question, honestly
8 I'd have to go back and look. I doubt that we looked
9 at that subject, but you know, I recommended same day
10 registration, I was a big supporter of the motor voter
11 legislation. You know, with the late Governor Chiles'
12 help, we for statewide races do have a campaign
13 finance law in this state that most states don't have.

14 So, you know, we did make some good progress. But
15 you know, we just didn't get a lot of support

16 COMMISSIONER WILSON: Let me just ask a
17 couple of other questions to Mr. Smith.

18 What's the budget now covering elections,
19 voting machinery, do you know what it has been, if it
20 has gone up or down?

21 WITNESS SMITH: That would be county by
22 county, it would be a mixed bag. We have some
23 counties that have, you know, equipment that has
24 worked very well. About half of them have had severe
25 deficiencies. I think the Secretary of State needs to

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1 be authorized to basically dictate the kind of
2 equipment that will be used. And I think with that
3 responsibility, the legislature, you know, should be
4 willing to provide some significant share of those
5 resources. We have some counties that can afford to
6 spend that kind of money, we have a 10 mill cap in our
7 counties and many of the smaller counties just don't
8 have the resources to do it, so the state is going to
9 have to pick it up.

10 COMMISSIONER WILSON: So there isn't an
11 overall state budget, it's definitely county by
12 county?

13 WITNESS SMITH: For voting equipment and
14 those kinds of things, it is at the county level.

15 CHAIRPERSON BERRY: We will ask staff to
16 get the information.

17 COMMISSIONER WILSON: And I'd be curious
18 to know how it has increased or decreased as the years
19 have gone on.

20 CHAIRPERSON BERRY: Okay.

21 WITNESS SMITH: Some machines are more
22 than 30 years old. I mean some of them hadn't been
23 cleaned in years. I think part of the -- what they
24 found out in Dade County, one reason they had a
25 significant problem with chads is the machines hadn't

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1 been cleaned, maybe ever.

2 CHAIRPERSON BERRY: Vice Chair Reynoso.

3 VICE CHAIRPERSON REYNOSO: Yes, Mr. Gans
4 and Ms. Newman listed a whole list of difficulties
5 that the Commission should take a look at, and in the
6 delineation of the nine items, it dealt with most of
7 the concerns raised, but not all. And I think that
8 the nine items did not deal with the issue of those
9 who don't vote; i.e., you're going to look at problems
10 of how ex-felons were identified but are you going to
11 look and make recommendations as to whether or not
12 there ought to be a law that prohibits ex-felons from
13 voting? that has been raised very often, particularly
14 in terms of its impact on African-Americans.

15 And I was pleased to hear your comment on
16 same day registration. Is the Commission going to
17 look at suggesting statutes of that sort, because that
18 clearly would deal with an issue that I think all of
19 us should be concerned with and that is that 50
20 percent of the potential voters aren't even registered
21 to vote. So I just wondered if the Commission was
22 going to look at those issues also, because I didn't
23 find them in the list.

24 WITNESS PRITCHETT: We lumped those, Mr.
25 Commissioner, under our voter registration piece and

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1 both of those issues were discussed at our Monday
2 meeting. We appreciate you bringing that to our
3 attention.

4 VICE CHAIRPERSON REYNOSO: Very good.
5 Thank you, Madam Chair.

6 CHAIRPERSON BERRY: Commissioner Lee.

7 COMMISSIONER LEE: I have a question for
8 Ms. Newman. You testified earlier that language
9 minority voters encounter a whole host of problems
10 during election. Are you aware of any plans that the
11 state has developed to meet the Voting Rights Act
12 Section 203 requirements?

13 WITNESS NEWMAN: Again, and I think this
14 is a central theme to what the Commission is
15 discovering. I think if those are left to the
16 individual counties that are 203(b) designated, it may
17 be that after the 2000 census our entire state will be
18 designated, but at this time, it is not. And it is a
19 list of counties and that kind of compliance has been
20 generally left to the individual counties, it's my
21 understanding.

22 Also the state's central, for instance,
23 mail-in voter application form, those kinds of forms
24 that are developed are developed with English and
25 Spanish. There are some concerns about other

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1 languages in Florida including Haitian Creole and some
2 Native American languages.

3 COMMISSIONER LEE: How about any state
4 efforts to provide education to would be voters who
5 are language minorities, are there any efforts to make
6 them aware of bilingual assistance availability during
7 elections?

8 WITNESS NEWMAN: Again, that would be done
9 on a county-by-county basis. Our impression -- we
10 sent these requests out before the new year and we are
11 getting slowly the information back from all the
12 counties. Our impression is that unless someone is -
13 - unless a particular county has been designated in
14 the regulations implementing the Voting Rights Act,
15 that by and large the counties are completely unaware
16 of any obligation whatsoever. And that compliance
17 with respect to those designated counties has been
18 somewhat spotty. And certainly affirmative efforts go
19 beyond what I think most supervisors of elections view
20 as their role or view as something they have any
21 budget or staffing for.

22 CHAIRPERSON BERRY: Thank you.
23 Commissioner Meeks, do you have a question?

24 COMMISSIONER MEEKS: On the issue of voter
25 education, how much, Mr. Smith, did your office focus

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1 on that when you were Secretary of State?

2 WITNESS SMITH: A lot. We made
3 recommendations in that regard every year. And there
4 are no monies provided at the state level.

5 COMMISSIONER MEEKS: Do you know whether
6 that was, you know, focused on in this -- in the past
7 four years, for instance, --

8 WITNESS SMITH: It has not been. If we --
9 for example, if we go to uniform technology, with that
10 has to be I think a very significant education
11 program.

12 COMMISSIONER MEEKS: And so that will be a
13 really strong recommendation?

14 WITNESS SMITH: Yes, ma'am. And education
15 generally, we need to do a much -- well, it used to be
16 when I was growing up, you know, they taught civics in
17 school. We don't teach civics in our schools, kids
18 don't learn a dadgum thing about voting in Florida
19 schools.

20 COMMISSIONER THERNSTROM: Shame on you.

21 CHAIRPERSON BERRY: Commissioner
22 Thernstrom.

23 COMMISSIONER THERNSTROM: I actually have
24 a question for Ms. Newman.

25 You talked about the disproportionate

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1 impact on minority voters. Do you know whether most
2 of the election officials with whom these voters
3 allegedly had problems were white, raising questions
4 of intentional discrimination, or was this a problem
5 with white, black and Hispanic election officials?
6 And also, do you know whether there were similar
7 problems in previous elections and if so, did you or
8 somebody else lodge complaints about these problems?

9 WITNESS NEWMAN: In response to the first
10 question, I do not know the demographics of poll
11 workers and election workers around the state. One of
12 the things we've asked for are -- which would get at
13 least to language minority issues are all workers at
14 any precinct in any election who were fluent in a
15 language other than English. But we didn't ask for
16 race data and I frankly don't have it. I mean, there
17 are of course anecdotal reports, but other than that,
18 I don't know the answer and I don't know that we ever
19 would know that answer.

20 With respect to the second question about
21 the problems, some of the problems I believe have
22 arisen -- no, we have not, is the short answer. And
23 the longer answer is that many of these problems I
24 believe have arisen as a result of a series of
25 legislation that was passed in this state in 1998 that

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1 dealt with voter identification procedures at the
2 polls and with the provision for an inactive list.

3 And if I could just take one moment to
4 explain what the problems as we perceived them were
5 with an inactive list. The problem appeared to be
6 that a number of people, for whatever reason, having
7 to do with address verification process from the
8 supervisor of elections, got placed on something
9 called an inactive list. Now they have an absolute
10 right both under Florida law and under the National
11 Voter Registration list to vote. It doesn't mean
12 anything about having been purged, but those lists
13 were not available in precinct after precinct around
14 the state. And the individuals who were on that list
15 were not permitted to vote, absent having verified
16 through the central registry. And in lots of
17 instances, there were lines of 20 or 30 people waiting
18 for someone to make a call to the central registry to
19 ascertain whether those persons were able to vote or
20 not.

21 Those are things that have changed in the
22 last two years in Florida, and I think they have led
23 to some of the problems that the Commission is hearing
24 about.

25 COMMISSIONER THERNSTROM: Thank you.

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1 CHAIRPERSON BERRY: I have one question or
2 two and then we'll finish this up and recess.

3 Let me just, first of all point out that
4 the range of problems that your task force is dealing
5 with are very important problems, but if some people
6 were not able to actually get to the polls because of
7 barriers, it wouldn't matter what kind of equipment
8 was in the polling place once they got there.

9 Also, if some people were prevented from
10 voting because they were wrongly accused of being a
11 felon, for example, it wouldn't matter what kind of
12 equipment was there.

13 So there are a whole array of problems,
14 and I was happy to hear Mr. Gans say that while there
15 might be problems elsewhere in the country, that there
16 is another category of issues that we are hearing
17 about here that are precisely pertinent to this
18 situation.

19 So that your task force then is dealing
20 with important issues, some of which may be relevant
21 in other places around the country -- technology,
22 machines, equipment and so on -- but the question is,
23 is it going to deal with these issues.

24 Now I was unclear about the Governor's
25 testimony. He first testified, as I understood him,

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1 that there are other investigations of these
2 allegations. And then later on, he said that your
3 task force could look or would look at these. So what
4 is the answer?

5 WITNESS SMITH: We have talked about the
6 felon issue, we are looking at that and I'm certain
7 we're going to be making a recommendation in that
8 regard.

9 When I was on the Clemency Board, you
10 know, I think the policy was that it was an automatic
11 restoration after five years. I think the law has
12 since changed and now you have to be proactive; you
13 have to go and petition, and I think most felons have
14 to hire an attorney to get through that process, it
15 costs -- it's not cheap and I really strongly feel
16 there ought to be some automatic restoration after a
17 certain time frame. But we will certainly be looking
18 at those kinds of issues. And I agree with you, I
19 mean it doesn't -- if you don't get there and you
20 can't vote, it doesn't matter if you've got great
21 equipment. We certainly will be looking at those
22 things.

23 CHAIRPERSON BERRY: The other thing is
24 you've been a Secretary of State, among other things,
25 and we were told that the Secretary of State, by the

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1 Governor, he emphasized the responsibility of that
2 office, although you have also told us about the small
3 staff in the Division of Elections. Did you have
4 conversations with the Secretary of State about the
5 task force being set up? Was the Secretary of State
6 involved in the discussions with you and the Governor
7 about its establishment since the Governor so much
8 emphasized that this was the role of the Secretary of
9 State, or have you had further discussions, keeping
10 apprised the Secretary of State or her staff what you
11 do as you go along? What is the relationship there?

12 WITNESS SMITH: Well, her staff, you know,
13 were present, you know, for the full time Monday and
14 Tuesday, they're participating with us. For example, I
15 asked at the hearing I think it was Tuesday, that Clay
16 Roberts, the Division Director, you know, come back
17 with a draft and some suggested time tables for the
18 election contest period and those kinds of things,
19 because he lives with it and he's got a better feel
20 obviously for what needs to be done there in a
21 corrective way than we would.

22 So, you know, they're working with us and
23 I talked to Secretary Harris when the Governor asked
24 me to do this, that we wanted to, you know, certainly
25 be cooperative and work with them.

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1 CHAIRPERSON BERRY: Was she present when
2 you met with the Governor?

3 WITNESS SMITH: No, ma'am.

4 CHAIRPERSON BERRY: To discuss this?

5 WITNESS SMITH: No.

6 CHAIRPERSON BERRY: Did she ask you to do
7 it?

8 WITNESS SMITH: She didn't ask me
9 anything. He did.

10 CHAIRPERSON BERRY: Because I understand
11 she was responsible -- well, anyway, I guess asked and
12 answered is the way we have to put it.

13 Now in terms of the budget, do you
14 believe, Mr. Pritchett, that \$200,000 is a sufficient
15 amount of money to fund this task and you are entirely
16 satisfied that all aspects of this task force can go
17 forward and be done efficiently and fairly without any
18 additional resources?

19 WITNESS PRITCHETT: Madam Chairman, as
20 I've read the Executive Order and then followed up
21 with a meeting with the Governor's staff and given the
22 short time frame..to..complete our work, I thought it
23 was sufficient at the time. I did a first draft that
24 was under that and then I expanded it as the first
25 meeting approached.

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1 CHAIRPERSON BERRY: Mr. Smith, are you
2 familiar with Section 102.091 of the Florida statute
3 empowering the Governor to appoint special officers to
4 investigate alleged violations of election laws?

5 WITNESS SMITH: I am now.

6 (Laughter.)

7 CHAIRPERSON BERRY: I just wondered why,
8 when you said you would turn over any information you
9 guys got, if you got any, on the task force about
10 violations, why you would turn it over only to the
11 Attorney General and not turn it over to the Governor
12 to see if he wanted to appoint a special officer.

13 WITNESS SMITH: Being aware of that,
14 certainly that -- you know, in my Attorney General
15 days, when -- we had a very cooperative relationship
16 with federal agencies and when they were conducting an
17 investigation in Florida, our policy was to let them
18 complete their work. And then if there were things
19 that were clearly state matters, that we would take
20 them up. And I would -- you know, you're here, we're
21 glad you're here; you know, we want to cooperate every
22 way that we can with you and I know you'll do a great
23 job. And I think when you're done, there may well be
24 areas that the state should look into, I'm certain
25 there will be. But my experience has been, you know,

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1 you don't need two or three investigations going on at
2 the same time. That can be very difficult.

3 CHAIRPERSON BERRY: Well, let me just tell
4 you, Mr. Smith, for the Commission and I'm sure that
5 the Commissioners will not disagree with me, if you
6 identify some specific violations which need to be
7 brought to the attention of the prosecutors, please
8 don't wait for us, we don't prosecute.

9 WITNESS SMITH: I understand, I
10 understand.

11 CHAIRPERSON BERRY: I just wanted to make
12 that clear.

13 COMMISSIONER WILSON: I just have one more
14 question.

15 CHAIRPERSON BERRY: Yes, Commissioner
16 Wilson.

17 COMMISSIONER WILSON: Thank you.

18 Mr. Smith, during the time that you were
19 Secretary of State, would you have had cause to
20 discuss the election with the Governor during the 30
21 days before the election?

22 CHAIRPERSON BERRY: He was not Secretary
23 of State.

24 COMMISSIONER WILSON: He was --

25 CHAIRPERSON BERRY: No, no, he was

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1 Secretary of State when?

2 WITNESS SMITH: To '94, I haven't been
3 since '94.

4 COMMISSIONER WILSON: When he was.

5 CHAIRPERSON BERRY: Oh, when he was.

6 COMMISSIONER WILSON: When you were
7 Secretary of State.

8 WITNESS SMITH: You know, I have no
9 specific recollection of any discussions like that.

10 COMMISSIONER WILSON: I mean, you wouldn't
11 discuss an election, an upcoming election?

12 WITNESS SMITH: Well, I mean, you know, I
13 hope Joe wins or -- I mean, I don't know what you
14 mean.

15 CHAIRPERSON BERRY: Turnout, registration.

16 COMMISSIONER WILSON: Any of --

17 WITNESS SMITH: Sure -- oh, yeah, okay.
18 Yeah, we were proactive very much in trying to
19 encourage people to register. You know, I was very
20 concerned, you know, in those days that a lot of folks
21 wouldn't register to vote because they used the voting
22 lists for people for jury duty. And we changed that,
23 that was one of the changes we made. So we were very
24 proactive and probably with Governor Graham, Bob
25 Graham was Governor when I was Attorney General and

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1 Lawton Chiles and Bob Martinez -- I would have no
2 doubt asked them for their assistance and visibility
3 in helping me promote registration and those kinds of
4 things, and they would have certainly -- and I'm sure
5 were helpful.

6 COMMISSIONER WILSON: Thank you.

7 CHAIRPERSON BERRY: Okay, well, I want to
8 thank the witnesses. There are some sign-out
9 procedures that our staff will assist you with.

10 (Witnesses excused.)

11 CHAIRPERSON BERRY: We are now recessed
12 until 1:30. Thank you very much.

13 (Whereupon, a luncheon recess was taken.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 CHAIRPERSON BERRY: As we return from
3 recess, are there any sign interpreters or court
4 reporters or clerks, signers, who have not been sworn
5 in and if so, could you come forward so that I may
6 swear you in?

7 (Whereupon, a sign interpreter was sworn.)

8 CHAIRPERSON BERRY: And could you please
9 ask if anyone needs sign interpretation at this time?

10 (The sign interpreter complies.)

11 INTERPRETER: I see no one.

12 CHAIRPERSON BERRY: If anyone does, they
13 may see you. Thank you very much.

14 INTERPRETER: Thank you.

15 **Expert Panel on Voting Rights and Election Law**

16 CHAIRPERSON BERRY: This panel is made up
17 of experts on voting rights and election laws and the
18 witnesses who need to come forward are Mr. Jim
19 Dickson, Mr. Jackson Chin, Mr. Allan Lichtman and Mr.
20 Darryl Paulson.

21 Mr. Lichtman or Professor Lichtman I do
22 see here and Professor Paulson, I do indeed see here.

23 And I assume that Mr. Dickson and Mr. Chin are both
24 somewhere in the vicinity, but let me go forward to
25 present the oath to the two witnesses who are here.

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1 Could you please stand and raise your right hand?

2 Whereupon,

3 ALLAN J. LICHTMAN

4 DARRYL PAULSON

5 appeared as witnesses herein, and having been first
6 duly sworn, were examined and testified as follows:

7 CHAIRPERSON BERRY: Please be seated.

8 Counsel, would you prepare to begin the
9 questioning of these witnesses or allow them to make
10 an opening statement?

11 ACTING GENERAL COUNSEL HAILES: Yes, thank
12 you very much.

13 We're going to ask at this time for both
14 witnesses to present your name and your title for the
15 record and then to present opening statements of
16 approximately five minutes.

17 WITNESS PAULSON: My name is Darryl
18 Paulson, I'm a professor of government at the
19 University of South Florida.

20 WITNESS LICHTMAN: Allan Lichtman, Chair,
21 Department of History and Professor of History,
22 American University in Washington, D.C.

23 ACTING GENERAL COUNSEL HAILES: Dr.
24 Paulson.

25 WITNESS PAULSON: Madam Chairperson,

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1 Commission members, I'm pleased to be here today. I
2 do have a document to submit, approximately 25 pages.

3 CHAIRPERSON BERRY: It will be included in
4 the record without objection.

5 WITNESS PAULSON: Thank you.

6 Approximately the first three-quarters of
7 the document deal with the history of voter
8 discrimination, primarily against African-Americans in
9 the state of Florida, covering a time period from
10 approximately the mid-1800s to about 1965. About one-
11 quarter of the document deals specifically with the
12 2000 election and my views with respect to the 2000
13 election.

14 One of the things I'm concerned with, of
15 course, were blacks systematically or specifically
16 targeted for exclusion and were turnout results in
17 Florida different in any way from results in other
18 states. My initial conclusions would lead me to
19 conclude no to both questions. I think in my view
20 what we have is a system failure without systemic
21 discrimination and I'll talk about that more in just a
22 moment.

23 We did have 180,000 votes in Florida that
24 were not counted. If you look at those votes
25 throughout the state of Florida, it was almost equally

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1 divided between counties that were won by Jeb Bush
2 (sic) and Al Gore. Across the United States, there
3 were 2.5 million votes that were not counted. And
4 whenever you have an election system that requires 105
5 million people to vote essentially in a span of 12
6 hours, you have created a system guaranteed to have
7 voting problems.

8 Now obviously everyone, including the
9 State of Florida can come up with ways to minimize
10 those problems, and no doubt there are substantial
11 problems that I have indicated in my document as well.

12 One of the things I do is to take a look
13 at some of the specific complaints that have been
14 raised by minorities, particularly African-Americans
15 in the state of Florida and give a number of examples
16 of where I think perhaps some of the complaints were
17 not really complaints, that local officials,
18 especially supervisors of elections, who had the
19 responsibility under Florida law and Florida
20 Constitution, were in fact carrying out what the laws
21 of the State of Florida require them to do -- things
22 about people being rushed at the polls. And I refer
23 to the specific segments of the Florida legislation,
24 which in fact impose certain requirements on election
25 officials to meet certain guidelines on the election

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1 day.

2 One of the problems I have with dealing
3 with this question of systemic discrimination or the
4 intent to discriminate against minorities is for this
5 discrimination to occur, it seems to me it almost
6 implies some sort of collusion among public officials,
7 some sort of agreement in principle, some sort of
8 mechanism to impose. And I just don't see that
9 evident in the state of Florida.

10 Now in my history of discrimination in the
11 state of Florida, I've testified a number of times for
12 the NAACP on voter discrimination cases. It's quite
13 obvious that there was collusion among state officials
14 and local officials to prevent African-Americans from
15 voting. I do not see the same pattern evident in this
16 particular election. Florida is a different state
17 today than it was in 1965 or 1935 or 1895. Florida
18 now has a competitive two-party structure that I think
19 in many ways makes it extremely difficult for a
20 systemic type of discrimination to occur against
21 minorities.

22 If the intent of state officials was to
23 discriminate against African-Americans, I would argue
24 it's a dismal failure. There was a record number of
25 African-Americans who participated in Florida's

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1 election, 893,000. This is a 65 percent increase in
2 turnout from the 1996 presidential election. The
3 1990s have also seen a tremendous explosion in the
4 number of black elected officials throughout the
5 state, which I think testifies to the progress that
6 the State of Florida has made with respect to this
7 issue of race relations. We now have a record number
8 of African-Americans in the state legislature, there
9 are 15 in the House of Representatives, there are six
10 in the state Senate, roughly proportionate to the
11 African-American percentage in the population. We
12 have three members in Congress elected in 1992, who
13 have been consistently re-elected. We now have record
14 numbers on city councils, school boards, county
15 commissions. So it's hard for me to make a case that
16 state officials were somehow able to deny African-
17 Americans an effective vote at the presidential level
18 while African-Americans have demonstrated such power
19 and such clout at the state and local level.

20 There are two problems that have been
21 alluded to before. One is the State of Florida does
22 disfranchise a large percentage of felons, anywhere
23 from 25 to a third, depending on which numbers you
24 use. Once again, Florida is not alone in that regard,
25 not to say it's right, but there are 13 states which

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1 have the same policy that the State of Florida has.

2 And perhaps the most significant problem
3 is the issue of the purge and the state using a
4 private firm to purge 173,000 individuals. In
5 Hillsborough County, the supervisor of elections
6 estimated that 15 percent of those purged were purged
7 in error, disproportionately African-American.
8 Another source estimated that 7000 voters, mostly
9 blacks registered as Democrats, were removed from the
10 list.

11 So in conclusion, I think the real scandal
12 in Florida -- Florida's election was not necessarily a
13 conspiracy against African-Americans to diminish their
14 impact in the state's electoral process, but the
15 inequities that existed from county to county.
16 Disparities between wealthy and poor counties was
17 reflected in the types of voting machinery used. And
18 poor counties, whether in Florida or elsewhere, have
19 always had a disproportionate number of votes not
20 counted.

21 And the last statement, this morning's
22 panel talked about why is this so -- why is so much
23 discretion going to these supervisors of elections.
24 The State Constitution requires it, for one reason.
25 Supervisors of elections are one of six constitutional

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1 officers under the Constitution of the State of
2 Florida. So if you change that structure, change their
3 power, change that position from partisan to non-
4 partisan, you're talking about changing the State's
5 Constitution.

6 Thank you very much.

7 ACTING GENERAL COUNSEL HAILES: Dr.
8 Paulson, you said in your statement you talk about the
9 history of discrimination in the state of Florida as
10 it relates to the voting rights of African-Americans?

11 WITNESS PAULSON: Right.

12 ACTING GENERAL COUNSEL HAILES: Okay.
13 And that is in your statement which is why we called
14 you to testify.

15 WITNESS PAULSON: Right.

16 ACTING GENERAL COUNSEL HAILES: And that
17 is in your statement?

18 WITNESS PAULSON: Absolutely, about three-
19 fourths of the paper outlines the state's prior record
20 with respect to some of the discriminatory policies
21 adopted in the state.

22 ACTING GENERAL COUNSEL HAILES: Did you
23 have an opportunity to talk to our staff about your
24 conclusions about the relationship of this history to
25 the November 7 election?

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1 WITNESS PAULSON: I haven't talked to
2 anybody on the staff directly concerning that yet, no.

3 ACTING GENERAL COUNSEL HAILES: Okay,
4 thank you very much.

5 Dr. Lichtman.

6 WITNESS LICHTMAN: Yes, thank you very
7 much. Madam Chairperson and other distinguished
8 members of the Commission, thank you very much for
9 this opportunity.

10 What I am going to talk about this
11 afternoon is the application of the Voting Rights Act
12 to the election in Florida and more broadly, to
13 elections anywhere in the United States, because it
14 may well be that the situations that arose in Florida
15 are not unique to the state and that there may well be
16 infractions of the Voting Rights Act occurring in
17 Florida and perhaps in states with significant
18 minority populations across this country.

19 And before getting into any detail, I want
20 to stress that when we're talking about violations of
21 the Voting Rights Act of the kind I am going to
22 discuss, we do not have to demonstrate an intent to
23 discriminate. We do not have to demonstrate that
24 there was some kind of conspiracy against minorities
25 or that anyone involved in the administration of

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1 elections today or yesterday had any intent whatever
2 to discriminate against minorities, because indeed
3 under the Voting Rights Act, practices can be illegal
4 so long as they have the effect of diminishing
5 minority opportunities to participate fully in the
6 political process and elect candidates of their
7 choice.

8 Ever since the 1982 amendments to the
9 Voting Rights Act, it is not necessary to prove that
10 either a system was adopted with the intent to
11 discriminate or that a system was maintained with the
12 intent to discriminate. The key is whether a system,
13 regardless of why it was adopted or why it was held in
14 place, has the effect of diminishing minority voting
15 opportunities.

16 The Voting Rights Act, of course, as you
17 all know, was passed in 1965 to carry out the
18 proposition that all Americans, regardless of race or
19 ethnic background, should have equal opportunities to
20 participate fully in the political process and to
21 elect candidates of their choice. It has had broad
22 bipartisan support over the years. Indeed, Ronald
23 Reagan called it the crown jewel of American civil
24 rights legislation.

25 The Voting Rights Act, of course, in one

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1 sense was designed to make sure that all individuals
2 would have the opportunity to register and have the
3 opportunity to vote. That's basic, that's fundamental
4 to our democracy. But the Voting Rights Act, of
5 course, has additional provisions. Section 2 of the
6 Voting Rights Act is designed to guard against the
7 dilution of minority votes. Section 2 is designed to
8 guard against the fact that even if minorities can
9 register and vote, that their votes should be counted
10 no less than the votes of white Americans. In other
11 words, for example, a system of -- a system that drew
12 a legislative plan for a state, that submerged
13 minorities in districts dominated by whites, that
14 broke up minority communities, could be violative of
15 Section 2 because even though those minorities could
16 vote, they would not have an equal opportunity for
17 their votes to count to elect candidates of their
18 choice and it wouldn't matter, in terms of the Voting
19 Rights Act, whether there was an intent to
20 discriminate against minorities in the development of
21 such a legislative plan.

22 I would argue that this effects test under
23 the Voting Rights Act, to make sure that minority
24 votes are not diluted, has direct applicability to
25 what happened in Florida regardless of intent. I

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1 would argue that a violation of the Voting Rights Act
2 occurs in the administration of elections if two
3 criteria are fulfilled. If, number one, there are
4 differences in voting technology or voting procedures
5 that are correlated with the race of the voters. In
6 other words, that there are differences in voting
7 procedures and voting technologies between white areas
8 and minority areas. That is to establish that there
9 is a pattern of difference, regardless of intent.

10 Secondly, the second criteria would be if
11 those voting technologies and voting procedures
12 operate such that minorities -- the procedures used in
13 the minority areas give minorities less of an
14 opportunity to have their votes counted.

15 And indeed, while I've done no study of my
16 own, I've handed out to you a New York Times article
17 from November 29, which does show that in fact there
18 are disparate election systems used in the State of
19 Florida. Those systems are correlated with race and
20 in fact, the systems that tend to be used in the
21 poorer, more heavily minority areas, are less likely
22 to allow a voter to cast a properly tallied ballot.
23 In other words, minorities perhaps can go to the polls
24 unimpeded, but their votes are less likely to count
25 because of the disparate technology than are the votes

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1 of whites.

2 In my view, that is a classic violation of
3 the Voting Rights Act. That is the very thing the
4 Voting Rights Act was trying to avoid that, for
5 whatever reason and whatever the intent, the Voting
6 Rights Act is trying to avoid different treatment of
7 whites and minorities when it comes to having one's
8 vote counted. And in a sense, not having your vote
9 tallied at all is even a more egregious violation of
10 the Voting Rights Act than the traditional violations
11 that come, for example, from gerrymandered districts
12 that make it difficult for African-Americans to elect
13 candidates of your choice, because here it is like the
14 old days when you couldn't vote at all. If your vote
15 isn't being tallied, that in effect is like having
16 your franchise denied fundamentally. And as I said,
17 it doesn't matter whether there is an intent or not to
18 discriminate.

19 And there are remedies here. There would
20 be remedies available under the Voting Rights Act and
21 those remedies clearly would be to equalize the
22 technology across all of the voting places in the
23 state of Florida and more broadly really within every
24 state, to have technologies equalized such that there
25 are no systematic correlations between technologies

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1 and whites and minorities and a minority vote is as
2 likely to be tallied as a white vote. This would apply
3 to elections from president all the way down to city
4 council and the most local elections in the United
5 States. The Voting Rights Act knows no limits when it
6 comes to the type of elections to which it applied.
7 And while this may require spending some money on the
8 part of states, frequently remedies are ordered in
9 under the Voting Rights Act. For example, redrawing
10 of a district plan that may well require the
11 significant expenditures of money. So that should be
12 no barrier to remedying this.

13 In other words, what we really need in
14 this country, not only an investigation in Florida of
15 the relationship between voting technology and voting
16 procedures and race, but really across the United
17 States to make sure that the Voting Rights Act is not
18 being violated and to make sure that every American,
19 regardless of race or ethnic background has an equal
20 chance with every other American to have their votes
21 properly tallied.

22 Thank you very much.

23 ACTING GENERAL COUNSEL HAILES: Thank you,
24 Dr. Lichtman.

25 CHAIRPERSON BERRY: Let me swear them in.

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1 ACTING GENERAL COUNSEL HAILES: Okay.

2 CHAIRPERSON BERRY: Mr. Chin and Mr.
3 Dickson, would you mind standing and raising your
4 right hand? I would like to swear you in.

5 Whereupon,

6 JACKSON CHIN

7 JIM DICKSON

8 appeared as witnesses herein, and having been first
9 duly sworn, were examined and testified as follows:

10 CHAIRPERSON BERRY: Thank you very much,
11 you may be seated.

12 BY ACTING GENERAL COUNSEL HAILES:

13 Q Before we go to the next two witnesses,
14 Dr. Lichtman, I want to ask you, if as you argue that
15 disparate technologies and procedures correlated by
16 race may result in a finding of a violation of the
17 Voting Rights Act, would that finding be vitiated by,
18 as Dr. Paulson suggests, a substantial participation
19 of African-Americans in an election?

20 A (Witness Lichtman) Not at all -- not at
21 all, because a significant participation of African-
22 Americans is obviously voluntary acts on their part
23 and when African-Americans participate at whatever
24 level, it doesn't matter, they, in my view, under the
25 Voting Rights Act, should have an equal chance with

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1 rights to have their votes properly tallied.

2 In other words, it's one thing to say we
3 can go to the polls; it's quite another thing to say
4 when we cast our ballot, our ballot is going to be
5 counted. And if there is a higher hurdle for minority
6 ballots to be counted than for white ballots to be
7 counted, that operates independently of levels of
8 turnout and the violation of the Voting Rights Act
9 would still be present. Imagine, for example -- we'll
10 take something real simple -- imagine if in white
11 areas, assuming the two communities were equal in
12 terms of their density and distributions. In a
13 comparable white area, you had 20 polling places and
14 in the comparable minority area, you had only one
15 polling place. Well, no one would think that wasn't,
16 you know, a violation of basic voting rights, but
17 technologies and procedures can do the same thing,
18 make it more difficult to have the votes of minorities
19 counted as compared to whites.

20 ACTING GENERAL COUNSEL HAILES: Thank you.

21 Mr. Chin and Mr. Dickson, we're going to
22 ask the two of you first to state your name, your
23 organizational affiliation and to give opening
24 statements of approximately five minutes, beginning
25 with you, Mr. Chin and then Mr. Dickson.

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1 WITNESS CHIN: Good afternoon, Madam Chair
2 and members of the Commission, my name is Jackson
3 Chin, I am Associate Counsel at the Puerto Rican Legal
4 Defense and Education Fund in New York City. We were
5 founded in 1972 and we are a national civil rights and
6 not-for-profit organization that promotes civil rights
7 and equal protections of Latinos and Hispanics in the
8 United States, through litigation, through policy
9 research, advocacy and educational service programs.

10 Our high courts have reminded us that the
11 right of suffrage is the preeminent right in a
12 democracy; the right to vote is the right to
13 participate, it is the right to speak, it is the right
14 to be heard.

15 The Puerto Rican Legal Defense and
16 Education Fund finds that this most fundamental right
17 to be heard is not protected and not enjoyed by all.
18 Immediately after the November 2000 election, PRLDEF
19 responded to a groundswell of complaints from local
20 Latino Floridians. We dispatched a team of lawyers to
21 investigate and to assess multiple complaints from
22 Latino voters. To date, we have conducted field
23 interviews in the central Florida, Orlando area on two
24 separate occasions to speak with Latino complainants
25 and our office is still continuing to gather facts in

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1 anticipation of possible voter rights litigation.

2 As compelling as some of the previous
3 testimony has been on the African-American vote and
4 their massive disenfranchisement, I think that the
5 lesser known groups have been the new Latinos in
6 Florida. And based on our preliminary investigations
7 and review of election practices in precincts in
8 central Florida, we believe that certain election
9 practices and policies have led to the widespread
10 voter disenfranchisement of possibly up to several
11 thousands of Latino voters.

12 Now I'm here to share with you some of the
13 situations and barriers which have deprived Latinos
14 from casting a vote and some of the barriers that they
15 have encountered in their attempts to vote.

16 We ask ourselves, well, why would voters
17 be turned away. I mean, we've been focusing on
18 machines and the chads and the double counting and
19 over-counting, under-counting. The earlier question
20 was what about the people who couldn't even get into
21 the voting booth. And this is where I'm trying to
22 address that issue, which cries for attention and
23 scrutiny.

24 Now these problems can be generally
25 classified as due to illegitimate reasons or factors

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1 or legitimate reasons or factors as to why people are
2 turned away from the ballot booth. The only
3 legitimate cause that we feel would be due to
4 individual voter error. Illegitimate causes might
5 include administrative agency error and nefarious or
6 illegal or discriminatory factors.

7 Now a recent study by the political
8 scientist professor Ronald Hayduk entitled
9 "Gatekeepers to the Franchise: Election
10 Administration and Voter Participation in New York" is
11 very instructive to all of us who are concerned about
12 this. It documents various forms and patterns of
13 disenfranchisement. Both agency caused error or
14 policies and practices are among the kinds of causes
15 that can result in impermissible and illegal, from our
16 point of view, outcomes since voters are indeed denied
17 the fundamental right to vote.

18 Now this unique study shows patterns of
19 disenfranchisement throughout the United States. In
20 nearly every election, in nearly every political
21 jurisdiction, the victims of disenfranchisement are
22 disproportionately harmed and they tend to be people
23 who are low income, minority communities of color,
24 first time voters, the very young, the very old, the
25 disabled, those whose literacy and education levels

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1 are much lower, and language minority voters who
2 receive no or inadequate bilingual assistance as
3 required by law in certain covered jurisdictions.

4 Now election officials, poll workers, even
5 the DMV personnel, they exercise wide discretionary
6 authority in the processing of registration
7 applications or in the election administration. This
8 discretion -- this discretionary capacity allows for
9 impermissible disenfranchisement that often goes
10 unanalyzed and unremediated. The main point is that
11 there are numerous instances where voters are turned
12 away or denied the franchise based on no fault of
13 their own, but due to agency or governmental personnel
14 error or other reasons, they will be turned away and
15 then there is clearly a denial of the basic franchise.

16 We have documented cases that fall into
17 this latter category and this is regardless of whether
18 there was default or by design, and we have found that
19 (1) Latino voters and residents, largely of Puerto
20 Rican descent and recent Latino immigrants, constitute
21 a growing and significant portion of the total adult
22 voting population in Orange, Seminole and Osceola
23 Counties. (2) Orange County, which is a Section 203
24 covered jurisdiction under the federal Voting Rights
25 Act, has failed to meet its legal obligations to

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1 guarantee meaningful electoral access to its growing
2 Spanish-speaking language minority voters. (3) We
3 also believe that significant numbers of Latino
4 residents in Orange, Seminole and Osceola Counties
5 were disproportionately harmed and deprived of their
6 right to vote, in violation of Section 2 of the Voting
7 Rights Act, in addition to other federal and state
8 laws which were violated.

9 Now drawing from the Exhibit 1 of
10 illustrative cases which are attached to this
11 submission, which I hope you have, Latino voters'
12 complaints were outlined in a number of scenarios. It
13 is a 10-page exhibit, it covers some of the people
14 that we personally interviewed and I think that we can
15 discuss that afterwards which I make just a few more
16 comments.

17 We have registered Latino voters, who voted
18 in immediate past elections, who went to the polls,
19 were told their names could not be found on the voter
20 lists; consequently, they were not allowed to vote,
21 some were sent home -- many were sent home. Some were
22 required to wait for many hours while election poll
23 workers struggled unsuccessfully to contact
24 supervisors for approval to allow these voters to cast
25 their votes. So these grievances were effectively

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1 ignored.

2 (b) Among those not found on these voter
3 rolls, voters ultimately were not able to cast their
4 vote, in violation of federal and Florida laws.
5 Election poll workers did not even offer the
6 alternative method of voting, which would have been
7 the confirmation paper affirmation ballot possibility,
8 which is provided under state law, as well as under
9 the National Voter Registration Act.

10 (c) Registered Latino voters who went to
11 their usual voting poll sites, who were told that
12 their names could not be found, were given the
13 proverbial run-around. And what I mean by that is
14 they were told to go to other voting sites miles away
15 and once arriving at these other sites were not found
16 on these lists, were ignored and refused the right to
17 vote. Often they became frustrated, confused and they
18 basically gave up.

19 New Latino voters, which is another
20 subgroup, who registered in a timely manner, way
21 before the election day, they were not processed,
22 these applications were obviously not processed by
23 government agencies, and receiving no voter
24 registration identity or cards and no assignment to
25 the particular voting poll site precincts and

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1 addresses, they could not have voted, they did not
2 vote and therefore were deprived.

3 ACTING GENERAL COUNSEL HAILES: Mr. Chin,
4 let us do this, because we will receive your full
5 statement in the record and in responses to some
6 questions, you may give us more information.

7 WITNESS CHIN: Sure.

8 ACTING GENERAL COUNSEL HAILES: I would
9 like at this time to ask Mr. Dickson to testify.

10 WITNESS CHIN: Thank you.

11 ACTING GENERAL COUNSEL HAILES: Thank you.

12 WITNESS DICKSON: Thank you. Madam
13 Chairman, distinguished Commissioners, it is an honor
14 and a privilege to speak before you. I'm Jim Dickson,
15 Vice President of the National Organization on
16 Disability.

17 I was a co-founder of Project Vote,
18 privileged to be part of the leadership team which
19 past the motor voter law and in this election, led the
20 first ever voter mobilization effort amongst voters
21 with disabilities. We had 36 national disability
22 organizations participating and based on polling data
23 from the Lou Harris Associates and the Pugh Research
24 Center, nearly three million disabled Americans voted
25 for the first time in this election.

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1 People -- I am blind and I was
2 particularly offended during the discussion about the
3 voter irregularities in Florida, where citizens who
4 had voted were generally accused by the media and
5 others of being ignorant, sloppy, failing to follow
6 directions.

7 The entire nation's voting system is
8 inaccessible to people with many disabilities. The
9 punch card system in particular is difficult to
10 impossible for many people with disabilities in
11 Florida to use. It wasn't that people can't follow
12 directions, it was that the system is inaccessible and
13 people were struggling to perform their civic duty on
14 a system that is inaccessible.

15 I got up this morning by myself, took the
16 bus to the metro, used the metro elevator by myself at
17 National Airport --

18 ACTING GENERAL COUNSEL HAILES: In
19 Washington, D.C.

20 WITNESS DICKSON: -- in Washington, D.C.
21 Got to the plane by myself. I cannot go into a voting
22 booth by myself and vote. Every time I have voted,
23 somebody knows how I vote. That is not acceptable.
24 There are 524,000 Floridians, based on 1998 census
25 data, who cannot read print.

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1 A few years ago, I was voting, my wife was
2 casting my ballot. Like many married couples, we
3 sometimes don't quite see eye to eye.

4 (Laughter.)

5 WITNESS DICKSON: As Renee was using the
6 punch card, she said to me, Jim, I know you love me;
7 now I know you trust me, because you think I'm voting
8 for that idiot.

9 (Laughter.)

10 WITNESS DICKSON: I've voted in four
11 states. This was awhile ago, but I have talked to
12 people who voted in Florida who are blind or visually
13 impaired and in Massachusetts and in Rhode Island, on
14 separate occasions in separate years, I had to rely on
15 poll workers to cast my ballot. In two separate
16 primaries, I chose to vote for candidates who were
17 controversial. Twice, I have had the poll worker
18 helping me to cast my ballot say are you sure that's
19 who you want to vote for?

20 (Laughter.)

21 WITNESS DICKSON: This is a Braille stylus
22 and this is a Braille slate. You make Braille dots by
23 punching little dots. Anyone who has been taught
24 Braille has known about dimples.

25 (Laughter.)

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1 WITNESS DICKSON: We have had drilled into
2 our heads by trainers and teachers that you must hold
3 the stylus 90 degrees to the paper or you get a
4 dimple, not a full Braille dot. In 20 years of
5 working around elections, I have never once heard
6 instructions to a citizen about the importance of
7 holding the stylus 90 degrees to the paper. If you
8 don't, you get a dimple. I would encourage the
9 Commission -- I think it would be possible to do some
10 fairly simple tests that could measure that.

11 Regarding the famous butterfly ballot.
12 This is a classic case of blaming the victim.
13 Commissioner LePore announced that she designed the
14 butterfly ballot to provide assistance for voters with
15 low vision. There are in excess of 60,000 people in
16 her county who admit that they have trouble reading
17 small print, and there are probably another 30 or
18 40,000 who have trouble reading small print but don't
19 admit it.

20 Ms. LePore, not only failed to request the
21 assistance of those who know how to develop effective
22 large print media, but she consistently rebuffed the
23 offers from activists in her county to provide
24 assistance. The butterfly ballot, not only made it --
25 made it -- it made it more difficult for a person with

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1 low vision to cast a ballot with the butterfly than
2 with a traditional ballot. For persons with low
3 vision, there is a difficulty called tracking. You
4 may be able to read the print, but you have to track
5 across the page. This is why you might often see
6 somebody holding something underneath the line or
7 using their finger, or using their pen point. Columns
8 are particularly difficult for people with low vision
9 to use. We are told, trained by independent living
10 specialists and low vision specialists, when using a
11 column, you don't go across, you count down and then
12 you go back to the top to find the next column and you
13 count down the appropriate number. The butterfly
14 ballot took what would have been a two column problem
15 and made it into a five column problem. The name of
16 the candidate, an arrow, which is a column, the holes
17 where you were supposed to punch the ballot, another
18 arrow and another name of candidates. Absolutely
19 irresponsible to say the least.

20 A low vision person voting in Palm Beach
21 County who chose to vote for Vice President Gore would
22 have counted down in the first column twice for Al
23 Gore, gone back to the top of the page, gone over to
24 the third column, counted down two holes and voted for
25 Mr. Buchanan. And I wish to repeat if the election

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1 commissioner had asked anybody who knows about low
2 vision, she would have been told that would have been
3 the result of her design.

4 I want to just touch on a couple other
5 quick things. There are, in Florida, over 100,000
6 voting age disabled citizens who are not registered to
7 vote. The National Voter Registration Act requires
8 all disability agencies to offer voter registration to
9 their clients. At the National Organization on
10 Disability last May, we did a survey with Lou Harris &
11 Associates, that reports back to us that 42 percent of
12 all people with disabilities have never been offered
13 the opportunity to register to vote by the disability
14 service provider from whom they receive service.
15 That's a nationwide study, that number holds in
16 Florida. There are more than 14 million unregistered
17 disabled voters across the country, who are not
18 registered because their service providers are in
19 violation of the National Voter Registration Act.

20 ACTING GENERAL COUNSEL HAILES: Mr.
21 Dickson, let me just ask you this, and we will give
22 you an opportunity to present a statement while the
23 record remains open and some additional points you
24 wanted to make, you can do so in response to
25 questions.

EXAMINATION

1
2 BY ACTING GENERAL COUNSEL HAILES:

3 Q But I would like you to tell us for the
4 record what the percentage of registered persons with
5 disabilities, those who have registered to vote --
6 what is generally their participation rate in
7 elections?

8 A (Witness Dickson) In 1996, the
9 participation rate was 30 percent. This year, the
10 participation rate was 40 percent.

11 Q Okay.

12 A (Witness Dickson) Or considerably below
13 what it is for the able-bodied.

14 Q Okay, thank you very much.

15 Mr. Chin, I have one question for you.
16 You mention in your testimony that one of the counties
17 that your organization is really focusing on is
18 covered by Section 203 of the Voting Rights Act. For
19 the record, will you give us a description of Section
20 203, what the requirements are, how a jurisdiction
21 comes under Section 203 authority and any other
22 information about Section 203.

23 A (Witness Chin) Sure. The Section 203
24 designation for Orange County or any other county that
25 is covered reflects the fact that a certain percentage

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1 of the voting population, adult aged voting population
2 is limited in English, and that means that they cannot
3 adequately speak or read or write English in order to
4 access the electoral process.

5 These political jurisdictions which are so
6 designated, it has been determined that, through a
7 number of different possible formulas, but one formula
8 indicates, for example, that if more than 10,000 of
9 its voting age citizens are members of a single
10 language minority group and who are limited English
11 proficient and that in this group the illiteracy rate
12 of this language minority group is higher than the
13 national literacy rate, then that is within the
14 jurisdiction and should be covered and then they
15 exercise affirmative duties to ensure that these
16 language minority voters can participate, whether they
17 seek to run for office, whether they seek to register
18 to vote, and the entire continuum. And the key
19 wording is "meaningful participation." And
20 traditionally it has been monitored through the
21 Justice Department and of course private action can
22 also ensue, and that is why we are looking at some of
23 the questions in Orange County.

24 Orange County, by the way, which is
25 Orlando, the greater Orlando area, in the last number

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1 of years has expanded, population-wise, exponentially.

2 It has a growing, very significant population of
3 Latinos.

4 Osceola, I am told in some of the reports
5 that I've seen, has up to 30 percent of its
6 population, which is Spanish-speaking, Latino
7 Hispanic. They are not covered under this Act and may
8 become covered. I think that's a situation that will
9 depend on the final results of the U.S. census as they
10 become known to the federal authorities.

11 Q How many counties, if you know, are
12 covered by Section 203?

13 A I believe there are from the list there
14 are possibly six to eight counties. I don't know
15 exactly, but certainly Orange County is one of those
16 counties.

17 ACTING GENERAL COUNSEL HAILES: Madam
18 Chair, I have no further questions.

19 CHAIRPERSON BERRY: Commissioner
20 Thernstrom.

21 COMMISSIONER THERNSTROM: I have a
22 question or a couple of questions for Professor
23 Lichtman.

24 You referred to a classic violation of the
25 Voting Rights Act. We do have a Voting Section of the

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1 Civil Rights Division of the Federal Department of
2 Justice that has a long and distinguished record of
3 attention to violations that don't even rise to the
4 level of being classic. But you know, hint at
5 violations of the Voting Rights Act and yet in this
6 case, at least so far, they certainly have not come
7 out to say wait a minute, we have got a situation here
8 of blatant discrimination of a dilution of minority
9 votes.

10 I've got a couple of other questions, but
11 maybe we should just take that one.

12 WITNESS LICHTMAN: Let me respond.

13 COMMISSIONER THERNSTROM: Yeah.

14 WITNESS LICHTMAN: Thank you very much,
15 Commissioner Thernstrom.

16 Indeed, I believe that this is something
17 that the Voting Rights Section of the Civil Rights
18 Division should be investigating and indeed this may
19 well be something that they might not only
20 investigate, but go ahead and bring litigation. The
21 fact that they haven't done it to this point does not
22 mean (a) that they're not investigating or (b) that
23 they will not move in this matter. I would hope that
24 they will -- I mean, they may already have begun
25 looking into this, I hope they will, I hope they will

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1 continue to do so after the change of administration.

2 And if indeed it is found that there are these
3 disparate technologies correlated with race that do
4 give minorities less of an opportunity to cast their
5 ballots than others, that the Voting Rights Section
6 would vigorously pursue litigation to remedy this
7 factor.

8 COMMISSIONER THERNSTROM: Well, is it
9 possible that one of the things that is -- I mean
10 usually they're very quick to act -- that one of the
11 things --

12 WITNESS LICHTMAN: Oh, they're
13 bureaucrats, you know, they're not that quick.

14 (Laughter.)

15 COMMISSIONER THERNSTROM: My -- you know,
16 my experience with them, long experience with them, is
17 that they do act rapidly.

18 But is it possible that one of the
19 problems here is that there is no case law that they
20 can cite involving vote dilution on the basis of the
21 use of one voting machine versus another. You know,
22 this has just not been the subject of Section 2
23 litigation.

24 And then (d) it seems to me that what
25 you're saying is that in a district that is, let's

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1 say, racially and ethnically mixed, if there is say a
2 punch card system, that all voters -- black, white,
3 Hispanic, Asian -- that all voters are disfranchised,
4 that their votes are not counted because there's
5 something inherently disfranchising about a punch card
6 system, and that that too is part of the package of
7 what is troubling the attorneys in the Voting Section.

8 WITNESS LICHTMAN: Well, let me make --
9 I'm not sure anything is troubling the attorneys in
10 the Voting Section -- we don't know that.

11 COMMISSIONER THERNSTROM: No, we don't
12 know that.

13 WITNESS LICHTMAN: We're speculating.

14 COMMISSIONER THERNSTROM: But it is
15 possible, yeah.

16 WITNESS LICHTMAN: We don't know that at
17 all.

18 COMMISSIONER THERNSTROM: Right.

19 WITNESS LICHTMAN: Let me say a couple of
20 things. Some cases are indeed cases of first
21 impression as we just saw with the Supreme Court
22 decision in Bush v. Gore. Not all cases are
23 necessarily rooted in prior case law, and it strikes
24 me that if indeed, given the logic of the Voting
25 Rights Act and given the two criteria that I laid out,

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1 that there is a possible or probable violation of the
2 Voting Rights Act, that this is precisely the area
3 that we need to forge ahead and create a case of first
4 impression that would remedy that kind of
5 discrimination.

6 Secondly, I couldn't agree with you more.

7 This is not an issue, even though I believe if there
8 are these two criteria fulfilled it does violate the
9 Voting Rights Act, this is not an issue that only
10 minorities should be concerned about. Every American,
11 regardless of their ethnic or religious background
12 should be deeply disturbed about voting technology
13 that does not properly and fully record their votes.
14 And I couldn't agree with you more, Commissioner
15 Thernstrom, that we should move promptly to eliminate
16 such technology wherever it may exist and bring
17 election administration into the 21st century.

18 COMMISSIONER THERNSTROM: Good. Well, I
19 certainly --

20 CHAIRPERSON BERRY: Commissioner
21 Thernstrom, we're going to have to take other people,
22 so I will let you have one more question.

23 COMMISSIONER THERNSTROM: I'd love one
24 more question to Mr. Dickson. Thank you very much,
25 Madam Chair.

1 I think, Mr. Dickson, what you're saying,
2 among other things, is that there is nothing unique to
3 Florida about the difficulties that people who are
4 blind are having in voting and that we indeed need
5 better education for election officials and those who
6 help voters. I think that is what is going to come
7 out of the Governor's task force. And I also think
8 you talked at length about the butterfly ballots, I
9 believe we have seen the last of the butterfly
10 ballots.

11 So in that sense, the first is, am I
12 correct in saying look, this is not a unique to
13 Florida question and my second is simply a remark that
14 I think that the serious problems you pointed out are
15 going to be addressed -- or that is my understanding.

16 WITNESS DICKSON: It is true that it is
17 not unique to Florida, though it is also true that we
18 received on election day many complaints.

19 But it is also important to emphasize that
20 many of the systems that have been touted as better
21 than punch card are still in accessible for the blind
22 and people with hand, arm, motor coordination
23 problems, which is something more than nine million
24 Americans. The State of Texas, interestingly enough,
25 has legislation signed by President select -- I mean

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1 elect -- Bush --

2 (Laughter.)

3 WITNESS DICKSON: -- that went into effect
4 in September, that requires any new purchase of a
5 voting system be -- allow for an independent and
6 secret ballot. A computer touch screen does not do
7 that. There's a need for computer systems to offer
8 both large print, voice output and for persons who can
9 get their wheelchair up close but maybe can't reach
10 up, to have a push button device, so they can cast an
11 independent ballot.

12 CHAIRPERSON BERRY: Okay. Commissioner
13 Meeks, do you have a question at this time? I'll come
14 back to you.

15 Yes, Commissioner Lee.

16 COMMISSIONER LEE: Thank you, Madam Chair,
17 I have a couple of questions. The first one is to Dr.
18 Paulson.

19 You mentioned the issue of purging.
20 Earlier we heard testimony about Florida contracting
21 out that job to private companies. Have you heard of
22 similar situations with other states where they hire
23 private contractors to do this kind of work?

24 WITNESS PAULSON: That's a good question.
25 I really don't know with respect to the issue of

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1 cleansing the voting lists. I mean obviously there
2 are many state governments that have engaged in all
3 sorts of contracting for private services because they
4 believe the private sector can do it more efficiently
5 or economically than can the public sector. I think
6 perhaps that's one of the recommendations the state
7 commission may want to look at. I think it is a state
8 responsible and state function. The supervisor of
9 elections and the Secretary of State in Florida have
10 the responsibility for making sure that the voter
11 rolls are accurate and I think inherently it should be
12 their responsibility to make sure that those records
13 are accurate. And I think this episode that we've had
14 in the past year with contracting out indicates some
15 of the problems.

16 And once again for citizens, I think it
17 also indicates the lack of recourse that they may have
18 had. Government, one can reasonably argue, has an
19 obligation to make sure that the voter rolls are
20 accurate, but at the same time, government has an
21 obligation to make sure that any citizens whose name
22 are challenged and particularly purged are informed
23 about that and have the right to challenge that and
24 correct the record if it proves to be inaccurate prior
25 to the election taking place, so that we don't have

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1 the problem that occurred on election day in Florida
2 with people coming in and finding out their names have
3 been eliminated from the list.

4 COMMISSIONER LEE: Let me ask one more
5 question.

6 CHAIRPERSON BERRY: Surely.

7 COMMISSIONER LEE: This is for Mr. Chin,
8 regarding 203 covered counties.

9 For those individuals who have gone to
10 your organization to file complaints regarding the
11 problems they had in voting, do you know what kind of
12 language assistance these covered counties have
13 provided to the eligible voters pre-election and also
14 on election day?

15 WITNESS CHIN: Well, this is complex
16 question, and I have in my submission Exhibit 2, which
17 is a letter that -- well, let me answer it this way.
18 Generally speaking, there should be a dialogue between
19 the language minority community and its
20 representatives and the county and I don't believe
21 that has happened or is maybe going to happen.

22 The issue of what type of tools, what type
23 of -- are there bilingual signs posted? These are all
24 at the poll sites, but we're also talking about the
25 fact that in many of the precincts, there were no

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1 English -- there were no Spanish-speaking election
2 workers at all, and therefore, many people ended up
3 getting put on secondary lines waiting for hours and
4 also we understand that -- for example in the Exhibit
5 2 that I have, a letter was issued and I think this is
6 part of the purging problem, it seemed to suggest, and
7 confused our complainant, the text of this letter was
8 sent out one week before election day, suggesting that
9 there were voter discrepancies -- discrepancies in the
10 voter records or that there needed to be an update.
11 Now all of that text was 90 percent in English, only
12 one sentence says "If you need help" in Spanish.

13 But this basically suggested to the voter
14 that she was not properly registered. In fact she
15 was, because in the end, she spoke to someone more
16 experienced -- and here is another thing, we're
17 talking about people who are not experienced, who are
18 very intimidated by the new process and another person
19 would have said, oh, I got this letter from the Board
20 of Elections saying there's something wrong with my
21 voter records, I guess I can't vote.

22 Well, she in the end did go vote and she
23 did find that there was nothing wrong. The question
24 is why should a letter of this sort -- and how many
25 letters emanating from the Board of Elections on the

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1 eve practically of elections, questioning voter record
2 accuracy went out in Orange County. That's in Exhibit
3 2, I hope you have an opportunity to look at that.

4 COMMISSIONER LEE: Please educate me, is
5 it a 203 requirement that you have to provide
6 translators on the day of election at those polling
7 sites?

8 WITNESS CHIN: The regulations don't speak
9 specifically about actually having how many and -- but
10 in terms of Ms. Thernstrom's previous question about
11 Section 2 litigation and 203 litigation, the Justice
12 Department has in fact filed cases on these very
13 issues of failure on counties' part to provide
14 bilingual aid and assistance. And oftentimes what
15 happens is there is a consent decree that issues and
16 therefore, in your legal research, you may not find
17 any legal decisions.

18 COMMISSIONER THERNSTROM: No, I was aware
19 of the 203, I was focusing solely on the Section 2
20 question.

21 WITNESS CHIN: But I think the issue here
22 is you're looking at a number of factors -- how many
23 people in a given precinct tend to be not English-
24 speaking does not obligate the county to have
25 available at its precincts bilingual signs,

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1 individuals who can speak to individuals who cannot
2 read, who need to speak to a Spanish-speaking
3 individual or other language minority. These are just
4 samples of the possible ways in which a county can
5 meet their obligations under Section 203, including
6 all the training that must go into the poll workers
7 and also what is it that a person who wants to vote
8 needs to know in terms of casting their vote. There's
9 a huge spectrum of possibilities that the county must
10 be obligated to and sensitive to and make
11 accommodations for.

12 COMMISSIONER LEE: Thank you.

13 VICE CHAIRPERSON REYNOSO: The testimony
14 from Dr. Paulson indicated that in his studies, the
15 technology discrepancies was more on the basis of
16 those jurisdictions that were rich and those that were
17 poor, and my question is the following -- this relates
18 both to Dr. Paulson's testimony and Dr. Lichtman's.
19 What if the evidence also shows that those poor
20 jurisdictions also are predominantly minority and
21 therefore also has an effect on minorities. Is that
22 the type of disparity that would bring into effect
23 Section 2? So often you hear folks say well that's
24 not a matter of race discrimination, that's a matter
25 of economic discrimination. I'm interested in your

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1 views on the relationship.

2 WITNESS PAULSON: Well, I think you've got
3 some of both parts, to answer that question. I mean,
4 you do have one of Florida's 67 counties that still
5 uses paper ballots and it's probably one of the
6 poorest counties in the state of Florida. And even
7 though they only had some 4000 ballots, it took them
8 forever to count that, as you might imagine, a system
9 that's extraordinarily prone to error.

10 VICE CHAIRPERSON REYNOSO: Well, is it
11 statistically prone to error? I've talked to experts
12 who say the most accurate ones are, what do they call
13 it, low tech --

14 WITNESS PAULSON: Well, it would seem easy
15 --

16 VICE CHAIRPERSON REYNOSO: -- and high
17 tech, and it's the middle tech that is bothersome.

18 WITNESS PAULSON: Well, it seemed to be
19 prone to error this year, let's put it that way.

20 (Laughter.)

21 WITNESS PAULSON: But in the case of the
22 electoral systems used or the voting systems used,
23 oftentimes it is an issue of wealth or class
24 distinctions. You know, Leon County, where we are
25 today, uses an optical scanning system, which had very

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1 low rates of errors and double counting, this sort of
2 thing. Where I'm from, Pinellas County, Hillsborough
3 County area, these are two urban, rather affluent
4 counties, compared with Florida's other counties.
5 They use a punch card system. They've used that
6 system for 30 years. Why do they use it? It's not
7 because they're poor, it's because there's almost a
8 process of political inertia that takes place. These
9 systems were adopted 30 years ago when the system was
10 new technology and it was cheap, and once again, with
11 the supervisors of elections having to pay for new
12 systems, it's very expensive for them to do that.
13 They don't have the budget to do that. So they're
14 politically constrained in terms of what they can do.

15 But I will say this, for example, Pinellas
16 County, Hillsborough County, Pasco County, six months
17 before this past election, all knew that their systems
18 were antiquated and needed to be updated, and they
19 said let's go together, let's pool our resources,
20 those three counties, and let's get a more
21 technologically sophisticated system, and that's what
22 they were planning to do after this election.
23 Obviously I'm sure they wish they had done it before
24 the election. But they are faced with real political
25 constraints.

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1 WITNESS LICHTMAN: Let me respond to your
2 question in terms of whether there was a violation of
3 the Voting Rights Act.

4 VICE CHAIRPERSON REYNOSO: Yes, sir,
5 that's my interest.

6 WITNESS LICHTMAN: Yes. And I made a very
7 careful distinction, you'll recall, in my testimony
8 between cause and effect, that under the Voting Rights
9 Act, it's not the cause that's critical, it is the
10 effect.

11 VICE CHAIRPERSON REYNOSO: Yes.

12 WITNESS LICHTMAN: And whether it is
13 indeed caused by class, if the effect of the system,
14 because class and race are correlated, is to give
15 minorities less of an opportunity than whites, on
16 average, -- obviously there are going to be exceptions
17 all over the place -- but on average, statistically,
18 if minorities have less of an opportunity than whites
19 to have their votes counted, in my view, that violates
20 the effects test of the Voting Rights Act. Whether
21 anyone ever intended that outcome or not, whether it
22 is because of a class correlation or not, it doesn't
23 matter, you are still violating the Voting Rights Act
24 and there obviously is a remedy here. If it's a
25 problem of money, then money can be provided.

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1 VICE CHAIRPERSON REYNOSO: And with
2 respect to 203, I assume that's the same rule that
3 would apply there, Mr. Chin. It doesn't matter
4 whether there was intentionally a service not
5 provided, if it wasn't provided, if the discussions
6 didn't take place, as you indicate. And I take it the
7 law applies both to those counties that are covered
8 and those that are not covered.

9 WITNESS CHIN: Absolutely. Section 2
10 applies to all counties.

11 VICE CHAIRPERSON REYNOSO: So it's just a
12 matter of whether there have been sufficient
13 objections that an action is brought by Justice, but
14 the law really covers everybody, and again, whether
15 it's by omission simply because of resources or
16 because of inattention, if those services are not
17 provided, I take it there's a violation of the voting
18 rights statute.

19 WITNESS CHIN: And even a choice as to how
20 you allocate your resources is an election practice
21 and is a policy, all under the scrutiny of the Voting
22 Rights Act and I agree with the Professor, his
23 analysis is apt. We are not looking for intention of
24 discrimination. The effect if someone is to be turned
25 away or unable to vote when they sought to and are

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1 eligible, that is in itself a violation de facto and
2 de jure.

3 VICE CHAIRPERSON REYNOSO: Right. And I
4 take it that applies also to the disabled, whether
5 it's sight or whether it's movement or whatever, if
6 there's been sufficient, I'd say, inattention, that
7 those matters have not been cared for, that too would
8 be a violation.

9 WITNESS CHIN: Those would probably
10 involve the disability rights federal legislation,
11 Americans with Disabilities Act.

12 VICE CHAIRPERSON REYNOSO: Oh, yes.

13 WITNESS CHIN: Section 504 --

14 VICE CHAIRPERSON REYNOSO: Not covered
15 specifically by the Voter Rights Act, but the ADA
16 requires similarity of services, so if that hasn't
17 happened -- is that your interpretation, Mr. Dickson?

18 WITNESS DICKSON: Yes. Though I would
19 also point out that the incidence of disability for
20 African-Americans is double the incidence for white.
21 And the incidence of disabilities for Hispanics is 50
22 percent higher than for whites, and that's all
23 disabilities, severity, minor, it's all across the
24 board. So if you're in an African-American community,
25 16 percent of the African-Americans in that community

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1 are going to have a disability.

2 VICE CHAIRPERSON REYNOSO: Thank you,
3 Madam Chair.

4 CHAIRPERSON BERRY: Thank you.

5 Commissioner Edley.

6 COMMISSIONER EDLEY: Madam Chair, first
7 I'd just like to take a moment and clarify the mind of
8 my fellow Commissioners but especially I think the
9 audience that we have at least two parallel
10 discussions going on here. One is an inquiry into
11 whether there may have been violations of particular
12 statutes that seek to guarantee voting rights.

13 A second is a somewhat broader inquiry
14 under this Commission's statutory authority, into
15 whether or not any individuals or groups have been
16 denied a right to vote, whether or not that denial was
17 -- flowed from discrimination. So I just want to make
18 sure that everybody understands that as the Chair
19 pointed out at the beginning this morning, that the
20 scope of our inquiry here is rather broad and reaches
21 beyond violations of anti-discrimination statutes,
22 looking to the effectuation of ~~people's~~ right to
23 participate in the democratic process.

24 CHAIRPERSON BERRY: Thank you for that.

25 COMMISSIONER EDLEY: Now I think that it

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1 is -- I was troubled and perhaps -- or at least
2 confused, Professor Paulson, by some of your
3 testimony, because certainly I believe that Professor
4 Lichtman's statement of the law with respect to the
5 effects test was correct.

6 And therefore, when you suggested that one
7 cannot make a serious argument about the possibility
8 of discrimination, because of the turnout, the
9 participation rates of African-Americans in this past
10 election and because of the numbers of black elected
11 officials in Florida, that struck me as just flatly
12 wrong, an incorrect inference, given the possibility
13 of finding discrimination using an effects test.

14 So could you clarify for me what you
15 meant?

16 WITNESS PAULSON: What I'm trying to point
17 to obviously is that in an election system like this
18 that we went through, there are a lot of unanticipated
19 events that occurred, and one of those was we talked -
20 - one of the earlier panels this morning talked about
21 the turnout rate in Florida, which was not much more
22 than the average turnout in Florida. The exception
23 was the extraordinarily high turnout in the African-
24 American community that I mentioned previously, up 65
25 percent from 1996.

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1 Oftentimes, election officials who have to
2 deal with the election process deal also with patterns
3 of behavior that occur in prior elections. An
4 election official who is going back and looking at
5 what happened in 1996 or what happened in 1992, based
6 on traditional voting patterns, is likely to make some
7 plans or expectations based on those figures. When
8 you also combine that with the fact that not only did
9 you have a 65 percent increase in African-American
10 participation, but 40 percent of the African-American
11 voters who turned out were first time voters, first
12 time voters whether whites, blacks, whatever.

13 There is a greater obligation, you might
14 say, on the part of government officials to make sure
15 that first time voters are informed about the
16 processes, what to expect, so that when they go down
17 to vote on election day, they can cast an effective
18 vote.

19 So I agree fully with what Professor
20 Lichtman is talking about in terms of this separation
21 between cause and effect, I'm simply saying that on a
22 practical kind of basis, ~~there are a lot of~~ political
23 considerations this election cycle, the
24 extraordinarily high turnout in African-American
25 precincts in particular, that I think caught a lot of

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1 these election officials off guard, they weren't
2 prepared to deal with that.

3 COMMISSIONER EDLEY: I understand. But I
4 do think it is important for us to keep -- to
5 distinguish between principles of public
6 administration, which is what you seem to be talking
7 about, versus questions of law. And there's nothing
8 in the Voting Rights Act that says you may have
9 suffered discrimination, but oops, it doesn't count if
10 it flowed merely from inadvertence or if it flowed
11 from officials having been surprised. That's a
12 separate issue and I think it's important to
13 distinguish them.

14 Finally, let me ask I suppose Mr. Chin,
15 Commissioner Thernstrom suggested that it would be
16 surprising for the Justice Department, or we should
17 note that the Justice Department has yet to file suit
18 here. And I guess that is not at all my experience of
19 the way Justice Department investigations into these
20 matters proceed, particularly if we're talking about
21 an investigation of something far more complicated
22 than a simple legislative act, but rather something
23 that involves investigations on many possible theories
24 in dozens of counties.

25 So my understanding is that there are

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1 Justice Department investigators present. So could
2 you comment on your sense of whether or not -- let me
3 say I'm very disappointed that the Justice Department
4 has not moved more quickly, but I do understand why
5 they haven't.

6 WITNESS CHIN: And I believe -- I think
7 Professor Lichtman is correct that there are
8 bureaucratic cultures and they are plodding, but they
9 are meticulous. I believe the Justice Department is
10 investigating, we have been in communication with
11 them. As I understand it, they only have two
12 attorneys appointed to Florida on a normal basis --
13 they may have more. They tell me that they are
14 investigating and I take them at their word.

15 COMMISSIONER EDLEY: Why haven't you filed
16 a suit yet?

17 WITNESS CHIN: We, as I mentioned earlier
18 in my remarks, are still in a preliminary
19 investigatory phase. We have contacted 50 people more
20 or less. We've been able to get detailed declarations
21 from a number of those and this has about 26 examples.
22 It is a very difficult process. If you are trying to
23 prepare for litigation and you're not interested in
24 grandstanding, you need to put in the time, you need
25 to sit down and speak with the individuals, you need

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1 to also get some information from the counties. We
2 have submitted document requests under the Florida
3 Public Records Act, and these are records which have
4 not yet been produced, but I believe that the counties
5 have been quite busy with other requests. So we look
6 forward to receiving that information and doing the
7 analysis.

8 These issues, post-election, have often
9 been ignored from election to election, and this is
10 the very first election I think in many, many years in
11 the country, where we begin to sort out the records
12 and looking at the purged records and looking at what
13 protocols or lack of procedures or election practices
14 exist at the various counties. And again, we are
15 focusing on the three counties in central Florida
16 where we find a significant Latino presence. And just
17 to correct the record, I'm here to present to you
18 information about those who speak no English who were
19 turned away or had difficulties at the polls, but also
20 Puerto Ricans and other Hispanics who did speak
21 English and still had the same problems getting into
22 the polls, being told they were not on the list,
23 probably being purged for no reason. And who had
24 incredible barriers.

25 Now again, people who are used to voting

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1 and know what their rights are, they're going to
2 insist, they're going to get their way and in some of
3 our cases, they managed to get in and voted. But a
4 number of people who knew their rights still could not
5 get election officials to give them the affidavit
6 ballot as an alternative. And we find that very
7 disturbing.

8 And how many more people throughout these
9 counties in the precincts where Latinos and African-
10 Americans have a high percentage of voters were turned
11 away in that very manner.

12 WITNESS LICHTMAN: Madam Chairman, may I
13 add something to this?

14 CHAIRPERSON BERRY: Yes, please do.

15 WITNESS LICHTMAN: I've served as an
16 expert witness for the Justice Department in numerous
17 Section 2 cases, Commissioner Edley, and you make the
18 excellent point and Commissioner Thernstrom made the
19 same excellent point, that you're in relatively
20 uncharted waters here. There is not well-established
21 case law with respect to the issues that we're talking
22 about. There may not even be a single case.

23 My experience with the Justice Department
24 is because they do represent the United States and all
25 of its people is that they do take their time and

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1 before they bring litigation, before they actually
2 come out with a case, they do very thorough
3 investigations and they really want to have the case
4 lined up. So you may be disappointed in the fact they
5 haven't moved more quickly. That doesn't mean that
6 the mills of justice aren't grinding and that there
7 might not be litigation brought in this matter.

8 CHAIRPERSON BERRY: And the wheels of
9 justice may grind very much indeed.

10 I have one question myself and then we
11 have to break. I'm alerting everyone that there will
12 be a break right after my question and then we will
13 reconvene at 3:15 as we are scheduled to.

14 My question is whether Mr. Chin, since
15 PRLDEF is a national organization and you keep track
16 of matters and get complaints from Puerto Ricans and
17 other Latinos nationally, did you get a similar number
18 of complaints on election day from Latinos and
19 Hispanics all across the country that they were in
20 fact being denied assistance, asked for two or three
21 IDs, all of the matters that you have included in your
22 testimony that you submitted to us?

23 WITNESS CHIN: As I stated earlier in my
24 testimony, these problems are universal and endemic
25 throughout the various jurisdictions. We did receive

1 over 150 complaints from voters in New York City
2 alone.

3 CHAIRPERSON BERRY: Okay.

4 WITNESS CHIN: Where people were
5 complaining about problems of accessing the polls,
6 being turned away, not found on the lists, machines
7 breaking down, waiting for hours, being turned away at
8 closing time, which also occurred here.

9 So, given the resources that we do have,
10 we believe that these problems exist throughout the
11 United States.

12 CHAIRPERSON BERRY: And what number, to
13 date, comparatively, of complaints did you get about
14 Florida and what is the comparative Puerto Rican
15 population of New York City and Florida, to your
16 knowledge? Are they similar?

17 WITNESS CHIN: I believe that New York
18 City is the largest Puerto Rican population outside of
19 the island of Puerto Rico and Florida and the central
20 Florida area, that would be the second largest
21 population of Puerto Ricans.

22 CHAIRPERSON BERRY: Okay. That tells me -
23 - now Mr. Dickson, being a national organization too,
24 did you on election day receive a similar number of
25 complaints from people with disabilities across the

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1 country about the various matters that you talked
2 about, given populations and where they are, as you
3 got in the state of Florida?

4 MR. DICKSON: Our operations are highly
5 decentralized, so we did not receive a lot of calls in
6 Washington. In Washington, D.C., we received five
7 calls, two from Florida, one from Virginia and I think
8 the other two were -- I forget the state.

9 CHAIRPERSON BERRY: And in your
10 decentralized operation, are you aware of anyone
11 reporting in other states that they received
12 complaints?

13 WITNESS DICKSON: My sense is we had a
14 disproportionate -- slightly more complaints from
15 Florida than we had from any other state.

16 CHAIRPERSON BERRY: Okay. All right, with
17 that, I have no further questions and we are going to
18 take a break here -- a recess for 15 minutes and we'll
19 come right back with the next panel. Thank you very
20 much and there will be some sign-out procedures that
21 the lawyers will engage the witnesses with. Thank you
22 very much.

23 (Witnesses excused.)

24 (A short recess was taken.)

25 **Expert Panel on Voting Technology**

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1 CHAIRPERSON BERRY: We will call the next
2 panel, Mr. Kimball Brace, Mr. Douglas Jones and Mr.
3 John Ahmann.

4 While you're getting ready, I need to
5 swear you in. Can we do that or do you need to do
6 whatever it is you're doing?

7 VOICE: No, that's fine.

8 CHAIRPERSON BERRY: No, you have to stand
9 up.

10 VOICE: All right.

11 CHAIRPERSON BERRY: Would you raise your
12 right hands?

13 Whereupon,

14 KIMBALL W. BRACE

15 DOUGLAS W. JONES

16 JOHN AHMANN

17 DAN GLOGER

18 appeared as witnesses herein, and having been first
19 duly sworn, were examined and testified as follows:

20 CHAIRPERSON BERRY: Please be seated.

21 Okay, counsel.

22 ACTING...GENERAL...COUNSEL...HAILES: While
23 we're waiting, Mr. Brace, for you to complete your
24 preparations, I'll ask each witness to identify
25 themselves for the record, beginning with you, Mr.

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1 Brace.

2 WITNESS BRACE: Yes, I'm Kimball Brace, B-
3 r-a-c-e, with Election Data Services.

4 WITNESS JONES: Douglas W. Jones, I'm an
5 Associate Professor of Computer Science at the
6 University of Iowa and Chair of the Iowa Board of
7 Examiners for Voting Machines and Electronic Voting
8 Systems.

9 WITNESS AHMANN: I am John Ahmann, my wife
10 and I have a little company we call Election Supplies
11 out of Napa, California and, for the record, contrary
12 to the notations here, I am not the inventor of the
13 Vote-O-Matic punch card machine.

14 (Laughter.)

15 WITNESS AHMANN: That belongs to Professor
16 Harris, who is no longer with us. Professor Harris,
17 yes.

18 ACTING GENERAL COUNSEL HAILES: And you
19 are accompanied by?

20 WITNESS GLOGER: Yes, sir, I'm Dan Gloger,
21 I am with John Ahmann and I am with Melbourne
22 Technical Services out of Melbourne, Florida.

23 ACTING GENERAL COUNSEL HAILES: And are we
24 now prepared to proceed?

25 WITNESS BRACE: Yes, I believe so.

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1 ACTING GENERAL COUNSEL HAILES: And just
2 so the Commissioners know, Mr. Brace is going to give
3 an opening statement accompanied with the overview
4 projection slides and we will ask questions of him and
5 then he will shut down his system so that we can then
6 allow Mr. Ahmann to get the power he needs for his
7 demonstration. So we will begin first with Mr. Brace,
8 ask questions of him, shut his system down and then
9 pull up Mr. Ahmann's system..

10 COMMISSIONER THERNSTROM: And is it
11 possible to do anything about the lights so that we
12 could have better visibility there?

13 CHAIRPERSON BERRY: Probably not.
14 Unfortunately not.

15 ACTING GENERAL COUNSEL HAILES: Mr. Brace,
16 will you proceed, please? Even as there are attempts
17 made to darken this room.

18 WITNESS BRACE: Darken the room or
19 whatever, fine.

20 Thank you very much, Madam Chairman.

21 I am here to talk about what we may have
22 learned from Florida... As I said, I'm Kim Brace with
23 Election Data Services. We're not the guy with the
24 funny ears, that's the other EDS.

25 (Laughter.)

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1 WITNESS BRACE: EDS is a 22-year old
2 bipartisan consulting firm that specializes in
3 reapportionment, the census, election administration
4 and redistricting all around the country.

5 For election administration, we do an
6 awful lot of information, we compile what type of
7 voting system is used in every single jurisdiction in
8 the country, we study different types of voting
9 systems in use, we collect election returns for the
10 entire nation, we study voter registration systems and
11 we also provide a GIS application, a geographic
12 information system application, to help jurisdictions
13 and county governments change precinct boundaries
14 around the country.

15 What I'm here to talk to you today about
16 is really what I'm talking about, the 10 lessons we
17 learned from Florida. First of all, we're all
18 different. I have here a map that we produced. We
19 compiled what type of voting system is used in every
20 single county in the country. We have been doing this
21 since 1980 and as you can see, at the county level is
22 where voting equipment is purchased, and there's a
23 wide variety of different types of voting equipment.
24 The most notorious following Florida, is of course the
25 punch card and that's in red, the deeper red. But of

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1 course we still have a number of different
2 jurisdictions using the old lever machines from --
3 started in 1892. A lot still with paper ballots
4 across the midwest part of the country. The newer
5 ones being the optical scan and the electronic systems
6 in purple, optical scan in green.

7 What we have done is taken a look at the
8 different types of systems and how they compare. We
9 keep track of not only what kind of -- how many
10 counties use the system, but how many registered
11 voters there are using the system, and you'll see
12 differences here. For example, for this first one,
13 which is the data vote, it's used in 1.8 percent of
14 the counties, but 3.3 percent of the registered
15 voters, because it's slightly larger areas that are
16 using it.

17 In terms of the lever machines, it's 15
18 percent of the counties, 18 percent of the registered
19 voters.

20 As far as paper ballots, it's 13 percent
21 of the counties in this country that are using paper
22 ballots, but it's less than two percent of the
23 registered voters, because it's all those small
24 jurisdictions that are still making use of paper
25 ballots.

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1 The biggest one is of course this new
2 optical scan, 38 percent of the counties in the
3 country make use of optical scan, but they are the
4 smaller jurisdictions, so it's only 27 percent of the
5 registered voters, as a result.

6 As far as the electronic systems, eight
7 percent of the counties, nine percent of the
8 registered voters.

9 And then finally, the mixed systems, which
10 tends to be up in New England, Michigan, Minnesota,
11 Wisconsin, four percent of the counties, but they're
12 larger counties, nine percent of the registered
13 voters.

14 So we can see that there's a wide
15 diversity around the country in terms of the types of
16 voting systems that are in use.

17 The next lesson that we've learned is that
18 things do change over time. In looking at registered
19 voters and the type of voting equipment over time, we
20 see that in fact for the mixed systems, it's gone down
21 since 1980, it's still hovering about 10 percent. As
22 far as the electronic systems, that's really come up
23 in this marketplace, particularly since 1990, from
24 about 4.5 percent up to about 10 percent by the year
25 2000. The biggest change, and I'm not sure if you can

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1 see this, is actually the optical scan. It was a
2 small element, but since 1990, it's gone from eight
3 percent up to almost 30 percent of the registered
4 voters. It's again the smaller jurisdictions that
5 have gone from paper ballot to the optical scan. And
6 in fact, because of that, we see the decrease in paper
7 ballot from 10 percent down to less than two percent,
8 as I said before.

9 As far as the other big change, it's the
10 lever machines. Twenty years ago, more than 40
11 percent of the population of the registered voters
12 used the old lever machines. That's now under 20
13 percent, so a big decrease over time.

14 The data vote punch card has stayed
15 relatively similar and then the punch card itself is
16 hovering about 30 percent over the past two decades.

17 Unfortunately in looking at this
18 information, the other lesson that we've learned is
19 that we don't have all the numbers in order to help
20 evaluate the problem. For example, I would ask you
21 how many -- what was the total number of people that
22 voted in the last presidential election? Anybody
23 know? This is a truck question, I must say.

24 CHAIRPERSON BERRY: Ask the panel.

25 (Laughter.)

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1 COMMISSIONER EDLEY: I thought there were
2 nine.

3 WITNESS BRACE: Nine? Well, we don't know
4 and we'll never know, because there are 11 states of
5 this country that don't tell us how many people went
6 to the polls, that simple number. And those are in
7 white there. And so we don't know the total number of
8 people that showed up on election day until those 11
9 states change their practice and provide that kind of
10 data.

11 Now why is that important? Why is the
12 actual number of people that went to the polls
13 important? Because it allows us to calculate the one
14 number that we can find out, and that is what we call
15 drop off. Okay? And drop off is -- let me give you a
16 definition so we can talk the same language here in
17 this regard. Drop off is equal to the difference
18 between the number of persons who went to the polls
19 and the total number of ballots that were cast for
20 that particular office. You, of course, can have drop
21 off for a lot of offices as we go down the ballot --
22 dog catcher is way down there obviously. But drop off
23 is one key thing that we can find out. Drop off is
24 not under-votes, drop off is actually the combination
25 of under-votes and over-votes, okay, or spoiled

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1 ballots.

2 That is one of the keys in terms of
3 understanding the data that we have. We can calculate
4 the drop off across the country. That is the one
5 number that we can calculate for at least those states
6 that report total number of people that went to the
7 polls.

8 And you can see in 1996, it varied across
9 the country. Florida was 2.58 percent drop off for
10 the vote for highest office, which in 1996 was the
11 office of president -- 2.58 percent of the people did
12 not have either a ballot being cast or a vote being
13 recorded in the state of Florida in 1996. Nationwide
14 average was 2.04 percent, but you can see there's some
15 wide differences across the country.

16 Now we do know, because we've compiled
17 data and do that task for past times also, that not
18 everyone, as I said, does vote for president. And in
19 fact, since 1948, we know that for the presidential
20 elections, which is in pink, it does average about two
21 percent of the people that don't vote for president or
22 don't have a vote recorded for presidential office.
23 In off-year elections, it goes up somewhat.

24 Now what we have been studying because we
25 do compile the type of voting equipment across the

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1 country and we do compile the election returns, we can
2 start looking now at whether or not voting equipment
3 makes a difference. And we do find that it does make
4 a difference. The drop off across the country in 1996
5 varied by the type of voting equipment. Punch card,
6 both the straight punch card like what we had and the
7 data vote punch card was the highest of the different
8 voting systems in use in the country. Lever machines
9 was actually down below, a lot of votes were being
10 cast on lever machines. But you can see the impact of
11 punch cards over here on the left-hand side, with both
12 of those types of punch cards.

13 Now the other thing that we know is that
14 within Florida, drop off varies greatly. And in fact,
15 when we look at drop off at the county level across
16 the state of Florida, we see a lot of difference. And
17 this was from 1996. We, of course, don't have all the
18 numbers yet for 2000, but you can see a dramatic
19 difference. As I said, the statewide average was
20 2.58, that's in blue. Anything in reddish color is
21 above the state average. And in fact, Dixon County
22 had the highest drop off in the state of Florida, 19
23 percent -- Dixie, I'm sorry -- 19 percent drop off.
24 As I understand it, Dixie had a new voting system in
25 1996 and did not do a lot of training on that new

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1 voting system, as I understand it.

2 But in terms of then looking in terms of
3 the year 2000, we find so far in the data that we've
4 been able to collect, a higher degree of drop off,
5 particularly in the state of Florida across the board,
6 the average went up to 3.79 percent of the people that
7 went to polls did not have a vote being counted or
8 cast for president -- this is president here, this is
9 the top of the ticket. Okay? And we see again the
10 lower ones in blue, but the higher ones in red.
11 Similar pattern, panhandle area, lower income, lower
12 population, SES scale, up in this neck of the woods up
13 here.

14 Indeed, what we've ended up finding then
15 is that some of the most important data is not being
16 compiled, unfortunately and that important data is the
17 difference in drop off. We focus on drop off because
18 that data is available, as I said. What would be nice
19 is to have under-votes and over-votes. But in many
20 instances around this country, many of the vendors
21 have discouraged the use of the reports to create
22 those, unfortunately. And so we don't know nationwide
23 how many under-votes there were and how many over-
24 votes there were. All we do know is drop off. Okay?

25 The combination of the two.

1 But when we do have access sometimes to
2 some of those reports, what we tend to find is that a
3 vast majority of that drop off is under-vote, okay?
4 Upwards of 85 to 90 percent of the drop off is an
5 under-vote. That is to say that there was no ballot
6 being cast or picked up by the machines. May be
7 choice of the voters in fact, but it was not an over-
8 vote in most instances.

9 But the number one less on that we've
10 learned from Florida is that Florida is not the norm.

11 Part of the reason it's not the norm is because in
12 the year 2000, Florida had one of the highest number
13 of presidential candidates on the ballot. There were
14 four other states that had 10 presidential candidates
15 on the ballot, no other state had more than 10. So
16 Florida was faced with a task of having a lot of
17 people on the ballot. And what we've seen then is
18 within the state, is that -- here we go -- the over-
19 vote share, we've been able to get some data. The
20 share of the drop off being cast by an over-vote --
21 not an under-vote -- is extremely high in this state.

22 It is just the opposite of what we normally observe.

23 It's not the five percent or less, but in fact, as
24 you can see, sometimes it's 75 percent of the drop
25 off. In Palm Beach, 64 percent of the drop off was an

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1 over-vote circumstance. In Duval County, 81 percent
2 of the drop off was an over-vote, an invalid ballot
3 being cast. Okay?

4 So one of the things that we've also taken
5 a look at is particularly Duval County. And there, I
6 have a graph here that shows the concentration of
7 black population by precinct. And when we overlay
8 where the drop off is, we end up seeing a very similar
9 pattern, that in fact, the drop off when you look at
10 it by precinct does follow very closely to the
11 minority population. In fact, we're seeing a very
12 high correlation between those two.

13 And that's what I wanted to bring to you
14 today. So thank you very much and I'll be happy to
15 take questions and turn over the electrical
16 information to my friend John Ahmann.

17 CHAIRPERSON BERRY: Before you do that,
18 could you put the last screen back up and repeat what
19 you said about it?

20 WITNESS BRACE: Sure. Okay. What we
21 found in Duval County, if we look at where the drop
22 off concentration is, where's the highest
23 concentration, it follows very closely to where the
24 minority concentration is or the black population is.

25 In fact, that drop off is very closely aligned with

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1 minority population.

2 CHAIRPERSON BERRY: All right, now could
3 you leave that up please?

4 WITNESS BRACE: Sure.

5 CHAIRPERSON BERRY: We're going to take
6 questions for you before you turn that off.

7 WITNESS BRACE: Okay.

8 CHAIRPERSON BERRY: Does any Commissioner
9 have any question?

10 COMMISSIONER THERNSTROM: Yes, I do have a
11 question.

12 CHAIRPERSON BERRY: Commissioner
13 Thernstrom.

14 COMMISSIONER THERNSTROM: Mr. Brace, what
15 factors, other than machines, might account for high
16 or low drop off rate and you do point to a correlation
17 in Duval County, but of course that is not a statement
18 about causation.

19 WITNESS BRACE: That's correct.

20 COMMISSIONER THERNSTROM: But obviously is
21 somebody's state of mind. But the first, I'm
22 interested in what factors other than machines might
23 account for the high or low.

24 WITNESS BRACE: There are a number of
25 different factors and in fact, one of the things that

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1 we're investigating right now is we're taking a look
2 at the various ballots that were in use on election
3 day. I have, courtesy of my last testimony here in
4 Tallahassee, the actual Palm Beach ballot and I also
5 have the Miami ballot, but I brought along a couple of
6 other kinds of ballots, particularly the optical scan
7 ones.

8 One of the things that we were in fact
9 seeing in a number of optical scan jurisdictions was a
10 very similar circumstance like what was happening in
11 Palm Beach and Duval County. This is an optical scan
12 ballot. A voter comes along and uses a number two
13 pencil and fills in the, in this instance, the little
14 circle next to the candidate's name.

15 In Florida, in this county, with the 10
16 candidates that they had for president, that
17 presidential ballot starts here in this left-hand
18 column and two additional presidential candidates of
19 those 10 are in the middle column. That middle
20 column, nowhere does it say this is a continuation of
21 the vote for president. Nowhere on the bottom of the
22 first column does it say go to the next column. And
23 nowhere does it say vote for one. All three of those
24 languages are ones that you would expect to find on
25 types of ballots, and I found that again also in the

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1 Palm Beach ballot that neither of those three
2 instances were there.

3 COMMISSIONER THERNSTROM: But I had in
4 mind factors like levels of education, socio-economic
5 status and so forth, which are -- and it's hard to
6 disaggregate those, from --

7 WITNESS BRACE: You're right.

8 COMMISSIONER THERNSTROM: -- use of
9 particular ballots and so forth.

10 WITNESS BRACE: Right. We are taking a
11 look at those other socio-economic indicators. We, of
12 course, are anxiously awaiting the new census data,
13 which should be here momentarily, because it is, even
14 the slide that I had on the percent minority, was 10
15 years old. But we are planning on pulling together a
16 lot of that data to see what kind of other
17 correlations there might be.

18 One of the other factors that we've seen
19 in studying across the country is that there is some
20 degree of correlation with drop off with what I would
21 refer to as smaller size jurisdictions. It seems to
22 me -- and we're testing this out. I don't know it for
23 a fact yet -- but it seems to me that in smaller size
24 jurisdictions where they don't have the kind of money
25 to provide training and that kind of resources to both

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1 polling place workers as well as to the voters, we're
2 finding a larger degree of drop off. I can only
3 imagine right now that it might be related to the lack
4 of funds as opposed to anything else. But we are
5 taking a look at those kind of things also.

6 CHAIRPERSON BERRY: Does anyone else have
7 any --

8 COMMISSIONER WILSON: I have a few
9 questions.

10 CHAIRPERSON BERRY: Commissioner Wilson.

11 COMMISSIONER WILSON: Thank you.

12 CHAIRPERSON BERRY: And should we have him
13 turn off this machine, so this one can be fired up now
14 or how long will it take --

15 COMMISSIONER WILSON: Well, let me just
16 ask --

17 ACTING GENERAL COUNSEL HAILES: Well, we
18 wanted to see if they had questions about the screen.

19 COMMISSIONER WILSON: Well, that's all
20 right actually, you can turn it off.

21 ACTING GENERAL COUNSEL HAILES: Well,
22 unless other Commissioners --

23 COMMISSIONER WILSON: I just wanted a
24 point of clarification. When you say drop off, is
25 that number the number that's arrived at by looking at

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1 the previous election or by looking at the population,
2 the present population today and how many people vote
3 --

4 WITNESS BRACE: No, neither of those,
5 Commissioner. That number drop off is taken from
6 official election records where they're available. It
7 is the difference between the number of people that
8 went to the polls, so that's turnout, okay, and as I
9 said we have actual turnout in 39 states. The
10 difference between that number and the total number of
11 ballots that were cast for a particular office,
12 usually the highest office, and in this instance for
13 president. So drop off is the difference in the
14 people that went to the polls, but didn't vote for the
15 various offices as they went down the ballot. And as
16 I indicated, drop off will increase as you get further
17 down the ballot. But one of the surprising things is
18 that everybody thinks that with a presidential
19 election, everybody is going to vote for president.
20 We know that's not the case, two percent of the
21 population doesn't cast a ballot or has a ballot
22 spoiled in a presidential election.

23 COMMISSIONER WILSON: Okay, I have two
24 other questions.

25 WITNESS BRACE: Okay.

1 COMMISSIONER WILSON: You mentioned that
2 the vendors did not give you reports of the number of
3 voters. Could you explain why?

4 WITNESS BRACE: What I have observed --
5 I've been observing elections for 30 years now. I
6 have been in a number of different jurisdictions
7 around the country, many times on election night, and
8 I have heard first-hand some vendors telling county
9 clerks, there is an over- and under-vote report on
10 your system, but it's very confusing, people don't
11 understand it, don't worry about running it. And so
12 in most instances, unfortunately, we don't have the
13 distinction of what is causing that drop off. Now
14 that is not uniform, there are some states that do
15 provide that. But the vast majority of states and the
16 vast majority of local jurisdictions, unfortunately,
17 don't run that report.

18 COMMISSIONER WILSON: But if you had those
19 figures, you would be able to come up with the total?

20 WITNESS BRACE: That's correct.

21 COMMISSIONER WILSON: All right, my last
22 question is -- this may be connected to the one I just
23 asked you, but how do you -- when we looked at the
24 graph of the -- or the image of all of the states,
25 like Texas and primarily a lot of the southern states,

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1 who don't account for the number of those people who
2 voted, can you explain that? Because I find that
3 mysterious.

4 WITNESS BRACE: Well, I have some
5 encouraging news. When we started compiling the data
6 back -- and pulling it together -- I wasn't around in
7 1948, but we pulled together the 1948 data, we only
8 had 18 states that reported that. We are now up to
9 39. We're not at 50 yet, but we are at 39. In some
10 instances, it is difficulty of securing vote history
11 and putting it onto the voter records. More and more
12 jurisdictions are in fact doing that, but sometimes it
13 takes time to do that. For example, the State of
14 Colorado did not have their actual turnout numbers
15 last election until June of the next year. It took
16 that long to find out actually how many people went to
17 the polls on election day.

18 CHAIRPERSON BERRY: Thank you.
19 Commissioner Edley.

20 COMMISSIONER EDLEY: So the drop off
21 figure is computed, the turnout figure, for these
22 purposes is computed just in terms of who signed in?

23 WITNESS BRACE: Yes, that's correct.

24 COMMISSIONER EDLEY: Let me ask you this
25 in simple terms if you can just distill it, it seems

1 to me at least intuitively I believe that these
2 variations in drop off, whether by geography or
3 temporally, are a rough index of voter confusion, that
4 apart from a base line of lack of interest in casting
5 a ballot for a particular office, that the variations
6 above that base line are perhaps an index of voter
7 confusion. Is that how it is commonly understood?

8 WITNESS BRACE: Well, as I mentioned,
9 Commissioner, in many instances, that drop off is
10 mostly simply no vote being cast. Now that may be a
11 choice by the voter not to cast a ballot for that
12 particular office. And as I indicated, in the vast
13 majority, it's an under-vote as opposed to an over-
14 vote. The confusion I believe would be more so if you
15 have much more over-vote. And in fact, that is what
16 we're finding here in the state of Florida, a lot of
17 over-votes, many, many more than one would normally
18 expect.

19 COMMISSIONER WILSON: I just have one more
20 question.

21 CHAIRPERSON BERRY: Are you thinking,
22 Edley? You're a thinking man, so --

23 COMMISSIONER EDLEY: Yeah, but I'm
24 thinking but not to a conclusion we're going to get to
25 any time soon.

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1 COMMISSIONER WILSON: Well, I'll be your
2 filler in while you think.

3 CHAIRPERSON BERRY: The Vice Chair has
4 questions.

5 VICE CHAIRPERSON REYNOSO: I just have
6 again a follow up question.

7 CHAIRPERSON BERRY: And remember, we've
8 not heard the other witnesses.

9 VICE CHAIRPERSON REYNOSO: Yes, ma'am.

10 CHAIRPERSON BERRY: So maybe I should ask
11 whether there are questions that are pertinent to the
12 material that's on the screen and requires it to
13 remain on the screen.

14 COMMISSIONER THERNSTROM: Yeah, I do have
15 a question pertinent to what's on the screen and it's
16 a very fast question as to what's been on the screen.

17 CHAIRPERSON BERRY: Because then I'm going
18 to let the other witnesses testify and then we'll come
19 back and finish the questions.

20 VICE CHAIRPERSON REYNOSO: Does --

21 CHAIRPERSON BERRY: Just a second. Do
22 your questions require the screen?

23 VICE CHAIRPERSON REYNOSO: No.

24 CHAIRPERSON BERRY: Then would you mind
25 holding them?

1 VICE CHAIRPERSON REYNOSO: Not at all.

2 CHAIRPERSON BERRY: Could you be very
3 fast?

4 COMMISSIONER THERNSTROM: I will be very
5 fast. It actually has to do with a previous screen,
6 that is the drop out rates in South Carolina were
7 higher than in Florida and California looked much the
8 same.

9 WITNESS BRACE: Yes.

10 COMMISSIONER THERNSTROM: I am still
11 bothered by my earlier question, which is the fact
12 that, for instance, there could be the strongest
13 correlation between drop off -- could be between drop
14 off and, for instance, education levels, because
15 you've got other states to explain as well as the fact
16 that you haven't sorted that data out.

17 WITNESS BRACE: It is possible that there
18 can be some other factors there and that's what we're
19 attempting to investigate, to see if there are other
20 factors.

21 CHAIRPERSON BERRY: Okay, thank you very
22 much.

23 COMMISSIONER THERNSTROM: Thank you, Madam
24 Chairman, that's all I have for that.

25 CHAIRPERSON BERRY: Could we unplug you

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1 and let Mr. Ahmann be plugged up. And should we have
2 him next or have --

3 ACTING GENERAL COUNSEL HAILLES: Yes, Mr.
4 Ahmann and then --

5 CHAIRPERSON BERRY: And then Professor
6 Jones.

7 WITNESS AHMANN: Thank you, Madam
8 Chairman.

9 I would like to apologize for the counties
10 and the voters in the United States for the spectacle
11 which we all saw this last year, this last November,
12 but as the engineer who helped develop the four
13 computer elections systems, the equipment, I really
14 can't take the full responsibility for setting up the
15 state law that ended up not being established in the
16 state of Florida, which caused the problems we had
17 with recounting punch card voting ballots. That was
18 something that happened a long time ago. Had there
19 been a proper law in place in the state of Florida,
20 which specified what was a legal vote on punch card
21 voting, rather than whatever the intent of the voter
22 was that might be determined by 67 different boards
23 and three members on each board, I don't think we
24 would be sitting here today, at least discussing the
25 voting equipment. We might be looking at optical scan

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1 instead of punch card, with the closeness of the
2 election.

3 But because of the fact that there was not
4 that law in place, we did have a problem and everybody
5 saw it and we had direct manual recount and there
6 definitely is a loophole in the law and that law needs
7 to be addressed. That was, as I see it, the major
8 problem that we had as far as counting and recounting
9 in this election.

10 The punch card voting system, as was
11 explained on television the other day by the
12 Governor's Committee, is the most economical system,
13 has been around for a long time and in most states it
14 works quite well. Many of the states that use it have
15 never had a close election like you had here, but some
16 of those states have and those states that have had
17 those close elections have rules in place to address
18 the situation we have here. And I just today received
19 a facsimile from the previous Secretary of State, Jim
20 Schumway, of the State of Arizona and I have handouts
21 here, a copy for each of you which you may have, which
22 gives the rules and regulations for conducting
23 elections in the State of Arizona, and how they handle
24 chad and how they take the chad off in the precincts
25 before they ever get to the central count. And I also

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1 have the cover letter, the first part of it, that Jim
2 sent to us, was the 1992 votes for president -- no
3 votes for president in '92 and in 2000 for Maricopa
4 County. They were on punch card voting in 1992, they
5 had 1.5 percent of the votes in Maricopa County, that
6 was out of 890,000, and there was no votes for
7 president.

8 They went to optical scan and that's with
9 the precinct count and they had 914,000 votes cast for
10 president -- or that voted, ballots cast in 2000, but
11 there were 15,000 that had no votes for president, and
12 1.7 percent, slightly higher. But the fact is, you
13 still had substantial amounts -- substantially the
14 same number of votes not cast for president in those
15 two elections but on two different voting systems.
16 One of them was precinct count, the other was central
17 count. So there was basically no change. You could
18 say the extra .2 percent was because of demographics --
19 - not demographics but because of the fact that there
20 was voter disinterest. They didn't want to vote for
21 either one of them -- Mr. Gore or Mr. Bush -- being as
22 they're that close. ~~I'm not going to say that two-~~
23 tenths of a percent means that optical scan is worse
24 than punch card. There are other things that we've
25 had here in this state which point out there are other

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1 factors to be considered.

2 But I wanted to give this to you along
3 with the -- Dan, if you want to hand that to the panel
4 up there, so they can have it. I wanted to give that
5 to you so you could see what at least one state, how
6 they have done it, and also Mr. Schumway was kind
7 enough to put footnotes alongside the state
8 specifications and regulations. On the left side,
9 you'll find his explanation of why they have done what
10 they have done in that state. So I thought this might
11 be of value to you.

12 CHAIRPERSON BERRY: We will distribute it.
13 Thank you very much. And keep it for the record.

14 WITNESS AHMANN: We thought that --
15 inasmuch as one of the things I've looked at and I
16 have a paper here also after testifying in Judge Saul
17 Sanders' -- Sander Saul's court, I kind of got the
18 writing fever, I had to start writing down some of the
19 things that I saw that I didn't think were right and
20 also the things that I thought might help,
21 improvements.

22 ...So I have here another 10 or 12 pages of
23 explanations, observations that I've made as to what
24 got us into the situation and then I also have another
25 one about punch card voting, how the equipment worked

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1 and my recommendations for improving the voting system
2 here in Florida and also could be nationwide.

3 CHAIRPERSON BERRY: That will be made a
4 part of the record.

5 WITNESS AHMANN: And last but not least,
6 Judge Sander Saul's court after the trial, the
7 attorney got out and made some wild accusations that I
8 had made statements and I have a release that was put
9 in the Napa Register in California which tells the
10 truth of what I actually said, not what the attorney
11 went out in front and told the media. So I have a
12 copy of that for you as well for the record.

13 Also for the record, I'd like to say that
14 Dade County, in the mid 1980s installed all new punch
15 frames, per my patent, in their voting devices and
16 that new patented punch frame -- it was an improved
17 punch frame over the rest of them; however, the rest
18 of the state basically has the Model 3 voting device
19 which doesn't have a problem with chad build-up which
20 was reported as being a problem. Also we have in
21 there the report by a rubber company, an analytical
22 company, which attests to the fact that the T-strips
23 that are being used and are used in the state as well
24 as nationwide are very sufficient and do a good job.
25 They don't wear down -- I shouldn't say wear down --

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1 they don't harden with age, which was one of the
2 accusations that was made and attributed to being the
3 cause of hanging chad or dimples. It's just not true.
4 That report is in there as well.

5 So I wanted to bring this information to
6 you and present it to you and if you have any
7 questions about the equipment, there's one other
8 factor that I wanted to point out that we need to
9 compare apples to apples and not apples to oranges
10 when we're discussing punch card voting versus optical
11 scan voting. For the last year, this unit has been
12 certified in this state to be used. There were
13 several counties that were interested in buying this
14 unit but didn't have the funds and there wasn't the
15 time to put it in place. This is the PBC-2100, it's a
16 precinct counter, does the same thing as an optical
17 scan precinct counter, made by the same company. The
18 only thing I regret to say is they didn't put it out
19 10 years ago. We originally developed the precinct
20 counter, PBC, in 1976 for Cook County, I was
21 instrumental in helping develop that. I was involved
22 with the quality control as well as design of the
23 reader and so forth. And now Cook County, City of
24 Chicago, has purchased \$30 million worth of these
25 precinct ballot counters, the same as you see right

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1 here, and it's perfectly capable of doing for your
2 punch card voting what the optical scan Eagle or the
3 other type of Accu-Vote units do for the precinct
4 count in much of Florida.

5 ACTING GENERAL COUNSEL HAILES: And if you
6 know, all the precincts in Cook County have or used
7 those?

8 WITNESS AHMANN: Yes, sir, they did.
9 There's one thing they didn't use, however. It has
10 the capability of over-vote and under-vote protection,
11 but Cook County and City of Chicago were afraid that
12 they would be sued by the rest of the state. And I
13 understand the Republican Party made some overtones of
14 objections. They did not want them using it because
15 of the fact it would give them an unfair advantage
16 over those counties or those precincts in Illinois
17 which did not have this capability. Inverse
18 discrimination, if you want to call it that. They
19 were jealous, I presume. They didn't want the
20 people's votes in Cook County and the City of Chicago
21 to have the over-vote protection. But it has that
22 capability and it also has telemetry capability, it
23 scrambles the signal at the end of the day, the
24 results can be transmitted to the election central
25 without phones. It has its own type of transmitter

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1 the same as your cell phone, but it scrambles so no
2 one can intercept it.

3 CHAIRPERSON BERRY: Are you going to show
4 us something with this machine or --

5 WITNESS AHMANN: This is Dan Gloger. Dan
6 can also --

7 WITNESS GLOGER: Can I add one thing to
8 what you said, John?

9 WITNESS AHMANN: Sure.

10 WITNESS GLOGER: We've also found that
11 unit to be very valuable. Unfortunately, in Illinois,
12 there's actually Illinois law that prohibits punch
13 card jurisdictions within the State of Illinois from
14 having the capability on that PBC of kicking out an
15 over-vote back to the voter. They're trying to get
16 that law changed, but it's right now in place within
17 Illinois law.

18 The other fact that we did see here in the
19 State of Florida, as it relates to those PBCs is that
20 the drop off rate when you have a precinct-based
21 counting system for optical scan was only .8 percent.

22 Okay? When you had a central count where you didn't
23 have one of those units but you took the ballots down
24 to the county courthouse, meaning at the end of the
25 election day, to be counted, the drop off rate in

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1 those jurisdictions in the State of Florida was 4.8
2 percent -- dramatic difference, dramatic difference.
3 Those units are well worth the price. They're pricey,
4 but they're well worth the price and I think Florida
5 demonstrated the usefulness of that.

6 CHAIRPERSON BERRY: Now let's not get
7 totally out of control here. Are we about to see
8 something here? Counsel, what is going on?

9 ACTING GENERAL COUNSEL HAILES: Yes.

10 COMMISSIONER EDLEY: Why that change in
11 the drop off rate if there's no over-vote protection?

12 I don't get it.

13 WITNESS BRACE: In Florida, there was that
14 over-vote protection. In the PBCs, in the use in
15 Florida, they did have that capability, so that when a
16 voter came in and voter an over-voted ballot, it
17 kicked it back out to them to say, you know, you've
18 got an invalid ballot here for an office, do you want
19 to cast one that is correct.

20 COMMISSIONER EDLEY: I see.

21 WITNESS BRACE: And it did increase that
22 drop off dramatically.

23 CHAIRPERSON BERRY: Do you want to pursue
24 that?

25 COMMISSIONER EDLEY: Well, I just want to

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1 make sure we understand what you're saying.

2 WITNESS BRACE: Okay.

3 COMMISSIONER EDLEY: So the effect of
4 having the over-vote protection was essentially to
5 give four percent of the voters back their franchise.

6 WITNESS BRACE: That's correct. That's
7 right.

8 COMMISSIONER EDLEY: That's a big deal.

9 WITNESS BRACE: Yes.

10 CHAIRPERSON BERRY: And where did this
11 happen and where did it not happen?

12 WITNESS BRACE: There were a number of
13 jurisdictions here in the state of Florida that had
14 the precinct-based tallying system, but a number of
15 other jurisdictions in the state of Florida that did
16 not have that precinct-based tallying. And those are
17 where the differences are.

18 CHAIRPERSON BERRY: And that's where the
19 people of color that you were talking about earlier
20 didn't --

21 WITNESS BRACE: Not necessarily because of
22 that, as it relates to color or not color. Just a
23 straight observation that it in fact allowed everyone
24 a shot at not having an invalid ballot. And it did
25 prove worthwhile.

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1 CHAIRPERSON BERRY: Who had it and who
2 didn't?

3 WITNESS BRACE: I don't have -- I do have
4 that data, but I don't have it right here with me.
5 But there were a number of different counties within
6 the state of Florida that did, and others that did
7 not.

8 CHAIRPERSON BERRY: We would need to have
9 that information.

10 WITNESS BRACE: Okay.

11 COMMISSIONER WILSON: I just have one
12 quick question.

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER WILSON: Did it also, for the
15 under-vote, kick it back out and say you didn't vote
16 for the following?

17 WITNESS BRACE: In most instances what we
18 found is that under-votes do not kick back out simply
19 because you do have that opportunity of not casting a
20 vote. That way -- I mean if it did kick out, they'd
21 be having all those dog catcher elections being kicked
22 out again.

23 COMMISSIONER WILSON: Okay, so it's
24 primarily for over-votes.

25 WITNESS BRACE: It's primarily for over-

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1 vote, yes.

2 CHAIRPERSON BERRY: All right, proceed,
3 counsel.

4 ACTING GENERAL COUNSEL HAILES: Yes. We
5 have a demonstration.

6 WITNESS GLOGER: Yes, sir. The machine
7 has been powered up and it's been cleared out to be
8 set for zero. I'm going to give you one of the
9 printouts if I may real quick.

10 WITNESS AHMANN: While he's going around,
11 I'll show you, this is the handicap voting booth that
12 is used for punch card voting, and we also have in
13 here the handicap stylus, patented, which has a cutout
14 on it and grips, allows the voter to grip. And we've
15 received a number of commendations on this from
16 paraplegics and people that have difficulty gripping
17 things, that this with the cutout on the side is quite
18 good. We did receive a United States patent on it and
19 some of the counties here have it, Los Angeles County
20 has it countywide, and other places too.

21 CHAIRPERSON BERRY: How many counties in
22 Florida have it?

23 WITNESS AHMANN: I don't recall, but it's
24 been about 10 years since we sold any here, because
25 all of the precincts got outfitted with one and they

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1 don't come around buying them again because they
2 usually keep it in the precinct supply cabinet for --

3 CHAIRPERSON BERRY: We'll find that out.

4 WITNESS GLOGER: Now this unit has been
5 zeroed out, it has a digital readout here and as each
6 ballot is inserted into it, it will print out -- it
7 will state that one ballot has been counted and it
8 says the polls are open, ready to read ballots. I've
9 got the ballots that I've used up here for the
10 printout I've just given y'all.

11 Now what it'll do, it says thank you for
12 voting, ready to read next ballot. One ballot has
13 been cast. This ballot has gone into a ballot box,
14 this machine will be sitting on a ballot box.

15 When you get a write-in ballot, you'll
16 still have the stub on it and they will write it in.
17 There's the second ballot has been cast, the third.
18 But it will separate the write-in ballots in the bin
19 down below, so at the end of the day when they close
20 the polls, the write-in ballots will be taken out and
21 transferred to the precinct, to the central count
22 system where they will be able to have the ballots
23 already separated, which I don't believe the scanner
24 ballots do, they don't separate them.

25 Now this would have been a write-in

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1 ballot, it says write in ballot. It went forward to
2 me into another section of the bin. There was another
3 write-in ballot. This ballot was rejected, over-voted
4 ballot. This ballot had voted twice for president, so
5 it's kicked back out to the voter so they can get an
6 unspoiled ballot and revote. This one says no vote,
7 blank ballot. The guy chose not to vote the ballot at
8 all.

9 At the end of the day --

10 VICE CHAIRPERSON REYNOSO: Excuse me. You
11 would tell the voter that, you would tell the voter
12 that this shows --

13 WITNESS GLOGER: Yes, sir, it kicks it
14 back out to him, he gets his ballot back, you did not
15 vote. So he knows he did not vote.

16 CHAIRPERSON BERRY: And when he over-
17 voted, it comes out saying you voted for George
18 Washington and John Adams, right?

19 WITNESS GLOGER: Yes, ma'am, I sure did.

20 (Laughter.)

21 WITNESS GLOGER: I'm guilty.

22 It is a very good unit. I'm new on it,
23 I've been going through it, we've been testing it
24 because we're looking at should they use this in
25 Florida. We would probably maintain it free. It's a

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1 very simple unit to service, there's four major units
2 in it, you pull it apart, service. And the nice thing
3 about it is if you come to the point where you need to
4 do a recount, you can take the ballots, go back to
5 your central location and run them on the existing
6 system you've got with the software that this uses.
7 So your recounts would be very speedy.

8 If you look at Seminole County on the
9 optical scan, State of Florida had a mandatory recount
10 this year. Seminole County took and processed
11 approximately 130,000 ballots back through the optical
12 scan machines. It took them 28 hours to recount
13 130,000 ballots. They were off by 670 votes on the
14 recount.

15 Volusia County is on an optical scanner.
16 Deanie Lowe took it upon herself and they hand-counted
17 every ballot rather than put them back through the
18 scanners. Not until they hand-counted the ballots did
19 they find out one of the precinct counters had powered
20 down, powered back up and reset itself back to zero,
21 320 votes were lost.

22 When you look at the statistics in
23 Florida, we are never going to have true statistics to
24 the accuracy of optical scan. Seminole and Volusia
25 County together processed approximately 315,000

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1 ballots on scanners, they were off by 1054 votes when
2 they did their recount, processing the ballots either
3 manually or electronically on the scanners.

4 Dade County processed over 600,000
5 ballots, they were off by only 100 votes approximately
6 when they did their recount on the machines.

7 Pasco County, they recounted their
8 ballots, Mr. Kirk Browning recounted the punch card
9 ballots in approximately two hours and I think 17
10 minutes for a recount.

11 There are probably, I estimate, going
12 through what I have seen pulling off the internet and
13 calling a few supervisors in the state of Florida, I
14 estimate that on optical scan on the Florida recount
15 that was required, that there's probably 1.7 million
16 ballots that were never reprocessed, the ballots
17 themselves, back through scanners. The optical scan
18 system is designed -- and this feature has the same
19 thing, it has a memory pack in it -- they are pulling
20 the memory packs out, they are reading one precinct,
21 some of the counties are, for a recount and then they
22 will take the memory packs and they will plug into a
23 PC and read the memory packs from the day of the
24 election and the ballots are not reprocessed.

25 I have a news article here from my home

1 county, Brevard County, and they admit -- the
2 Democratic Party finally went and approached him --
3 and he has said I had some precinct counters that went
4 down on election day; yet, on TV I saw and they know
5 he processed one precinct and he did not process other
6 precincts through the ballots themselves. So we will
7 never know the true statistics as to the accuracy of
8 optical scan.

9 Now on the punch cards, we do service them
10 throughout the state of Florida, every punch card
11 system in Florida. Our company goes in there, we
12 check every machine central count, we put an
13 oscilloscope on it that's been calibrated every year
14 by a U.S. company to meet government standards. We
15 put a volt meter on it, we check data going across the
16 read head before every major election, we check every
17 machine. We also turn around and we do the service
18 when they call us in to do it, but we verify that it
19 meets all manufacturer specs. All counts on punch
20 cards are doing L&A on every machine that is
21 processing punch cards at the central count, for
22 accuracy before the election. ~~They will~~ also do the
23 L&A the night after the election.

24 On precinct counters, on the scanners,
25 they might choose one out of ten and then those things

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1 go to the field. I have letters in here that have
2 been written by two supervisors to an optical scan
3 company stating what a wonderful system was
4 demonstrated and how it was supposed to be so great.
5 Yet on election days, going in, the equipment fails,
6 it doesn't last, they have outages at the precincts.
7 Yet these things have never been recounted on a
8 recount. And according to one article --

9 ACTING GENERAL COUNSEL HAILES: Mr.
10 Gloger, thank you very much. We may have questions
11 that relate directly to the technical expertise.

12 WITNESS GLOGER: Oh, I'm sorry.

13 CHAIRPERSON BERRY: I think we got the
14 point.

15 WITNESS GLOGER: Thank you.

16 ACTING GENERAL COUNSEL HAILES: And we
17 would like to hear from Professor Jones at this time.

18 WITNESS JONES: Thank you.

19 I've been a member of the Iowa Board of
20 Examiners for Voting Machines and Electronic Voting
21 Systems for the past six years. In the fall of 1999,
22 I was elected Chair of the Board. In these years,
23 I've examined voting systems made by Micro-Vote,
24 Election Systems & Software, Global Election Systems,
25 Fiddler, Doubleday and others.

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1 Old timers tell me that not too long ago,
2 there were only two vendors of lever voting machines
3 and the only other choice was paper ballots. This
4 time is long past. We have six systems approved for
5 use in Iowa today and I know there are vendors we have
6 not heard from.

7 In short, we're in the midst of a
8 revolution in the way we vote. This revolution
9 started in the 1960s with the introduction of punch
10 card voting and not long after that, optical mark
11 sense voting. In the last 10 years, the rate of
12 change has increased. This revolution offers
13 wonderful opportunities but the technology we use has
14 left our laws and regulatory structures far behind,
15 and this poses real perils for our democracy.

16 In the next few minutes, I'd like to
17 briefly outline the technologies available, along with
18 the problems these pose, but first I'd like to address
19 some broader issues.

20 It's extremely important to emphasize that
21 voting technology cannot be evaluated in isolation.
22 Each voting technology, whether it rests on hand-
23 counted paper ballots or modern electronics is part of
24 a system. Some of the system components may be
25 mechanical or electronic, but others are laws and

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1 administrative rules. And none of these can be
2 ignored when evaluating the technology. Thus, whenever
3 hand vote counting plays any role, whether it's in the
4 first count or in the recount, we must examine the
5 laws and administer the rules governing the count.
6 When any mechanical processes are involved, we must
7 ask how the mechanisms are prepared, maintained and
8 checked for proper operation and when computers are
9 involved, we must ask about the rules governing their
10 programming.

11 I am particularly concerned by the claim
12 repeatedly echoed in the media last month that a
13 machine count is inherently unbiased and should not be
14 subject to dispute. Machines can be unbiased and
15 accurate, but we can only trust machines as far as we
16 trust those who maintain and program them. There are
17 two primary ways to ensure that a machine count is
18 trustworthy. One is to routinely hand-count some
19 fraction of the ballots, as a matter of quality
20 control, and the other is to require a complete public
21 disclosure of the mechanism and software used in the
22 count.

23 The suggestion that an honest electoral
24 system must be based on trust is a dangerous one. We
25 must not trust any particular participant, mechanism

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1 or computer program. In fact, we must expect every
2 participant, the maintainer of every mechanism and the
3 designer of every computer program to be a partisan.
4 The way that we assure that the system itself is
5 trustworthy is to construct an adversary system where
6 each step in the process is carried out not only in
7 public, but in the presence of and under the
8 supervision of representatives of opposing parties.

9 Each of the 50 states, as you've already
10 heard, acts very independently. The example of
11 Florida is not terribly distinctive. In Iowa, we have
12 essentially the same structure and we certainly can't
13 blame it on reconstruction. We have a Secretary of
14 State who is the State Commissioner of Elections and
15 county auditors who are the county commissioners of
16 elections, with a very similar autonomous county
17 structure. The funding for voting machines is at the
18 county level.

19 The federal role has been extremely
20 limited, largely limited to civil rights and
21 promulgating voluntary standards. Currently the
22 Federal Election Commission's ~~January 1990~~ standards
23 document governs essentially all voting systems other
24 than paper ballots and lever machines, but it's a
25 voluntary standard and unfortunately the standards are

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1 far from perfect, they are significantly out of date,
2 five years before they were adopted, and the number of
3 states that don't even write any reference to the
4 standards into their state law governing voting
5 machines is embarrassing.

6 There are five broad classes of technology
7 used today -- paper ballots, lever voting machines,
8 punch card ballots, optical mark sense ballots and
9 direct recording electronic voting machines. Each of
10 these has its strong points and each has significant
11 weaknesses.

12 In summary, the great strength of paper
13 ballots, including punch card and optical mark sense
14 ballots is that they offer a physical record of each
15 vote cast, and therefore, if there's any question
16 about the trustworthiness of the original count, a
17 recount is possible.

18 This is not true of lever voting machines
19 or direct recording voting machines. With these, even
20 if they purport to keep a record of each voter's
21 ballot, this record is only indirect evidence of the
22 voter's expressed preference. It's only as
23 trustworthy as the mechanism used to transcribe the
24 vote.

25 The great weakness of paper ballots,

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1 including punch card and optical mark sense ballots,
2 is that they are subject to interpretation, either by
3 a person or by a machine. Most voters are very
4 conscientious about how they mark their ballots, but
5 even so, some marks or punches are marginal. The rules
6 governing the interpretation of these marginal marks
7 have been manipulated for partisan advantage for at
8 least a century, and yet there are straight-forward
9 reforms that would make such manipulation extremely
10 difficult.

11 Voting machines, both the old lever
12 machines and modern direct recording electronic voting
13 machines, offer an immediate vote total as the polls
14 are closed and they eliminate the need for, and in
15 most cases even the possibility, of a recount. The
16 most obvious problem with voting machines is their
17 sheer complexity -- hundreds of springs and levers,
18 thousands of gears or worse yet, a microprocessor with
19 complex software inside. How do we ensure ourselves
20 that such systems operate correctly? Typically we
21 must simply trust the designers and maintainers of the
22 machines and it's dangerous to rely on trust when
23 conducting elections.

24 I believe the no voting technology
25 available today is good enough to be adopted as a

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1 national standard and I believe that we benefit from a
2 technologically diverse marketplace offering many
3 different voting technologies. I believe, therefore,
4 that the current press for uniformity should be
5 directed towards uniform performance and
6 accountability standards, and not the creation of a
7 single standard voting system.

8 In my written comments, I've offered more
9 detailed examination of each of the available voting
10 technologies along with detailed suggestions for
11 reform that I feel are needed. I will gladly answer
12 questions you have about these technologies, their
13 weaknesses and the reforms.

14 CHAIRPERSON BERRY: Okay. Does anyone
15 have any questions for the -- why don't we start --
16 Cruz, I promised you'd be first.

17 VICE CHAIRPERSON REYNOSO: Yes, thank you
18 very much.

19 I wanted to ask Mr. Brace, does the drop
20 off -- and I'm talking now about the vote for
21 president -- does that include spoiled ballots for any
22 reason?

23 WITNESS BRACE: Yes, it would include
24 spoiled ballots, so drop off is both over-votes, which
25 would be spoiled ballots, or other kind of spoilage

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1 besides an over-vote.

2 VICE CHAIRPERSON REYNOSO: Right.

3 WITNESS BRACE: As well as under-vote.

4 WITNESS JONES: But it should not include
5 a spoiled ballot if the voter than got a replacement
6 and voted the replacement.

7 WITNESS BRACE: That's correct.

8 VICE CHAIRPERSON REYNOSO: In fact, that
9 leads me to my second question, which I put to all of
10 you. I was quite encouraged by the development of a
11 system that can kick back the over-vote; quite
12 distressed that some folk would not want a machine
13 that would kick back an under-vote, because it seems
14 to me it'd be a very simple matter to have that kicked
15 back and have the official say it's been kicked back
16 because apparently you didn't vote for everybody; was
17 that your intention? Yes; fine. No; well, you'd
18 better do it again.

19 It seems to me that we need to concentrate
20 on protecting the individual right of each voter to
21 vote and to have his or her ballot counted. So my
22 question to all of you is the following -- is there
23 presently a system or can a system be developed that
24 does precisely that; that is, once the person has
25 voted, it can be -- it can go through a machine or

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1 some other system that assures the voter that his vote
2 will be counted. I know there are legal mechanisms
3 for doing that, the affidavit ballot, for example,
4 where if a person is not on the rolls, they at least
5 vote and then later decide whether or not that vote
6 can be counted. So there are legal mechanisms for
7 doing some of that. But I'm just interested in the
8 mechanics of it.

9 Is there now that type of mechanism?
10 Because it seems to me it would be so helpful if a
11 person over-counts -- over-votes or whatever, to have
12 it kicked back immediately and then get another
13 ballot.

14 CHAIRPERSON BERRY: Or under-votes.

15 VICE CHAIRPERSON REYNOSO: Or under-votes.

16 MR. AHMANN: If I may answer that. If you
17 take a look at the laws and the rules that are in
18 effect in the state of Arizona, that's exactly what
19 they do and they have the mechanism in there that if a
20 person comes into the precinct and they don't know who
21 it is or they don't know if they're fully registered,
22 they go ahead, let them vote and then that vote is put
23 into a separate envelope so that later on -- it
24 doesn't get merged with the rest of the ballots so it
25 can be recognized and verified that that person is

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1 legitimately allowed to vote in that precinct, instead
2 of turning him away at the door. Plus, they can use -
3 - they have the opt-tech unit that has this over-vote
4 capability and the kick back capability in Maricopa
5 County right now, as an example.

6 CHAIRPERSON BERRY: But do they have the
7 under-vote that was the other part? I guess not from
8 what we've heard.

9 COMMISSIONER WILSON: Madam Chair.

10 CHAIRPERSON BERRY: I will recognize you
11 in just a second.

12 COMMISSIONER WILSON: Okay.

13 CHAIRPERSON BERRY: Will you try to answer
14 this question? Are you going to follow up on that,
15 Commissioner Wilson?

16 COMMISSIONER WILSON: No, it's another
17 question.

18 WITNESS AHMANN: I believe it does have
19 the under-vote capability too.

20 WITNESS JONES: I was going to follow this
21 up. The problem with kicking back under-votes is I
22 believe the vast majority of voters don't vote in one
23 or another of the numerous tail of the ballot races in
24 the general election.

25 VICE CHAIRPERSON REYNOSO: Judges and so

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1 on.

2 (Laughter.)

3 WITNESS JONES: County soil and water
4 conservation district board members is a classic
5 example we have in Iowa, a mosquito abatement board
6 might be the Florida equivalent.

7 The problem is to design a voting system
8 where the errors in the mechanism scrupulously count
9 even marginal marks as votes so that bottom of the
10 race -- bottom of the ticket races make it a little
11 inaccuracy, those aren't of national importance,
12 they're of local importance and those marginal marks
13 are not a major -- aren't going to shake the country.

14 But top of the ticket races -- if I make a faint
15 tick, that should be counted as a vote. If I make a
16 dimple, that should be counted as a vote by the
17 machine. And if the machine introduces extra votes on
18 the top of the ticket race, those become over-votes
19 which can be kicked back quite fairly

20 Whereas if we kick back under-votes, we're
21 going to kick back 90 percent of all voters' ballots,
22 probably many more, because I don't know what
23 percentage of voters actually vote every race on the
24 ballot, it must be very rare.

25 CHAIRPERSON BERRY: On this question,

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1 counsel has a follow up.

2 ACTING GENERAL COUNSEL HAILES: Would it
3 help to design a ballot that would allow the voter to
4 mark some intent not to vote for all of the candidates
5 on the ballots? Would that help?

6 WITNESS JONES: That might be helpful;
7 that isn't an option that I've considered, but there
8 are some research very similar to what you've done,
9 having to do with the effect of technology on the drop
10 off at the bottom of the ticket, and that research
11 almost contradicts the top of the ticket results you
12 presented, because what it shows is that for lever
13 voting machines, the old classic iron warhorse
14 technology, the people will vote at the top of the
15 ticket, but when they reach the bottom of the ticket,
16 maybe their arms are tired from holding their hand up
17 like this for so long, it may actually be a
18 disabilities issue, but the drop off rate at the
19 bottom of the ticket on lever machines is extremely
20 high. When you compare that with paper ballots, they
21 have a much flatter decline in the drop off as you
22 move from the top of the ticket to the bottom of the
23 ticket.

24 CHAIRPERSON BERRY: I'm going to recognize
25 people in just a second, but to follow up with what --

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1 counsel asked you a question and, Professor Jones, you
2 said I really hadn't thought about that, when counsel
3 asked you if it were possible to devise where one
4 could mark that one --

5 WITNESS JONES: I'm sure the answer is
6 yes.

7 CHAIRPERSON BERRY: Would you think that
8 that would make sense if under-voting is a problem and
9 if trying to figure out all the people who didn't want
10 to under-vote --

11 WITNESS JONES: It might make excellent
12 sense and it's sort of like having people raise their
13 hands for abstain in a parliamentary election.

14 WITNESS BRACE: There is one state in this
15 nation that does provide for that. It's the State of
16 Nevada that has a category of none of the above. And
17 a couple of times that entity has won.

18 (Laughter.)

19 COMMISSIONER THERNSTROM: Madam Chair, I
20 have a follow up.

21 CHAIRPERSON BERRY: Commissioner Wilson.

22 COMMISSIONER WILSON: Thank you.

23 I'd like to thank each of you for coming -

24 -

25 CHAIRPERSON BERRY: Well, just a minute,

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1 let me see if somebody wants --

2 COMMISSIONER WILSON: No, I have a
3 question.

4 COMMISSIONER THERNSTROM: I do have a
5 follow up on this specifically, the question of under-
6 votes, if you would permit me.

7 CHAIRPERSON BERRY: Do you have a question
8 about this or do you have a question about something
9 else?

10 COMMISSIONER WILSON: Well, by this point,
11 it's gone out of my head, but I did have a question,
12 yes.

13 CHAIRPERSON BERRY: Do you recall the
14 question?

15 COMMISSIONER WILSON: No. So for the
16 moment -- I'll get it back, so I'll defer to my
17 colleague.

18 COMMISSIONER THERNSTROM: Let me just do
19 the follow up. On the under-votes, isn't there
20 another question with respect to counting -- kicking
21 back the under-votes and that is wouldn't there be a
22 problem of invasion of privacy if an official asked
23 about an under-vote, didn't you want to vote for
24 either presidential candidate? You know, invasions of
25 privacy are a concern to me and I wonder how you react

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1 to that.

2 MR. AHMANN: I think you're absolutely
3 correct and to many people this would be. But then
4 again, it depends on how your state law or how the
5 federal law might be written, or as a guide or maybe
6 it would be permissive but maybe not a requirement --
7 there's different ways of writing.

8 CHAIRPERSON BERRY: Do you all agree with
9 that, and do you all think that that is any more of an
10 invasion of privacy than asking why someone chose to
11 vote for two people? I did that once.

12 (Laughter.)

13 COMMISSIONER THERNSTROM: Well, wait a
14 minute --

15 CHAIRPERSON BERRY: Why is it more of an
16 invasion of privacy to be --

17 COMMISSIONER THERNSTROM: Because one is
18 clearly a mistake.

19 CHAIRPERSON BERRY: Commissioner
20 Thernstrom, I'm asking a question.

21 COMMISSIONER THERNSTROM: Sorry.

22 CHAIRPERSON BERRY: Please indulge me.

23 COMMISSIONER THERNSTROM: Yes, I'm
24 terribly sorry.

25 CHAIRPERSON BERRY: Why would it be more

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1 of an invasion of privacy to ask me why I didn't vote
2 in a category than to ask me why I chose to mark two
3 people, and did I notice that and don't I want to do
4 it again?

5 WITNESS GLOGER: Well, the machine did
6 kick it out.

7 CHAIRPERSON BERRY: The machine is not
8 God, and is not the law. So I'm asking you tell me
9 why it's more --

10 WITNESS BRACE: There is a median point
11 here, Commissioner, that you could have -- and there
12 are some systems that would kick out, for example,
13 what Dan just demonstrated, when it is totally blank,
14 it would kick out because obviously that is probably
15 an error. It could also be configured that if one
16 side of the card -- in some cards where you could vote
17 both sides of the card, if one side is totally blank,
18 it could be programmed to kick that out.

19 CHAIRPERSON BERRY: Commissioner Lee has a
20 question and then Commissioner Meeks and then I'll
21 come back to Commissioner Wilson.

22 COMMISSIONER LEE: This is actually a
23 follow up question. What happens if only the voter
24 puts in her or his ballot in the scanning machine,
25 with the prior education that if it kicks out for

1 over-vote or under-vote, then you decide whether you
2 go back and get another vote. So that provides
3 privacy protection but at the same time the voter will
4 know whether his or her vote is being counted. Does
5 that work? Because right now we have problems in some
6 counties that you have to hand your ballot physically
7 to another person to submit it to --

8 WITNESS BRACE: To the machine. It varies
9 according to different state laws. Some of them do do
10 that. The key is, however, you're alluding to the
11 need for education. We have all gone through a big
12 education exercise in the last three months, since the
13 election. I was talking to a couple of election
14 officials a couple of days ago. They all tend to
15 think that boy, this next election, we'll all be
16 checking for the hanging chads and everything else to
17 make sure that our ballot is cast properly.

18 CHAIRPERSON BERRY: Commissioner Meeks:

19 COMMISSIONER MEEKS: Yes, and this just
20 goes back to the slides that you had -- and I wasn't
21 asleep -- but I just wanted to make sure that I
22 understood. What was the percent of over-votes in
23 Florida?

24 WITNESS BRACE: The county-by-county ones
25 that I was doing was a percent of the drop off that is

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1 under-vote, so it's not what percent of under-votes
2 there are for the entire number of people that went to
3 the polls. What I was attempting to say is that when
4 you look at just that drop off, normally you find that
5 most of that drop off is under-vote, not an over-vote.

6 That is just the opposite of what I'm finding here in
7 the state of Florida. That in most instances it was
8 in fact an over-vote situation and I believe it's
9 partly the bad ballot design -- the Palm Beach ballot.

10 The Duval County ballot where you have an office that
11 goes across both pages. Now there's been alluding to
12 butterfly ballots being in other states. They don't
13 really have a true butterfly ballot in the state of
14 Illinois, they have an overall office that goes with
15 multiple races for judgeship. That's different. If
16 you had, for example, in a judgeship retention race,
17 it's a vote of yes or no; if you had a yes on one page
18 and a no for that same judge on another page; that
19 would be a butterfly ballot. But not when you have a
20 yes/no; yes/no; yes/no; and then another set of
21 yes/no; yes/no; yes/no for other offices for
22 judgeship. That's not technically a butterfly ballot.

23 WITNESS JONES: With all the disadvantages
24 of one.

25 CHAIRPERSON BERRY: Just a moment. I

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1 didn't hear what you said, Professor Jones.

2 WITNESS JONES: It has all the
3 disadvantages of one, that Cook County ballot was an
4 atrocious ballot that raises all of those disability
5 issues that were so well discussed in the previous
6 session, with having to try to find -- if you're going
7 to count down columns, there was no way to do it
8 coherently on that ballot.

9 WITNESS BRACE: And unfortunately, Cook
10 County was caught in the circumstance of having all of
11 those judgeship races. They had to go out -- because
12 their physical ballot, the 312 card that they had, did
13 not handle it, they had to go out, as John alluded to,
14 and buy a whole new set of ballots to allow more
15 candidate possibilities on that ballot.

16 CHAIRPERSON BERRY: Commissioner Wilson.

17 COMMISSIONER WILSON: Thank you.

18 I would like to continue to thank you all
19 for coming here --

20 (Laughter.)

21 COMMISSIONER WILSON: -- and to say how
22 illuminating, as far as I'm concerned, each of your
23 testimony has been.

24 Before I get to my question, I was about
25 to comment on the under-vote issue because when I

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1 think about it, were I in that situation, I don't
2 think I would want to answer the question if I were
3 asked "or none of the above." I would probably say
4 well, that's none of your business. But on the other
5 hand, -- I mean I think it's a valid -- I think it is
6 an issue and I think it needs more thought. On the
7 other hand, perhaps if I was given a breakdown of
8 choices where I was asked, you know, did I not want to
9 vote period; was I not voting as a protest vote. Then
10 you could be making a point in answering those
11 questions.

12 COMMISSIONER THERNSTROM: None of the
13 above, you mean.

14 COMMISSIONER WILSON: Other than the none
15 of the above. Also, of course, there is the other
16 issue which I may be overstating, which is the
17 intimidation factor, when people are in that booth
18 anyway, they're jangled, I think under the best of
19 circumstances they're jangled, they know other people
20 are waiting, they want to get out of there, so there's
21 that issue.

22 My simple question was, this machine is
23 very interesting and I think is a machine that's sort
24 of full of hope and possibility. But my simple
25 question was how much is it and is it really too

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1 expensive for most districts.

2 WITNESS GLOGER: You would have to talk to
3 the manufacturer of it, but I think if the people were
4 really interested, they are looking to put this in the
5 state.

6 COMMISSIONER WILSON: You mean they'd work
7 out a deal? It's not that I want to buy it myself.

8 WITNESS GLOGER: You need to talk to a Mr.
9 Gene Cook.

10 MR. AHMANN: I believe those --

11 CHAIRPERSON BERRY: Just a moment, please
12 do not talk at once.

13 WITNESS JONES: It's cheaper in volume.

14 WITNESS GLOGER: They are cheaper in
15 volume.

16 CHAIRPERSON BERRY: I will recognize you,
17 please. I just can't hear with everyone talking at
18 the same time.

19 WITNESS GLOGER: You need to talk to ES&S,
20 a Mr. Gene Cook.

21 COMMISSIONER WILSON: Well, I mean I was
22 really just saying that I hope that it would be
23 affordable.

24 WITNESS GLOGER: I believe it is.

25 CHAIRPERSON BERRY: Mr. Ahmann.

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1 WITNESS AHMANN: I believe the quantity
2 one price that I was given was approximately \$6500,
3 quantity one.

4 CHAIRPERSON BERRY: Mr. Brace, do you
5 agree with that?

6 WITNESS BRACE: That's what I have been
7 led to believe, somewhere around \$5-6000. The problem
8 is that when you have 3000 precincts in your
9 jurisdiction, that's a hefty price tag.

10 CHAIRPERSON BERRY: Right.

11 WITNESS BRACE: That's the problem.

12 CHAIRPERSON BERRY: Did you want to -- do
13 you agree with that or do you want to comment?

14 I see you, Mr. Dickson, and I'll recognize
15 you in a minute.

16 WITNESS JONES: I was wondering how that
17 compares with the price of things like the Optic Eagle
18 which is the same vendor.

19 WITNESS BRACE: It's a very similar price
20 for those kind of -- for the optical scan precinct-
21 based counting system, very similar price.

22 WITNESS JONES: This is one of the
23 patterns that we see is that it's the small rural
24 counties that adopt new technology soonest. And the
25 large urban counties make the least frequent changes

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1 in their voting technology and frequently hang onto
2 old systems long after they should have been replaced.

3 CHAIRPERSON BERRY: Could someone pass a
4 microphone to Mr. Dickson, who is behind you, in view
5 of his disability. He testified earlier -- I don't
6 know if it'll reach -- somebody see if we can -- if we
7 can't, then we'll figure out something else. That's
8 all right, he's coming over. And he asked to comment
9 on this, so we're going to -- since he is a witness --
10 let him do so.

11 You're still under oath, Mr. Dickson.

12 WITNESS DICKSON: Yes, I am. Thank you.

13 That machine was impressive, but if I
14 understand it correctly, it still would not allow
15 either myself or over 500,000 other Floridians to cast
16 a secret and independent ballot.

17 CHAIRPERSON BERRY: Okay.

18 WITNESS DICKSON: Am I correct in that?

19 CHAIRPERSON BERRY: With a disability, in
20 his case, it's blindness.

21 WITNESS GLOGER: I believe he's -- well,
22 yeah --

23 WITNESS BRACE: He's correct. I mean he's
24 still caught at the beginning of the process not being
25 able to follow the punch card system.

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1 CHAIRPERSON BERRY: So he would still
2 require assistance.

3 WITNESS BRACE: That's correct.

4 CHAIRPERSON BERRY: Okay. That's your
5 point, right?

6 WITNESS DICKSON: Yes.

7 CHAIRPERSON BERRY: Okay, thank you very
8 much, Mr. Dickson.

9 ACTING GENERAL COUNSEL HAILES: Mr.
10 Dickson also informed our staff, and my question is
11 directed to Mr. Ahmann, that there are certain voting
12 booths that are not accessible for persons with
13 disabilities, maybe paraplegic or quadriplegic,
14 because of the height of the table and he gave me a
15 very vivid illustration of a person who went to the
16 booth, had to lift themselves up on one arm and then
17 try to use the other arm to punch a card. And you
18 mentioned that this was a voting booth that was
19 specifically designed to assist persons with
20 disabilities. In what way does that help the person
21 who is a quadriplegic or paraplegic?

22 WITNESS AHMANN: A paraplegic, by
23 definition, I'm assuming they would have at least a
24 hand where they would be able to punch, that was
25 available, and being in a wheelchair. This is what we

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1 call the wheelchair accessible booth.

2 ACTING GENERAL COUNSEL HAILES: Because of
3 the height of the table?

4 WITNESS AHMANN: The legs have been
5 shortened by at least 10 inches to get it down to
6 table top height, and wheelchair height, the
7 wheelchairs actually need a little higher booth than a
8 standard table you would sit at. So it's been
9 designed that way and then also we have the
10 handicapped adapters. These adapters that you see
11 spread out in the front, would allow most wheelchairs
12 and the person with wheelchairs to put their legs,
13 slide up underneath and be able to roll the booth --
14 not the booth -- roll their wheelchair up to it or
15 either sideways or underneath. And this is usable on
16 any one of the 300,000 plus voting booths that are in
17 use today for punch card voting.

18 CHAIRPERSON BERRY: Commissioner Lee, did
19 you have a question?

20 COMMISSIONER LEE: Just a general
21 question.

22 CHAIRPERSON BERRY: It's a general
23 question, not about this.

24 COMMISSIONER EDLEY: No, I have a general
25 question.

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1 CHAIRPERSON BERRY: General question.
2 Commissioner Meeks, do you have a question about this
3 or about something else?

4 COMMISSIONER MEEKS: Well, actually about
5 the machine.

6 CHAIRPERSON BERRY: All right, well go
7 ahead, you ask your question.

8 COMMISSIONER MEEKS: So would one machine
9 be sufficient for one precinct?

10 WITNESS AHMANN: Yes, normally that's the
11 --

12 CHAIRPERSON BERRY: Commissioner Lee.

13 COMMISSIONER LEE: This is a general
14 question. Since some of the states are now
15 experimenting on computer voting, I'd like to get your
16 comment on your assessment, other than the
17 accessibility issue that some of the counties may not
18 be hooked up or some communities may not have
19 accessibility to it. I'd just like to get your
20 comments on how this is going, computer voting.

21 WITNESS BRACE: It is moving forward, but
22 at a slow pace and probably ~~should at a~~ slow pace.
23 There's a lot of still secrecy issues involved in that
24 as well as I've been out in a lot of different county
25 election offices and some of them don't have their own

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1 PC, so how are they going to take the ballots in? We
2 are not quite ready in many different jurisdictions
3 for that. It may be coming, but we're not quite ready
4 yet.

5 CHAIRPERSON BERRY: Commissioner
6 Thernstrom.

7 COMMISSIONER THERNSTROM: Just one brief
8 comment and then a question. I had assumed that the
9 over-vote would not have the same invasion of privacy
10 problems simply because it's so clearly an error,
11 whereas an under-vote is that personal decision. But
12 here's my question. Mr. Jones, you talked about the
13 federal role, you said no national standard but
14 uniform standards with respect to performance and
15 accountability. Now obviously I haven't seen your
16 full statement, but it seems to me there's an awfully
17 thin line between the two on its face at least, that
18 once you say look, we want uniform standards in terms
19 of performance and accountability -- what is the
20 argument to going to a national standard, because in
21 order to comply with your performance and
22 accountability standard, you are going to have to -- I
23 mean that compliance is going to be also flawed. You
24 said well, you've got error, inherent flaws so we
25 don't want to pick for a national standard a system

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1 that, you know, is not perfect, but no system is going
2 to be perfect.

3 What's the heart of the difference between
4 the two and the argument against federal standards
5 here?

6 WITNESS JONES: The differences between
7 the current state of affairs and what I would hope
8 would come to be --

9 COMMISSIONER THERNSTROM: No, the
10 difference between what you hope and what you don't
11 want, which is a federal standard.

12 WITNESS JONES: Ah. I don't want a
13 federal standard voting technology or essentially I
14 don't want to create a monopoly. What I do want are
15 performance standards that state that machines must
16 live up to certain standards and as far as the formats
17 used for reporting data for the canvassing purposes, I
18 want to see those over-votes and under-votes
19 mandatorily included in the canvass of the election.
20 I'd like to see the total number of people who
21 requested ballots as distinct from the number of
22 ballots found in the ballot box, because that's an
23 important component of the problem.

24 I want these numbers because they disclose
25 numerous voting abuses, they make it very hard to

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1 hide. Whereas if you only report the number of votes
2 actually counted for one candidate and actually
3 counted for another, all kinds of dirt can be hiding
4 in the corners.

5 I want to see uniform standards for
6 interpretation of marked ballots and I want those
7 standards to be based on objective criteria. I did
8 some simple games with an old punch card ballot. I
9 simply sat there and started poking at it and made a
10 couple of observations. One of them is that without a
11 backing, you get a trap door every time. Another one
12 is that the force required to create a dimple in card
13 stock is immense compared to the force required to
14 create a trap door. If you're going to count trap
15 doors, then you should count anything that requires
16 more force than is required to create a trap door. I
17 mean creating the dimple that I just created in this
18 ballot stock, I had to push a whole lot harder. This
19 isn't a ballot that was used in Florida, this is a 10-
20 year old Democratic Convention ballot from a state
21 Democratic convention in Iowa.

22 ~~..So my experiments have to be taken~~ with a
23 grain of salt, but nonetheless, the point is we should
24 have standards organizations that are in a position to
25 make scientific studies, providing the data on which

1 we can base these kinds of standards and not seat of
2 the pants guesstimates being made by county election
3 officials who have not the apparatus or the scientific
4 training to make those kind of judgments.

5 COMMISSIONER THERNSTROM: I totally agree
6 with that, I just don't know why you don't go all the
7 way and say look, that in effect amounts to a federal
8 standard, let's have a federal standard.

9 WITNESS JONES: Partly because I don't
10 know whether we'll succeed in getting one. It's hard
11 to push the federal government to impose standards,
12 particularly when we have strong partisan arguments in
13 favor of a certain degree of decentralization, which
14 is frequently described as local government but
15 actually is states' rights.

16 The other side of it is that my experience
17 with the Federal Election Commission standards we've
18 got is that there have been many occasions when I've
19 seen machines that passed the FEC testing with flying
20 colors, which we haven't approved in Iowa because we
21 found that they didn't live up to the standards that
22 were imposed. I would like the option of imposing
23 tougher standards and in Iowa we've used that two or
24 three times in the last couple of years, depending on
25 whether I count one machine coming back for re-

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1 examination and being turned down twice.

2 COMMISSIONER THERNSTROM: But they would
3 live up to the standard of uniform performance and
4 accountability that you want.

5 WITNESS JONES: I would love to see
6 minimum standards at the very least that were binding.

7 CHAIRPERSON BERRY: Okay. Commissioner
8 Wilson.

9 COMMISSIONER WILSON: I just have one more
10 question to get your response to what you were
11 discussing with Commissioner Thernstrom. Before, you
12 said -- very passionately said I don't want to see a
13 monopoly.

14 WITNESS JONES: Right.

15 COMMISSIONER WILSON: Okay. Do you want to
16 just expand on that?

17 WITNESS JONES: Monopolies pose risks of
18 manipulation by whoever it is that is running the
19 monopoly. If it's a government run thing, you'll have
20 to ask what happens if we get a political machine in
21 power that is going to use the machinery of its
22 government run bureaucracy to impose its own will. If
23 it's a privately run monopoly, we have the possibility
24 of that private institution becoming corrupted.

25 In addition, if we have a single monopoly

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1 technology and we discover 10 years down the road that
2 there's something horribly flawed about it, we don't
3 have anything to fall back on. Right now, if we
4 decide that we want to rule out punch card voting, we
5 have multiple vendors, each of which offers multiple
6 alternatives to punch cards, and are in production,
7 they're approved for use in many states and they can
8 easily provide the replacements.

9 Were we to move to a position where we had
10 a monopoly and 10 years down the road discover we've
11 made a horrible mistake, what would we do? Where
12 would the replacements be?

13 COMMISSIONER WILSON: Thank you..

14 CHAIRPERSON BERRY: Yes, Commissioner.

15 COMMISSIONER EDLEY: Okay, this is a
16 general question, and I guess I want to pose it to
17 Professor Jones and then Mr. Brace.

18 I listened to the descriptions of the
19 alternative technologies and the possibility of doing
20 better, but it leaves me with the following problem.
21 We have a lot of people that we are all trying to
22 bring into the electoral process, ~~trying to get~~ them
23 to participate in our democracy, and a lot of first
24 time voters. We heard the stunning numbers from Mr.
25 Dickson about participation from the disability

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1 community. And yet we see these problems in terms of
2 under-votes and over-votes and all the rest of it, and
3 I can imagine two different stories. One story is
4 that sprinkled around the country, we have some
5 wonderful, civic-minded people at the state and local
6 level who are doing their best to find voting systems
7 that will ensure that everybody's vote is counted.
8 There's another story that is my goodness, look at all
9 these variations, look at the situations and people
10 seem to be insistent upon selecting voting systems
11 that predictably will result in high under-counts,
12 high over-counts, high rates of voter confusion. And
13 indeed, differences in rates of voter confusion based
14 upon things like class, education, race, cleverness,
15 you name it.

16 So I've got two different stories. One in
17 other words of civic-mindedness, high-mindedness, and
18 for some reason they're just not finding their way to
19 better policies and practices. And another story that
20 really is a frightening one of kind of selected
21 indifference, a willingness to tolerate
22 disenfranchisement via technology.

23 My question is to the two of you, since
24 you work day in and day out, have contact with
25 election officials around the country, which of those

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1 two stories do you think actually characterizes the
2 culture of election officials?

3 WITNESS JONES: The first --

4 COMMISSIONER EDLEY: Go ahead.

5 WITNESS JONES: I think the answer is over
6 the past 100 years, both stories have been true many
7 times. I think that to the extent we succeed in
8 building a system where fraud is difficult, we develop
9 a culture of honesty; and to the extent we develop a
10 system where manipulation of the vote isn't terribly
11 hard to get away with, it rewards dishonesty
12 tremendously. Little details can have a huge impact.

13 For paper ballots where we have basically
14 150 years of experience with the modern Australian
15 paper ballot, which is actually not old technology, it
16 was developed around the time of the Civil War,
17 governments have had a long time to learn how to
18 manipulate those and one of the classic ones is simply
19 writing laws that set uniform standards for ballot
20 interpretation that are almost impossible to live up
21 to, and then making sure that your vote counters,
22 representing your party, are extremely well-trained in
23 the application of those rules, and trying to make
24 sure that you get relative newcomers to the counting
25 business representing the opposing party, this almost

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1 guarantees that the machine will stay in power forever
2 and I'm pretty sure that the old city machines of 100
3 years ago in the United States did this routinely.
4 And it was pretty effective. Those machines were
5 unstoppable.

6 Lever machines were introduced in part
7 because of this. There was a national scandal with --
8 there were jurisdictions where 40 percent of all
9 ballots cast were invalidated because, for example,
10 the X just crept outside the border of the box or
11 didn't connect the corners of the box or the lines of
12 the X weren't straight, or arcania like that.

13 We need a standard which says that any --
14 that if one election judge says that the ballot
15 contains a clear indication of the intent of the
16 voter, that that ballot should be set aside even if
17 the other judge says it violates some standard, for
18 example, the standard that the punch must go all the
19 way through and completely remove the chad, or some
20 such.

21 We need a way that ballots that contain an
22 apparently clear indication of the voter's intent can
23 be reconsidered if their number exceeds the margin in
24 the election. Those kinds of rules can make it very
25 difficult to pull off a fraudulent election or a

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1 recount which is strongly biased in favor of one
2 candidate or another.

3 And I feel very strongly we need those
4 kind of reporting rules through the system, no matter
5 what the technology is. It makes a big difference in
6 the ability of the -- in the vulnerability of the
7 system to manipulation and the difficulty of hiding
8 what you've manipulated.

9 COMMISSIONER EDLEY: Mr. Brace, can you
10 help me? I mean we've got a population that feels
11 tenuously connected to participation and some election
12 official saying we can't be bothered adopting a system
13 that'll help four percent of you get your votes
14 counted.

15 WITNESS BRACE: Well, I know an awful lot
16 of these election officials all around the country.
17 And I think I am safe in saying that the vast majority
18 of them are very good people and during the beginnings
19 of the Florida controversy, before I came down here to
20 testify, I was quoted by the press many times saying
21 if I had this to do any place, I'd rather have it done
22 in Florida, because they are -- so -- much -- more of a
23 professional nature here, the elections supervisors,
24 than elsewhere in the country. One of the main things
25 is that they are more educated and they participate in

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1 very extensive classes that their organization
2 conducts and they do a lot of training of their own
3 self and their staff, which you don't see in other
4 jurisdictions unfortunately. Training is one of the
5 key things and education is one of the key things. We
6 are seeing a sea change within the election
7 administration community of some of the older people
8 that have gray hair like myself retiring and being
9 replaced by young whipper snappers, as I used to be,
10 that are bringing forward new ideas and a lot of very
11 good innovation.

12 So I'm very encouraged from that
13 standpoint, but it's not to say that there aren't some
14 bad apples out there also. I think the key for any of
15 this is public disclosure. You know, when we had all
16 of the recount operations going on down here, yes,
17 there were varying standards, but it was done out in
18 the open. If it was done behind closed doors or if
19 people were taking the ballot someplace, some dark
20 crevice someplace, then I would have been very
21 concerned. But that was not the case here. It is a
22 very open process and that's how you protect it.

23 CHAIRPERSON BERRY: I had a few questions
24 myself. Did you have any others, Vice Chair?

25 VICE CHAIRPERSON REYNOSO: Well, I just

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1 want to make the observation there's a certain irony
2 in the testimony we've heard this afternoon,
3 particularly from Professor Jones, that the intent of
4 the voter ought to be the key or testimony of Mr.
5 Brace that we have high professionalism in this state,
6 inasmuch as the U.S. Supreme Court said that the
7 intent of the voter was something that nobody could
8 perceive, and therefore it failed constitutionally.
9 So I just couldn't help but be impressed by the
10 distinct interpretations of what happens in the real
11 world.

12 CHAIRPERSON BERRY: I had --

13 VICE CHAIRPERSON REYNOSO: I think we have
14 a response.

15 WITNESS JONES: I would very much like to
16 respond to that. I think different technologies make
17 it very much easier or harder to determine the intent
18 of the voter. If I'm making marks on paper with
19 pencils and pens, I'm using a technology where all of
20 us have been doing it since kindergarten, if we went
21 to school, and most of us have been doing it even if
22 we didn't go to school. We all have behind us a
23 lifetime of experience marking on paper with pencils
24 and pens. It's very easy for us to tell the
25 difference between a mark that looks intentional and a

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1 mark that looks like an accidental pencil point
2 touched the paper while I was reading the item beside
3 it. It's very easy for us to tell a smudged erasure
4 from a clearly made mark.

5 On the other hand, if I had one of these
6 blasted punch cards, it's not an intuitive thing, we
7 haven't been -- well, I've been using punch cards
8 since 1969, but that's because I'm in the computer
9 business and I fortunately stopped using them many
10 years ago.

11 But most of us don't have much experience
12 with chad. For most people, chad is a foreign term --

13 CHAIRPERSON BERRY: Not any more

14 WITNESS JONES: And there's no intuition
15 we can use -- we can fall back on about the meaning of
16 a slightly dimpled piece of chad. We have to rely on
17 obscure experts in an arcane area. This is one reason
18 why I have a very strong preference for methods that
19 can be done with paper and pencils.

20 Incidentally, the new mark sense scanners
21 do live up to the claims that they can read anything
22 you're likely to be carrying in your pocket. The old
23 ones didn't and this difference between old and new
24 mark sense technology is quite startling when you
25 start doing testing. The new ones, for example, some

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1 of them that I've tested will detect -- if you circle
2 the place where it says you should be filling in the
3 oval, it still detects it and says that's a vote. And
4 I find that very encouraging, because it means that we
5 can still tell people use number 2 soft lead pencils
6 and fill it in as follows, but if they vary from those
7 rules quite significantly, we can still detect their
8 intent which machinery. I like that.

9 CHAIRPERSON BERRY: Am I now permitted to
10 ask a question?

11 (Laughter.)

12 CHAIRPERSON BERRY: And let me just say
13 before I ask -- well ask my question -- don't you
14 think that it is important not to privilege some
15 people's testimony and to not take seriously that of
16 others?

17 When we were asking the question about
18 over-votes and under-votes and I think the panel gave
19 an answer that it was all right to count over-votes
20 because under-votes had some kind of system one would
21 be asking questions related to privacy matters and
22 then I asked whether indeed it would also raise
23 privacy matters to ask someone about over- or under-
24 votes. And I think that later on in the questioning
25 the point was made that -- and I pointed out that I

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1 have indeed over-voted deliberately and that I would
2 consider it an invasion of privacy for someone to have
3 asked me why I did it, as much as if I did not vote
4 and later on in the --

5 VICE CHAIRPERSON REYNOSO: Why did you?

6 (Laughter.)

7 CHAIRPERSON BERRY: It's none of your
8 business.

9 (Laughter.)

10 CHAIRPERSON BERRY: That's precisely my
11 point. And I have known other people who have said
12 that they had done the same thing for the same reason
13 I did it, which is none of your business.

14 But the point that I'm making is later on
15 in the testimony, there was some comment that over-
16 votes can be ignored because they are obviously a
17 mistake and all the panelists nodded their heads.

18 So I'm asking why would you privilege
19 someone's testimony or your analysis that under-votes
20 raise questions -- questioning people about under-
21 votes raise privacy matters but questioning people
22 about over-votes..do not and may not even though I have
23 told you that my own experience -- and I stand here to
24 give testimony, as they say in my church -- that -- I
25 want to testify that that is the case.

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1 So what is the reason for privileging one
2 person's testimony or do I need to bring more people,
3 since you were only answering hypothetically, as I
4 understood it, about the under-votes?

5 WITNESS BRACE: Well, if I can go forward.

6 We are, in this country, a country of laws and most
7 state election laws do prohibit an over-vote from
8 being counted because they don't know, was it
9 candidate A you wanted to vote for or candidate B.
10 Particularly you see many more over-votes when you get
11 into a vote for two or a vote for three kind of an
12 office circumstance. And so it is by law that you
13 kind of seek to eliminate those over-votes.

14 Now what intrigued me the most is the last
15 two weeks, there was an article from one of the papers
16 down here of some of their investigations of the
17 ballots, that in fact there was a circumstance that
18 hadn't been thought about of an over-vote. That is
19 where someone went and voted for Gore and then on the
20 write-in, marked the write-in and wrote in the word
21 Gore.

22 Now technically that ~~is~~ two punches for
23 Gore and for write-in, but you know, should be allow
24 that to be a vote for a Gore or for a Bush? That's a
25 very interesting question. I mean it was a new kind

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1 of an over-vote circumstance that most of us hadn't
2 thought about before.

3 CHAIRPERSON BERRY: Right. And that was
4 my only -- I have other questions and I just think
5 that while we are thinking about proposals and the
6 subject was proposals such as ways to deal with under-
7 votes, we might also think about proposals in that
8 area.

9 But my larger question is to bring us back
10 to the folks who are not sitting here, who are the
11 people who are testifying at this point, and they are
12 the people who had trouble or have given sworn
13 testimony and have filed complaints that they had
14 trouble getting to the polls or getting inside to use
15 these nice pieces of machinery of various kinds. And
16 I'm wondering how that affects the kinds of analysis
17 you have made. For example, Professor -- Mr. Brace,
18 you talked about people showing up at the polls and
19 how the states report those. Do they report people
20 who show up and are turned away in those numbers, or
21 do you mean by showing up, people who actually voted?
22 What do you mean by showing up at the polls?

23 WITNESS BRACE: Showing up at the polls in
24 most states is a physical act of signing a poll book,
25 for example, or stating to a poll worker that you're

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1 here to vote and they mark you in. Once you are
2 marked in, via your signing or them marking, that is a
3 count of someone there at the polls.

4 CHAIRPERSON BERRY: So you are counting
5 people who didn't vote or who came and who were turned
6 away.

7 WITNESS BRACE: That's correct.

8 CHAIRPERSON BERRY: And you obviously are
9 not counting those people who never got inside the
10 polling place.

11 WITNESS BRACE: That's correct.

12 COMMISSIONER EDLEY: I'm sorry, Madam
13 Chair, I think that was confusing. You said does it
14 count people who came in, stood in front of the poll
15 worker, said I'm here to vote, I want to sign in, at
16 which point the poll worker says no, you're a felon,
17 go away.

18 WITNESS BRACE: At that point, --no, that
19 would not count.

20 CHAIRPERSON BERRY: Well, that's my
21 precise question. That's my precise question, whether
22 in fact you are including all the people who have made
23 complaints or given sworn testimony about the kinds of
24 problems that they have had in that number when you
25 say showing up at the polls in the charts that you

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1 showed us up here.

2 WITNESS BRACE: In most instances most
3 states do not record that separately. It would be
4 nice if they did and that could be one of your
5 recommendations certainly, but it's not something that
6 most states keep track of.

7 CHAIRPERSON BERRY: So that the analysis
8 that we hear about and discuss here may be skewed by
9 the fact, many of them, by the fact that the dirt lies
10 in the corner or however Professor Jones talks about
11 it, and i would consider that part of the dirt and
12 debris, those who were excluded and didn't get an
13 opportunity. They wouldn't be included in this kind
14 of data that we're talking about here.

15 WITNESS BRACE: That is correct.

16 CHAIRPERSON BERRY: Yes, Professor.

17 WITNESS JONES: There are straight-forward
18 procedures that would include these people in the
19 count. We use such a procedure in Iowa where the
20 voter, as they reach the poll table, is handed a sheet
21 of paper, they sign their name on that piece of paper,
22 speak their name out loud and hand the piece of paper
23 to the clerk who then looks them up in the poll book
24 to see if they're entitled to vote. That counts the
25 people who arrive requesting a ballot independently of

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1 whether they get one or not. And I think that that
2 count really needs to be reported and carried through
3 as a measure of turnout along with the number of
4 ballots actually encountered and the number of
5 challenged ballots which didn't go in the ballot box
6 because they weren't resolved whether that person was
7 entitled to vote or not. And nobody should ever reach
8 the polling place without at least getting a
9 challenged ballot.

10 CHAIRPERSON BERRY: All right, Mr. Ahmann.

11 WITNESS AHMANN: Yes. I just wanted to
12 put in the two cents worth here that I have over the
13 years encountered people who say well I came to the
14 polling place to keep my voter registration current,
15 and therefore, I don't really know anybody that I want
16 to vote for, but I'm getting my ballot and I'm putting
17 it in the ballot box blank. This happens.

18 And also, as mentioned by Mr. Jones, if
19 you look in Jim Schumway's report there, one of the
20 things Jim was mentioning to us yesterday evening was
21 the accountability of ballots issue, how many ballots
22 were in the polling place, how many were rejected.
23 This count has to be very strictly maintained because
24 he's very much afraid that many states do not require
25 and maintain a good accountability of the ballots that

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1 actually are issued, that go to the polling place,
2 what happens to all of those after they're counted,
3 after they're recounted. Do they still have the
4 accountability of all those ballots, where are they,
5 how many were spoiled. So this was the point he
6 wanted to make.

7 I had in my observations here about four
8 recommendations, one of them was that you need to do
9 something about the law as far as what constitutes a
10 vote. Second, precinct counters should be employed, I
11 believe, wherever possible and wherever the funds can
12 be found to buy them. I think voter education needs
13 to be greatly improved, whether it be punch card or be
14 optical scan, and if it's punch card, I personally
15 feel after 30 some odd years that the voter should be
16 asked to actually punch a sample ballot so at least he
17 gets the feel of punching and knows that he has to go
18 all the way through. And that would go a long ways, I
19 think, to eliminate a lot of the so-called dimpled
20 ballot problems that we've run across.

21 Two other areas were that the stylus that
22 we've developed and have been using for about the last
23 10 years is called needle point. There's one county
24 in Florida that used it this election that I know of
25 and that's Dade County. They had very low problems,

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1 few problems with actually hanging chad or with chad
2 that was caught or found in the recount number of
3 votes that they generated, you might say, in the
4 recount. And that's because this little stylus with
5 it's little dimple at the end -- not a dimple but a
6 little needle point -- the little needle point
7 actually spears the chad and pushes it on through,
8 even if your humidity is high, even if the temperature
9 is low and you're off registration. If it can see any
10 part of that chad up or down or sideways, it will put
11 a pin in it, it will push it through. I would
12 strongly recommend that any jurisdiction in the United
13 States -- every jurisdiction -- be equipped with
14 either needle point or with the micro point, the
15 little needle type pin stylus.

16 CHAIRPERSON BERRY: We are going to thank
17 the panel and we have one other small piece of
18 testimony before we break. But i want to thank the
19 panel and ask you to please check out with the lawyers
20 and we very much appreciate your testimony.

21 COMMISSIONER WILSON: Thank you very much.

22 .(Witnesses excused.)

23 ACTING GENERAL COUNSEL HAILES: Our next
24 witness is Senator -- State Senator Kendrick Meek.
25 Will you please come forward at this time?

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1 CHAIRPERSON BERRY: And then we're going
2 to break after that for a time before we have the
3 forum at 6:00.

4 MR. JIN: Can I make a quick announcement?

5 CHAIRPERSON BERRY: Yes.

6 MR. JIN: In terms of dinner, if any of
7 the Commissioners want us to get dinner between the
8 5:00 and 6:00 hour, if you can give me that sheet that
9 we passed out.

10 CHAIRPERSON BERRY: Senator Meek.

11 Whereupon,

12 KENDRICK MEEK

13 appeared as a witness herein, and having been first
14 duly sworn, was examined and testified as follows:

15 CHAIRPERSON BERRY: Thank you very much.

16 Be seated and wait just a second while the \$6000,
17 \$8000 machine, whichever one it is --

18 COMMISSIONER WILSON: \$6500.

19 CHAIRPERSON BERRY: \$65,000.

20 COMMISSIONER WILSON: \$6500.

21 CHAIRPERSON BERRY: Counsel, will you
22 please proceed?

23 ACTING GENERAL COUNSEL HAILES: Senator
24 Meek, will you please provide your name -- your full
25 name and your position for the record and then proceed

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1 with a statement of approximately five minutes?

2 WITNESS MEEK: Thank you. My name is
3 State Senator Kendrick B. Meek. I represent the 36th
4 District from Miami, mainly north Dade, representing
5 the communities of Liberty City, Little Haiti, Little
6 River, Carroll City, Bunch Park, Scott Lakes,
7 Opalocka, some small parts of Hialeah and the City of
8 Miami, all of Miami Shores and North Miami.

9 I just, first of all, want to thank you
10 and I want to thank you, Madam Chair, for allowing me
11 to come early because I have a flight to catch back to
12 Miami later on this evening. But I just can't tell
13 you elated that I am and appreciative that the
14 Commission would not find it robbery to find
15 yourselves dealing with another Florida issue within
16 the last 15 months. And I also bring you greetings on
17 behalf of the Chair of the Florida Conference of Black
18 State Legislators, Dr. Fredericka S. Wilson, who was
19 not able to be here today but in your later testimony
20 that you'll have within your public hearing later on
21 this evening, you will hear from a few other members
22 from the Florida Conference of Black State
23 Legislators. But I wanted to thank you for being here
24 and I'm going to be quick.

25 I have a copy of my statements here and

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1 what I'm going to do is just hit some points on the
2 statements.

3 CHAIRPERSON BERRY: That will be included
4 in the record.

5 WITNESS MEEK: Thank you. Thank you, Madam
6 Chair.

7 First of all, I just wanted -- I really
8 have only four words for the Commission that I want
9 you to definitely remember for the time that you're
10 here in our capitol city and while you're here in
11 Florida and while you're looking at this issue. We
12 need your help, here in the State of Florida.

13 I guess I want to go from the point of not
14 really dwelling on the fact of disenfranchised voters
15 that I've seen personally and that I've heard personal
16 stories from and on election day actually being on the
17 ground in south Florida and seeing some of the
18 frustration that took place, being on statewide radio
19 throughout that day. I know that you've had testimony
20 and some folks have spoken to the fact that there was
21 plenty of notice to know that people of color were
22 going to show up at the polls in record numbers on
23 this November 7 election, for more reasons than a
24 political one. One is a struggle for principle and
25 one is a struggle for equality and justice.

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1 And I think that a lot of that fed into
2 the disenfranchisement of these individuals. One may
3 say that it was coordinated. I say that it was pretty
4 subliminal, from the top.

5 Here in Florida, what I may call the
6 powers that be really, in my opinion and several
7 people of color and people of good will's opinion,
8 really don't have a forward lean to bring about the
9 kind of changes that should take place in future
10 elections and I just want to talk about the future and
11 the opportunity of individuals that were left behind
12 in this election and have a chance to have a fair
13 shake at voting in the next election. I know that
14 you're going to have testimony from key people that
15 you can draw your own conclusions, but I know that
16 you're going to have a final report that's going to
17 help you help us here in Florida understand our
18 responsibilities.

19 Over the last two years here in Florida,
20 we have been experiencing what I call a Selma kind of
21 experience, not one that you may say that the fire
22 trucks in the fire station right across the street are
23 lining up to hose certain individuals down, but
24 definitely at the end of the day, you wonder why your
25 shirt is damp, as it relates to not being heard in

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1 this process.

2 I know that you will hear testimony while
3 you're here in Florida of people, the reason why they
4 didn't go to the officials to change anything, because
5 they don't feel that any change will be brought about,
6 based on the past history.

7 As it relates to the elections process
8 here in Florida, it started many months before that.
9 Over the last two years, as it relates to the issue of
10 equal opportunity, affirmative action, African-
11 American voters were not heard in this state, period,
12 by the powers that be.

13 As it relates to the accounts of blatant,
14 in my opinion, violations of what you may say law in
15 the state of Florida that went unenforced, brought
16 about the kind of feeling of voters in Florida that,
17 you know, it doesn't matter. Why should you go and
18 say anything about anything because it's just not
19 going to happen. This is not necessarily the kind of
20 environment that we should have in future elections.
21 And I believe if it goes uncorrected, that it will
22 definitely set in voter apathy and voter
23 disappointment in thinking that their vote will count
24 in this state.

25 I just wanted to make those opening

1 comments because I know that you may have a few
2 questions. We do have -- I do have some other
3 comments that I want to share with you, but I see the
4 red light blinking and I don't know if that means stop
5 or that means maybe stop.

6 CHAIRPERSON BERRY: It means maybe stop.
7 I'll give you another minute.

8 WITNESS MEEK: Madam Chair, if I could
9 just share just two other things with you.

10 One may say on the Commission why are you
11 talking about issues that may be a policy issue or a
12 political issue. It feeds into the very reason why
13 the U.S. Commission on Civil Rights is here today.
14 The fact that voters did not find it robbery -- the
15 unlikely voter did not find it robbery to go out and
16 cast their ballot on election day or what they thought
17 they were doing.

18 In my district, one out of 11 votes were
19 thrown out due to the fact that some news reports have
20 said that we had the oldest machines in the county in
21 the black communities, in Little Haiti. No
22 translation -- they're supposed to provide translation
23 for these first time, maybe second time voters -- were
24 not there. Lines were clogged. Some people may say
25 well you have to work out your state statutes. That

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1 may not necessarily be the case.

2 Now let me just talk a moment to talk
3 about the state statutes.

4 CHAIRPERSON BERRY: One more moment.

5 WITNESS MEEK: One more moment.

6 CHAIRPERSON BERRY: A minute.

7 WITNESS MEEK: The Commission that has
8 been put together here in the state of Florida to
9 correct the wrong, in my opinion and the opinion of
10 many of my constituents and people within the Florida
11 Conference of Black State Legislators, really feel
12 that it's another opportunity to run the clock out. I
13 believe that some issues will be resolved from this
14 Commission and the legislature, but I believe some of
15 the issues -- so that we can do the new voter
16 education that must take place in this state because
17 of some of the statute changes, because of some of the
18 procedural changes, because we have to go out to the
19 grassroots community so that they can go out and share
20 this new information, must and should happen this
21 session of the Florida legislature for us to be able
22 to bring about ultimate accountability to those voters
23 that were disenfranchised.

24 CHAIRPERSON BERRY: All right, thank you
25 very much, Senator Meek. And I know you have to go,

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1 but is there any Commissioner who has a question that
2 they feel they should absolutely ask the Senator and
3 that they cannot resist.

4 WITNESS MEEK: My flight is two hours
5 away, but I know that I'm standing in front of dinner,
6 so --

7 CHAIRPERSON BERRY: Does anybody want to--
8 (No response.)

9 CHAIRPERSON BERRY: All right, well, then
10 let us thank you -- you have a question?

11 COMMISSIONER EDLEY: If I may. I think
12 it's very important. You have spoken more directly I
13 think than any of our witnesses today about your sense
14 that this is about discrimination, that this is about
15 the effective disenfranchisement, particularly of
16 people of color.

17 Let me press you, if I may. Do you
18 believe that it was intentional? And if so,
19 intentional on whose part?

20 WITNESS MEEK: I don't believe that there
21 is a memo sitting around that we would find as it
22 relates to intentional disenfranchisement. I believe
23 that, like I said, it's been more subliminal, due to
24 the fact that certain folks can do certain things in
25 the state of Florida and if you want me to go further,

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1 I will, but I don't believe that we have time to do
2 so. And that they can go uninvestigated, unfounded,
3 unresolved.

4 The mindset that was set going into this
5 election was one of people of color in this state are
6 not going to necessarily get a fair shake from state
7 government or from any other government, but the tone
8 was set here in Tallahassee as it relates to
9 accountability for people of color here in this state.

10 We have had more civil rights marches in this state
11 in the last two years or 15 months than we've had
12 through my entire 35 years here in Florida, as far as
13 I'm concerned. We have had more protests as it
14 relates to equal rights and equal opportunity here in
15 this state due to what came out of the state capitol,
16 and will continue. Just think about it. This is the
17 second time the U.S. Commission on Civil Rights had to
18 even deal with the Florida issue. First the
19 affirmative action question; second, this issue.

20 And Madam Chair, I've heard rumors that
21 y'all may not be able to get to certain parts of the
22 state, but I definitely encourage you to with vigor
23 please move to those other parts of the state to hear
24 from those disenfranchised voters that may be there.
25 I don't think that there is a memo or an e-mail saying

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1 how do you disenfranchise the votes of people of color
2 and then again, it's hard for me not to speak of the
3 political question -- I don't think it's more
4 ethnicity, I think it's more party-oriented than
5 anything.

6 COMMISSIONER EDLEY: Well, let me just be
7 sure that we understand you, Senator. Are you saying
8 that you believe that there were certain officials,
9 state and/or local officials, who for partisan reasons
10 ignored warning signs that more care should be taken,
11 more investments should be made in order to see that
12 the voting process ran smoothly? Is that what you're
13 saying?

14 WITNESS MEEK: No. What I'm saying is --
15 you're talking about prior or after?

16 CHAIRPERSON BERRY: Both.

17 COMMISSIONER EDLEY: I'm talking about in
18 the months and weeks leading up to this record
19 turnout.

20 WITNESS MEEK: Leading up to the election,
21 I believe that it was similar to how most government
22 functions perform, that everyone thought that things
23 would pretty much be on the up and up as it relates to
24 the government's responsibility of making sure that
25 everyone is able to cast an accurate ballot outside of

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1 those that have semi -- I wouldn't say permanent
2 disenfranchisement, but because of a past criminal
3 history.

4 I can say that that era of good will
5 existed there as it relates to it. But everyone that
6 oversaw that particular issue did have some political
7 interest and busy with campaigns weeks prior to the
8 election and, Madam Chair, if I can just take a
9 prerogative of 30 seconds to talk about post-election

10 Many of the issues went uninvestigated for
11 several days, almost a -- over a month as it relates
12 to what took place. I heard your previous panel
13 talking about the spoiling of ballots. Well the
14 spoiling of the paper trail and the spoiling of
15 witnesses took place after the disenfranchised voters
16 were disenfranchised. I mean there was no -- there
17 was power in the state to say we should investigate
18 this allegation, there was every media outlet in the
19 country here to interview certain individuals. No one
20 from the government found that it was their
21 responsibility to go out and find that issue.

22 I can say what happened in the Florida
23 Highway Patrol case is that at least they followed up
24 in a timely manner and didn't wait a month and a half
25 afterwards to do an internal investigation. And as

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1 far as I'm concerned, as it relates to people, those
2 disenfranchised voters being heard, you are the first
3 panel of any status that will help carry their issue a
4 little further as it relates to corrective measures in
5 this state.

6 CHAIRPERSON BERRY: Yes, Commissioner Lee.

7 COMMISSIONER LEE: You mentioned earlier
8 about voter apathy and the Governor was here earlier
9 today assuring the Commission that he was going to do
10 whatever he can to make things better.

11 Between now and the next election, what
12 would you suggest the Governor should do to change
13 voter apathy right now?

14 WITNESS MEEK: Well, I think what the
15 Governor can do at this particular time is move with
16 vigor to have the appropriate agencies that are under
17 his control, investigate first-hand, do what you are
18 doing to investigate first-hand some of the issues
19 that took place in the polling places. And first of
20 all, I must say that the affected communities
21 obviously, not only through some of the vote that took
22 place, obviously do not have great faith in whatever
23 the Governor says that he's going to listen, because
24 during the one Florida hearing as it relates to
25 affirmative action, we went to three major cities,

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1 including Tallahassee and they said please do not take
2 race nor gender out of many considerations as it
3 relates to equal opportunity, and he left that meeting
4 by saying this is the reason why we need to move forth
5 with doing away with those factors.

6 So I think what the Governor action-wise
7 can do is do one thing, that's listen to those that
8 may not necessarily tell him what he wants to hear,
9 but tell him what he needs to know. And what he needs
10 to know is that it's important that we make sure that
11 we have second chance voting machines in precincts
12 throughout the state of Florida and I'm going to tell
13 you what the catch word there, Madam Chair and Ms.
14 Lee, is the issue of those machines being ordered in a
15 timely manner. You have to remember throughout this
16 country, folks are watching not only these proceedings
17 but also trying to do the same thing. And we will
18 find ourselves in Florida without second chance
19 machines. We will find ourselves in Florida possibly
20 being in a backlog of having the kind of whatever
21 voting method that we're going to come up with -- it's
22 important that we purchase those items.

23 And in my text that I've given to you,
24 I've spelled that out of what I think it will cost,
25 but I think the Governor moving fast and making sure

1 that everyone is -- those recommendations are brought
2 about and also there's another document that I will
3 give you for the record that Senator Darryl Jones and
4 State representative Chris Smith brought forth as it
5 relates to recommendations of letting folks know. I
6 understand you have a copy of it -- letting those
7 precincts know that had very high over-votes their
8 rights and also making it open for other observers to
9 be a part of the voting process and the education
10 process.

11 So the sooner that we make the
12 corrections, the more time we have to education
13 Floridians throughout the state of Florida on what the
14 new changes have been, the new procedure and making
15 sure that those voting machines are in those areas
16 where we've had the largest over-voting and voter
17 inaccuracies so that we can hopefully correct those
18 issues throughout Florida.

19 CHAIRPERSON BERRY: Yes, Commissioner
20 Wilson.

21 COMMISSIONER WILSON: Thank you. I guess
22 my question..is could..you..describe..the..programs that
23 you're involved in, in terms of educating voters -- in
24 terms of educating voters in schools as well as out of
25 schools, I mean prospective, soon to be, one day will

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1 be voters.

2 WITNESS MEEK: That's an interesting point
3 and something that I haven't in the legislature heard
4 any dialogue on. Right now, I know in south Florida
5 in some school districts, we register voters at the
6 age of 17-1/2 to allow them to receive their voter
7 registration card when they turn 18. The education or
8 the mechanics of voting is not necessarily a part of
9 the curriculum base of our school system or one of the
10 many things that they can teach within a school
11 system. But I think that could be one way as it
12 relates to voter education.

13 But going back to voter education, I think
14 it's also important that we set forth whatever new
15 standards that we're going to have dealing with
16 everyday voters as soon as possible, so that
17 organizations that are ready to go, educate those
18 voters, young and old, on how the new voting machines
19 or the second chance voting, as it relates to the poll
20 workers, would have you. God bless the poll workers,
21 I know a lot of people have talked a lot about them.
22 These folks are volunteers, they're trying to do the
23 best they can, but the more investment that we give
24 local districts the opportunity to invest in training,
25 I think the better outcome that we'll have along the

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1 education front.

2 COMMISSIONER WILSON: One thing I must
3 say, just as a final statement, that I don't
4 understand is that in our country, we -- voting is
5 just a basic right, but we don't celebrate it in our
6 schools and we don't teach it in our schools. And in
7 a way, it's just been cast aside, speaking of voting.

8 I mean it's just -- the attention isn't paid and it
9 seems to me one of the crucial things that should be
10 done now is that attention should be paid in the
11 schools so that children think it's a valuable thing
12 to do.

13 CHAIRPERSON BERRY: I thank you for that
14 comment. I'm sure you agree, Senator Meek.

15 WITNESS MEEK: Oh, I agree 110 percent.

16 CHAIRPERSON BERRY: Let us -- did you want
17 to ask something? Okay.

18 Let me just say that we thank you and are
19 happy to have accommodated you and point out finally
20 in reference to a point that you made, that we earlier
21 in a session discussed that the Florida statutes do
22 empower the Governor to appoint special officers to
23 investigate alleged violations of the election laws.
24 We asked whether the Governor had appointed any
25 special officers to do that since the election and the

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1 answer was no. But I simply point that out in terms
2 of your -- what do you think about that idea?

3 WITNESS MEEK: Madam Chair, I would -- I'm
4 sorry.

5 COMMISSIONER EDLEY: Well, I was going to
6 ask, have state legislators specifically formally
7 requested that he do so?

8 WITNESS MEEK: Let me just -- well, I'm
9 going to answer your question, Madam Chair, and then
10 come over to you.

11 The Governor, historically has had --
12 you're talking about the executive investigation
13 privilege that he has as it relates to looking at any
14 of these issues that are there. And that's what I
15 meant by identify disenfranchised voters and issues
16 that took place during the election. There was a
17 silence. I mean when the Governor said he was going
18 to step out and no longer wipe his hands of dealing
19 with the elections issue, he did in some things and
20 didn't in others. The day after he said I'm no longer
21 dealing with the elections, he allowed six senior
22 members of his staff to go over and work with the Bush
23 recount initiative.

24 But the issue comes down to, at the same
25 time, there could have been immediate investigation.

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1 I used to be a state trooper here in Florida. When a
2 crime scene takes place, we know of the spoiling of
3 evidence. I mean the more people you let walk through
4 the crime scene, how can you solve the crime. So when
5 we look at where are the people, who are the victims,
6 I mean it's kind of hard to find those victims when
7 you're investigating 40, 60, six months after the
8 crime.

9 So I think it's important that we remember
10 that the Governor had full powers in being able to
11 deal with this issue and opted not to do so.

12 And then you go back to the issue of the
13 house burning. I'm sorry, I don't want to sound like
14 some sort of a car salesman, but I just want to say if
15 the house is on fire and the fire department is across
16 the street and they're not pulling their trucks out,
17 but they show up after there are ashes talking about
18 now how can we correct this in the future, even though
19 we saw it burning -- that's what happened here in
20 Florida and that's the reason why people of color and
21 Haitians and Hispanics in certain areas and poor
22 people -- I just want to add that because I believe
23 it's a class issue. And I didn't want -- you know, I
24 am a Democrat, I would say that, but this is not a
25 partisan issue for me, but it has been a partisan

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1 issue as it relates to dealing with and responding to
2 the issues because it comes down to constituencies.

3 Case in point real quickly. The
4 legislature appointed a select committee to deal with
5 the issues of elections. What did they pick? Well,
6 the process in how we count ballots, why do different
7 counties have different processes in counting ballots
8 post-election. And why overseas ballots were not
9 counted. And should we meet in a special session.
10 Not what happened to the disenfranchised voters in
11 Jacksonville. Not what happened to those Holocaust
12 survivors in Palm Beach who thought they were voting
13 for one candidate and voted for another. Not why
14 should we deal with the issue of the butterfly ballot
15 or any of those issues. They were clearly partisan
16 issues.

17 And so when you look at the constituencies
18 that have been disenfranchised, you have to look at
19 those historically African-Americans, you know --
20 well, I don't want to say historically because we were
21 Republicans at one point, but now in recent history
22 they're Democrats.. So there's no real reason to do
23 it. That goes back to disenfranchisement of ex-
24 felons. Why do we want to list that? Why do we want
25 to allow Florida voters to vote on that issue if we're

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1 going to deal with it? Well, number one, that's not
2 going to work in the Republican Party way here in the
3 state of Florida. Not all Republicans feel that way,
4 but the leadership does because those individuals
5 historically are going to vote Democratic.

6 So that goes back to the point, Madam
7 Chair, as it relates to the issue at hand of why
8 certain things did not happen. And you ask members of
9 the legislature, it is not our -- how would you say --
10 we can ask the Governor to do something, individual
11 members. I personally did not write the Governor on
12 this particular issue of him exercising his executive
13 privilege, due to the fact that he's not going to
14 exercise his executive privilege in this case.
15 There's just some things that you know. And my house
16 has been burned down many times without the water.

17 So if I have this kind of apathy as it
18 relates to the Governor responding to this kind of
19 situation, guess what the average Floridian may feel
20 as it relates to those individuals that were
21 disenfranchised.

22 CHAIRPERSON BERRY: We are going to have
23 to cut this off.

24 WITNESS MEEK: Thank you, Madam Chair.

25 CHAIRPERSON BERRY: And we very much

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1 appreciate it and we were happy to accommodate you,
2 and thank you very much, Senator.

3 WITNESS MEEK: Thank you.

4 COMMISSIONER WILSON: Thank you very much.

5 CHAIRPERSON BERRY: We will stand in
6 recess until 6:00 p.m. when we will have our open
7 forum. Thank you.

8 (Whereupon, the afternoon session was
9 concluded at 5:32 p.m., the evening session to begin
10 at 6:00 p.m.)
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E-V-E-N-I-N-G S-E-S-S-I-O-N

Public Forum

CHAIRPERSON BERRY: This session will now come to order. Would everyone please take their seats. Could we have the sign interpreter ask if anyone is in need of sign interpretation? Where's the sign interpreter? Do we have a sign interpreter?

(No response.)

CHAIRPERSON BERRY: What happened to the sign interpreter?

(Brief pause.)

CHAIRPERSON BERRY: If the sign interpreter would ask if anyone is in need of sign interpretation, please.

(Whereupon, the sign interpreter complies.)

THE INTERPRETER: Madam Chair, I see no one.

CHAIRPERSON BERRY: All right, thank you. We will now begin a session where the Commissioners will hear testimony from concerned persons... We have individuals who we will be calling, who have previously signed up and had a brief screening with our staff. They're being called in the order that we will proceed here in just a moment.

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1 Then the record for the hearings -- we'll
2 remind persons who give testimony that the record for
3 the hearing will remain open for 60 days during which
4 you may introduce any other materials that you wish to
5 submit to the Commission.

6 For those of you who will be speaking, we
7 ask that you limit your comments to five minutes, if
8 you are able to do so, and please try to keep within
9 the five minutes.

10 General counsel, could you please call the
11 witnesses?

12 ACTING GENERAL COUNSEL HAILES: Yes, Madam
13 Chairperson.

14 At this time, I would like to call the
15 following persons to come forward: Mary Knight, State
16 Representative Chris Smith, Raymond Jackson, Mr.
17 Whitfield Jenkins, Jan LaBelle and Mr. Tony Hill.

18 We need one additional chair at this time.

19 CHAIRPERSON BERRY: Would you please, now
20 that you're sitting down, stand up?

21 (Laughter.)

22 CHAIRPERSON BERRY: And raise your right
23 hands to take the oath.

24 Whereupon,

25 MARY KNIGHT

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CHRIS SMITH

RAYMOND JACKSON

WHITFIELD JENKINS

JAN LABELLE

TONY HILL

appeared as witnesses herein, and having been first
duly sworn, were examined and testified as follows:

CHAIRPERSON BERRY: Thank you, you may be
seated again. We will begin with the first witness
and take each of you in turn and we will start with
Ms. Mary Knight of the League of Women Voters of
Florida.

Please proceed.

WITNESS KNIGHT: I have brought copies of
my statement and gave them to Joyce Smith.

CHAIRPERSON BERRY: Right, and we will
introduce the statement for the record. Without
objection, so ordered.

WITNESS KNIGHT: Regardless of political
party, Americans seem to agree that the 2000
presidential election was a disaster, a fiasco
centered in our own state no less. It, therefore,
behooves us to reform our system of voting and we
commend you for coming to Tallahassee to help us do
that.

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1 We were once the center of the universe
2 for three weeks. I hope some of you heard Pam Iorio,
3 Supervisor of Elections of Hillsborough County, Tampa.

4 I can tell you that if the task force recommends her
5 ideas to the Governor and the legislature, the League
6 of Women Voters of Florida will be more than pleased.

7 I believe she summarized the specific issues which
8 made Florida elections seem out of control in
9 November.

10 The League believes in representative
11 government and individual liberties, established by
12 the Constitution of the United States. We believe
13 that democratic government depends on the informed and
14 active participation of its citizens and requires that
15 government bodies protect the citizens' right to know
16 by giving adequate notice of proposed actions, holding
17 public meetings and making public records accessible.

18 Further, we believe that every citizen should be
19 protected by the exercise of these right and that
20 includes supporting the restoration of civil rights
21 automatically when a felon has paid his or her debt to
22 society. Fundamental to this participation is citizen
23 right to vote.

24 In order to increase participation, the
25 League believes the election officials have a

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1 responsibility for encouraging the exercise of the
2 vote, for promoting citizen confidence in and
3 understanding the electoral process, and for providing
4 equal access to the ballot. To support these
5 principles, the League has developed positions through
6 study of election law, voter registration and
7 education, voting process administration and updated
8 equipment.

9 Much of the chaos in November was the
10 result of a lack of administrative rules and
11 uninformed political and/or irresponsible decisions.
12 Those frequent snap decisions, made under enormous
13 pressure by local supervisors of elections and the
14 Secretary of State's office, could have been avoided
15 by clear administrative rules that were enforced.
16 Statewide policy on standardized updated counting
17 equipment and statewide standards for counting ballots
18 are essential in a close election. If supervisors of
19 elections were elected on a nonpartisan basis, there
20 would have been less pressure on them to do favors for
21 party officials.

22 The United States and Florida Leagues
23 oppose the electoral college and support uniform
24 national qualifications and procedures for the
25 presidential election. If these had been in effect

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1 this cycle, the election would have been over November
2 7 because the popular vote would have determined the
3 vote and that count nationally was never questioned.

4 David S. Broder said in the Washington
5 Post on December 6, 2000, one of the few benefits that
6 can derive from Florida's voting mess is a serious
7 effort to examine and improve election procedures in
8 this country. The antiquated machinery by which we
9 choose our elected officials is an embarrassment.

10 Former President Jimmy Carter said that if
11 his group went to another country to monitor a vote
12 and found the problems that were in Florida, they
13 would have refused to participate.

14 Broder goes on to say that part of the
15 problem is lack of funding. He has a concern about
16 Congress not giving states any financial help and
17 legislatures not funding secretaries of state. In
18 Florida, the counties are responsible for the funding
19 of election equipment; therefore, we have a mix of
20 antiquated and modern voting equipment. Broder says
21 that federal and state governments should share the
22 burden of the updating of voting systems.

23 CHAIRPERSON BERRY: You have to start
24 summing up, ma'am, please.

25 WITNESS KNIGHT: This is it.

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1 (Laughter.)

2 WITNESS KNIGHT: In conclusion, the
3 Florida League positions on electronic voting systems
4 state that to ensure the integrity of the voting
5 process, to promote public confidence in voting and to
6 provide uniformly reliable vote tallying throughout
7 Florida, the performance standards of all hardware,
8 software, management elements of voting systems
9 considered for a public use within the state must be
10 established by law. Voting systems should be
11 certified for use by the Secretary of State.
12 Determination of compliance should be an ongoing
13 process covering new systems, changes in systems and
14 systems in use.

15 Thank you for coming to Tallahassee and we
16 hope that you will have a good stay.

17 CHAIRPERSON BERRY: Thank you very much
18 and we'll see if there are any questions for you.
19 Thank you for your testimony.

20 State Representative Chris Smith, please.
21 Welcome.

22 WITNESS SMITH: Yes, ma'am. Thank you
23 very much. I know as an elected official, you're
24 probably scared that I'm going to go over the five
25 minute time, but in my other life, I'm a lawyer and

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1 I'm not billing now, so I'll keep it below five
2 minutes.

3 (Laughter.)

4 WITNESS SMITH: My name is Christopher
5 Smith, I'm a State Representative from Fort Lauderdale
6 and in Broward County -- the now famous Broward
7 County. I was first elected in 1998. Subsequently
8 re-elected unopposed, because if I had to run in this
9 2000 election, I'm not sure I'd be here or know
10 whether I was really elected or not.

11 I want to again echo the comments earlier
12 and thank you for coming here today and doing the work
13 that honestly I felt that our task force should be
14 doing. I was appointed by the Speaker of the House of
15 Representatives as the Democratic member from the
16 House of Representatives on the Governor's Select Task
17 Force, and as an appointee of that task force, I felt
18 that we would look at all of the issues of this past
19 election. In looking at the Executive Order that
20 created the task force and listening to the original
21 comments, I was dismayed to think that we would not go
22 into all realms of the problems of this past election.

23 Luckily, Senator Jones and I, the
24 Democratic member from the Florida Senate that is on
25 the task force have been able to bring up certain

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1 issues and certain comments and we're getting into the
2 records of the task force and trying to charge the
3 task force into looking at those issues.

4 Part of that recommendation you should
5 have with you and I'd like to introduce it into the
6 record. It's "Accuracy and Fairness of Florida
7 Voters." Your staff informed that you all received a
8 copy, but it has not yet been entered into the record,
9 so I'd like to enter that into the record.

10 CHAIRPERSON BERRY: Without objection, so
11 ordered.

12 WITNESS SMITH: Thank you very much.

13 Again, when we started with the task
14 force, we were charged with looking at voting
15 mechanisms in the Florida election under the mindset
16 that by changing the voting mechanisms in Florida, we
17 would alleviate all of the problems and concerns in
18 Florida. Well, ladies and gentlemen, that is just not
19 the case with some of the things that has happened in
20 Florida.

21 November 8, I went on a local radio
22 station in Miami and discussed the election and I gave
23 out my office phone numbers on that radio station. My
24 office was inundated with phone calls with stores from
25 people from around the tri-county area, Palm Beach

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1 County, Broward County and Dade County, with a myriad
2 of stories of how they were denied the right to vote.

3 Not just those that voted and maybe are afraid their
4 ballots didn't count because they had a hanging chad
5 or a dimpled chad or had a ballot that just wasn't
6 sufficient, but people that were actually denied the
7 right to vote coming there. I received numerous phone
8 calls from people that had problems whether their
9 names were on the rolls or not, I had people that had
10 voting precincts that had moved and they weren't
11 informed of where to find those new precincts. I had
12 many constituents calling with the concern that once
13 they were told their names aren't on the roll, the
14 procedures weren't followed to justify them not being
15 on the rolls, nor were the procedures followed to
16 allow them to still vote. In Florida, if your name is
17 not on the roll, you can sign an affidavit and vote
18 and have it verified later. In many communities that
19 was not offered. That's a concern that the task force
20 -- we're trying to charge them into looking into it,
21 but I seriously hope and I seriously pray that this
22 Commission will look into those things as you continue
23 with your investigations and hear the testimony, that
24 you seriously look at some of those.

25 I will leave also a copy of my phone log

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1 from November 8 which has names and phone numbers and
2 a short narrative of everyone's comments from November
3 8, and their concerns.

4 Regarding the task force and our
5 recommendations given to the task force, I understand
6 Senator Meek spoke earlier and spoke to some of those
7 recommendations that were given to the task force --
8 the recommendations of the bill of rights that are
9 posted in the different precincts. We've gone a step
10 further in recommending that those bill of rights be
11 articulated to everyone coming into the precincts
12 because what we found in Florida is that not only did
13 the voters not know their rights, but precinct workers
14 weren't as informed of the rights or did not
15 articulate the rights to the voters, to ensure that
16 they're able to vote.

17 In summation, fl's election was much more
18 than hanging chads or dimpled chads or soiled ballots.

19 Florida's election involved a lot of people that were
20 denied the right to vote through a myriad of reasons.

21 People that had registered to vote, people that went
22 to vote and were turned away or people that just
23 didn't even get in the door to vote when they had the
24 ability and the right to vote. And I seriously hope
25 and pray that you look into these issues and help us

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1 disseminate the information throughout the state and
2 throughout Tallahassee and this government so that we
3 can alleviate this problem in the future.

4 Thank you, Madam Chair.

5 CHAIRPERSON BERRY: Thank you very much,
6 Representative Smith.

7 Now we have the President of the North
8 Florida Branch of the NAACP, Mr. Raymond Jackson.

9 WITNESS JACKSON: I say good afternoon
10 each and every one of you. Indeed I am happy to be
11 here to speak before this Commission.

12 In our area there we did to a get out the
13 vote. You know, most of the testimony may be
14 negative, but some of these times you have to say
15 something that's truthful about it. We worked the get
16 out the vote and arrive with five. Our registration
17 lady, Ms. Beasley, worked with us to supply
18 registration forms that we did sign up a lot of
19 people. But the only concerns that we had in most of
20 our areas was the number of absentee ballots that were
21 coming from certain precincts and we are in question
22 about that.

23 Also that we did have some complaints
24 about the number of people that went to the poll and
25 their name had been purged from the rolls and from our

1 understanding, that could not be done. And I'm over
2 three counties -- Washington, Walton and Holmes
3 Counties -- the only discrepancy we had in Holmes
4 County was the sheriff's race and it was by three or
5 four votes there, they had a recount on that. All in
6 all, our voting in our area was pretty decent and in
7 order.

8 Our most concern was also the military,
9 you know, we have Eglin Air Force Base down there and
10 have a lot of people that's overseas and their ballot
11 came in after the election was closed and we had
12 questions about that. And I think Okaloosa County,
13 some of Walton County did not allow those ballots to
14 be counted. But all in all, we had a wonderful
15 election and we felt like the get out the vote and
16 everything was wonderful and successful in our area.

17 Thank you.

18 CHAIRPERSON BERRY: Thank you very much.

19 Mr. Whitfield Jenkins, who is the first
20 Vice President of the State Conference of NAACP.

21 WITNESS JENKINS: Thank you, Madam Chair,
22 and members of the Commission, my name is Whitfield
23 Jenkins. I'm going to read a statement on behalf of
24 State President Adora Obay Nweze. President Nweze is
25 in Miami doing some work similar to this and she

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1 prepared a statement and I'd like to read it for the
2 record. And I have a copy of it that I will give to
3 you.

4 I'm here this evening to present testimony
5 with regard to the grave concern felt by the
6 membership of the State Conference as a result of the
7 circumstances of November 7, 2000 general election.
8 At the outset, I must tell you that my remarks will be
9 general rather than talk about specific instances of
10 voter disenfranchisement. I will describe some of the
11 allegations heard by local NAACP units around the
12 state.

13 The overriding issue surrounding this
14 election is the fact that some voters were
15 disenfranchised because their legitimately cast votes
16 were not counted. Contrary to media reports, the
17 NAACP is not concerned about who won or who lost this
18 election. We are extremely concerned and alarmed by
19 the fact that decisions were made by state and local
20 officials that had the results of denying many voters
21 the opportunity to have their votes counted. Our
22 concern begins with the lack of sufficient preparation
23 for those who chose to take advantage of the
24 opportunity to cast early ballots.

25 In some major metropolitan areas of the

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1 state, supervisors of elections announced that there
2 would be an opportunity for early voting on the
3 Saturday prior to the general election. This
4 opportunity was made available at the main supervisors
5 of election offices. In many instances, because of
6 the lack of sufficient personnel and voting equipment,
7 people were forced to wait for three or more hours in
8 order to cast their ballots. In these instances, many
9 people simply gave up and left. If there are going to
10 be opportunities for early voting, then election
11 officials should have the necessary contingencies in
12 place to be able to deal with the large crowds who
13 expect to take advantage of this opportunity.

14 This problem of poor planning carried over
15 to election day. On the 7th of November, many
16 precincts were understaffed and unequipped, which
17 again resulted in long delays and voter frustration.

18 With regard to the equipment, there have
19 been widespread allegations that faulty or poorly
20 maintained election equipment was used in
21 predominantly minority and low-income precincts. As a
22 result, it is alleged that most of the ballots which
23 were identified as being unread by the tally equipment
24 came from those same minority and low income areas. I
25 should also state for the record that these two terms,

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1 the minority and low incomes, are often
2 interchangeable. They are not two separate areas,
3 they are one and the same.

4 There are widespread allegations of
5 precinct workers who by their actions or decisions
6 disenfranchised many voters. Failure of the election
7 workers to adequately test voting machines prior to
8 the start of voting resulted in inoperable machines
9 being used, which again denied many people the ability
10 to have their vote counted.

11 Election workers failed to check to
12 determine whether many voters were registered by
13 calling the central record department of the county
14 election office, as they were supposed to. In many
15 instances, voters either had to wait an inordinate
16 amount of time to complete these checks or therefore
17 were frustrated and left without voting.

18 In many instances, delays were due to
19 clogged telephone lines into the central office. This
20 is another example of poor planning.

21 But there are other issues such as the
22 inability of election workers to communicate with
23 voters who spoke a different language. This is
24 particularly true in precincts with high Haitian
25 populations. There were no instructions available in

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1 Creole or individuals available to translate
2 information into Creole. Many of the precinct workers
3 are alleged to have prevented individuals from
4 obtaining assistance in their native languages. This
5 was a major problem. This, coupled with unfamiliarity
6 with the process by many new voters, points out the
7 need for adequate poll worker training.

8 In many counties across the state, it's
9 alleged that valid, eligible voters were turned away
10 from the polls because their names had been purged
11 from the voter files. In many instances, these files
12 were wrong. In a number of specific instances, these
13 purges were the result of incorrect information with
14 regard to felon disenfranchisement. There are many
15 questions with regard to purges ordered by the
16 Secretary of State office as a result of an erroneous
17 list of disenfranchised felons produced for it by an
18 outside firm.

19 In addition to the allegations I have
20 addressed thus far, the most alarming allegation is
21 the suggestion that law enforcement officers may have
22 impeded or interfered with voters who were in transit
23 to polling places. This interference included
24 unauthorized roadblocks and unwarranted traffic stops
25 near polling places in certain minority precincts.

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1 Ultimately the most egregious allegation
2 is the one concerning failure or refusal of state and
3 local officials to count legitimately cast votes.
4 There were several counties where a majority of the
5 ballots contained supposedly over-votes and unread
6 ballots occurred in predominantly minority
7 communities. We believe that refusal to properly
8 count or recount these ballots was intentional and
9 race-based.

10 This Commission must and should provide an
11 accurate investigation and report of irregularities
12 that occurred in Florida on November 7, 2000. We hope
13 that you will be thorough and your conclusion will
14 speak to each of the issues that are identified in the
15 course of these hearings.

16 The Florida State Conference of the NAACP
17 branches believe that many instances of illegal voter
18 disenfranchisement occurred. We hope that your report
19 will clarify this situation and provide useful
20 recommendations for future action that can help our
21 state avoid this kind of problem. Ultimately, we hope
22 that your actions will help to ensure that every
23 Floridian will be able to vote and that each of their
24 votes will be counted.

25 Thank you.

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1 CHAIRPERSON BERRY: Thank you very much.

2 The next testimony comes from Ms. Jan
3 LaBelle, Executive Director of the Family Network on
4 Disabilities of Florida and a Board Member of the
5 Florida Coalition on Disability Rights. Welcome.

6 WITNESS LABELLE: Thank you very much. I
7 would also like to thank the Commissioners for coming
8 to Florida and looking into this very important issue.

9 First and foremost, I'd like to speak to
10 you as a parent of two children with disabilities.
11 I'm also a registered voter in the state of Florida.

12 As the Executive Director of Family
13 Network on Disabilities, I'd like to share with you it
14 is a statewide not-for-profit and we have provided
15 information, support, training and advocacy to more
16 than 100,000 individuals with disabilities, special
17 needs or at-risk throughout the state of Florida, as
18 well as their families each year.

19 There's two issues I'd like to address.
20 The first is to echo what Senator Meek stated earlier
21 and that is that we really need to invest in the
22 training of poll workers, and in particular from my
23 perspective, sensitivity training with respect to
24 disability issues.

25 The second is to speak to the composition

1 of the Select Task Force on Election Procedures,
2 Standards and Technology. My understanding is that
3 there is no representation from the minority
4 communities on this task force, including the
5 disability community. While the Select Task Force may
6 ultimately consider the public comments that they've
7 gathered throughout the state, there is a real
8 potential for recommendations to be made that might
9 include such things as optical ballot scanners. This
10 use of technology continues to make the constitutional
11 and civil rights to cast your vote in privacy
12 unavailable to many Floridians with a variety of
13 disabilities in our state.

14 By placing representatives from the
15 various stakeholder groups as members of the task
16 force or increasing the membership of the task force,
17 we believe that some of these recommendations that
18 might continue to disenfranchise voters might not
19 occur.

20 Equally important is the need for the task
21 force to focus on information dissemination regarding
22 the upcoming public comment meetings that are already
23 scheduled in several locations throughout Florida. We
24 believe that if they provided the information to the
25 many advocacy organizations and others that we would

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1 be happy to assist in letting our membership and our
2 constituency know of the opportunity to voice their
3 concerns as well as possible solutions so that no
4 voter is or perceived that they are disenfranchised
5 from the voting process in Florida.

6 Thank you.

7 CHAIRPERSON BERRY: Thank you very much.

8 ACTING GENERAL COUNSEL HAILES: Madam
9 Chair, I believe State Representative Chris Smith may
10 want to briefly comment on the racial diversity of the
11 task force.

12 CHAIRPERSON BERRY: Would you wish to
13 comment on that? As I understood Ms. LaBelle, she
14 said that minorities were not represented and she
15 referred to the disability rights community. Did you
16 want to comment on the diversity issue concerning the
17 task force?

18 WITNESS SMITH: Yes, Madam Chair, with
19 your permission, thank you.

20 She is correct, there is not a person to
21 represent the disability community. There are
22 minorities on the commission but no one from the
23 disability community. We are scheduled to have a
24 representation at our next meeting in Orlando on the
25 23rd, a gentleman came to my office today to speak

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1 about those issues as well as recommendations that he
2 will put forward to the commission on January 23rd in
3 Orlando.

4 And the second issue regarding the timing
5 of the meetings or the publication of our meetings,
6 they are on the website at CollinsCenter.org. There's
7 a full report of our task force as well as notices of
8 our next meetings, which are in Orlando, Fort
9 Lauderdale and Jacksonville.

10 CHAIRPERSON BERRY: Did you want to say
11 something back?

12 WITNESS LABELLE: I appreciate the
13 opportunity to add to my comments.

14 I am very glad that there is minority
15 representation and that the disability community has
16 access to your office. I would still like to see
17 representation on the task force at the table, not
18 merely having an opportunity to speak before you but
19 actually part of your voting group as you come up and
20 identify your recommendations.

21 Greater than that is I believe the need to
22 be proactive in disseminating information. I believe
23 that the task force -- I have no reason to believe
24 that they're not being completely in the sunshine but
25 it leaves our -- the disability community at least --

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1 we would then have the responsibility to find internet
2 access and go and find out on our own where the
3 meetings are, and I'm just offering an additional
4 opportunity to be proactive and disseminate that
5 information so you have real grassroots comment during
6 your public hearing which is, I would imagine, what
7 you're really looking for.

8 WITNESS SMITH: Yes.

9 CHAIRPERSON BERRY: And by you, you were
10 talking about the task force, not this Commission.

11 WITNESS LABELLE: Either one. Anything
12 where Floridians have a chance to --

13 CHAIRPERSON BERRY: This Commission has a
14 number of TABs, temporarily able bodied people. And
15 at least one member who does have disabilities that
16 are --

17 WITNESS LABELLE: I was speaking of the
18 task force.

19 CHAIRPERSON BERRY: Okay, I just wanted to
20 make sure.

21 Mr. Tony Hill, a former State
22 Representative, please proceed.

23 WITNESS HILL: Thank you, Dr. Berry, and to
24 the Commission again, I wanted to echo the sentiments
25 of thank God that y'all are here in Florida.

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1 I want to come from a historical
2 perspective of how we got to the pregnant chads and
3 the dimpled chads and all the other stuff, was because
4 of a large African-American turnout. And the reason
5 for that turnout, that led to that turnout, happened
6 around August of 1999 when Ward Connelly was seeking
7 to put a ballot initiative here in Florida on the
8 affirmative action issue. Then in November -- well,
9 in August of 1999, word leaked out of Governor Bush's
10 One Florida initiative. And in November of 1999, they
11 made it official while he was in Europe. After that
12 fact of leaking that information out and confirming
13 that he was going to pursue the One Florida
14 initiative, he began to consult black leaders,
15 primarily clergy. December 17, '99, he called all
16 black publishers to the mansion in what was a very
17 hostile meeting about One Florida and no further
18 meetings were ever held. Late December 2000, it
19 became clear that Ward Connelly's initiative to end
20 affirmative action would be taken off the ballot
21 because of the constitutionality of it and the single
22 subject matter that covers Florida's ballot
23 initiatives. January 2000, the legislative committee
24 met, black lawmakers were extremely angry and
25 frustrated and then on January 18, Senator Meeks and

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1 myself, we had a friendly visit there at the
2 Governor's office and then from there, Bush recorded
3 TV shouts at his press secretary, "your life is going
4 to be a 'living hell if you don't kick their asses
5 out." He said that he was not talking to us, but he
6 was talking to the nine reporters. And then after
7 that, 3000 FAMU students marked on the Capitol
8 demanding a meeting with the Governor to get into a
9 discussion of their concerns. And they felt that the
10 Governor was disingenuous in his discussions with
11 them. At that time, his negatives in terms of
12 popularity, which was being floated when the One
13 Florida initiative jumped 25 points. In March, before
14 the opening of the session, we had over 50,000 people
15 march on the Capitol because of this. National
16 leaders came in from around the country. By March,
17 the polls showed that the public was evenly split on
18 the issue, where previously they were 70 to 30 against
19 affirmative action.

20 Bush was forced to hold public hearings
21 around the state. The hearings becoming a public
22 relations nightmare for him, keeping the issue alive
23 in terms of the march on Tallahassee. The Board of
24 Regents passed the One Florida despite overwhelming
25 opposition by public hearings. The cabinet

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1 implemented the One Florida as the Board of Education
2 after an emotional presentation by Senator Betty
3 Holsendorf from Jacksonville, Senator Meek from Miami,
4 Representative Hill from Jacksonville.

5 Last minute poorly scripted presentation
6 by some of the administration employees; i.e.,
7 African-Americans, they were as sellouts. Florida
8 appeared on national television and in press as a
9 state that was in disarray and in full retreat of
10 civil rights progress.

11 The 2000 legislative session was very
12 difficult for members of the caucus. A lot of
13 legislation was not passed because of the march on
14 Tallahassee. We passed a voter fraud act that passed,
15 was designed to try to intimidate, I feel, African-
16 Americans. The State Division of Elections currently
17 running TV ads with an 800 number to report voter
18 fraud and an attempt to starve off high black voter
19 turnout. The ads touted a \$5000 reward for reporting
20 voter fraud. The ads are running statewide with a
21 grainy video of an elderly black man in a traditional
22 ballot box... Intimidation efforts is clear there. The
23 Republican legislators was totally hostile toward the
24 Florida Supreme Court, they tried to put language
25 where they could add more people to the courts.

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1 People talked constantly about the arrogance of the
2 Governor and we tried -- Congresswoman Corrine Brown,
3 Senator Holsendorf reminded the Governor this is a
4 democracy, not a dynasty.

5 We sued over vouchers, FREE organization,
6 which was the counter organization to Ward Connelly's
7 initiative, call FREE filed suits. We also filed
8 suits against the Governor's One Florida plan in terms
9 of the percentage plan. The percentage plan that we
10 felt was not implemented in terms of legislation
11 passed and then going forth with it.

12 May 2000, no schools failed on the
13 educational piece, so no vouchers were handed out.
14 June 2000, Senator Meeks and myself, we began the
15 famous Arrive with Five bus tour where we were taunted
16 by the Republican Party chair as a hate group -- a
17 hate tour. In August of 2000, the Florida Department
18 of State and its chief election officer Kathleen (sic)
19 Harris, spent over \$30,000 producing a public service
20 announcement on films, extremely reckless waste of
21 taxpayer dollars. The ad featured her at the beaches
22 and thoroughbred horses and Norman Schwartzkopf. The
23 message was not directed at voters least likely to
24 vote. The code was protection of freedom, the question
25 is for whom.

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1 The National -- and then coming down to
2 where the rubber meets the road, Madam Chair, is that
3 --

4 CHAIRPERSON BERRY: Yeah, you've got to
5 finish up.

6 WITNESS HILL: -- out of a possible
7 943,000 voters that were registered African-Americans,
8 893 voted. Our concerns here today as I wrap it up is
9 that when we looked for help from FDLE, which was
10 established for this purpose, to investigate, we never
11 got a call from FDLE and we're asking that this
12 Committee, if we could do, if anything, expand the
13 voting rights cities in Florida. We have five and out
14 of those five, only one city, which is Hillsborough,
15 has a large population of African-Americans.

16 CHAIRPERSON BERRY: Thank you very much.
17 What's FDLE?

18 WITNESS HILL: Florida Department of Law
19 Enforcement.

20 CHAIRPERSON BERRY: Oh, I didn't know what
21 FDLE was.

22 Does any Commissioner have any questions
23 for any member of the panel? Yes, Vice Chair.

24 VICE CHAIRPERSON REYNOSO: I have a
25 question for Representative Smith. Probably all of

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1 you know the answer, but the material that we got is
2 still confusing to me.

3 Is there or is there not a law in Florida
4 that says that anybody who shows up to vote and is not
5 on the rolls but feels that he or she has been
6 excluded improperly, does that person have a right to
7 vote by affidavit?

8 WITNESS SMITH: Yes, sir, there is a form
9 affidavit that many counties use and many precincts
10 use. In Broward County, it's used in a lot of the
11 precincts and I know in Dade County, it's used. And
12 it's part of the Florida election code, I can't rattle
13 off the number as we speak, but that is a law.

14 VICE CHAIRPERSON REYNOSO: May I follow
15 up? What went wrong? With the testimony we heard
16 this morning, literally dozens, maybe hundreds of
17 incidents which we read about in the newspaper, where
18 folk showed up and they were told they couldn't vote
19 because they were felons and they said no, we're not
20 felons. Should they have been able to vote by
21 affidavit and then check it out later or the many
22 other folk who were told that they weren't on the
23 rolls and many of them got discouraged and left?

24 If that law is so clear, how come the
25 officials didn't know about it? Frankly, from,

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1 everything I had read until I got the material from
2 our staff, I thought you didn't have an affidavit law.

3 WITNESS SMITH: Yes, sir. Well, the
4 concern and what I think a couple of people have
5 mentioned today is that throughout the state, it was
6 on a precinct -- even smaller than county -- precinct-
7 by-precinct basis where the people were given adequate
8 assistance. Part of the problem and a major part of
9 the problem, in some precincts where we were more
10 vigilant and had more assistance, you had these
11 smaller amount of instances. There are many
12 precincts, through overt actions or inaction where
13 people were denied this right, that is a state law.

14 VICE CHAIRPERSON REYNOSO: There was a
15 report in the press of a woman who said she was
16 African-American, had worked for many, many years as a
17 precinct worker in a predominantly African-American
18 precinct and she said she sat down and cried, if I
19 remember correctly, because she had to turn down so
20 many people that she knew had always voted in her
21 precinct, but she kept calling and kept calling and
22 couldn't get through to the proper authorities.

23 My question is why didn't she, apparently
24 a good, motivated citizen and worker, know that
25 there's a law that says that folk can vote by

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1 affidavit? Or am I -- I don't understand it frankly.

2 WITNESS HILL: Well, the one on the
3 felony, those letters were sent out in the summer.

4 VICE CHAIRPERSON REYNOSO: I understand.

5 WITNESS HILL: So it's possible that
6 someone could have been living in New York and been a
7 convicted felon and had their rights restored but
8 moved to Florida.

9 VICE CHAIRPERSON REYNOSO: Right.

10 WITNESS HILL: And so that's where the
11 problem is there because of the felony situation.

12 VICE CHAIRPERSON REYNOSO: But my question
13 is if you have a right to vote by affidavit and an
14 official says you can't vote because you're an ex-
15 felon and the person says I don't believe that law
16 applies to me, under the affidavit procedure, the
17 person should be able to vote and then check it out
18 later.

19 WITNESS HILL: But I don't think,
20 Commissioner, that was the case at the polling place.

21 I think these people were notified before, not when
22 they went to the polling place, they would tell you
23 that you were a felon. I don't think they had that
24 information to say they were a felon.

25 VICE CHAIRPERSON REYNOSO: Oh, no, the

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1 testimony that we've heard is that they were not
2 notified that they were dropped from the rolls and so
3 they would show up and they would be told you're not
4 on the rolls, then at least we had one witness this
5 morning say that then they called the central office
6 and the central office said oh, you've been dropped
7 because you're an ex-felon. And he was not.

8 WITNESS HILL: Well then, Commissioner, I
9 think in respect to those people who were working,
10 they were doing the right thing, because those
11 people's names were not on the rolls. But what we're
12 saying, the supervisor of elections should have
13 identified those folks. I mean just like they got the
14 letters or the letters were sent out to some people.

15 VICE CHAIRPERSON REYNOSO: I know, but all
16 kinds of problems can come up during an election and
17 some states like California have a law that says if
18 the person who shows up thinks that he or she ought to
19 be able to vote, they have a right to vote no matter
20 what the officials say. But you take the ballot and
21 you put it into a separate box and then if issues come
22 up later, if the vote is needed to determine any
23 issue, then you determine whether or not that person
24 was right or wrong.

25 Now maybe I'm interpreting, when you folks

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1 say an affidavit ballot, to be an affidavit ballot
2 like California's, maybe it's not. But if it is like
3 California, California said all of these folk who were
4 improperly dropped, the folks who were not on voter
5 lists and so on, should all have had a right and then
6 count their vote later if it's needed. But from what
7 I've read in the newspapers and the testimony we heard
8 under oath this morning indicates that that wasn't
9 done and I guess my question is if my understanding of
10 the law is correct, how could there be such massive
11 misunderstanding?

12 WITNESS HILL: Well, the problem here,
13 Commissioner, and we're hoping through the testimony
14 and hoping through some legislation from the
15 Governor's task force is that we're not uniform, each
16 county has their own autonomy to tell you what they
17 can do and what you can't do.

18 CHAIRPERSON BERRY: If I may just, point
19 of information; counsel has just pointed out that the
20 section in the Florida law applies to the whole state,
21 it doesn't apply to just one county. We heard so much
22 over and over again since we've been here today that
23 each county does whatever it wants. The law says it
24 does whatever it wants. The law doesn't say that.
25 There are numerous instances in the Florida election

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1 law where there are provisions that apply to the while
2 state, they don't just apply to one county and say
3 that one county can do it. We're sitting here reading
4 the law, it's Section 101.111 of the Florida law, and
5 it provides for an oath of the person entering the
6 challenge and the oath of the challenged voter. And
7 it says that the oath may be administered by any
8 inspector or clerk and if the challenged person
9 refuses to make and sign the affidavit, the clerk
10 shall refuse to allow him or her to vote. That is if
11 they refuse to sign it.

12 VICE CHAIRPERSON REYNOSO: Right. But if
13 they're willing to, they can vote.

14 CHAIRPERSON BERRY: So the question --
15 Vice Chair, proceed, but I just wanted to point out --

16 VICE CHAIRPERSON REYNOSO: What went awry?

17 WITNESS HILL: Again, Dr. Berry --

18 CHAIRPERSON BERRY: What is your
19 understanding of why this procedure was not used? Any
20 of you, are you familiar with it?

21 WITNESS HILL: Again, Dr. Berry, I think
22 that if the legal people on either side of the aisle
23 would argue that case, we probably wouldn't have been
24 in the situation today, but that was not the way they
25 went.

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1 CHAIRPERSON BERRY: I see.

2 WITNESS HILL: What I want to say back to
3 the Commissioner, that is that we, as people were
4 getting out the vote, we didn't empower people that
5 you could ask for an affidavit for the first time or
6 that you can ask up for the three ballots, if you made
7 a mistake on the ballot.

8 See, we had people that were intimidated
9 by people and then we had in some communities people
10 had a computer where they could just run it up there
11 and tell the people. Whereas in the African-American
12 community, you had to use the phone and the lines were
13 tied up.

14 CHAIRPERSON BERRY: I see, okay. Yes?

15 WITNESS JENKINS: Madam Chair and Vice
16 Chair, my position is this, that if the law was on the
17 books to give a right to the voter, the onus should be
18 then on the elected officials and the employees to
19 administer that service. We have many employees who
20 might not have the knowledge, but if they got there
21 and a situation occurred, it makes sense that the poll
22 workers who are being paid by taxpayers' money, would
23 know the law and administer the service. So if it did
24 not happen, it's an omission on the part of the
25 elected officials and the poll workers, not the

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1 voters.

2 CHAIRPERSON BERRY: Well, we will pursue
3 this question on tomorrow with the public officials
4 who are responsible for the training and the education
5 and the administration of the laws here in the state.

6 Does anyone have any further questions?
7 Yes, Commissioner Edley.

8 COMMISSIONER EDLEY: I just think at some
9 point it would be nice to see if we could find out how
10 often and what counties and what precincts affidavit
11 ballots were in fact used and to see if there is any
12 pattern about the use of affidavit ballots.

13 CHAIRPERSON BERRY: Good question.

14 COMMISSIONER EDLEY: It would be difficult
15 to work through the methodology because you don't know
16 how many were requested as opposed to -- but it still
17 would give us a little bit of an inkling.

18 My question was for Mr. Jenkins. During
19 your testimony, you stated your belief that there was
20 a race-based refusal to count all the ballots. I just
21 wanted to ask you to elaborate on why you believe that
22 to be the case.

23 WITNESS JENKINS: Based upon the
24 information that has been before the NAACP. Most of
25 the precincts where we had a large number of uncounted

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1 ballots were minority precincts, African-American.
2 And there's no other explanation for that other than
3 the fact that it would be on that basis. The Haitian
4 community and the black community. And so that was
5 the basis for my statement.

6 WITNESS HILL: Also, Commissioner, in Duval
7 County, for example, even when they asked for the
8 recount, the supervisor of election people purposely
9 waited to hear what the Supreme Court was going to say
10 because the majority of those ballots that were low
11 count or the machine did not count, were in African-
12 American communities. And I think that's why Mr.
13 Jenkins, and as we had our town hall -- I mean our
14 hearing from people in Duval County about the problems
15 that they were having at the polls. There was almost
16 27,000 ballots that were not counted or either were
17 not known as were low counts or that the machine did
18 not count. We were notified through Congresswoman
19 Corrine Brown that it was only 500 and then two days
20 later after the deadline had passed for us to make a
21 protest, Madam Chairman, it came out it was 27,000

22 . COMMISSIONER EDLEY: Can I ask the two of
23 you then, because it's quite clear to me based upon
24 the media reports, that this sense that there was a
25 race-based -- that race, if not partisan calculations,

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1 played a role in some of these post-election
2 decisions, that that's a deep-seated conviction on the
3 part of many people in Florida, particularly in the
4 minority communities.

5 My question to you is can you imagine any
6 kind of information, any kind of evidence, any kind of
7 testimony that would satisfy you that that's not the
8 case? Is there anything that you can imagine hearing
9 from election officials, is there anything that you
10 can imagine investigating, that would suffice to
11 persuade you and persuade people in a community that
12 in fact this wasn't about race, this was just a screw
13 up.

14 WITNESS HILL: Well, if it was a screw up
15 then, the second time around when they said count the
16 votes, they would immediately not played around and
17 say we don't know which votes were under-counted --
18 they just purposely stalled the time. And then of
19 course, the Supreme Court came back and said don't
20 count. So if they wanted to make up for the time that
21 they did not allow us to make a protest, they could
22 have did it then.

23 COMMISSIONER EDLEY: Well, I just want to
24 comment that I think there's an interesting problem
25 here in that while it's true that in a legal sense,

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1 one might say that those who claim there's a racial
2 issue have the burden of persuasion. In a moral or
3 political sense where the question is what can we do
4 to ensure that the public has confidence in the
5 system, there's a sort of a sense in which the public
6 officials have the burden of persuading people that
7 they're mistaken to believe that race really has been
8 the source of the problems here.

9 I think as the Commission dwells on this
10 and as we think about it, it would be interesting to
11 try to figure out what kind of information might be
12 developed that would give comfort to the folks who
13 really have these grave reservations about what's
14 going on. I don't know what that would be.

15 CHAIRPERSON BERRY: Let me follow up and
16 just ask you, if for example, -- the same question --
17 if, for example, on the day after the election or two
18 days later when all these allegations arise, the
19 Governor announced that he was using his powers under
20 Section 101.29 or whatever it is, to appoint special
21 officers and they were announced as names and most of
22 the community throughout the state had confidence in
23 these people, say some white shoe lawyers or somebody,
24 who would immediately begin to investigate these
25 allegations to try to get to the bottom of it and take

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1 testimony from people, or that the task force that was
2 set up -- let's try that -- was going to immediately
3 start looking at these or that -- of if he'd done this
4 right away, would that have given you -- or the
5 Secretary of State had done that, would that make you
6 feel, as Commissioner Edley said, that maybe, you
7 know, it wasn't really about race, things just happen
8 and maybe we should just, you know, listen to them
9 because they're trying to clean it up and fix it --
10 what that have been enough to make you have
11 confidence?

12 WITNESS SMITH: Madam Chair, one of the
13 major problems in this election -- and it was covered
14 by the Miami Herald in an interesting article -- was
15 the amount of spoiled ballots where they went and did
16 an investigation and looked at numbers of spoiled
17 ballots by precinct. By precinct in Broward County,
18 my county, and Madam Chair, I'll let you know that
19 Broward County is considered the most Democratic
20 county in the state of Florida where one candidate,
21 the Democratic candidate, won by almost 200,000 votes.
22 However, still within that county where you would
23 think that if it wasn't partisan -- that if it was
24 partisan politics, all those votes would be counted.
25 In the African-American communities, in my district,

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1 were the highest numbers of spoiled ballots. In Dade
2 County, when you looked by precinct by precinct, the
3 highest number of spoiled ballots were in the African-
4 American communities. So whatever was done on
5 November 8, whatever was done on November 7 at 8:00,
6 it's hard to look at those numbers, look at the
7 straight facts and justify why in certain areas,
8 certain areas, you had a higher number of spoiled
9 ballots. So to the communities in Florida, no matter
10 what you do from this point on -- and I admit, it's on
11 us to really make sure or try to gain back the voter
12 confidence because in Florida we broke records with
13 minority turnout for voting. So it's incumbent on us
14 to try and keep those people and keep that fire
15 burning. However, it's hard when you look at the
16 statistics, when you look at the numbers of where you
17 had the spoiled ballots. If you look in Duval County,
18 you would see the highest number of spoiled ballots,
19 and those are uncounted ballots, were in African-
20 American communities.

21 COMMISSIONER EDLEY: Madam Chair, may I
22 ask Ms. Knight one last question?

23 You said during your testimony you made
24 mention to the problem of supervisors doing favors for
25 party officials and I think you were -- this was part

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1 of a general argument in favor of have nonpartisan
2 election officials.

3 So I want to ask, to what were you
4 referring when you're talking about supervisors doing
5 favors for party officials and then while you're
6 answering that, could you also tell us whether from
7 your vantage point at the League of Women Voters, do
8 you believe that race was somehow a factor in the
9 various allegations of what, of misdeeds, of breakdown
10 of the system on November 7 and beyond -- do you think
11 that race as at work?

12 WITNESS KNIGHT: Well, I'm not here to
13 express what I think, you know, I'm representing the
14 League of Women Voters of Florida and I only speak on
15 those things that the League has an official position
16 on. And the reason I brought up the supervisors of
17 elections being appointed or -- put it this way --
18 being nonpartisan, not being part of one of the two
19 major parties, is that that's what the League
20 believes. We believe that that's what needs to
21 happen.

22 COMMISSIONER EDLEY: You're on record with
23 that policy, favoring that policy -- the League is on
24 record as favoring that policy.

25 WITNESS KNIGHT: Yes, we've studied the

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1 issue and we feel that that would make it fairer.

2 We're in favor of a lot of nonpartisan
3 officials. It's not going to solve all the problems,
4 you're still going to have politics come into it, but
5 we believe that would help.

6 We don't have any evidence of race-based
7 problems. We've certainly heard all the rumors that
8 you've heard. We've heard a lot of -- we've seen a
9 lot of news reports. We don't have any evidence of
10 it, we actually I guess don't have any evidence of
11 partisan problems, but I think it's pretty obvious
12 that both parties were involved in a lot of spin.

13 CHAIRPERSON BERRY: Yes, Commissioner
14 Wilson.

15 COMMISSIONER WILSON: I was going to say,
16 did the League -- or does the League take a position
17 on looking at the situation in terms of it being
18 racist or not? You yourself don't have an opinion,
19 but does the League?

20 WITNESS KNIGHT: Well, when I say
21 representing the League, this is something that
22 happens over a long period of time as we study these
23 things. You see, we've had on our -- in our positions
24 any of the things I referred to for years and it was
25 in the '80s that we developed some of these things.

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1 We've had the position on felons having their rights
2 restored a long, long time before this came up. So we
3 can't make a decision, okay, this particular situation
4 was race-based and so we want it investigated right
5 now.

6 COMMISSIONER WILSON: But in your
7 statement, it seemed to -- what you seemed to be
8 saying or what I inferred from what you were saying is
9 that this was a particularly egregious example of -- I
10 mean it was a particular egregious example of an
11 election gone afoul in this state.

12 WITNESS KNIGHT: Yes. I think that any
13 observer would see that there were some very strange
14 things going on.

15 COMMISSIONER WILSON: And I just had one
16 more question, and that is were you -- meaning was the
17 League aware of this law that Vice Chair Reynoso was
18 talking about in terms of somebody being allowed to --
19 if there was a problem or a glitch that somebody could
20 vote, the ballot would be put aside and would be
21 looked at later?

22 WITNESS KNIGHT: Yes. . . .

23 COMMISSIONER WILSON: Why do you think
24 that there were so many problems with that particular
25 aspect of it this time?

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1 WITNESS KNIGHT: I have no idea, but I
2 think that -- I have no proof of anything. It seems
3 to me that from everything I've read and heard in the
4 news, that the poll workers were not educated to the
5 degree and that's what Ion Sancho said yesterday, that
6 the state spends no money educating the public or the
7 poll workers at all and that those people -- the
8 supervisors of elections are lucky to have live bodies
9 there and they don't give them the kind of education
10 they need.

11 COMMISSIONER WILSON: Is the League of
12 Women Voters in this state well-endowed?

13 WITNESS KNIGHT: I beg your pardon?

14 COMMISSIONER WILSON: Is the League of
15 Women Voters in the state of Florida well-endowed --
16 does it have money?

17 (Laughter.)

18 COMMISSIONER WILSON: I don't mean in
19 terms of their measurements, I mean in terms of their
20 financial situation.

21 WITNESS KNIGHT: We're one of the poorest,
22 I hate to tell you.

23 COMMISSIONER WILSON: I'm sorry, I didn't
24 hear you.

25 WITNESS KNIGHT: We've very poor.

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1 COMMISSIONER WILSON: See, now this is a
2 shame, because this is part of the same thing that
3 we're seeing. I think it's an absolute crime that the
4 League of Women Voters in New York has just folded its
5 shop and --

6 CHAIRPERSON BERRY: Someone gave them a
7 little infusion in the last few days.

8 COMMISSIONER WILSON: Oh, that's nice, so
9 they'll be around for another six months.

10 But nevertheless, it does show an attitude
11 about this and the League of Women Voters has been
12 dedicated to voter education and voter registration
13 for as long as it's been in existence.

14 WITNESS KNIGHT: 1920.

15 COMMISSIONER WILSON: It's a pioneer and
16 should be commended.

17 WITNESS KNIGHT: We can't -- you know,
18 it's hard to say why finances are so low for nonprofit
19 organizations, but most nonprofits now are suffering
20 from lack of money and lack of membership.

21 COMMISSIONER WILSON: But it just seems to
22 me that the whole issue of -- I mean this is a country
23 now where every other word is marketing and what
24 voting needs in this country is a huge marketing
25 campaign to turn people around in the way they see it

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1 and feel about it.

2 CHAIRPERSON BERRY: Thank you very much.

3 Commissioner Thernstrom.

4 COMMISSIONER THERNSTROM: I just want to
5 make sure that I completely understand some of your
6 testimony today. My understanding is that one of the
7 things that has been said is that Democratic -- in
8 Democratic counties, that Democratic officials have
9 been excluding black voters. And if that is the case,
10 why is that in their interest?

11 WITNESS SMITH: My testimony before is
12 that in Democratic county -- a heavily Democratic
13 county, the votes were spoiled, excluding -- when you
14 say excluding, do you mean not allowing them to vote
15 or doing mechanisms not to vote or --

16 COMMISSIONER THERNSTROM: Well, with the
17 end result that you've got a high number of Democratic
18 votes that are not being counted. I'm just -- I'm
19 confused by the story simply because of course it is
20 in the interest of Democratic Party officials -- since
21 black voters overwhelmingly vote Democratic, it is in
22 their interest to have every possible voted counted --
23 African-American vote counted. So I'm just -- I just
24 wanted a clarification.

25 WITNESS HILL: I would like to hitchhike

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1 on that thought from the perspective of we never had
2 the turnout that we had in this election and in his
3 case, even though Broward County is a heavy Democratic
4 area, but you have a Republican that is the supervisor
5 of elections. And so as far as we know, in terms of
6 close elections, the reason why all this came out was
7 because of the election being so close and ballots
8 being missing in Broward County after it was declared
9 that Gore had won. And word got out that Gore had won
10 and then mysteriously, Madam Chairman, some ballot
11 boxes out in the western part of Broward County became
12 suspiciously missing and then after it came back that
13 Gov. Bush had won, they found the boxes.

14 So I mean the thing about why is the
15 spillage so high as Representative Chris is saying,
16 we've never even known about the low count and over-
17 count until this election. We might have had a lot of
18 elections stolen out of the African-American community
19 as far as we know. That's what we need to probably
20 research on the committee, and go back over a few
21 years where African-Americans who have run statewide
22 and lost, or ran in their countywide elections and
23 lost by two or three votes.

24 CHAIRPERSON BERRY: We had testimony
25 today, by the way, I don't know if you were here, we

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1 asked and had testimony about whether or not the state
2 made any preparation for the large registration and
3 the expected turnout of voters in those precincts. We
4 will be asking the supervisors whether they requested
5 assistance, but we do know -- we asked those questions
6 today because we know that under the laws in Florida,
7 as in many states, the state is responsible for
8 training, providing training money for election
9 officials and it's in the statute that it is part of
10 the responsible of the Secretary of State to see to it
11 that there are fair, uniform, efficient elections and
12 that there is adequate training. So we were trying to
13 figure out whether there was preparation.

14 Are you telling us, Representative Hill,
15 that you think that in some of those Democratic
16 precincts that people were not prepared for the
17 turnout and the kind of training that needed to be
18 done resulted in some problems? Or are you saying
19 that the voters themselves were uneducated and
20 therefore cast ballots that somehow couldn't be used?
21 Or what are you saying?

22 . WITNESS HILL: . Well, what we are saying
23 is, Madam Chair, at 12:00 they ran out of "I vote"
24 stickers.

25 COMMISSIONER WILSON: Ran out of what?

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1 I'm sorry?

2 CHAIRPERSON BERRY: Ran out of what?

3 WITNESS HILL: In Florida we have as a way
4 of identifying people, the supervisors of elections
5 around the state came up "I voted" and there at 12:00
6 they ran out of those stickers. So there would answer
7 your question, supervisors of election around the
8 state, specifically in the African-American precincts
9 where I was working at, had dummed down the numbers
10 that we were not going to turn out. That was the
11 evidence there.

12 WITNESS SMITH: Ma'am, the question asked
13 by the Commissioner on the end kind of ties back to
14 the other questions and speaking again of Broward
15 County, even though the county is very heavily
16 Democratic, each precinct is manned by ordinary
17 citizens, we do not know party affiliation and I bring
18 that up to say that I'm not saying that it was a
19 Republican conspiracy or a Democratic conspiracy;
20 however, when precincts are manned by ordinary
21 citizens that may not know state statutes or may not
22 know the laws or may not have the patience in certain
23 precincts -- Dillard Elementary, my old precinct, if
24 you have ordinary citizens there that do not know the
25 state laws or do not have the patience for that, if a

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1 voter comes in and votes twice on the ballot, well
2 that ballot becomes spoiled. Under Florida law, that
3 person is allowed to get another ballot. Well, in
4 these individual precincts the poll workers there may
5 not offer them the other ballot or may tell them
6 they're not able to get another ballot.

7 Now in that case, you do not have a person
8 say downtown in a smoky room telling them to do that,
9 but you have people individually making decisions,
10 whether informed or uninformed, intentional or
11 unintentional, that are making these decisions. And
12 the highest amount of these ill-advised decisions were
13 being made in African-American communities.

14 CHAIRPERSON BERRY: We are going to have
15 to, after this next question, close this down.

16 WITNESS HILL: Madam Chair, just one
17 example. In Palm Beach County, at 7:00 to 8:00, they
18 had called down to the supervisor of election's office
19 because someone had instructed that poll worker he
20 could not help someone with the ballot. People were
21 having problems at 7:00, 8:00, 9:00 to say there was
22 some confusion with the ballot. And then there was a
23 notice sent out. Well the notice wasn't sent out to
24 all the precincts where people were working, so they
25 didn't know that they could assist the people because

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1 of they having Buchanan in the middle and Gore up
2 under there and Bush at the top. So this was known way
3 before -- they were saying the next day or the next
4 day or the day after. They knew on that day while the
5 election was going on, that they had a problem with
6 the ballot because people were not educated, in the
7 question that you were asking.

8 CHAIRPERSON BERRY: Commissioner Lee.

9 COMMISSIONER LEE: At least one month
10 before the election, the state election officials knew
11 you're dealing with a record number of new registered
12 voters, they're anticipating a high turnout rate;
13 since many of your represent civic, social, community
14 leadership organizations, have any one of you been --
15 your organizations been contacted by the state
16 officials, county officials so that they can give you
17 an update or at least ask you for input or assistance
18 at all to prepare for the election?

19 WITNESS HILL: Commissioner, that's why
20 y'all are here, because we have not heard from any
21 people at the Secretary of State's level. I just
22 happened to be in Washington on Monday with Operation
23 Big Vote, that I heard from the Secretary of State
24 about what they're getting ready to move on, and the
25 question was asked, Madam Chair, are you going to

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1 invite some of the people who are a part of that
2 process; for example, i.e., Operation Big Vote, or
3 some of the community people. Of course the answer
4 was no.

5 CHAIRPERSON BERRY: Mr. Jenkins.

6 WITNESS JENKINS: Yes, let me comment on
7 behalf of Florida State Conference of the NAACP.

8 We administered a very large voting
9 empowerment program in Florida. It was part of a
10 national NAACP effort as well. And I was the
11 administrator of that overall program. I was
12 surprised that our organization, which has been a
13 longstanding organization working in many arenas of
14 our community, did not -- was not consulted as it
15 relates to having a representative on the task force.

16 It's unbelievable -- when I look at the names of the
17 task force, the persons, I'll tell you this, even
18 though we had African-American elected officials on
19 the task force, I really don't think that that group,
20 because they are politically entwined, even though
21 they represent our community in various ways, I don't
22 think they would represent and ask the type of
23 questions on that type of body that an NAACP person
24 would ask. And so I'm very disappointed when I look
25 at the task force, because when I looked at it, it

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1 looked like most of them are elected officials or
2 somewhere close elected officials, but most of the
3 problems were with grassroots people. And it seems to
4 me that you would extend an invitation down to that
5 level to be sitting at the table on the task force.

6 CHAIRPERSON BERRY: Okay. Well, thank you
7 very, very much for coming. You may be excused.

8 (Witnesses excused.)

9 CHAIRPERSON BERRY: That concludes our
10 proceedings for today. As is customary with the
11 hearings, the record will remain open for 60 days
12 during which any of the witnesses can submit written
13 statements.

14 We appreciate the attention and
15 participation of everyone who was here today and we
16 will meet again tomorrow morning at 8:00 for a
17 Commission meeting in this room -- is that right?

18 ACTING GENERAL COUNSEL HAILES: Correct.

19 CHAIRPERSON BERRY: -- and then right
20 after that, at 9:00, we will begin the second day of
21 our hearings.

22 Without objection, we are in recess.

23 (Whereupon, the hearing was recessed at
24 7:22 p.m., to resume at 9:00 a.m. on Friday, January
25 12, 2001.)

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CERTIFICATE

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matter of: Hearing on Allegations of Election-Day
 Irregularities in Florida

Before: U.S. Commission on Civil Rights

Date: January 11, 2001

Place: Tallahassee, Florida

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
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