

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY

OCTOBER 8, 2004

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:30 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, Chairperson  
CRUZ REYNOSO, Vice Chairperson  
JENNIFER C. BRACERAS, Commissioner  
CHRISTOPHER EDLEY, JR.; Commissioner  
PETER N. KIRSANOW, Commissioner  
ELSIE M. MEEKS, Commissioner  
RUSSELL G. REDENBAUGH, Commissioner (via  
telephone)  
ABIGAIL THERNSTROM, Commissioner  
  
LESLIE R. JIN, Staff Director

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STAFF PRESENT:

MANUEL ALBA  
TERESA BROOKS  
DEBRA CARR, ESQ., Deputy General Counsel  
IVY DAVIS, Chief, Regional Programs Coordination  
Unit  
PAMELA A. DUNSTON, Chief, Administrative Services  
and Clearinghouse Division  
DORELLE GRAY  
GEORGE M. HARBISON  
SOCK-FOON MACDOUGALL  
TINALOUISE MARTIN, Director of Management Division  
KWANA ROYAL  
MICHELLE ROYSTER  
EILEEN RUDERT  
ALEXANDER SUN  
AUDREY WRIGHT  
TIFFANY WRIGHT  
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

LAURA BATIE  
PATRICK DUFFY  
JOY FREEMAN  
CHRISTOPHER JENNINGS  
KIMBERLY SCHULD  
MELISSA SHARP  
KRISHNA TOOLSIE

PANELISTS

SABRINA HODGE NAACP, Campus Chapter, Prairie  
View A&M University  
JANELLE HU Asian and Pacific Islander  
American Vote 2004  
TED SHAW NAACP Legal Defense Fund  
NIGEL REDMOND Student Body Government, Prairie  
View A&M University

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I. Approval of Agenda

CHAIRPERSON BERRY: The meeting will come to order. The first item on the agenda is approval of the agenda. Can I get a motion to approve the agenda?

VICE CHAIRPERSON REYNOSO: So moved.

CHAIRPERSON BERRY: Can I get a second?

COMMISSIONER EDLEY: Second.

CHAIRPERSON BERRY: All in favor indicate -- oh.

COMMISSIONER REDENBAUGH: Madam Chair?

CHAIRPERSON BERRY: Yes. Oh, hi, Russell.

COMMISSIONER BRACERAS: Could I have discussion on the --

CHAIRPERSON BERRY: On the agenda?

COMMISSIONER BRACERAS: On the motion.

CHAIRPERSON BERRY: On the agenda motion. Okay, sure.

COMMISSIONER BRACERAS: I would like to move that we take off the agenda, the discussion of, the Bush Civil Rights Report, and that we table it till the November meeting and also remove the

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1 unapproved draft from the web site.

2 VICE CHAIRPERSON REYNOSO: Also the what?  
3 I didn't catch --

4 COMMISSIONER BRACERAS: That we table  
5 discussion of the Civil Rights Report --

6 VICE CHAIRPERSON REYNOSO: Right.

7 COMMISSIONER BRACERAS: -- to November and  
8 remove the unapproved draft from the web site.

9 REDENBAUGH: Oh.

10 CHAIRPERSON BERRY: Were you seeking  
11 recognition, Russell? You said something.

12 COMMISSIONER REDENBAUGH: Oh. I was but I  
13 defer to my colleague.

14 CHAIRPERSON BERRY: Oh, okay. So you're  
15 suggesting that we change the agenda.

16 COMMISSIONER BRACERAS: I'm suggesting we  
17 take it off the agenda.

18 COMMISSIONER EDLEY: Right. That seems to  
19 me separate from the web site issue. So I suggest  
20 there be two motions. One is about the agenda, and  
21 one is about the web site, right?

22 COMMISSIONER BRACERAS: Well, one can view  
23 it that way, but the point is --

24 COMMISSIONER EDLEY: No. It's just -- the

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1 only reason --

2 COMMISSIONER BRACERAS: Are we having  
3 discussion on my motion now?

4 COMMISSIONER EDLEY: Well, the only reason  
5 I'm asking is because if it's about the agenda, I  
6 might support it. If it's about the agenda, I might  
7 support it. If it's about the web site, I'm not  
8 sure what I'd do.

9 CHAIRPERSON BERRY: Commissioner Edley,  
10 you were not recognized.

11 COMMISSIONER EDLEY: Okay.

12 CHAIRPERSON BERRY: Vice Chair, you were  
13 not recognized. I have not decided -- I can't  
14 figure out yet whether there was a second to her  
15 motion.

16 COMMISSIONER THERNSTROM: I second it.

17 CHAIRPERSON BERRY: Okay.

18 VICE CHAIRPERSON REYNOSO: That was my  
19 question.

20 CHAIRPERSON BERRY: Oh, that was your  
21 question?

22 VICE CHAIRPERSON REYNOSO: Yes.

23 CHAIRPERSON BERRY: All right. Now that  
24 there's been a second to the motion and we're

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1 discussing the motion, Commissioner Edley, your  
2 point was that you think there should be two  
3 different -- it sounds like two separate motions to  
4 you. Okay. All right.

5 COMMISSIONER BRACERAS: Okay.

6 CHAIRPERSON BERRY: Would you like to make  
7 two separate motions or not?

8 COMMISSIONER BRACERAS: I would not and  
9 here is why: I think that -- it was my  
10 understanding that in June of 2000 when the Clinton  
11 Civil Rights Report was coming out, Commissioner  
12 Edley made a similar request, which was to defer  
13 discussion of the report until after the  
14 presidential election in November in order to  
15 basically depoliticize the report. And it was  
16 discussed, I have the transcript right here and  
17 Commissioner Edley agreed, that Commissioner  
18 Anderson stated, quote, "It would be best for us if  
19 we were not circulating drafts or draft reports in  
20 October." Commissioner Edley, "Agree."  
21 Commissioner Anderson, "I think the reason is  
22 obvious."

23 Anyway, so the point of -- as I understand  
24 it -- obviously, I wasn't here, but as I understand

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1 what was done with respect to the report on the  
2 Clinton Administration was to defer discussion of  
3 the merits until after the election so that it  
4 wouldn't be perceived -- so that we wouldn't be  
5 perceived as trying to influence the election one  
6 way or the other. And, therefore, because the web  
7 site is in the public domain and is there for -- it  
8 impacts circulating the draft, I would ask that the  
9 document be pulled from the public domain entirely  
10 until November, at which point I'd be happy to  
11 discuss the merits of it.

12 CHAIRPERSON BERRY: I'm not -- maybe  
13 Commissioner Edley recalls the discussion that you  
14 gave us a part of, but I don't recall the  
15 discussion, but that doesn't matter. But I would  
16 say that the policy that we have of putting reports  
17 on the web site after we have -- the staff has  
18 finished them and we send them to commissioners, I  
19 think that policy was made after the discussion that  
20 you have just cited. And that is an overall policy  
21 which covers all reports, not just this one, but all  
22 reports.

23 For that reason, I would think that it  
24 would make sense, since it does cover all reports

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1 and not just this one, that your motion -- I agree  
2 with Commissioner Edley that it should be divided  
3 into two parts. And in fact I would rule that, as  
4 Chair, that it should be two separate motions.

5 COMMISSIONER BRACERAS: Okay. You're  
6 ruling it?

7 CHAIRPERSON BERRY: I'm ruling  
8 procedurally that the motion --

9 COMMISSIONER BRACERAS: How can they be  
10 split?

11 CHAIRPERSON BERRY: Because the motion --

12 COMMISSIONER BRACERAS: I need some  
13 education.

14 CHAIRPERSON BERRY: We have a policy  
15 already which is separate --

16 COMMISSIONER BRACERAS: May I be heard?

17 CHAIRPERSON BERRY: Yes. Just a second.  
18 You asked me and I'll say it again.

19 COMMISSIONER BRACERAS: Okay.

20 CHAIRPERSON BERRY: But the policy of  
21 putting materials on the web site once they're sent  
22 to the commissioners is a policy the commissioners  
23 made after, if I recall correctly -- someone can  
24 find out.

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1 COMMISSIONER BRACERAS: I understand that.

2 My question --

3 CHAIRPERSON BERRY: I don't know whether  
4 that's true or not.

5 COMMISSIONER BRACERAS: I understand that,  
6 and I recall that. My question is, what I need  
7 educating on here, is as a matter of Roberts Rules,  
8 if somebody makes a motion, you have the discretion  
9 just to sever it based on your view of whatever the  
10 policy is? I mean it's my motion, and I'm trying to  
11 understand procedurally on what basis you have a  
12 right to change my motion.

13 CHAIRPERSON BERRY: Well, since I don't  
14 wish to get into --

15 COMMISSIONER BRACERAS: Okay. My  
16 assistant is explaining it to me.

17 CHAIRPERSON BERRY: All right. So all I'm  
18 saying -- it would have to be voted on, though, if  
19 someone wants to overrule it. I cannot just  
20 unilaterally make -- and in fact I will, as a  
21 courtesy to you, withdraw my interpretation and ask  
22 the commissioners to vote on your motion when you're  
23 ready, when the discussion has gotten to that point.

24 COMMISSIONER BRACERAS: Okay. Well, I

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1 appreciate that, but I want to just take the time to  
2 explain again why I think that they need to be --  
3 why it needs to be one motion.

4 And that is, I fully understand that the  
5 web site policy was enacted after -- well after the  
6 June 2000 meeting that I referred to earlier, but  
7 the point is in this particular case, in the  
8 interest of basic equity and fairness and balance  
9 and treating a Democratic administration and a  
10 Republican administration in the same manner, the  
11 concerns were the same.

12 The concern at that time was not to have  
13 something in the public domain that would seem one  
14 way or the other like a political document and to  
15 have an academic study of the Clinton  
16 Administration's record on civil rights that could  
17 not be politicized by the campaigns. And,  
18 therefore, the view, it seems to me, that it  
19 shouldn't be in the public domain at all, no draft  
20 circulated. And the same logic clearly applies  
21 here.

22 So I have long opposed the policy of  
23 putting drafts up on the web site before  
24 commissioners have had a chance to read them, and I

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1 understand that that was railroaded through when  
2 Commissioner Redenbaugh was on hiatus and there was  
3 a gap in the service, so there was nothing we could  
4 do about that. But it seems to me to be, a, not a  
5 good policy in its right, but, but, this seems to me  
6 to be the type of circumstance where even if one  
7 approved the policies, generally, this would be a  
8 circumstance where, in the interest of equity and  
9 fairness, that the policy should be amended in this  
10 case.

11 CHAIRPERSON BERRY: Yes, Vice Chair?

12 VICE CHAIRPERSON REYNOSO: Perhaps the  
13 staff can remind us of the history here. My  
14 recollection was that the Clinton report was not, as  
15 this report was, established early on as a regular  
16 report that we were going to make and that this  
17 report has always been, as one of the projects that  
18 we had, I believe, agreed to unanimously, unlike the  
19 Clinton report. I need to be reminded if that's  
20 true. It seems to me that we ought to follow  
21 whatever normal procedural we follow --

22 COMMISSIONER BRACERAS: I didn't quite  
23 hear you.

24 CHAIRPERSON BERRY: I couldn't understand

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1 the point.

2 COMMISSIONER BRACERAS: Explain that  
3 again.

4 VICE CHAIRPERSON REYNOSO: I'm asking the  
5 staff remind us -- my recollection is that the  
6 Clinton report was not a report that we had agreed  
7 way early on, a couple years before, as long as we  
8 have agreed to do this report, and that this report  
9 on this administration has been before us as a  
10 regular report. My recollection, I may be wrong,  
11 was that the Clinton report didn't follow that  
12 trajectory.

13 COMMISSIONER BRACERAS: What difference  
14 would that make? I mean which way does that cut,  
15 I'm not even sure?

16 VICE CHAIRPERSON REYNOSO: Oh, no. It's  
17 just that my conclusion is that this report should  
18 be treated like any other report, that's all.

19 COMMISSIONER REDENBAUGH: Madam Chair?

20 CHAIRPERSON BERRY: I'm going to recognize  
21 ~~Commissioner~~ Thernstrom and then Commissioner  
22 Redenbaugh, but let me just say that my view of this  
23 entire matter is now colored by the statement of  
24 Commissioner Braceras that somebody railroaded

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1 through a motion when in fact the motion was voted,  
2 on six to two, which is what the record will show.  
3 Commissioner Thernstrom? Which means there must  
4 have been eight commissioners. Yes.

5 COMMISSIONER THERNSTROM: Well, I would  
6 like to defer to Commissioner Redenbaugh first and  
7 let him speak first. He hasn't had a chance to  
8 speak.

9 CHAIRPERSON BERRY: You haven't either.  
10 You haven't either, but --

11 COMMISSIONER THERNSTROM: That's all  
12 right.

13 CHAIRPERSON BERRY: Just a moment,  
14 Commissioner Thernstrom. Please calm down. We all  
15 have a short time -- if we could be patient for  
16 another few months. Just a little patience, okay?

17 COMMISSIONER THERNSTROM: I am really  
18 patient.

19 CHAIRPERSON BERRY: Now, Commissioner  
20 Redenbaugh?

21 COMMISSIONER REDENBAUGH: Oh, thank you.  
22 I was on the Commission at that time, and I do  
23 recall --

24 COMMISSIONER BRACERAS: I apologize

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1 Russell. I misspoke. I mean obviously don't  
2 remember that correctly. I apologize.

3 COMMISSIONER REDENBAUGH: That's all  
4 right. I do remember Commissioner Edley's concern  
5 at that time, and in fact I shared his concern and  
6 agreed with him that the principle that we should  
7 follow, and did follow, was to hold the report over  
8 until after the election so that we made sure to  
9 avoid even the appearance of being partisan or  
10 political. And I think that is a good principle to  
11 follow and that that principle is one that should  
12 guide us here and that that principle rises above  
13 whatever policy we have about disclosure on the web  
14 site or not. I recommend that we follow the Edley  
15 policy.

16 CHAIRPERSON BERRY: In the interest of  
17 Commissioner Edley who doesn't remember himself what  
18 he said, I can tell from looking at him --

19 (Laughter.)

20 CHAIRPERSON BERRY: And I didn't either,  
21 to be frank, I have now a copy of the transcript,  
22 and I just want to tell you that Commissioner  
23 Edley's point had nothing to do with the points that  
24 have just been discussed or at least were indirectly

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1 only concerned about it. What he wanted was a  
2 report for new appointees that were coming into  
3 office on the last eight years of the Clinton  
4 Administration. for their guidance and for the  
5 commissioners to say what things we thought they  
6 ought to do. The whole discussion was about that.

7 I think the situation now is very  
8 different because we don't have an administration  
9 with eight years in office going out. And Clinton  
10 in fact wasn't even running for office again, so it  
11 could not have a political consideration for Bill  
12 Clinton. And as I recall, the report was quite  
13 critical of Bill Clinton and his presidency. And  
14 Bill Clinton in fact was not running for office  
15 again, having served eight years and unhappily not  
16 being able to run again.

17 But in any case, I don't think that any of  
18 that is relevant, and I would like Pages 27 through  
19 -- Page 28 through Page 31 of the transcript from  
20 the meeting of June 16, 2000, which is in accord  
21 with what I have discussed here, entered into the  
22 record. I will not read it into the record in the  
23 interest of time, and I will hand it over to the guy  
24 who's doing the transcript at an appropriate time.

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I just want it in there so that we can have it accurately reflect for the historians who might wish to look at this matter.

(INSERTED PORTION FOLLOWS ON NEXT 5 PAGES, PAGES NUMBERED 16 THROUGH 20.)

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VI. Future Agenda Items

CHAIRPERSON BERRY: Okay. Any other --  
yes, Commissioner Edley?

COMMISSIONER EDLEY: This is on the new  
business, future business.

CHAIRPERSON BERRY: Yes.

COMMISSIONER EDLEY: I wanted to just  
present for Commissioners to think about -- no?

CHAIRPERSON BERRY: I was talking to her.  
Sorry.

COMMISSIONER EDLEY: Present for  
Commissioners an idea for an activity. It seemed to  
me that it would be very helpful for the public at  
large if we were to undertake to do a pretty serious  
conference/hearing in November after the election in  
which we analyzed the civil rights enforcement  
record of the Clinton Administration, last eight  
years. And on the basis of that hearing do a report  
for the benefit of the next President and the next  
Congress providing our thoughts about what the  
experience, recent experience has been, and what  
priorities would make sense.

It strikes me first of all; that doing  
this after the election would help minimize the

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1 politicization of the exercise. And the kind of  
2 session that I envision would be at least a day,  
3 would involve hearing from several of the agencies  
4 themselves, but also hearing from outside folks.  
5 Perhaps some people from Capitol Hill, certainly  
6 some researchers, other interested members of the  
7 public. And that we need to endeavor to try to put  
8 together a tight -- not massive, but a fairly tight  
9 20, 30-page document for the incoming administration  
10 and the incoming congressional leadership trying to  
11 distill and offer our suggestions about priorities.

12 But I thought it would be a good occasion  
13 for everybody to take their breath, take stock of  
14 where we are and offer the Commission's independent  
15 view about future directions.

16 CHAIRPERSON BERRY: Any support for such  
17 idea? Yes, Commissioner Redenbaugh?

18 COMMISSIONER REDENBAUGH: Yes, very  
19 supportive of it. It goes right to, I think, one of  
20 the things we can do well, which is comment and seek  
21 to influence policy. I think it's a very worthwhile  
22 and appropriate project and I would support it.

23 CHAIRPERSON BERRY: Okay. Any objections  
24 to the idea? You object to the idea, Commissioner?

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1 You just proposed it.

2 COMMISSIONER EDLEY: I just wanted to  
3 clarify that it seems to me -- the reason that I  
4 suggested that our gloss on this, our synthesis be  
5 short, is because it seems to me it would be  
6 desirable to get it done by January, so that  
7 incoming appointees would have the benefit of it. I  
8 think that if we decided to do this and got it  
9 underway quickly that it would be an opportunity to  
10 get some thoughtful pieces contributed by outsiders  
11 so that we'd be able to really put together a  
12 compendium of analyses, not just our own thoughts  
13 but a compendium of analyses from a variety of  
14 viewpoints about the effectiveness of the last eight  
15 years in various areas.

16 CHAIRPERSON BERRY: Okay. Commissioner  
17 Anderson?

18 COMMISSIONER ANDERSON: I was going to  
19 ask, what do you think the timeframe is for the  
20 initiation for the project?

21 COMMISSIONER EDLEY: To the extent that we  
22 want to get academics to do some of the analysis --  
23 and I think we should -- the sooner the better,  
24 because summer is upon us and the three best things

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1 about teaching are June, July, and August.

2 [Laughter.]

3 COMMISSIONER EDLEY: So getting some  
4 academics who might have more flexibility to do the  
5 work in the summer I think would be ideal, if we can  
6 decide today or within the next week or two to  
7 launch it.

8 CHAIRPERSON BERRY: Pointy-head academics.

9 COMMISSIONER EDLEY: Yes, those folks.

10 CHAIRPERSON BERRY: So if there are no  
11 objections to -- you're not objecting, are you,  
12 Commissioner Anderson?

13 COMMISSIONER ANDERSON: No, I just -- I  
14 think that I would support the idea. I think it  
15 probably would be valuable if whatever drafts or  
16 discussion or whatever were not prepared until after  
17 the election. So if we start the process soon,  
18 that's fine with me, but I think it just would be  
19 best for us if we were not circulating drafts or  
20 draft reports in October.

21 COMMISSIONER EDLEY: Agreed.

22 COMMISSIONER ANDERSON: I think the reason  
23 is obvious. But if we had something maybe the end  
24 of November we're looking at or early December, that

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would be great.

CHAIRPERSON BERRY: So maybe what we could do is identify some types and Commissioners could make suggestions of what -- and remember, we want, to the extent that we can get them, not people who are associated with think tanks that have a particular political edge and everybody knows it. But if academics, people who are out there in the groves of academia who are supposed to be experts on policy matters, it would be good. Unless we want to identify think tanks and say, this one is identified as this kind of place, and this is that kind of place, and here's what they all have to say. That's one way to do it and then just simply be very up front about it. Otherwise, try to get professor types who make a specialty of studying policy and who may have some political edge, but that's not their strong suit. Like they're very out front with it; I'm only trying to make recommendations to achieve X objective. So I don't know.

**(END OF INSERTED MATERIAL)**

1                   CHAIRPERSON BERRY:       Now, Commissioner  
2 Thernstrom.

3                   COMMISSIONER THERNSTROM:   Well, trust I'm  
4 not putting words in Commissioner Edley's mouth  
5 here, but he actually was making two different  
6 points, and he says, "It strikes me, first of all,  
7 that doing this after the election would help  
8 minimize the politicization of this exercise." That  
9 was his first point, and that's the point that  
10 carries over to this. And the second point is  
11 exactly as the Chair described.

12                   So the timing, whatever the origin of  
13 these separate reports, one on the Clinton  
14 Administration, one on the Bush Administration,  
15 whatever the origin, the timing point remains the  
16 central one. And it seems to me in terms of the  
17 credibility of this Commission and the credibility  
18 of the report at issue is that it would be better to  
19 wait until after the election so that nobody could  
20 accuse the Commission of trying to influence in any  
21 small way the election results.

22                   CHAIRPERSON BERRY:       But someone has  
23 already accused the Commission of doing so in print.  
24 But in any case -- when there's no evidence that it

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1 was the case. I am perfectly willing to have this  
2 item removed from the agenda until November. The  
3 question of what should be done about the web site  
4 is a different matter, in my opinion. However, I'm  
5 ready to call for the question on Commissioner  
6 Braceras' motion if the debate is ended on it.

7 If there's no further discussion, would  
8 someone call the question and we can vote on it.  
9 Yes?

10 COMMISSIONER EDLEY: I feel quite torn  
11 about this, because I think that the -- I think  
12 deferring the matter is fine. It's just that this  
13 is actually a situation -- I hate to sound like a  
14 law professor, but this is sort of a situation where  
15 no matter what we do --

16 COMMISSIONER THERNSTROM: I was going to  
17 say you're sounding like a dean instead.

18 COMMISSIONER EDLEY: Yes, right. No  
19 matter what we do there's a political cast to it. I  
20 mean creating an exception to the general practice  
21 has a political cast to it because you're picking  
22 this report to treat it differently.

23 COMMISSIONER BRACERAS: But we're not  
24 treating it differently than we treated the Clinton

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1 report.

2 COMMISSIONER EDLEY: But we are because  
3 there was not general policy operating in the  
4 background at that stage.

5 COMMISSIONER BRACERAS: But it was --

6 CHAIRPERSON BERRY: Commissioner Braceras  
7 --

8 COMMISSIONER BRACERAS: It was  
9 specifically stated it shouldn't be in the public  
10 domain.

11 CHAIRPERSON BERRY: Commissioner Braceras,  
12 please be in order. You were not recognized. He  
13 was speaking. Please let him finish and then I'll  
14 recognize you.

15 COMMISSIONER EDLEY: We didn't at that  
16 stage have a policy of having all the reports be in  
17 the public domain in kind of a notice and comment  
18 fashion, but now we do. But on the other hand, I  
19 will say that the report has been on the web already  
20 for some time, so to the extent that one's concerned  
21 about the notice and comment principle, it's at  
22 least been half honored by the fact that it's been  
23 up there for a while.

24 CHAIRPERSON BERRY: Would you like to be

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1 recognized? Yes, Commissioner Braceras.

2 COMMISSIONER BRACERAS: Well, is it really  
3 up there for the purposes of notice and comment? I  
4 mean if e-mails and letters come in based on that,  
5 are they then incorporated into the report? No.  
6 That's never -- I've never seen that occur. Let's  
7 be honest about why they're on the web site.  
8 They're on the web site so that they can be in the  
9 public domain irrespective of what the eight people  
10 sitting at this table do.

11 But in any event, the point is that all  
12 I'm interested in here is treating likes alike, and  
13 it was specifically stated in 2000 that there should  
14 be no drafts in the public domain, and that was what  
15 was agreed to. And they may not have been posting  
16 things on the web then and they may not have had a  
17 policy of using that particular form of technology  
18 to disseminate the reports, but the fact of the  
19 matter is a draft in the public domain is a draft in  
20 the public domain, and it was thought at that time  
21 that that was not appropriate, and I don't  
22 understand why it's not equally inappropriate today.

23 CHAIRPERSON BERRY: A point of  
24 information: The Commission voted six to two to put

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1 reports in the public domain after an extended  
2 public discussion. Accusing commissioners, mainly  
3 this one, of leaking reports and not giving them to  
4 commissioners and that they didn't have them and  
5 that I got them from the staff -- there was a  
6 particular report, it was all in the press. And  
7 commissioners were quite upset about this and  
8 decided that if we had a policy of when the staff  
9 gave the report to the commissioners it was put on  
10 the web site, nobody could complain that any press  
11 somehow got a leak from the report. That was the  
12 purpose of the policy. And the transcript of the  
13 meeting where it was discussed clearly shows that  
14 that was the purpose of the policy.

15 Secondly, the Commission has had a long-  
16 standing policy, since 1957, of when reports are  
17 ready, that the staff has finished, they go to the  
18 commissioners. The commissioners don't worry about  
19 the politics of it -- that's been a policy since  
20 1957 -- of who cares about what is going on with it,  
21 that if the staff finishes the work and it's handed  
22 in to the Staff Director and the Staff Director  
23 reviews it and it's done, nobody thinks about  
24 political considerations; they just put it up.

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1                   And, thirdly, it's on the web site, and if  
2 we take it off the web site, that is a political  
3 decision also, once it's already been up there, to  
4 decide in violation of our policy.

5                   I am inclined to call on whoever had their  
6 hand up and then ask someone to call for the  
7 question. Yes, Commissioner Thernstrom?

8                   COMMISSIONER THERNSTROM: Just two quick  
9 points. One, I don't see the downside to taking it  
10 off the web site. As you've stated, and as I was  
11 going to say but you've already done it, the point  
12 of the policy was to deal with the problem of leaks.

13                   In this case, there is no problem of leaks. It's  
14 been up there. So that the underlying rationale  
15 doesn't apply in this situation. I would be  
16 delighted to have the question called.

17                   CHAIRPERSON BERRY: All right. All those  
18 in favor of Commissioner Braceras' motion to both  
19 remove this item from the agenda and to also take  
20 the report down from the web site indicate by saying  
21 aye.

22                   All those opposed indicated by saying no.

23                   (Commissioners vote.)

24                   COMMISSIONER BRACERAS: Roll call.

1 CHAIRPERSON BERRY: Give me a thing.  
2 Commissioner Braceras?  
3 COMMISSIONER BRACERAS: Aye.  
4 CHAIRPERSON BERRY: Commissioner Edley?  
5 COMMISSIONER EDLEY: No.  
6 CHAIRPERSON BERRY: Commissioner Kirsanow?  
7 COMMISSIONER KIRSANOW: Aye.  
8 CHAIRPERSON BERRY: Commissioner Meeks?  
9 COMMISSIONER MEEKS: No.  
10 CHAIRPERSON BERRY: Commissioner  
11 Redenbaugh?  
12 COMMISSIONER REDENBAUGH: Aye.  
13 CHAIRPERSON BERRY: Vice Chair Reynoso?  
14 VICE CHAIRPERSON REYNOSO: No.  
15 CHAIRPERSON BERRY: Commissioner  
16 Thernstrom?  
17 COMMISSIONER THERNSTROM: Aye.  
18 CHAIRPERSON BERRY: Berry? No. The  
19 motion fails by a vote of four to four. I would  
20 like someone to move to take this item from the  
21 agenda.  
22 VICE CHAIRPERSON REYNOSO: So moved.  
23 CHAIRPERSON BERRY: All right.  
24 COMMISSIONER EDLEY: Second.

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1                   CHAIRPERSON BERRY:    Or we can table it  
2 when we get to it if there's not an affirmative vote  
3 to do so.  Is there any discussion as to whether we  
4 should take it from the agenda or not and consider  
5 it in November sometime or whenever the Commission  
6 wants to?  Any discussion?  Anybody who wants to  
7 discuss whether it should be taken?  Yes?

8                   COMMISSIONER EDLEY:    Look, I think the  
9 principle -- it may be that the better principle  
10 here, under these circumstances, is when the staff  
11 finishes their work it goes on our agenda.  If we  
12 have a substantive reason to put something over,  
13 fine, but I do worry about a political reason.

14                   I haven't had a chance to go back and re-  
15 read the transcript from 2000.  My vague  
16 recollection is that it was fairly late when I made  
17 the suggestion that we do this.  And my further  
18 vague recollection is that in the context of  
19 thinking should we be rushing to get this done  
20 before the election, that struck me as political and  
21 inappropriate to rush to try to get it out before  
22 the election.  But I wanted it to be useful, and the  
23 utility that I imagined at that point was for  
24 transition purposes since we knew there was going to

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1 be a new administration.

2 But the politicization that I was  
3 concerned about had to do with the rushing to  
4 judgment. And as far as I know, in the history of  
5 this project, there has been, certainly not from the  
6 Commission, any kind of direction to the staff that  
7 the timing of their work be synched with the  
8 election.

9 So I guess I think it would not be -- I  
10 would not favor -- my position right now is  
11 different from what it was ten minutes ago. Having  
12 thought this through now, I think that the way to  
13 try to depoliticize this is to simply take the  
14 matter up when our Civil Service staff has produced  
15 it, rather than to make a judgment about what might  
16 or might not affect an election.

17 CHAIRPERSON BERRY: Yes. And for stories,  
18 for those who care about commissioner lore, the  
19 reason why the Commission did this years ago was  
20 because there was political pressure placed on the  
21 Commission to delay a report that the staff had  
22 ready by people in that particular administration.  
23 And the commissioners discussed it among themselves,  
24 and it was quite a heated discussion, as reported

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1 historically, and decided that, by golly, from then  
2 on whenever the staff finished something they were  
3 going to put it on the agenda and they were going to  
4 vote on it, and they didn't care what anybody said.

5 And it was a very -- they got a lot of  
6 criticism. There were hearings in Congress that  
7 attacked the Staff Director. It was one of those  
8 periods in the Commission's history that was fraught  
9 with great tension, but they withstood it and they  
10 did it. And from then on, and when I first came on  
11 Flemming told me, that's one of the first things he  
12 told me, "By golly, when something is ready from the  
13 staff, we vote on it and let justice be done or the  
14 heavens fall." I guess he got that from Floyd  
15 Dansfield or somebody.

16 Anyway, who's next? Commissioner Kirsanow  
17 hasn't spoken.

18 COMMISSIONER KIRSANOW: Yes. It seems to  
19 me -- I've listened to what Commissioner Edley had  
20 to say about if staff completes a report, we should  
21 then vote upon it. It would seem to me that the  
22 overriding consideration is one of comparing apples  
23 to apples. There can be no more of a political  
24 report than one about a President's civil rights

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1 record on the eve of an election. I think that far  
2 surpasses any considerations related to making sure  
3 that we not engage in a political endeavor in terms  
4 of delaying a report.

5 In terms of comparing apples to apples,  
6 the transcript clearly shows, and I agree with what  
7 you -- I will go with what you have to say,  
8 Commissioner Edley in terms of the reason for it,  
9 but the fact of the matter is we treated President  
10 Clinton's civil rights report far differently than  
11 what we're contemplating doing in this particular  
12 case. And if the considerations overall are that we  
13 not be viewed as a political body but one that is  
14 engaged in a scholarly and advisory endeavor, then  
15 it makes sense that holding it over for a month,  
16 just one month, is not going to be viewed as  
17 political as voting on a President's civil rights  
18 record on the eve of an election. So for those  
19 reasons, I would emphatically urge us to hold this  
20 over for another month.

21 CHAIRPERSON BERRY: Okay. Anybody else  
22 before we vote on this? Yes, Commissioner  
23 Thernstrom?

24 COMMISSIONER THERNSTROM: Well, and it

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1 isn't as if we haven't postponed votes in the past.  
2 We've postponed a bunch of votes in recent months --  
3 educational accountability and other matters. So  
4 it's not unprecedented.

5 CHAIRPERSON BERRY: Okay. Can we get a  
6 call for the question?

7 COMMISSIONER REDENBAUGH: Call for the  
8 question.

9 COMMISSIONER BRACERAS: What is it?

10 CHAIRPERSON BERRY: The question is  
11 whether to -- that we would delay voting on -- let's  
12 take this report off the agenda for today and we  
13 would vote on it -- put it back on the agenda for --  
14 well, November is after the election, right?

15 COMMISSIONER EDLEY: Yes, it is.

16 CHAIRPERSON BERRY: For November. That's  
17 the motion.

18 COMMISSIONER EDLEY: We could do it  
19 December, whenever.

20 CHAIRPERSON BERRY: Whenever, but at the  
21 earliest November. When people are ready to vote --

22 COMMISSIONER BRACERAS: I'm sorry. I know  
23 the question's been called.

24 CHAIRPERSON BERRY: Right.

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1                   COMMISSIONER BRACERAS:        Would you  
2 entertain another comment or no?

3                   CHAIRPERSON BERRY:        As a matter of  
4 courtesy, Commissioner Braceras, please proceed.

5                   COMMISSIONER BRACERAS:    I'm going to be  
6 perfectly honest about this. My view is if it's  
7 going to remain on the web, it's essentially in the  
8 public domain, and --

9                   CHAIRPERSON BERRY:    As what?

10                  COMMISSIONER BRACERAS:   As a Commission  
11 document.

12                  CHAIRPERSON BERRY:    As a report that is  
13 being considered by the Commission. That's what  
14 it's in the domain as, not as was reported by  
15 someone associated with this Commission a document  
16 that had been voted on by the Commission and  
17 released.

18                  COMMISSIONER BRACERAS:   I'm sorry, who  
19 reported it as that?

20                  CHAIRPERSON BERRY:    Well, that's okay. In  
21 any case --

22                  COMMISSIONER BRACERAS:   I don't know what  
23 you're talking about.

24                  CHAIRPERSON BERRY:    -- it's in the public

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1 domain.

2 COMMISSIONER EDLEY: I think the Wall  
3 Street Journal referred to it that way.

4 CHAIRPERSON BERRY: It's in the public  
5 domain.

6 COMMISSIONER BRACERAS: Oh. All right.

7 CHAIRPERSON BERRY: In any case, it is on  
8 the web site as a document that the staff has  
9 produced, which has been distributed to the  
10 commissioners and is in draft, and the commissioners  
11 will consider it.

12 COMMISSIONER BRACERAS: The point is it's  
13 on the web site to be quoted by the press and  
14 others, be it the Wall Street Journal or any other  
15 publication, which, frankly, I think is  
16 inappropriate, no matter what the comments about it  
17 is. So I would just say that.

18 But my -- I guess my question is we're not  
19 voting whether or not to take it off the agenda.  
20 Can we then after that -- since the first motion was  
21 a double motion, can we then specifically vote on  
22 the question of the web site or does the first  
23 motion -- is that resolved?

24 CHAIRPERSON BERRY: If you want to

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1 introduce another motion after we vote on this  
2 motion or if you want to amend this motion, whatever  
3 you wish to do, even though the question has been  
4 called for, I would indulge your doing so. People  
5 are always at liberty to introduce motions.

6 COMMISSIONER THERNSTROM: I'm sorry but  
7 now I'm lost. Can you tell --

8 CHAIRPERSON BERRY: Okay. We have called  
9 for the -- the question has been called for on the  
10 motion. The motion is that the report will be  
11 removed from the agenda of this meeting and  
12 considered at the November meeting at the earliest.  
13 That's the motion.

14 All those in favor of the motion indicate  
15 by saying aye.

16 Those opposed -- who said aye? I couldn't  
17 see anybody. Let's call the roll -- if somebody  
18 could ask for a roll call, because I can't figure  
19 out --

20 COMMISSIONER REDENBAUGH: Roll call,  
21 please.

22 CHAIRPERSON BERRY: Okay. All of those in  
23 favor of the motion -- I mean I'll call your name  
24 and you say what you want to do. Braceras?

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1 COMMISSIONER BRACERAS: Aye. I vote to  
2 take it off the agenda.

3 CHAIRPERSON BERRY: Edley?

4 COMMISSIONER EDLEY: Abstain.

5 CHAIRPERSON BERRY: Kirsanow?

6 COMMISSIONER KIRSANOW: Aye.

7 CHAIRPERSON BERRY: Meeks?

8 COMMISSIONER MEEKS: No.

9 CHAIRPERSON BERRY: Redenbaugh?

10 COMMISSIONER REDENBAUGH: Aye.

11 CHAIRPERSON BERRY: Reynoso?

12 VICE CHAIRPERSON REYNOSO: Aye.

13 CHAIRPERSON BERRY: Thernstrom?

14 COMMISSIONER THERNSTROM: Aye.

15 CHAIRPERSON BERRY: Berry, aye.

16 Okay. The motion passes. It has been  
17 taken off the agenda for this meeting. It's an  
18 interesting lineup anyway.

19 COMMISSIONER REDENBAUGH: I can't figure  
20 it out.

21 (Laughter.)

22 CHAIRPERSON BERRY: Let's just move on. I  
23 can't --

24 COMMISSIONER THERNSTROM: My head was

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**II. Approval of Minutes**

SEPTEMBER 17, 2004 MEETING

CHAIRPERSON BERRY: Let us have -- the next item on the agenda is approval of minutes of the September 17, 2004 meeting. Can I get a motion to approve the minutes?

VICE CHAIRPERSON REYNOSO: So moved.

COMMISSIONER EDLEY: Second.

CHAIRPERSON BERRY: Moving right along. Did anybody have any changes that they want to make in the minutes or corrections that they want to approve?

Okay, hearing none, all those in favor of approving the minutes indicate by saying aye.

Opposed?

(Commissioners vote.)

CHAIRPERSON BERRY: So ordered.

**III. Announcements**

CHAIRPERSON BERRY: The next item on the agenda is -- what's the next item on the agenda?

VICE CHAIRPERSON REYNOSO: Announcements.

CHAIRPERSON BERRY: Oh, announcements.

1 COMMISSIONER REDENBAUGH: Madam Chair?  
2 CHAIRPERSON BERRY: Yes, Commissioner  
3 Redenbaugh?  
4 COMMISSIONER REDENBAUGH: I'm sorry. Is  
5 the Education report on the agenda?  
6 CHAIRPERSON BERRY: No, it's not.  
7 COMMISSIONER REDENBAUGH: Okay. I'm in an  
8 airport, and I'm going to go now and board my plane.  
9 CHAIRPERSON BERRY: Well, you have a nice  
10 trip, okay?  
11 COMMISSIONER REDENBAUGH: Thanks.  
12 CHAIRPERSON BERRY: Have you already gone  
13 through security?  
14 COMMISSIONER REDENBAUGH: No, I haven't  
15 done that part yet.  
16 CHAIRPERSON BERRY: Okay. Well, you  
17 better go then.  
18 COMMISSIONER REDENBAUGH: Okay. Thanks.  
19 CHAIRPERSON BERRY: Whatever time your  
20 plane is. Bye-bye.  
21 (Laughter.)  
22 COMMISSIONER THERNSTROM: Even it's this  
23 afternoon.  
24 VICE CHAIRPERSON REYNOSO: We hope they

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1 don't have a name that sounds like Redenbaugh.

2 CHAIRPERSON BERRY: Okay. The  
3 announcements. Oh, I have information for those of  
4 you who go through security. If you wear shoes that  
5 have a heel that is less than one inch, one inch or  
6 less, and it's rubber and your shoe is entirely  
7 rubber, you don't have to take your shoes off.

8 COMMISSIONER THERNSTROM: I wear sneakers  
9 and don't take my shoes off. But if you have any  
10 kind of metal in your shoe. It's not the heel, it's  
11 the metal.

12 CHAIRPERSON BERRY: But if you make an  
13 entirely rubber shoe, which I have found, and wear  
14 them --

15 COMMISSIONER THERNSTROM: It's called a  
16 sneaker.

17 CHAIRPERSON BERRY: No metal. And a heel  
18 less than -- that person told me one inch or less,  
19 you can go through --

20 COMMISSIONER THERNSTROM: That has to be  
21 cool with heels.

22 CHAIRPERSON BERRY: In Boston.

23 COMMISSIONER THERNSTROM: Sneakers with  
24 heels as long as there's no metal. I don't wear

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1 sneakers with heels.

2 COMMISSIONER EDLEY: With respect, Madam  
3 Chair, it depends on the airport and the state of  
4 alert.

5 CHAIRPERSON BERRY: Oh, okay. All right.  
6 Well, I'm not an expert on this matter. I just  
7 thought that was interesting.

8 The Native American Museum opened. I  
9 haven't been down there yet. Has anyone been yet?  
10 None of you have? September 21 after 15 years of  
11 preparation. Great historical significance in the  
12 history of Native Americans. But this policy change  
13 took place that made it possible to have a museum on  
14 the Mall when for years we were told that there was  
15 no space to have another museum on the Mall, and now  
16 they're finding space. That's good, they found  
17 some. The space was there all the time, I guess.

18 (Laughter.)

19 CHAIRPERSON BERRY: Anyway, on the  
20 breaking of the Nez Perce Treaty, October 5, 1877,  
21 Chief Joseph surrendered to United States forces  
22 near Chinook and I love to always say what he said,  
23 "I will fight no more forever," marking the bookend  
24 to the breaking of the Nez Perce Treaty by the

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government.

We've done a lot of work on Native Americans, and trust responsibilities are still fraught with difficulty.

It is Disability Awareness Month, October 2004 with 54 million Americans are counted as having disabilities. And since the passage of the Americans With Disabilities Act, some of which the information in there, the provisions, were recommended by this Commission, progress has been made to improve the access of the disabled in a number of areas, although there are still significant challenges and barriers, most importantly jobs and employment for the disabled.

The first African-American to be enrolled at the University of Mississippi, Ole Miss, September 1930, 1962, James Meredith, on his fourth attempt got in the school after some legal challenges and a lot of disorder and violence at the University -- a landmark in the history of civil rights.

On October 3, 1965, the Immigration and Nationality Act was signed by President Lyndon Johnson, which eliminated the national origins quota

1 system in favor a worldwide quota blind to national  
2 origin. And this abolished the Asia Pacific  
3 triangle definition of undesirable which had been on  
4 the books for many, many years. And it was one move  
5 to sort of liberalize our immigration policy.

6 On October 12, 1998, Matthew Wayne  
7 Shepherd, a 21-year-old University of Wyoming  
8 student was brutally beaten and tied to a fence in  
9 Wyoming in a horrific instance of violence against  
10 gays. There were protests about it, more national  
11 awareness of the violations in the administration of  
12 justice as it concerned people whose sexual  
13 orientation was considered suspect by some people.  
14 He, of course, died, and the folks who killed him  
15 each received double life sentences.

16 The first American women to walk in space,  
17 that happened October 11, 1984. Dr. Kathryn  
18 Sullivan, the first U.S. astronaut who did this on a  
19 Shuttle Challenger mission.

20 Does any commissioner have any  
21 announcements that you wish to make about anything  
22 at all? Okay.

23 **IV. Staff Director's Report**

24 CHAIRPERSON BERRY: Hearing none, the next

1 item on the agenda is the Staff Director's Report.  
2 Anybody have any comments, questions, anything  
3 related to the Staff Director's Report?

4 We got a letter, didn't we, from the SAC  
5 Chair --

6 STAFF DIRECTOR JIN: In Arizona.

7 CHAIRPERSON BERRY: -- in Arizona, asking  
8 us to take a position on an initiative that's on the  
9 ballot in --

10 STAFF DIRECTOR JIN: In Arizona.

11 CHAIRPERSON BERRY: -- Arizona that would  
12 require identification in order to receive  
13 government services and when people go to vote; is  
14 that right?

15 STAFF DIRECTOR JIN: That's correct.

16 CHAIRPERSON BERRY: But it came last  
17 night.

18 STAFF DIRECTOR JIN: It came, yes, just in  
19 the last day or two.

20 CHAIRPERSON BERRY: So -- oh, the last day  
21 or two.

22 STAFF DIRECTOR JIN: Let's put it this  
23 way: We were made aware of it the last day or two.

24 CHAIRPERSON BERRY: Which means that we

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1 haven't had time to figure out what it all means or  
2 to ask questions about it. But the staff will be  
3 reviewing that in the next few days to see what it  
4 is they're asking us to do is consistent with the  
5 position we already have, issues of voting and use  
6 of services, and if so, we might be able to comment  
7 on it otherwise. But we don't know -- at this time,  
8 we don't know. They asked us to take it up at this  
9 meeting. We don't know enough to take it up.

10 Is there anything anybody else has on the  
11 Staff Director's Report? Anything at all? Okay.

12 **V. State Advisory Committee Appointments for**  
13 **Montana, North Dakota, Ohio, Utah, and Washington**

14 CHAIRPERSON BERRY: We have some SAC  
15 appointments for Montana, North Dakota, Ohio, Utah  
16 and Washington. Can I get a motion on the --

17 STAFF DIRECTOR JIN: Madam Chair, the only  
18 ones that are ready are actually Montana and North  
19 Dakota.

20 CHAIRPERSON BERRY: Okay.

21 STAFF DIRECTOR JIN: And we sent out a  
22 memo to the commissioners with those.

23 CHAIRPERSON BERRY: Okay, Montana and  
24 North Dakota. Yes?

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1                   VICE CHAIRPERSON REYNOSO: Madam Chair, I  
2 want to commend the staff for doing a lot better the  
3 last few years than before in terms of having  
4 Advisory Committee members under age 40.  
5 Nonetheless, two of them just have three persons  
6 under 40, and I wonder if the staff might consider  
7 whether it's advisable to have another one or two  
8 more under 40.

9                   The matter that I raised at that time,  
10 and, again, I appreciate how the staff has  
11 responded, was that we just need to have younger  
12 people conscious as we go along of the issues of  
13 civil rights, and we ought to encourage younger  
14 people too. I know we always have a conflict, as we  
15 want very distinguished people on the Advisory  
16 Committees, but I think it's also important to have  
17 those young people.

18                   So I won't vote against this, but if they  
19 find qualified younger people, perhaps they might  
20 consider adding a person or two.

21                   STAFF DIRECTOR JIN: We will do that.

22                   CHAIRPERSON BERRY: Okay. Yes?

23                   COMMISSIONER MEEKS: I move.

24                   CHAIRPERSON BERRY: All right.

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1 COMMISSIONER EDLEY: Second.

2 CHAIRPERSON BERRY: Any further discussion  
3 on the Advisory Committee appointments?

4 All those in favor indicate by saying aye.

5 Opposed?

6 (Commissioners vote.)

7 So ordered.

8 **VII. Future Agenda Items**

9 CHAIRPERSON BERRY: The only other item on  
10 the agenda is future agenda items. Does anybody  
11 have any future agenda items that they are  
12 interested in discussing or anything else they're  
13 interested in discussing since we have a little time  
14 here, because we aren't discussing the report?

15 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
16 just want to raise the issue of the immigrants from  
17 this country undocumented, and I raise the issue  
18 because we have so many reports of abuses. They're  
19 in a position where they can't defend themselves,  
20 because likely there will be a report that they are  
21 here, and they'll be arrested. And so we have -- in  
22 fact, I've been asked to head up sort of a citizens  
23 commission to have some hearings on farm workers  
24 undocumented. I know that the abuses go beyond farm

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1 workers.

2 We've never looked into that issue, and I  
3 know that we can't -- we're authorized only to deal  
4 with civil rights within our country, but,  
5 obviously, those folks are in the country, and I  
6 just wonder if it's time for us to take a look at  
7 that issue. We have the report of the inordinate  
8 number of undocumented who get killed on the job as  
9 compared to non-undocumented. But we see incidents  
10 so often of undocumented not getting paid, health  
11 standards not being met by employers and so on, I  
12 just wonder if it's time for this Commission to take  
13 a look at that issue.

14 CHAIRPERSON BERRY: Why couldn't the  
15 Commission do a study of the fate of barriers to  
16 equality of opportunity, or something like that for  
17 undocumented persons in the United States? Is that  
18 what you have in mind?

19 VICE CHAIRPERSON REYNOSO: Yes, or equal  
20 treatment of the law, because the law that applies  
21 in terms of minimum wage applies to everybody,  
22 whether they're documented or not. The health laws  
23 applies to everybody, whether they're documented or  
24 not.

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1 CHAIRPERSON BERRY: So discriminatory  
2 enforcement.

3 VICE CHAIRPERSON REYNOSO: Yes.

4 CHAIRPERSON BERRY: Illegal  
5 discrimination. Yes, Commissioner Thernstrom?

6 COMMISSIONER THERNSTROM: Just a point of  
7 clarification. So you are saying that people are  
8 killed, that is murder is taking place, and nobody's  
9 prosecuting?

10 VICE CHAIRPERSON REYNOSO: Oh, no, no, no.  
11 There was a report I think by the U.S. Labor  
12 Department where -- maybe it was OSHA -- where they  
13 do a study of deaths on the job, and the report  
14 indicated that those who are undocumented has a  
15 disproportionately large number of deaths on the  
16 job. The attribution --

17 COMMISSIONER THERNSTROM: Work-related, in  
18 other words.

19 VICE CHAIRPERSON REYNOSO: Beg your  
20 pardon?

21 COMMISSIONER THERNSTROM: Work-related, in  
22 other words.

23 VICE CHAIRPERSON REYNOSO: Yes. That was  
24 strictly work-related.

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1 CHAIRPERSON BERRY: What would  
2 commissioners think about doing such a study?

3 COMMISSIONER BRACERAS: I mean, first of  
4 all, I think I need more information, but, secondly,  
5 I think I'd want to hear from the staff on workload,  
6 timing, current projects, that kind of stuff too.

7 VICE CHAIRPERSON REYNOSO: Well, no, I  
8 would think that if the Commission censors it, the  
9 first thing we should do is have the staff take a  
10 look at it to see what areas we might be looking at,  
11 you're absolutely right. So I wasn't calling on a  
12 vote or anything. I'm just raising the issue.

13 I haven't raised it before, but I'm  
14 particularly thinking about it because I just met  
15 with some women who were sexually harassed, they  
16 weren't paid for their work, that they actually  
17 filed a claim and it was found that they had not  
18 been paid for the work they were doing. In fact,  
19 the supervisor said, "You've got to work Saturday  
20 without pay, and if you don't agree with that, don't  
21 bother showing up Monday," et cetera, et cetera.  
22 And we hear so many such stories and yet because the  
23 folk are undocumented and it's therefore sort of a  
24 political issue, somehow nobody's looking at that.

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1 And yet to have people treated differently and not  
2 have the law apply to them equally, it seems to me a  
3 civil rights issue, so maybe we ought to put some  
4 light on that if there's light to be put.

5 But Commissioner Braceras is perfectly  
6 correct, that we ought to have the staff take a look  
7 at it before we move forward. But I'm just raising  
8 the issue to see whether there's the interest around  
9 the table. So my apologies that I haven't raised it  
10 with any of you before, but it just strikes me as  
11 something that we ought to think about.

12 CHAIRPERSON BERRY: So what the Vice Chair  
13 is really asking is whether commissioners, at first  
14 glance, feel favorable disposed toward even putting  
15 the energy into having the staff bother. Are there  
16 any upsides or downsides that people can see or any  
17 ways to expand the discussion or to narrow the  
18 discussion or is it an issue that would be of  
19 interest to the commissioners? He's just trying to  
20 assess whether it's something people might, going  
21 forward, think is interesting to do. Yes,  
22 Commissioner Edley?

23 COMMISSIONER EDLEY: Well, of course, with  
24 any of these things, it's a question of what the

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1 opportunity costs and how the staff might otherwise  
2 be spending its time. I'm mindful of the fact that  
3 the majority is going to shift in a couple of  
4 months, and I would hate for the staff to invest  
5 time in something that might ultimately come to not.

6 I have a thought about a shorter-term  
7 effort where that risk might be less, and that's  
8 just the question of what we do around the election  
9 and sort of systematically understanding what the  
10 experience is on November 2. And I'm wondering  
11 whether the staff has any plans underway to collect  
12 or to receive and organize whatever information is  
13 out there being produced by researchers and  
14 journalists and others about incidents related to  
15 our jurisdiction that occur leading up to and on the  
16 day of the election.

17 That was pretty incoherent. Can I try  
18 again?

19 (Laughter.)

20 CHAIRPERSON BERRY: I'm lost.

21 COMMISSIONER EDLEY: Wow, this jet lag  
22 thing has really put me --

23 CHAIRPERSON BERRY: Would you think about  
24 that as you recapitulate and reformulate while I see

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1 if anyone is interested in pursuing the question  
2 that the Vice Chair raised or if there's a total  
3 lack of interest.

4 COMMISSIONER EDLEY: Well, I'm interested  
5 in it, but I was going to -- I'm certainly  
6 interested. I was simply suggesting that although  
7 I'm interested in that, might it not be an even more  
8 compelling thing for the staff to do over the next  
9 couple of weeks is to get ready for November 2?

10 CHAIRPERSON BERRY: Yes, but I wanted him  
11 to get an answer first as to how other people felt  
12 about his idea. Yes, Commissioner Thernstrom?

13 COMMISSIONER THERNSTROM: Chris, these are  
14 not mutually exclusive; that is, the question can be  
15 explored with the staff about the undocumented  
16 workers and we can see what the answer is to that.  
17 We can have an answer to your question. We can  
18 weigh the priorities. I don't think we need to  
19 decide today what our priorities are going to be  
20 down the road.

21 CHAIRPERSON BERRY: But you need to decide  
22 whether there is enough interest in it.

23 COMMISSIONER THERNSTROM: Yes. That's  
24 all. But there's no conflict with --

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1                   CHAIRPERSON BERRY:     Right, but I still  
2     don't know whether there's enough interest.     The  
3     only person I heard express interest was the Vice  
4     Chair.

5                   COMMISSIONER THERNSTROM:   Okay.

6                   CHAIRPERSON BERRY:     Do you think it's okay  
7     to pursue it?

8                   COMMISSIONER BRACERAS:   I have interest.

9                   COMMISSIONER THERNSTROM:   Yes.

10                  COMMISSIONER KIRSANOW:     I agree with  
11     Commissioner -- Vice Chair Reynoso on this.   I mean  
12     it's something that we've considered before, two  
13     years ago in New York.     It's a matter that we  
14     considered pertaining to the treatment of  
15     undocumented workers.     And we didn't sufficiently  
16     explore it at that point, it seems to me.   I'll  
17     speak for myself:   I'm interested in exploring this,  
18     and I don't know that it needs to be rushed.   I  
19     think it's something that the staff should advise us  
20     as to whether or not they've got, number one, the  
21     capability under the scope of it, but I think it's  
22     something worth of exploration.

23                  CHAIRPERSON BERRY:     Okay.   Good.   Is that  
24     what you were going to say Commissioner Meeks?

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1 COMMISSIONER MEEKS: Yes.

2 CHAIRPERSON BERRY: Okay. So there is  
3 interest, enough interest for the staff to look at  
4 it.

5 VICE CHAIRPERSON REYNOSO: And, Madam  
6 Chair, just speaking up on the other thing that  
7 Chris mentioned, I had assumed without knowing it  
8 that with all the recommendations that were made on  
9 election procedures, that we might have a  
10 discussion. We don't have the meeting until the  
11 12th of November on what happened in the election.  
12 Were our recommendations followed, were they not, et  
13 cetera, et cetera. I think that would be very  
14 interesting if it can be worked out.

15 CHAIRPERSON BERRY: Have you had time to  
16 reformulate your idea despite the jet lag?

17 (Laughter.)

18 COMMISSIONER EDLEY: You'll have to be the  
19 judge of that.

20 (Laughter.)

21 COMMISSIONER EDLEY: But I'm ready to try  
22 again, in any case. I think it is -- there are  
23 going to be, say, three categories of stuff that  
24 happened. One is that we will be able to observe --



1 one, we'll be able to observe the extent to which  
2 jurisdictions have adopted recommendations that the  
3 Commission has made. A second is there will  
4 undoubtedly be allegations from various quarters  
5 about mismanagement, abuses, problems of fraud,  
6 problems of suppression, et cetera, that are made,  
7 and it might be of interest for the Commission to be  
8 in a position to systematically inventory what  
9 people have said about the conduct of the election.

10 Third, there will be various kinds of  
11 investigatory steps that might be launched on  
12 election day and immediately thereafter, and it  
13 would be interesting and useful, I think, to simply  
14 have a sense of what those are, what's their scope.

15 And I guess what I'm suggesting is that rather than  
16 kind of waking up on November 3 and saying, "Let's  
17 do a nexus search and figure out what's gone on or  
18 did anything happen," that a little bit of advance  
19 thinking by the staff and perhaps deploying of some  
20 resources to see to it that there's a better than ad  
21 hoc analysis of what happened on election day I  
22 think would be good.

23 I suppose that that would entail, for  
24 example, working now to establish the lines of

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1 communications to various official sources of  
2 information, Secretary of States' offices, the  
3 Justice Department, Federal Election Commission,  
4 whoever, as well as lines of communications to the  
5 various public interest groups across the political  
6 spectrum who are going to be doing various kinds of  
7 election monitoring and then having the staff make  
8 some effort to synthesize the information available  
9 from those sources and from the media. But if  
10 something like that could be done with reasonable  
11 effort, I think it would be very useful to the  
12 Commission and probably to the public as well. The  
13 basic question is what happened in some kind of a  
14 comprehensive way, a sense of what happened, as best  
15 one can tell it?

16 CHAIRPERSON BERRY: Commissioner  
17 Thernstrom?

18 COMMISSIONER THERNSTROM: Chris, I'm  
19 reluctant to have the Commission spend resources on  
20 topics in which there's already going to be a crush  
21 of investigations across the political spectrum. I  
22 mean this is -- we're going to be entering a very  
23 crowded field, and I suspect others will be doing  
24 precisely this work. If we find out after the

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1 election that isn't so, which is unimaginable to me,  
2 it seems to me we could act then, but, again, the  
3 limited resources, limited time, et cetera, here, I  
4 just don't think it's the best use of the staff at  
5 this point, given how many others are interested in  
6 it.

7 CHAIRPERSON BERRY: Vice Chair?

8 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
9 guess I can't help but be reminded that when there  
10 were problems in Florida, the Attorney General could  
11 have investigated and did not. The Attorney General  
12 of Florida, who's a Democrat, could have  
13 investigated and did not. The Governor has a  
14 specific legislative mandate to investigate and he  
15 did not. The only group that investigated was this  
16 Commission.

17 So I find some new activity this time  
18 around that I think would be very interesting. For  
19 example, both parties are active in having monitors  
20 go to the polls, and I'd be very interested to find  
21 out whether the monitors that the Republicans and  
22 Democrats, those the parties that are talking about  
23 it, have sent out, apparently extensively, did that  
24 really keep the officials straight and narrow in

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1 terms of following the law and providing proper  
2 ballots and so on. I think it would be very  
3 interesting to find out whether those efforts worked  
4 or didn't work.

5 I don't know whether anybody's going to be  
6 doing that sort of observation, so I'm rather  
7 attracted to the suggestion that Chris has.

8 CHAIRPERSON BERRY: Commissioner Edley?

9 COMMISSIONER EDLEY: I may be somewhere in  
10 the middle between where Commissioner Thernstrom is  
11 and the Vice Chair. What I had in mind was not  
12 something at this point as aggressive or as  
13 resource-intensive, certainly, as what we did in  
14 Florida, but rather the preliminary assessment of  
15 November 2 that would then be the basis upon which  
16 the Commission could decide whether or not anything  
17 of moment warranted in-depth investigation by the  
18 Commission.

19 So what I was thinking is something, in  
20 other words, that would be a step more  
21 sophisticated, comprehensive and professional than  
22 what we're likely to call from 18 column inches in a  
23 national newspaper that would then be able to inform  
24 a Commission judgment about whether there's work for

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1 us to do coming out of the election.

2 And my mention of my third category of  
3 having this report to us include a sense of who's  
4 doing -- what kinds of investigations or enforcement  
5 activities are afoot would, as Commissioner  
6 Thernstrom suggests, then help us decide whether or  
7 not there's anything to be done, whether or not  
8 there is a need for us to step in to a vacuum or  
9 not. But that was sort of my -- otherwise, we're  
10 just going to basically have news clips to work from  
11 to make a judgment. I thought we could do a little  
12 better than that.

13 CHAIRPERSON BERRY: Yes, Commissioner  
14 Thernstrom?

15 COMMISSIONER THERNSTROM: You don't think  
16 there's going to be a lot of interest groups across  
17 the political spectrum looking into this? I mean I  
18 appreciate what the Vice Chair said, that Florida  
19 took a -- people were off guard, that had never  
20 happened before, et cetera, et cetera, but this is  
21 post-Florida, and this is -- you know, I mean it's  
22 going to be a different landscape in terms of  
23 people, again, across the political spectrum being  
24 on the alert.

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1                   CHAIRPERSON BERRY: So you predict a lot  
2 of reports or investigations.

3                   COMMISSIONER THERNSTROM: I predict an  
4 awful -- look, people are very on edge about this  
5 election. It's a very polarized scene across the  
6 political spectrum. People are thinking this  
7 election is going to be stolen, and I think people  
8 are gearing up for a lot of "what happened"  
9 research.

10                  CHAIRPERSON BERRY: Yes?

11                  COMMISSIONER EDLEY: That's sort of what  
12 makes me think we ought to look at it. I mean I'm  
13 sort of thinking that there's going to be a lot of  
14 noise.

15                                 (Laughter.)

16                  COMMISSIONER EDLEY: And to the extent  
17 that the staff could help us figure out -- make  
18 heads or tails out of the -- what may in fact be  
19 very loud competing claims about whether the  
20 election was conducted well or not conducted well,  
21 whether or not something was stolen, we could just  
22 read the clips and make our own judgments.

23                  COMMISSIONER THERNSTROM: I think we'll  
24 have more than clips. We'll have more than clips.

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1                   CHAIRPERSON BERRY: Well -- did you want  
2 to say something, Commissioner Meeks? I can't  
3 decide whether you are -- yes, Commissioner Meeks?

4                   COMMISSIONER MEEKS: I think that the  
5 better we inform ourselves -- I mean, yes, we can  
6 read the paper, but to sort of commit it to record  
7 and within the Commission because, after all, we  
8 obviously have the voting rights. So I think it  
9 would be very interesting to take a view of it  
10 afterwards.

11                   CHAIRPERSON BERRY: Maybe Staff Director  
12 -- I'm asking, I'm not telling -- maybe somebody in  
13 one of the regional offices -- I know you don't have  
14 anybody -- could look at some one place, sort of  
15 keep an eye on some one place that day just to see  
16 what people are doing, maybe a polling place in  
17 South Dakota or a polling place in -- in addition to  
18 -- I mean I don't know what polling place here but  
19 someplace.

20                   And in addition to that, go through the  
21 materials so that the commissioners don't just have  
22 the news clips and do something on -- you know,  
23 maybe somebody can start now on what we recommended  
24 and what happened in these briefings that we've had

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1 and what came out of it in terms of recommendations  
2 or thoughts that people had about what they were  
3 worried about. And then direct it toward what  
4 allegations and all the stuff that Chris talked  
5 about came out on election day and maybe just write  
6 a short paper or something as a briefing memo or  
7 something for the commissioners. Yes?

8 COMMISSIONER EDLEY: And a compilation of  
9 the -- I mean if there are things that groups come  
10 out with, as Commissioner Thernstrom was suggesting,  
11 some kind of compilation --

12 CHAIRPERSON BERRY: Put them all together  
13 so that --

14 COMMISSIONER EDLEY: -- compilation and at  
15 least modest digesting or executive summarizing of  
16 what --

17 CHAIRPERSON BERRY: Which is work, so  
18 maybe like a paragraph.

19 COMMISSIONER EDLEY: -- they come up with.

20 CHAIRPERSON BERRY: Yes. Just something  
21 so that people have something more than just a stack  
22 of news clips.

23 COMMISSIONER THERNSTROM: I don't think  
24 we'll be reduced to a stack of news clips, but

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1 anyway.

2 CHAIRPERSON BERRY: Commissioner Braceras?

3 COMMISSIONER BRACERAS: I just have a  
4 question. When people keep referring to  
5 recommendations, are they referring to things that  
6 were recommended in the past, things that we intend  
7 to recommend now --

8 CHAIRPERSON BERRY: No.

9 COMMISSIONER BRACERAS: -- or things that  
10 we're going to recommend after the election?

11 CHAIRPERSON BERRY: No, things that the  
12 Commission has already recommended.

13 COMMISSIONER BRACERAS: In the report on  
14 2000?

15 CHAIRPERSON BERRY: In 2000 or before the  
16 Senate when we were commenting on --

17 COMMISSIONER BRACERAS: Okay. It sounded  
18 to me as if there were plans to make additional  
19 recommendations, either now or --

20 CHAIRPERSON BERRY: No.

21 COMMISSIONER BRACERAS: -- post-election,  
22 and I was unclear on that.

23 COMMISSIONER EDLEY: If you have some.

24 (Laughter.)

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1 COMMISSIONER BRACERAS: Actually, I do.

2 CHAIRPERSON BERRY: And we'd like to make  
3 some.

4 COMMISSIONER BRACERAS: But, no, I was  
5 unclear as to exactly what you were referring to.

6 CHAIRPERSON BERRY: But I'd be happy to  
7 entertain some recommendations, seriously, if anyone  
8 as a result of what's been going on thinks there's  
9 something this Commission ought to recommend between  
10 now and election day.

11 COMMISSIONER THERNSTROM: Let's not wade  
12 into that scene.

13 CHAIRPERSON BERRY: Well, if Commissioner  
14 Braceras has recommendations, I think she should --  
15 it might help the situation.

16 COMMISSIONER BRACERAS: I'm sure it would,  
17 but --

18 CHAIRPERSON BERRY: You don't want to make  
19 them? Okay.

20 COMMISSIONER BRACERAS: I'm sure you  
21 wouldn't adopt them.

22 (Laughter.)

23 CHAIRPERSON BERRY: It depends on what  
24 they are.

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1 All right. So then we -- to the extent  
2 that, you can, within the resources that are  
3 available, does anyone have any other issues that  
4 they would like to -- yes, Commissioner Braceras?

5 COMMISSIONER BRACERAS: This is just a  
6 question. The dates that were e-mailed around for  
7 the calendar for next year, those are final dates or  
8 do we need to vote on them again or these are -- we  
9 can put them in our calendar?

10 VICE CHAIRPERSON REYNOSO: That's correct.  
11 The last one we mailed out with the addition of  
12 Commissioner Redenbaugh's request that in June we  
13 switch it from the 10th to the 17th --

14 COMMISSIONER BRACERAS: Right.

15 VICE CHAIRPERSON REYNOSO: -- which none  
16 of the commissioners seemed to have a problem with.

17 COMMISSIONER BRACERAS: No, that's fine.  
18 I just wanted to make sure before they are  
19 officially entered that this is final.

20 CHAIRPERSON BERRY: Okay. Now we will  
21 take a short break and then begin the briefing on  
22 voting and election reform.

23 (Whereupon, the foregoing matter went off  
24 the record at 10:41 a.m. and went back on

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the record at 11:06 a.m.)

**Briefing on Voting and Election Reform: Is America  
Ready to Vote?**

CHAIRPERSON BERRY: Welcome to you, Jehmu Green. I already said hello to everybody else.

We are now having another one of our briefings on America's readiness and preparation to vote in the upcoming election. This is the fourth one we've had to see whether or not only are Americans ready to vote, but is the system ready to have them vote and have it carried out fairly and without misadventure.

The Commission, of course, sees as one a major focus of our work voting rights. In our statute it is emphasized that it's something that we should be concerned about, and one of our panelists will talk about some of the historic importance of the right to vote.

We will today talk about barriers to voting among first-time voters and young people -- young meaning anybody under 60? I mean what age are young people?

(Laughter.)

CHAIRPERSON BERRY: That prevent them from

1 fully participating in the democratic process. The  
2 panelists will address reports of problems  
3 encountered by first-time voters, immigrant  
4 communities, students, and they will help us examine  
5 the significance of the Voting Rights Act to various  
6 first-time voters, and allegations of suppression on  
7 college campuses.

8 Among the persons that we have as  
9 panelists, Jehmu Green who's President of Rock the  
10 Vote Foundation; Janelle Hu is National Director of  
11 the Asian and Pacific Island American Vote, APIA  
12 Vote 2004; and Nigel Redmond who is Student Body  
13 Government President and a management information  
14 systems major at Prairie View A&M University,  
15 Prairie View, Texas, where he is a senior hoping to  
16 graduate. Sabrina Hodge is President of the Campus  
17 NAACP at Prairie View and a management information  
18 systems major too. And she is also a senior hoping  
19 to graduate.

20 We will begin today with Janelle Hu, who  
21 is the National Director, as I said, of the Asian  
22 and Pacific Islander Vote Campaign, which is a  
23 coalition of national and grassroots non-partisan  
24 and non-profit organizations that encourage civic

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1 participation and promote a better understanding of  
2 public policy and the electoral process among the  
3 Asian and Pacific Islander American community.

4 A native Californian, she is in  
5 Washington. She came to Washington for graduate  
6 school where she became involved in activism and she  
7 is Chair for the Conference on Pacific-American  
8 Leadership, an all-volunteer, non-profit  
9 organization that aims to draw more Asian-Pacific  
10 Americans into public service and elected office.

11 Thank you very much, and could you please  
12 proceed.

13 MS. HU: Thank you. There are over 13  
14 million APIAs residing in the U.S., making up 4.7  
15 percent of the U.S. population. With over two-  
16 thirds of the community born outside the U.S., the  
17 APIA population is heavily dominated by immigrants.  
18 However, we have a very high naturalization rate  
19 compared to other minority groups, as 80 percent of  
20 APIA immigrants become citizens.

21 APIAs also have one of the highest voter  
22 participation rates. In the 2000 presidential  
23 election, 83 percent of the registered APIAs voted  
24 and 71 percent of registered young APIAs voted. A

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1 direct correlation exists between registration and  
2 political participation in the APIA community. If  
3 we can get APIAs to register, they will vote.

4 Nevertheless, strong barriers to APIA  
5 participation in the political process still remain.  
6 This morning, I will chronicle many reported  
7 instances of the intimidation, discrimination and  
8 suppression experienced by APIAs in Southern  
9 California and New York and the rest of the nation  
10 where APIA legal organizations and hundreds of  
11 community volunteers have extensively monitored  
12 elections over the past decade. However, these  
13 instances of misconduct and intimidation are  
14 definitely not limited to just California and New  
15 York. Asian and Pacific Island American immigrant  
16 and youth suppression exists across the nation.

17 I'll also discuss the barriers young APIA  
18 voters are facing this year. Specifically APIA  
19 voters observed a number of instances where  
20 confusion surrounding identification requirements  
21 discouraged young potential APIA voters. Like many  
22 minority voters in Florida in 2000, APIAs have faced  
23 a wide range of discriminatory barriers where they  
24 have exercised their right to vote.

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1           Language barriers continue to prevent many  
2           APIAs from participating in the American political  
3           process.    Section 203 of the Voting Rights Act  
4           mandates the availability of translated ballots and  
5           other voting materials as well as oral language  
6           assistance.   However, the goals of this legislation  
7           are often unmet or inadequate.    Despite the  
8           provisions of 203, there are many instances where  
9           language assistance has been denied.

10           In New York, some of the inspectors were  
11           belligerent and refused to make translated materials  
12           available to voters.    A poll worker defiantly  
13           refused to place translated materials on the table,  
14           claiming she would only bring them out upon request.  
15           This procedure is improper.    Instead, voters are not  
16           required to ask for translated materials but rather  
17           they should have them displayed on tables.

18           In Southern California, many locations  
19           failed to place these translated materials in plain  
20           view, making it very difficult for APIA voters to  
21           find them.    In most cases, poll monitors had to ask  
22           several poll workers before multilingual sample  
23           ballots were located and shown to the monitor.  
24           Dozens of locations did not have translated

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1 materials at all.

2 When translated materials are provided,  
3 there's no guarantee they're even useful to the  
4 community. Bilingual ballots are at the core of  
5 making the political process accessible to language  
6 minorities, yet translations on ballots have been  
7 too small to read, layouts are misleading and  
8 ballots have faulty translations of candidates'  
9 names. In 2000, New York ballots reversed the  
10 Chinese translations of the party headings, so  
11 Democratic candidates were listed as Republicans and  
12 vice-versa.

13 In many cases, all language assistance is  
14 troubling as well. Interpreters are often missing  
15 or there are too few to assist. Additionally, many  
16 poll workers have blocked interpreters from  
17 assisting voters. Interpreters are allowed to  
18 assist voters, and may enter voting booths with  
19 voters if voters request such assistance.

20 In addition to interviewing with language  
21 assistants, many complaints from APIA voters in New  
22 York revealed certain poll workers were rude,  
23 hostile or made racist remarks about language  
24 assistance and APIA voters. One poll monitor mocked

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1 Asian voters and made racist remarks and gestures.  
2 She pulled back the corners of her eyes and said, "I  
3 can tell the difference between Chinese and Japanese  
4 by their chinky eyes." Another worker referred to  
5 South Asian voters as terrorists.

6 Additional methods of intimidation exist  
7 when poll workers inappropriately require APIA  
8 voters to show identification in order to vote. One  
9 New York voter complained that his name was not  
10 listed and that the poll worker told him to return  
11 with three pieces of identification before he could  
12 vote. In fact, over ten percent of the APIA voters  
13 surveyed during the 2002 primaries responded that  
14 they were required to provide identification. This  
15 is especially troubling as no form of identification  
16 is required of voters in New York.

17 In some cases, even if APIA voters provide  
18 identification, they were still turned away. APIA  
19 voters have complained that they have been directed  
20 to stand in multiple lines, waiting hours, only to  
21 be turned away because inspectors did not want to  
22 search through the list of Asian names. These grave  
23 instances of misconduct reveal the lack of proper  
24 training for poll workers about the rights of APIA

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1 citizens to have assistance and access to translated  
2 materials.

3 In addition to facing the challenges of  
4 language barriers, APIA voters have been directly  
5 targeted at the polls. In Alabama City Council race  
6 this August, opponents of Huynh, the Vietnamese  
7 candidate, challenged nearly 50 ballots, all from  
8 Asian-Americans who were likely to cast a ballot for  
9 Huynh. Under Alabama's municipal election law, any  
10 registered voter may challenge the ballot of another  
11 voter. The law does not stipulate that the  
12 challenger must provide a reason for the challenge  
13 and does not prescribe any penalties for frivolous  
14 accusations. Advocates for the Asian community have  
15 charged Huynh's opponent in the City Council race of  
16 racist tactics designed to intimidate the city's  
17 large Asian community. Nearly one-third of the city  
18 is of Asian origin, and, if elected, Huynh would  
19 become its first ever Asian-American City Council  
20 member.

21 HAVA is also stirring up frustration and  
22 confusion for APIA voters. HAVA requires that  
23 first-time voters must present photo identification  
24 when they vote. These provisions may

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1 disproportionately affect new citizens and young  
2 adults. Without advanced knowledge of these  
3 requirements, many APIA voters may not have the  
4 chance to acquire or prepare such identification in  
5 time to vote.

6 Adding further confusion to the  
7 implementation of HAVA's identification  
8 requirements, Arizona wants to add proof of  
9 citizenship, copy of a birth certificate, U.S.  
10 passport or Bureau of Indian Affairs card to be  
11 presented to election officials before the  
12 individual can register to vote. This measure is  
13 aimed at challenging immigrants, many of whom are  
14 first-time voters. Immigrant communities are being  
15 harmed because these measures are fueling voter  
16 suppression.

17 These examples fall under the rubric of  
18 minority voter suppression, which is not just  
19 happening in Florida, not just to the African-  
20 American, Latino and Native American voters, but  
21 evidences a nationwide systemic problem of  
22 protecting and providing for APIA voters as well.

23 Although HAVA has provided voters the use  
24 of provisional ballots to challenge these barriers,

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1 unfortunately, many APIA voters are still unaware of  
2 the provisional ballot, will not know it is their  
3 right to request one or if they do receive one, may  
4 not know how to use it.

5 In California, HAVA money was never  
6 released to community groups to conduct education in  
7 the community about these challenge ballots. While  
8 California is making tremendous efforts to train  
9 poll workers, the lack of community education will  
10 negatively impact the APIA community, one-third of  
11 whom are first-time voters. The state with the  
12 largest APIA population does not have the money that  
13 HAVA initially intended. In fact, no organizations  
14 have received HAVA funding at all.

15 Many organizations were intending to  
16 provide translated materials and conduct outreach in  
17 the community to explain the new HAVA rules with the  
18 expected funding. Instead, APIA community groups  
19 are left to cobble together efforts, cutting back on  
20 mail programs, instead door-knocking, housing town  
21 hall meetings and holding press conferences to  
22 inform the ethnic media.

23 Increased awareness and activism is  
24 happening not only within the immigrant community

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1 but the young APIA community as well, especially in  
2 light of the growing awareness of young voter  
3 suppression tactics. Among minority youth groups,  
4 APIA youth have the lowest rates of voter  
5 registration, but this year APIA student groups have  
6 activated like no election prior. APIA Vote is  
7 working closely with the National Asian-American  
8 Student Conference, South Asian-American Voting  
9 Youth and the APIA Greek Alliance, a network of  
10 4,000 APIA students at 70 campuses nationwide  
11 committed to registering and mobilizing 20,000 young  
12 APIA voters this fall.

13 Research shows that more young people say  
14 they plan to vote this fall than anytime during the  
15 1996 and 2000 elections. Thanks to the efforts of  
16 many youth voting rights advocates like Rock the  
17 Vote and the Greater Youth Vote Coalition, a  
18 projected 20 million young voters will race to the  
19 polls on election day.

20 But confusion still hovers within the APIA  
21 community. While the education component of student  
22 voting rights continues, it is still in the nascent  
23 stages and not reaching a majority of students.  
24 Since this is the first time many of APIA youth are

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1 participating in the election process, a number of  
2 questions and concerns remain. While progress was  
3 made to register millions of students across the  
4 nation, many APIA students still remain uncertain if  
5 they are allowed to vote on election day since they  
6 do not know if they'll be allowed to vote absentee  
7 as first-time voters or if their dormitory addresses  
8 will meet the residency requirements in the state  
9 they attend school.

10 Many APIA students have taken to  
11 contacting local election boards directly to clarify  
12 residency and identification requirements but have  
13 gotten no answers. In Philadelphia and Atlanta,  
14 students have called the local election offices to  
15 obtain clarification on these requirements, but  
16 still these offices have no answer for the students.

17 Yet despite these barriers, the APIA vote  
18 is rising. In 2000, 4.7 million APIAs were  
19 eligible.. Two million registered and 83 percent of  
20 those registered actually went to the polls on  
21 election day -- one of the highest rates of return  
22 of all the ethnic groups. As of the 2000 census,  
23 over 6.8 million APIAs are eligible to vote, with 50  
24 percent of those registered to vote to date.

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1           As you have heard today, the right -- or  
2 will hear today, the right to vote is very precious  
3 yet still not guaranteed. There are many situations  
4 in the APIA community where rights still need to be  
5 vigorously protected, yet despite these challenges  
6 facing our community, it's important for APIAs to  
7 incorporate into the political system. No matter  
8 how difficult things are, we still need to go out  
9 and vote.

10           APIAs are more energized than ever about  
11 participating in the elections this year than any  
12 election prior. Even if things may go wrong, we  
13 still need to go out to the polls and vote. We need  
14 to convey the message to the public that the new  
15 APIA generation is serious about becoming a part of  
16 the American democracy by becoming a visible voting  
17 constituency and voting on November 2.

18           CHAIRPERSON BERRY: All right. Thank you  
19 very, very much, Ms. Hu.

20           We have been joined by Ted Shaw, who is  
21 supposed to start, but we're going to ask him to  
22 start now if he's ready, but let me introduce you  
23 first. Thank you very much for coming. Ted is  
24 President of the NAACP -- President and Director

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1 Council of the NAACP Legal Defense Fund, the  
2 organization founded by Thurgood Marshall, Thurgood  
3 Marshall's law firm, that led the legal battles that  
4 ended up with Brown against the Board of Education  
5 and numerous other cases, landmark cases in the  
6 history of this country.

7 He began working on these issues the year  
8 he was born in 1954 --

9 (Laughter.)

10 CHAIRPERSON BERRY: -- when Brown was  
11 decided and hasn't stopped since. He's been at LDF  
12 since 1982 except for being a faculty member at the  
13 distinguished University of Michigan School of Law  
14 -- Hail to the Victors. And after graduating from  
15 law school, he worked as a trial attorney in the  
16 Civil Rights Division of the Justice Department here  
17 in Washington. In 1982, he resigned his position in  
18 reaction to the Reagan Administration's civil rights  
19 policies and joined the Legal Defense Fund. He is  
20 also an adjunct professor at the Law School of  
21 Columbia University and is also Vice Chair of the  
22 Board of Trustees of Wesleyan University.

23 So thank you very much for coming, Mr.  
24 Shaw, and could you please proceed?

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1 MR. SHAW: Well, thank you, Commissioner  
2 Berry -- I should say Chairwoman -- and thank you  
3 all, commissioners, for an opportunity to address  
4 you today. I'm here a few minutes after your  
5 meeting began because the Legal Defense Fund has  
6 every year a Lawyers Training Institute and it's  
7 held down in suburban Virginia, what used to be  
8 suburban. It takes more and more time to get into  
9 the District from Virginia, as you know, every time  
10 I come through anyway, so I apologize for joining  
11 you a few minutes late.

12 The Legal Defense Fund, as you know, is no  
13 longer part of the NAACP out of which we were born,  
14 but I always have to underscore that. And the Legal  
15 Defense Fund has been engaged in voting rights  
16 issues even before there was a Voting Rights Act.  
17 The cases Smith v. Alright back in the 1940s, which  
18 challenged all white primaries in Texas, and cases  
19 like Gomillion v. Lightfoot in the 1960s, which  
20 challenged the ludicrous fracturing of black voting  
21 strength to deprive the African-American community  
22 effectively of the fruits of the right to vote, were  
23 Legal Defense Fund cases, as have been many of the  
24 major civil rights cases involving the right to

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1 vote.

2 And we have been engaged in enforcing the  
3 Voting Rights Act since it was enacted in 1965 and  
4 were deeply involved in the process of ensuring the  
5 amendments and extensions of the Voting Rights Act  
6 of 1982 and enforcing the Voting Rights Act since  
7 then.

8 This year we're engaged with a number of  
9 other civil rights organizations and institutions,  
10 public interest law firms and grassroots  
11 organizations in election protection work. We have,  
12 based on recent experiences and our long-term  
13 experiences, a strong concern about the protection  
14 of the right to vote in the upcoming election.

15 I don't need to spend time or I shouldn't  
16 need to spend time recounting what happened in  
17 Florida in 2000 and other places around the country.  
18 This is not only a problem in Florida. There has  
19 been litigation after the Florida debacle, and the  
20 Legal Defense Fund was involved in some of that  
21 litigation. I hasten to add that we are a 501(3)(c)  
22 non-profit, non-partisan organization, and I always  
23 explain to people that we did not weigh in when  
24 lawyers were parachuting into Florida like it was D-

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1 Day to impact the outcome of the 2000 election. Our  
2 concern was the systemic reform of the Florida  
3 electoral system insofar as we witnessed a number of  
4 practices and procedures and shortcomings that  
5 resulted in the denial or effective denial of the  
6 right to vote on behalf of African-Americans, people  
7 of color and in fact white Americans in Florida.  
8 And so we have been engaged in an effort to see that  
9 that does not recur.

10 I think that the historical problems, poll  
11 taxes, white primaries, at-large elections, literacy  
12 tests, intimidation, violence, those problems are  
13 well known, and those problems are not the problems  
14 of 2004, for the most part, even though intimidation  
15 efforts continue. They've changed. We're not  
16 living in the 1940s or 50s or 60s, indeed, even the  
17 90s.

18 The present-day problems are a combination  
19 of intentional efforts to suppress the minority  
20 voting strength and unintentional but nonetheless  
21 very troubling problems and inadequacies in our  
22 electoral process: Inadequate technology,  
23 inadequate training of poll workers, felon  
24 disfranchisement laws which disproportionately

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1 impact upon the African-American community.

2 In 48 states there are felon  
3 disfranchisement laws, and in the states where there  
4 are large African-American populations, the impact  
5 of these laws is palpable, as they are often  
6 intended -- it often is intended to be. Even where  
7 such laws exist beyond the legal targets of felon  
8 disfranchisement laws, that is those who have in  
9 fact been convicted of felonies, we have problems  
10 with African-Americans who have never been convicted  
11 of a felony being swept up in purge lists and denied  
12 the right to vote, either because of incompetency or  
13 less defensible -- not that incompetency should be  
14 defensible, but less defensible reasons.

15 The Help America Vote Act, intended to  
16 address some of these problems, has some  
17 unintentional consequences that we are concerned  
18 about. So, for example, African-American  
19 communities are more likely to have people who are  
20 disproportionately poor, some of these people live  
21 in households that are multigenerational. They may  
22 not have or need to have or have an opportunity to  
23 have the kinds of identification that most of us  
24 take for granted, whether that's a driver's license

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1 or whether it's getting mail to our address with a  
2 utility bill. Somebody else in the family may get  
3 that mail, somebody else in another generation. In  
4 fact, I often point out that the right to vote is a  
5 constitutional right even though some people may be  
6 confused about that. It is a constitutional right.  
7 And homeless people have the right to vote in this  
8 country.

9 So we're concerned about ID requirements.  
10 I acknowledge the necessity to verify that people,  
11 in the first instance, when they register are who  
12 they say they are. We're also concerned about the  
13 varying interpretations of provisional balloting  
14 provisions that are part of HAVA. In some  
15 jurisdictions, a ballot may be thrown out if someone  
16 votes in the wrong precinct. In other places, they  
17 are not. Now, almost four years after Bush v. Gore  
18 was decided, I think constitutional scholars have  
19 pretty much determined that that case is either  
20 impenetrable beyond its result or it has dubious  
21 underpinnings. But if it means anything, if the  
22 notion that the 14th Amendment's equal protection  
23 laws require similarly situated voters to be treated  
24 similarly, then it seems to me the problem that I'm

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1 pointing to or that we're pointing to is a problem  
2 that we should all be concerned about.

3 This cycle already -- and you're going to  
4 hear if you haven't already about some of these  
5 problems, I assume, from the younger people who are  
6 here today whom I salute for their activism -- this  
7 cycle already we have seen a Florida investigation  
8 into election fraud in which armed investigators,  
9 state officers appeared in the homes of elderly  
10 black voters. They tell us that they were  
11 intimidated or found it intimidating, because these  
12 folks were engaged in trying to procure absentee  
13 ballots.

14 We have the Texas Prairie View situation  
15 in which --

16 CHAIRPERSON BERRY: They're here. They're  
17 here.

18 MR. SHAW: I know. I know. That's why I  
19 salute them. In which students at Prairie View,  
20 which you know is an historically black institution.  
21 We're told by the local DA that if they voted in the  
22 election, they face prosecution, and they'll talk  
23 about that.

24 We have a Michigan state legislature

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1 suggesting that it was necessary or desirable to see  
2 voter turnout in Detroit, which is of course a  
3 heavily African-American city, kept down. Now, in  
4 this democracy we ought to encourage the right of  
5 every citizen to vote who's qualified to vote, no  
6 matter what their political affiliation is, and we  
7 ought to remove barriers.

8 We have a 1-866 number which we set up  
9 along with other groups, available for anybody who  
10 has problems either during the pre-election weeks or  
11 on election day to call this 1-866-OUR-VOTE. And it  
12 is my hope that we have an election that we can  
13 stand up and say -- about which we can stand up and  
14 say this is the way democracy works. Everyone who  
15 has the right to vote has had an opportunity to  
16 participate. It was a clean election. It was an  
17 election that is beyond question one that we can  
18 hold up as an example of how elections ought to work  
19 for the rest of the world. I hope that we don't  
20 have to litigate in the aftermath of this election,  
21 but we have strong concerns that are justifiable  
22 about what may happen in the weeks to come.

23 There's been a surge of registrations.  
24 It's been a great thing. There may be a lot of

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1 confusion, but when the dust settles the Legal  
2 Defense Fund is going to be there to make sure that  
3 the right to vote has been protected and will be  
4 protected in the years to come. Thank you.

5 CHAIRPERSON BERRY: Thank you. There will  
6 be questions. Ms. Hu, I forgot to say there will be  
7 questions. Thank you.

8 Jehmu Green is President of Rock the Vote.  
9 It is a non-profit, non-partisan organization  
10 dedicated to empowering young people to participate  
11 in the political process. She oversees the  
12 operation of the Rock the Vote, headquartered in LA  
13 with offices in Washington and New York. She  
14 manages the organization's budget and the Board of  
15 Directors includes some of the most influential  
16 leaders and executives in the entertainment and  
17 media communities. She's also the spokesperson for  
18 the organization, and we thank you very much for  
19 agreeing to come today. Please proceed.

20 MS. GREEN: On behalf of the Rock the  
21 Vote, I wish to thank you, Dr. Berry and the U.S.  
22 Commission on Civil Rights, for inviting me, for  
23 inviting Rock the Vote to discuss the importance of  
24 the youth vote and youth civic participation and the

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1 civil rights issues impacting young voters.

2 Rock the Vote is a non-profit organization  
3 based in Los Angeles that promotes political  
4 participation for young adults. I am pleased to  
5 report that Rock the Vote has registered over one  
6 million new voters through our online and on-the-  
7 ground efforts in this election cycle. Actually, as  
8 I left Los Angeles yesterday, it was as 1.203, and  
9 we are very, very excited about those efforts this  
10 year.

11 We are fully confident that this is going  
12 to be a historic election year for young voters. As  
13 most of you know, young voters, which we define as  
14 18 to 30, tend to be underrepresented in larger  
15 margins than any other group of voters. The most  
16 common explanation for this trend is that young  
17 people are simply apathetic or too disinterested in  
18 politics to bother with informing themselves, much  
19 less voting. The other conventional justification  
20 is that refraining from voting is a conscious  
21 decision for various reasons, such as rejection of  
22 the system or a belief that their vote will not make  
23 a difference.

24 Rock the Vote has spent a considerable

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1 amount of time and energy combating this problem,  
2 creating initiatives aimed at engaging young people  
3 in the political process through a combination of  
4 popular culture, youth-oriented activities and  
5 targeted marketing campaigns designed to reach  
6 potential voters and encourage them to use their  
7 vote to not just involve themselves in the issues  
8 that affect them but to have an impact on those  
9 issues.

10 Our efforts this year have amounted to  
11 an all-out blitz featuring an unprecedented array of  
12 initiatives, some time tested and others that put us  
13 on the cutting edge of voter participation  
14 campaigns. To begin with, we issued public service  
15 announcements entitled, "It's Up to You," for  
16 television and movie theaters. These focused on  
17 issues important to young voters, such as the rising  
18 costs of college tuition and the lack of health  
19 care, more in the spirit of issue motivation rather  
20 than a generalized call to vote. In addition, the  
21 ads focused on women's voting and used celebrity  
22 appearances to aid voter recognition and improve  
23 issue identification.

24 Rock the Vote's street team have played an

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1       invaluable part in our operation.       They are the  
2       heart and soul of our organization.       They are  
3       pounding the pavements, registering voters at  
4       concerts, events, community centers and wherever  
5       young people hang out.       In addition, we launched the  
6       Rock the Vote bus tour, traveling to over 50 cities  
7       with over 100 stops.       The tour stopped at a number  
8       of conventions and conferences, including the  
9       national party conventions, before it headed to  
10      college campuses this fall.

11               Featuring a number of artists, the bus  
12      tour is expected to come in contact with half a  
13      million young people and reach five million young  
14      voters with our message through publicity about the  
15      tour.

16               Public service announcements, street teams  
17      and concerts have been the traditional methods  
18      employed by Rock the Vote, and they have been  
19      successful.       However, we are extremely excited about  
20      our new initiatives to use emerging technology to  
21      keep younger voters involved.       A giant step has been  
22      Rock the Vote Mobile.       This partnership with  
23      Motorola enables people to get politically involved  
24      wherever they are by using the one device they carry

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1 with them at all times -- their cell phone. Young  
2 people can now get essential news from the campaign  
3 trail, make their voice heard in the first ever  
4 wireless polls and on election day receive a  
5 reminder to vote and locate their polling place  
6 through their cell phone.

7 Another exciting tool has been the online  
8 voter registration tool. This tool allows anyone  
9 with Internet access and a printer to register to  
10 vote without leaving their home. Rock the Vote has  
11 offered this technology free of charge to web sites  
12 in order to spread the word, and over 1,000 web  
13 sites have taken us up on our offer. It is largely  
14 due to such online efforts that Rock the Vote has  
15 been able to register voters in such high numbers.  
16 And, as I said before, as of today we have  
17 registered over 1.2 million people.

18 I want to just touch briefly on a couple  
19 of other programs we have: A Happy Birthday Program  
20 with the California Secretary of State where 30,000  
21 birthday cards are sent out to 18-year-olds every  
22 single month, and we have a 12 percent return rate,  
23 and we are looking forward to spreading that program  
24 across the country as well as Rock the Vote voter

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1 registration kits that we have sent out over 2,000  
2 voter registration kits, with 90 percent of those  
3 kits going to high school teachers who do not have  
4 voter registration materials and information  
5 provided to them from their school administration  
6 and come to Rock the Vote for those materials.

7 As it turns out, it's far easier to sell  
8 civic engagement than one would think. Once  
9 informed of the power that they possess to create  
10 change, many young voters immediately seek out ways  
11 to get involved. The major challenge has been the  
12 hurdles placed in the way of these young people who  
13 desperately want to participate in politics, who  
14 desperately want to vote. Questionable practices by  
15 local and state election officials, primarily  
16 centered around unconstitutional residency  
17 requirements, have illegally discouraged or impeded  
18 scores of young voters from registering to vote or  
19 voting in local elections.

20 According to the New Hampshire Institute  
21 of Politics, the most significant challenge for  
22 students who want to vote this fall is bureaucracy  
23 -- legal or administrative barriers that make it  
24 extremely difficult or impossible to vote in their

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1 college communities. The net effect of these  
2 barriers has been widespread: Student voter  
3 suppression, which amounts to a form of  
4 discrimination against young people.

5 The United States Supreme Court upheld the  
6 right of students to register to vote from their  
7 campus residence in 1979, yet a national problem  
8 remains. Instances of student voter suppression  
9 have occurred at Prairie View A&M, William & Mary  
10 College, Henderson State, Florida A&M, Bowdoin  
11 College, among others. Additionally, many of these  
12 schools have a considerable black student body and a  
13 community that is largely white.

14 A recent report by the League of  
15 Conservation Voters, Education Fund and Project  
16 Democracy has found that restrictive residency  
17 requirements in conjunction with contradictory  
18 information on absentee voting messages received by  
19 students have presented numerous barriers to student  
20 voting. In addition, they found multiple instances  
21 of voter intimidation at the polls, as well as  
22 partisan scare tactics and ongoing voter suppression  
23 efforts. These discriminatory efforts, including  
24 turning away students from the polls, declaring

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1 students ineligible, threatening students with  
2 misinformation that voting in their college town  
3 would make them lose their scholarship, that voting  
4 in their college town would make their parents not  
5 be able to claim them as dependents, that voting in  
6 their college town would make them lose their  
7 student loans.

8 Lastly, the report found that there were  
9 no polling places on or near many college campuses  
10 and that redistricting diluted the impact of  
11 students' votes by dividing the student body into  
12 many different districts.

13 This may sound like a lot of bad news, but  
14 Rock the Vote believes that the public attention to  
15 these issues can make a real difference toward  
16 ensuring that local election officials comply with  
17 federal election law. And we've seen this evidenced  
18 firsthand at Prairie View. I was going to talk a  
19 little bit about the Prairie View situation, but I  
20 will allow Nigel to go through that story. I do  
21 want to point out the work that we did through Rap  
22 the Vote, which is a project of Rock the Vote, to  
23 work with the Prairie View students.

24 In response to the Prairie View situation,

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1 Rap the Vote led students in discussions with  
2 prominent national and local elected officials about  
3 voting rights, election issues affecting young  
4 people and the importance of political activism. I  
5 want to recognize Prairie View's student body and  
6 their student government for all of their activism  
7 that they took up.

8 They organized a forum featuring hip hop  
9 artist Q-Tip, the Congressional Black Caucus, we had  
10 congressional members from Maryland and state  
11 representatives, Congressman Cummings, State Senator  
12 Rodney Ellis, myself, Congresswoman Sheila Jackson  
13 Lee, and other national and state leaders went down  
14 and the students really did organize one of the most  
15 intriguing and informative student forums that Rock  
16 the Vote has participated in.

17 In addition, coming out of the work that  
18 we did at Prairie View, Rock the Vote created a  
19 campus campaign called, "Do It On Campus," to fight  
20 student voter suppression and intimidation. Rock  
21 the Vote has also started a national campaign to  
22 help students at college campuses across the country  
23 to push for on-campus polling places. We created a  
24 web site which provides information on what students

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1 can do to take action against student voter  
2 suppression, including a place to post their stories  
3 about suppression and information to their fellow  
4 students on how to get polling places on their  
5 campus.

6 Rock the Vote strongly agrees with the  
7 findings of the League of Conservation Voters,  
8 Education Fund and Project Democracy. Although  
9 there are numerous examples of student  
10 disenfranchisement around the country, there is hope  
11 that these tactics will be eliminated. The 2000  
12 elections were a wake-up call and shown the  
13 spotlight on practices that have been going on for  
14 years. There are also other changes that can be  
15 made that eliminate the restrictive residency  
16 requirements and other structural barriers to  
17 student voting. We endorse their proposed solutions  
18 to the barriers to student votings which are as  
19 follows: Same-day vote registration. I think that  
20 light's blinking because I need to finish.

21 Only seven states -- Idaho, Illinois,  
22 Maine, Minnesota, New Hampshire, Wisconsin and  
23 Wyoming -- currently allow residents to register to  
24 vote on election day. In these states, youth voting

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1 rates have an increase estimated at 14 percent in  
2 presidential years. We also endorse their findings  
3 on college and university involvement. The National  
4 Higher Education Act of 1998 specifies that all  
5 post-secondary institutions must make forms widely  
6 available to students.

7 We also think that there is a great need  
8 for institutional change. The only solution may be  
9 federal legislation that upholds the rights of  
10 students to either register to vote at their  
11 parents' home or to register at their college  
12 address. We hope Congress will take up this fight  
13 and introduce legislation to address this issue.  
14 Thank you very much.

15 CHAIRPERSON BERRY: Thank you. There will  
16 be questions.

17 Nigel is a Dallas, Texas native and is  
18 Student Body President at Prairie View A&M and is a  
19 management information systems major with a minor in  
20 economics, and he recently took the LSAT and plans  
21 to attend law school. He wants to pursue a career  
22 as a civil rights lawyer. He is active in numerous  
23 youth civic organizations and volunteers for  
24 community service activities with Big Brothers and

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1 Big Sisters, Toys for Tots and Adopt a House, Adopt  
2 a Family, among other things. Nigel, welcome.  
3 Thank you for coming and please proceed?

4 MR. REDMOND: All right. Thank you for  
5 inviting me. It's a beautiful and wonderful day  
6 this morning.

7 CHAIRPERSON BERRY: Yes.

8 MR. REDMOND: It's certainly an honor to  
9 sit amongst all of you, and I appreciate the  
10 interest that everyone has in our university.

11 Prairie View A&M University was  
12 established in 1876, a little more than a decade  
13 after the civil war. Ever since the establishment  
14 of this great institution we have struggled with so-  
15 called elitists trying to filter our natural born  
16 rights away from us. We did not give up then, and  
17 we are not about to give up now.

18 Prairie View A&M is a predominantly black  
19 institution in a small white county right outside of  
20 Houston, Texas. The student body population is more  
21 than 8,300. The surrounding community employs many  
22 students, and the main customers of these businesses  
23 are primarily the students. We are welcomed with  
24 open arms when it is time to exchange our money with

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1 their goods and services, but when it's time for us,  
2 these same students, to vote in the same county as  
3 these businesses, we're no longer welcome. They do  
4 not want the students to have jurisdictions on how  
5 we are governed during our years of residency.

6 In 1979, Prairie View A&M brought a case  
7 to the U.S. Supreme Court that resulted in a  
8 landmark decision upholding a student's right to  
9 vote. This historic case, Symms v. the U.S., found  
10 that although a student may not be able to state  
11 with certitude that he intends to permanently live  
12 in the university community, such a declaration is  
13 not necessary to establish domicile.

14 That decision is synonymous with meaning.  
15 Students can vote where they go to school even if  
16 they do not plan to stay there permanently. So  
17 fighting back against voter intimidation and  
18 disenfranchisement is no stranger to the students at  
19 our university.

20 In Waller County, the former District  
21 Attorney Oliver Kitzman printed letters in a local  
22 newspaper that threatened students with federal  
23 prosecution for illegal voting if they attempted to  
24 cast their ballot in the March primary elections.

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1 These threats were based upon a legally  
2 unjustifiable theory of Texas domiciliary law.

3 His theory was indeed directly  
4 contradicted by the Texas Attorney General and the  
5 Secretary of the State. Former Texas District  
6 Attorney Oliver Kitzman still refused to withdraw  
7 his statement. A lawsuit was filed against him in  
8 federal court because of the students' fears of  
9 being prosecuted for simply registering to vote. A  
10 settlement was quickly reached and approved by the  
11 court wherein the former District Attorney agreed to  
12 initiate criminal investigations for his definition  
13 of illegal voting, among other things.

14 Also within the settlement was the  
15 creation of a Waller County criminal justice intern  
16 with the Waller County District Attorney's Office.  
17 Mr. Kitzman later released a formal statement and  
18 apology encouraging Prairie View students to  
19 register to vote in Waller County. And I'm very  
20 happy to say that Oliver Kitzman is no longer the  
21 District Attorney in Waller County. He resigned  
22 maybe a month and a half, two months ago.

23 A second lawsuit was filed by the Prairie  
24 View Chapter in the NAACP to prevent the County from

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1 implementing a change of frequent voting without  
2 first obtaining judicial or administrative  
3 clearance, as required by Section 5 of the Voting  
4 Rights Act of 1965. Because of this lawsuit, the  
5 commissioner's core decided to reinstate two days of  
6 early voting, which they tried to take away from the  
7 students in order to provide early voting days, as  
8 was provided in past years.

9           These two lawsuits were filed in February  
10 and March of this year with the assistance provided  
11 by several organizations and associations. The most  
12 recognized event that made headlines all over this  
13 great nation was the massive and militant protest  
14 march that was on January 15, also as a celebration  
15 of Reverend Dr. Martin Luther King, Jr. birthday.  
16 Nearly 5,000 students marched seven miles from the  
17 campus in the rain to Waller County courthouse to  
18 demand the right to vote where we attend college.  
19 We proudly overtook U.S. Highway 290 with this  
20 massive show of force, backing up traffic for miles  
21 into Houston.

22           The march was led by student leaders,  
23 President, NAACP, myself and many other student  
24 leaders. Senator Rodney Ellis, State Representative

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1 Al Edwards of Houston, U.S. Representative Sheila  
2 Jackson Lee of Houston and other prominent elected  
3 officials.

4 After all these events that have  
5 transpired, you would think that Prairie View A&M  
6 students' struggles were over. Unfortunately, those  
7 would just be thoughts and not reality. We are  
8 currently fighting to get polling stations placed on  
9 our campus. We are more than 95 percent of the  
10 voter population in Precinct 309 but were  
11 disapproved of having a polling station on campus  
12 twice. All of the schools within the A&M system as  
13 large as ours and obviously those larger have  
14 polling stations on their campus, usually in their  
15 student centers. Why can we not have a polling  
16 station in our student center? What makes Prairie  
17 View so different from other schools?

18 Well, one, the school is predominantly  
19 black in a predominantly white county with a  
20 majority of white commissioners making most of these  
21 voting decisions. We had a white District Attorney  
22 and have a white election commissioner managing more  
23 than 8,000 blacks. Secondly, and more importantly,  
24 the fear of losing power. With the student vote

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1 having more than twice the power than these  
2 residents not enrolled, added all together, the  
3 County is in the students' hands. Without the  
4 students' vote, the County is in the hands of the  
5 outside community which is accustomed to voting one  
6 particular way.

7 Coming up this Wednesday we're having a  
8 voting rally, and we have Senator Royce West coming,  
9 U.S. Representative Sheila Jackson Lee, Al Edwards,  
10 Al Green and some other congressmen and women coming  
11 to the voting rally. It's a barbecue, so I want to  
12 invite everybody to come if you want to come down.

13 CHAIRPERSON BERRY: Next Wednesday did you  
14 say?

15 (Laughter.)

16 MR. REDMOND: Next Wednesday.

17 CHAIRPERSON BERRY: Barbecue, I heard that  
18 part.

19 MR. REDMOND: November 2 we're having a  
20 march to the polls where we're going to formulate  
21 another march like we did earlier this year. We're  
22 going to march to the polls since we don't have it  
23 on our campus.

24 If we do not as a county live in a

1 democracy, then events such as those described today  
2 will continue and worsen. We need leaders to step  
3 up to the plate to condemn attacks on voting rights  
4 in Waller County, in Texas and in this nation. If  
5 the two parties cared about black students being  
6 able to vote, they would have taken some course of  
7 action and not just expressed empathy of the  
8 students and disgust with those actions by the  
9 former DA. It is truly unbelievable that the  
10 struggle continues in 2004 with such a basic right.  
11 We, as students, deserve support from all to assure  
12 the certainty and validity against racist class  
13 solidarity. Thank you.

14 CHAIRPERSON BERRY: All right. Well,  
15 thank you very much, Nigel.

16 Sabrina Hodge is the President of the  
17 Prairie View A&M campus student chapter of the  
18 NAACP, and she heads the campus voter registration,  
19 voter education and protection drive. Her duties  
20 include encouraging and motivating students to  
21 register to vote, holding seminars on voter  
22 education, voting rights and preparing pamphlets and  
23 disseminating them regarding voting rights and poll  
24 access.

1                   At the 2004 NAACP state conference, the  
2 university chapter received the College Voter  
3 Empowerment Award as a result of her efforts toward  
4 registering students. She also is a senior from  
5 Dallas and management information systems major with  
6 a minor in criminal justice. In her church, in  
7 Dallas, Texas, Baptist church, she serves as a  
8 mentor to youth and to teenagers. Thank you very  
9 much for coming, Ms. Hodge, and please proceed.

10                   MS. HODGE: I would like to thank everyone  
11 for the invitation to come. This is very exciting  
12 for me as well as for the students at Prairie View.  
13 My duties include -- well, I feel my duties should  
14 include encouraging the students to vote. One thing  
15 that we'd like to hit on for this election is --  
16 we're focusing on four things: Voter registration,  
17 voter education, voter mobilization and voter  
18 protection.

19                   With the voter registration, we have been  
20 going door to door, knocking on the students' doors,  
21 encouraging them to register to vote. We've held  
22 numerous voter registration drives, and we're also  
23 doing seminars, passing out pamphlets on voting  
24 issues about the candidates, anything that they need

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1 to know about voting.

2 Also, for the voter mobilization, we are  
3 going to call the students the night before the  
4 election and remind them to go vote. We're also  
5 taking them to the polls to vote because we don't  
6 know if it's going to be cold or rain.

7 And for the voter protection, to let the  
8 students know when they go to the polls that they  
9 should not be discriminated against. Some of those  
10 students don't know their actual voting rights, but  
11 when they go to the polls we are going to give them  
12 all the proper procedures that they need to take if  
13 they are turned away from the polls.

14 One of the things that I feel the young  
15 people don't go out and vote on is because they feel  
16 that they are not wanted in the County. They have  
17 officials who are running for a position. They come  
18 and they encourage the students to vote for them  
19 when it's time for them to be elected. But when  
20 it's time for us to stand up for our voting rights,  
21 they don't stand up for us.

22 For the issue of the polling place, we  
23 went to the Commission's Court expecting them to  
24 have the polling place on campus, and they appealed

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1 it twice. The person who was in our district -- the  
2 commissioner who was in our district he did not even  
3 vote for the polling place to be on campus, and that  
4 was really hurtful to the students because we voted  
5 for him to be the commissioner within that precinct.

6 One student posed a question to me --  
7 well, they made a statement, that we're all created  
8 equal but we're not all treated equally. And we see  
9 that as a result of Oliver Kitzman's letter that was  
10 printed in the newspaper. And it's hard to  
11 encourage the students to go out and vote if they  
12 feel they're going to be intimidated, if they feel  
13 they're going to be arrested when they go and vote.

14 So how can you explain to a student,  
15 "Well, you're not going to be arrested," but a  
16 letter has been printed in the paper that says  
17 you're going to be prosecuted? So my job is to  
18 encourage those students and get them out to the  
19 polls and vote. So we've been working together on  
20 the campus making sure that all the students are  
21 registered to vote. We registered over 2,000  
22 students on the campus, so we feel that our efforts  
23 are really getting into place, and hopefully we can  
24 get all the students out to vote on the election

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1 day.

2 We're working with the President, or  
3 trying to work with the President to create  
4 blockouts for the class periods. That way they will  
5 have enough time to go vote, because the hours are  
6 not long enough -- eight to five. Some students are  
7 in class from eight to five, depending on how their  
8 schedule is, on how their work study schedule is.  
9 And then we have students who go to class until nine  
10 o'clock.

11 So we wanted to extend the days for early  
12 voting, get the polling place on campus because it's  
13 easily accessible to the students if they can walk  
14 from class during their lunch period and go vote on  
15 campus. And that's one of the things that we're  
16 really working for to get the young people to vote,  
17 because they're saying, well, they don't vote and  
18 they feel that their vote doesn't count, but their  
19 vote does count.

20 If the officials in the County would stand  
21 up and tell them how important their right to vote  
22 is, then maybe they would go out and vote. Thank  
23 you.

24 CHAIRPERSON BERRY: All right. Thank you

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1 very much. Does any commissioner have any questions  
2 or comments to the panel about anything? Yes?

3 VICE CHAIRPERSON REYNOSO: Always. Well,  
4 I have actually a series of questions. I have a  
5 question for Ms. Hu. Would it help to have  
6 volunteer poll watchers at the precincts to make  
7 sure that the official poll workers in fact follow  
8 the law on provisional ballots and that sort of  
9 thing? Have you had experience with that?

10 MS. HU: In fact, hundreds of Asian  
11 Pacific Island Americans have volunteered in the  
12 past and this election. In ten states, the APIA  
13 legal organizations have organized poll watching  
14 programs, and they have been helpful in highlighting  
15 what has happened in the discrimination suppression  
16 that has taken place in the past. So, yes, if there  
17 were the resources for our community to garner some  
18 volunteers, even more so -- or even be paid as  
19 bilingual poll workers, it's proven in the past to  
20 be helpful, for 50 percent of the APIA population  
21 has said that if they received language assistance,  
22 they'd be more likely to vote.

23 VICE CHAIRPERSON REYNOSO: That's  
24 important. That's good. Mr. Shaw, I have a

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1 question on the felony laws. You mentioned that 48  
2 states have some impediment in terms of the felony  
3 laws, and I assume that includes the state of  
4 California who doesn't allow a person that's been  
5 convicted of a felony to vote until they've gotten  
6 out of prison and includes a state like Florida that  
7 doesn't allow a person that's been convicted a  
8 felony to vote at all until years later when and if  
9 they get something akin to a pardon.

10 My question is this: What does a felony  
11 conviction have to do with voting and with the right  
12 to vote? It seems to me that if you had a narrowly  
13 prescribed law that says if you've been convicted of  
14 a felony relating to voting, voting fraud, or  
15 something of that sort, there might be some  
16 relationship between voting and a felony. But if  
17 you've been convicted of a felony for manslaughter  
18 in terms of how you drove and so on, and I don't see  
19 the relationship of that felony to voting, which  
20 leads to the question: No chance that all those  
21 laws can be declared unconstitutional?

22 MR. SHAW: Well, Commissioner Reynoso, I  
23 agree with the point that I think you're making,  
24 which is that the connection between one's status as

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1 a felon and the right to vote is a dubious one.  
2 Given the explosion in incarceration rates in this  
3 country, which, as we all know, now puts us ahead of  
4 the rest of the world in terms of per capita  
5 incarceration rates in the last 20, 25 years,  
6 largely driven by draconian drug sentencing laws  
7 which end up with the incarceration of many non-  
8 violent drug offenders. This has become a problem  
9 that has impacted communities of color in a  
10 disproportionate way.

11 I cannot neglect to add that of course  
12 most drug users in this country, either in absolute  
13 numbers or proportionality, are not African-American  
14 or Latino.

15 VICE CHAIRPERSON REYNOSO: But those who  
16 get convicted are.

17 MR. SHAW: Well, that's right. Right. I  
18 think when people are convicted of crimes, they  
19 should serve their term and then they should be --  
20 having served that time, they should be allowed to  
21 reenter society. I don't see whose interests are  
22 served in a legitimate way -- of course I see the  
23 political interest, but I don't see whose interests  
24 are served in a legitimate way by continuing to

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1 marginalize and exclude people. And it's not only  
2 felon disfranchisement but it is also people who are  
3 unable to get housing, to get an education loans, to  
4 participate in society in all kinds of ways. And so  
5 what you do is effectively put these people outside  
6 of the boundaries of society and they're more  
7 likely, I think, as non-participants to be  
8 recidivous. So I think that's absolutely right.

9           There is litigation pending in a number of  
10 jurisdictions now. The Legal Defense Fund is  
11 involved, for example, with a challenge in New York  
12 to New York's felon disfranchisement laws. There's  
13 a case coming out of the 9th Circuit right now that  
14 is in the Supreme Court on a petition. There's a  
15 case that is coming out -- another case coming out  
16 of the 2nd Circuit. There's been litigation in  
17 Florida, there's been litigation in other  
18 jurisdictions, and I think that -- I know that  
19 judges are beginning to split on this issue. There  
20 is more public opinion being expressed in op ed  
21 pieces. Public education on this issue on the  
22 increase.

23           Whether or not the Supreme Court or lower  
24 federal courts will ultimately declare these

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1 practices unconstitutional is still up for grabs,  
2 but I think that this is a fight that we have to  
3 engage in.

4 VICE CHAIRPERSON REYNOSO: Well, you have  
5 mentioned the obvious, that it's a constitutional  
6 right to vote. Then it seems to me to take it away  
7 it's got to have some relation to the vote. So  
8 that's why I was asking.

9 MR. SHAW: Well, it ought to. Some people  
10 would argue of course that these folks have had due  
11 process before they've been convicted, but the --  
12 you know, a sentence is a sentence, and a sentence  
13 doesn't or shouldn't include all of these other  
14 punishments which are frankly gratuitous.

15 VICE CHAIRPERSON REYNOSO: Thank you. Ms.  
16 Green, you mentioned same-day voting. I attended a  
17 conference last week and there was a professor from  
18 Columbia who follows these matters, and he  
19 estimated, I forget -- I think it was -- he  
20 estimated that if you had same-day registration on  
21 voting day, the vote would go up by, I think he  
22 said, ten or 15 percent. In light of the reduced  
23 voting year-by-year percentage wise in this country,  
24 it seems to me that's something that we should do.

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1           So my question is why hasn't that become a  
2 political issue? You think the parties would be --  
3 that would be at some high level of discussion now.  
4 You mentioned it, but I don't hear much discussion  
5 in the political world about something that  
6 potentially, at least according to that professor,  
7 might take the vote up ten, 15 percent. That would  
8 help democracy, it seems to me. So how come it's  
9 not a big issue?

10           MS. GREEN: I don't know if I can answer  
11 how come it's not a big issue. I agree with  
12 everything you said as far as when you see direct  
13 correlation with turnout increases tied to same-day  
14 registration in those seven states. For young  
15 voters, it is a 14 percent increase in the  
16 presidential election. It's a four percent increase  
17 in mid-term elections for young voters. In  
18 California, in 2002, there was a proposition on the  
19 ballot, Proposition 52, which would have brought  
20 same-day voter registration into that state. That  
21 initiative as defeated by, I believe, 61 percent and  
22 the opposition --

23           COMMISSIONER EDLEY: Where was that?

24           MS. GREEN: This was California in 2002,

1 which was otherwise referred to as election day  
2 voter registration. The opposition to Proposition  
3 52, their messaging was focused on fraud and focused  
4 around people voting at one precinct and then going  
5 to another precinct and just -- nothing that really  
6 tied into a system that actually is in place and can  
7 I think be protected.

8 So one of the things we want to do, which  
9 is I think what similarly happened with the motor  
10 voter law, is to put a lot of celebrity attention,  
11 media attention behind same-day registration coming  
12 out of this election. We'll get through the next  
13 20-something days and then head into next year with  
14 our number one issue being highlighting the need to  
15 hopefully have federal legislation passed to have  
16 this across all 50 states.

17 VICE CHAIRPERSON REYNOSO: Isn't that  
18 subject also -- the politics of it is another  
19 matter, but aren't those matters subject to federal  
20 legislation, at least with respect to federal  
21 elections?

22 MS. GREEN: It definitely can be, and some  
23 legislation has been introduced that has not gotten  
24 a lot of attention. Again, we hope to see, in the

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1 same way that the motor voter law passed, that same-  
2 day registration can go to that level.

3 CHAIRPERSON BERRY: I'll let you continue  
4 after we let somebody else go.

5 VICE CHAIRPERSON REYNOSO: Yes. Okay.  
6 I've asked too many questions, the Chair tells me.

7 CHAIRPERSON BERRY: I have Edley,  
8 Braceras, Meeks so far. And Thernstrom, yes.

9 COMMISSIONER EDLEY: Mr. Shaw, are you  
10 aware -- I should ask anybody. Is anybody aware of  
11 any federal criminal indictments or grand jury  
12 proceedings that have been initiated in this  
13 election cycle by the Justice Department? Has  
14 anybody heard of anything?

15 MR. SHAW: There is a report about someone  
16 who was engaged in registration activities, I think  
17 in Wisconsin that I saw in the paper, who faced some  
18 criminal charges. I don't know where that stands.  
19 Apparently, this person had many registration forms  
20 in the trunk of his car. I don't remember the  
21 details of it, so I don't know about that. If the  
22 question goes to whether anybody's been under  
23 indictment for interfering with the right to vote,  
24 I'm not aware of that.

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1 I do know that in the meeting that I and  
2 other civil rights organization representatives had  
3 with the Justice Department a couple of years ago,  
4 around a mid-term election, the priority of the  
5 Justice Department at that time was voter integrity;  
6 that is to say they were very concerned about voter  
7 fraud, and the Attorney General dropped in on that  
8 meeting and articulated that primary concern. My  
9 sense is that there continues to be their priority  
10 as distinguished from the concerns about  
11 intimidation efforts and techniques that keep people  
12 from voting, particularly people of color.

13 That's a source of concern for us because  
14 while we think that voter fraud obviously is a  
15 problem that ought to be investigated and pursued  
16 where it's found, there is a much broader problem  
17 with intimidation efforts and techniques that keep  
18 people who are qualified to vote away from the  
19 polls, and we wish the Justice Department would put  
20 more efforts into that issue.

21 COMMISSIONER EDLEY: Well, what is your  
22 understanding of the content of the criminal  
23 prohibitions on interference with the actual size of  
24 civil rights, generally the right to vote? For

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1 example, if you have a deliberate misinformation  
2 campaign by private parties, the leafletting saying  
3 you can't vote if you haven't paid your parking  
4 tickets and paid your rent sort of thing, one  
5 example. Second example, an official  
6 misrepresentation, like the DA in Prairie View or a  
7 sign put up in a polling place that says, "No ID, no  
8 ballot," "No ID, no vote," in a state in which an ID  
9 is not required, like New York. And I guess a third  
10 example would be a pattern of underresourcing  
11 polling places, absence of materials, absence of  
12 facilities, et cetera, in a way that is not just an  
13 effect but if you had evidence of an intent to do  
14 that as a way of suppressing vote.

15 I mean don't any of those things rise to  
16 the level of potential criminality?

17 MR. SHAW: If they are intentional efforts  
18 to suppress the right to vote, to interfere with the  
19 right to vote, they could. We certainly have  
20 represented African-American voter registration  
21 activists in other times. I can remember some  
22 litigation that we did, I believe it was in the late  
23 80s or early 90s, in which we represented defendants  
24 who were prosecuted by the federal government in

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1 Alabama for voter registration activities that the  
2 government alleged were fraudulent. If they can be  
3 prosecuted by the federal government, then,  
4 certainly, it seems to me, the facts demonstrate  
5 that people are engaging in intentional efforts to  
6 suppress the right to vote on behalf of minorities,  
7 that they can be prosecuted also. I'm not aware of  
8 any such prosecutions in recent times.

9 CHAIRPERSON BERRY: Commissioner Braceras?

10 COMMISSIONER BRACERAS: My question was  
11 for Mr. Green. It was just about the same-day  
12 voting -- I'm sorry, election day registration, as  
13 she calls it. And you said that the opposition to  
14 that campaign in California talked about fraud, but  
15 I'm just wondering what measures are there to  
16 prevent fraud in such a situation? I mean,  
17 technically, how does the system work to do that?

18 MS. GREEN: I think in the same way you  
19 have the ability of asking for the utility  
20 identification, that there could be ways of bringing  
21 information to the polling place that shows that you  
22 are a resident of the state. I know the challenges  
23 that identification creates in minority communities,  
24 but because of the --

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1                   COMMISSIONER BRACERAS: Right. Because I  
2 was just going to say I thought you were opposed to  
3 that.

4                   MS. GREEN: Because of the increase in  
5 voter registration or voter turnout that we see with  
6 same-day registration and the existing  
7 identification legislation or laws that are already  
8 in place, those things should take -- balance  
9 themselves out. The existing identification  
10 requirements from coming out of the Help America  
11 Vote Act could suffice for election day  
12 registration.

13                   COMMISSIONER BRACERAS: So you support  
14 those requirements in the case of election day  
15 registration?

16                   MS. GREEN: I would say that Rock the Vote  
17 does not support identification requirements, but  
18 there are --

19                   COMMISSIONER BRACERAS: So that's why I'm  
20 asking you, how would you or your organization  
21 propose to implement that system in a way that would  
22 both allow people access on election day and --

23                   MS. GREEN: You know what? I would  
24 probably say, looking at the seven states and the

1 success that they have had with election day  
2 registration that the systems that --

3 COMMISSIONER BRACERAS: I guess that's my  
4 curiosity, what do they do there, because I'm not  
5 familiar with those states?

6 MS. GREEN: Off the top of my head I don't  
7 have the exact systems they go through, but they  
8 have held many elections for many years that have  
9 been held up under scrutiny that provide for  
10 election day registration, and those systems that  
11 are in place I think -- they can be replicated at  
12 the national level.

13 COMMISSIONER BRACERAS: Right. My  
14 question was simply what those systems are, and  
15 maybe you don't know, but then the follow-up  
16 question would be -- and you sort of answered this  
17 already -- but I'm unclear as to whether some of the  
18 systems that prevent fraud in that context are  
19 systems which you would also approve of, the ones  
20 that are currently in place in those seven states?  
21 I guess what I'm saying is I think it's important to  
22 strike a balance between allowing full access, and I  
23 have no objection to same-day registration in theory  
24 if problems of fraud can be worked out and

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1 prevented. And what I hear you saying is that those  
2 states have done that. I just don't understand how  
3 or know how because I haven't researched that.

4 MS. GREEN: Yes. I don't have at my  
5 fingertips how those states have done that. And I  
6 would say from where Rock the Vote sees this when we  
7 look in a country where less than 50 percent of the  
8 people who are citizens in this country participate  
9 in the democracy. The focus needs to be on how we  
10 increase turnout and have greater participation.  
11 And I think in the same ways where Mr. Shaw was just  
12 saying looking at who's being prosecuted, if the  
13 focus is only on fraud and not on voter  
14 intimidation, then it's a little backwards, that we  
15 have to do everything we can to increase  
16 participation instead of all of the resources and  
17 focus being on trying to focus on fraud.

18 COMMISSIONER BRACERAS: Right. Yes. But  
19 can't we do both at the same time? I mean can't we  
20 both be registering people, breaking down barriers  
21 in terms of, for example, the Prairie View  
22 situation, making sure that there are polling places  
23 on campuses, making sure college students, for  
24 example, have a right to vote where they go to

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1 school, and at the same time, requiring  
2 identification, requiring people to prove that they  
3 are in fact, for example, enrolled in that  
4 university or that they live in that place. I mean  
5 I don't see those things as necessarily mutually  
6 exclusive, and my problem is that I often see on  
7 both sides of the political aisle one side focusing  
8 on just one half of the equation and very few people  
9 wanting to take on both sides at the same time.

10 MS. GREEN: I think the bulk of the  
11 resources need to be focused on increasing turnout  
12 when we have such a crisis that our democracy is  
13 facing right now, that you can do both but that the  
14 bulk of the resources should be to really address  
15 this crisis, especially when you have an entire  
16 generation opting out of participating. This is  
17 something that every single person in the country I  
18 think should be up in arms with. And so, yes, there  
19 can be a focus on the fraud requirements that are  
20 needed but that the bulk of the resources be a  
21 majority of the intention. The urgency of the need  
22 for increasing turnout is where all sides of the  
23 aisle need to focus on.

24 CHAIRPERSON BERRY: Commissioner Meeks and

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1 then Thernstrom. And just a point of information:  
2 As I understood it from Mr. Shaw or somebody  
3 earlier, the problem is not so much fraud or  
4 increasing turnout or increasing opportunity; it's  
5 targeting efforts at people. Like who do you go  
6 after for fraud, and who do you go after? Are there  
7 just certain people or do you treat everybody the  
8 same, which is really what the issue is, try to  
9 treat everybody the same. Commissioner Meeks?

10 COMMISSIONER MEEKS: I want to thank you  
11 all for being here and especially to applaud Mr.  
12 Redmond in his efforts. Somebody has to lead the  
13 way.

14 Native Americans have just really started  
15 to participate in the voting process in numbers that  
16 I think are getting people's attention, but the same  
17 thing is true. The younger people, I think, haven't  
18 at all understood how important this is for their  
19 future. And I just wondered if Rock the Vote has  
20 targeted tribal colleges or any of the reservations  
21 or anything to try to get more Native Americans in  
22 the process?

23 MS. GREEN: We, since the 1998 mid-term  
24 elections, have been very much focused on targeting

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1 Native American youth and taking our bus tours into  
2 reservations. The phase I of this bus tour that we  
3 are currently in right now, we stopped at five  
4 reservations on the west coast. And as we were  
5 heading into phase III, which is the last two weeks  
6 of the election, we will be doing the same in  
7 Wisconsin, Minnesota and Iowa and really having a  
8 concerted effort to reach out to Native American  
9 youth.

10 COMMISSIONER MEEKS: I think Arizona would  
11 be good. I said South Dakota, Arizona and New  
12 Mexico would be good.

13 MS. GREEN: We did Arizona. We spent  
14 three days in Arizona, and I'd say 90 percent of our  
15 efforts in Arizona were reaching out to Native  
16 American youth. We did the unity conference which  
17 brings in 2,000 young Native Americans from across  
18 the country and did a voter registration drive,  
19 trained them on voter registration to then go back  
20 into their communities and register their peers to  
21 vote.

22 CHAIRPERSON BERRY: Commissioner  
23 Thernstrom?

24 COMMISSIONER THERNSTROM: I have a bunch

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1 of questions, the first one for Ted Shaw. You and I  
2 read the U.S. Constitution a little bit differently  
3 and I would love to hear a little more about your  
4 reading, but I don't find a constitutional right to  
5 vote in the United States Constitution, and the  
6 qualifications for voting have traditionally been,  
7 as you know, a state prerogative that is qualified,  
8 obviously, by the amendment and by the Voting Rights  
9 Act, which is based on both the 15th and 14th  
10 Amendment. But you see a very -- something broader  
11 than the 15th -- I mean you see a sort of general  
12 right to vote built into the Constitution. Which  
13 clause of the Constitution are you reading?

14 MR. SHAW: The Supreme Court has  
15 interpreted certain rights as being fundamental  
16 rights. That includes the right to vote. Of course  
17 the 15th Amendment is the amendment that prohibits  
18 discrimination on the basis of race or color,  
19 previous condition with respect to the right to vote  
20 of course is an amendment with respect to women.  
21 But the right to vote is protected as one of the  
22 fundamental rights in the Constitution.

23 COMMISSIONER THERNSTROM: But this case  
24 reads beyond the 15th Amendment a right to vote,

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1 period.

2 MR. SHAW: If you're suggesting --

3 COMMISSIONER THERNSTROM: Which overrides  
4 state prerogatives. Oh, I'm terribly sorry -- which  
5 overrides -- I mean after all that was a huge fight  
6 with respect to the Voting Rights Act. The degree  
7 to which it interfered, it was rightly decided that  
8 the act was constitutional. But the degree to which  
9 it interfered with traditional state prerogatives to  
10 set voter qualifications.

11 MR. SHAW: If your suggestion,  
12 Commissioner Thernstrom -- and you and I have  
13 disagreed about many things, agreed about some,  
14 which is fine -- if your suggestion is that there's  
15 no constitutionally protected right to vote, that is  
16 an interpretation that some people have. It differs  
17 from mine, and if you like, I can get you a  
18 memorandum on the right to vote.

19 COMMISSIONER THERNSTROM: I would like to  
20 have the memorandum. I would very much like to have  
21 it.

22 MR. SHAW: Be glad to do that.

23 COMMISSIONER THERNSTROM: That would be  
24 great. Couple of other questions. I gather it was

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1 Ms. Green or Ms. Hu who referred to the possibility  
2 of future federal legislation to remedy -- I missed  
3 exactly what the reference was to the hope of future  
4 federal legislation with respect to voting to remedy  
5 I'm not sure what, but in any case I'm interested in  
6 what you're hoping for in the future.

7 MS. GREEN: I think I referenced both  
8 federal legislation for same-day voter registration,  
9 which we've talked about a little bit --

10 COMMISSIONER THERNSTROM: So then that  
11 would be a federal mandate.

12 MS. GREEN: That would be a federal  
13 mandate, as well as federal legislation that upholds  
14 the rights of students to either register to vote at  
15 their parents' home or to register at their college  
16 address.

17 COMMISSIONER THERNSTROM: And the hook for  
18 federal mandate for, for instance, same-day  
19 registration, what would be the constitutional hook  
20 for that?

21 MS. GREEN: That, actually, I do not know  
22 what it would be, but I'm not a constitutional  
23 expert; I'm a youth organizer who tries to do  
24 everything we can using pop culture to get these

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1 messages out.

2 COMMISSIONER EDLEY: Spending clause.

3 MR. SHAW: If I may, though. I find it  
4 puzzling that a commissioner, on the U.S. Commission  
5 on Civil Rights would take the position that the  
6 right to vote isn't constitutionally protected or  
7 that states' rights override the federal  
8 Constitution with respect to the right to vote.  
9 Baker v. Carr, which as you know or should know, was  
10 the case that embraced the notion of one person/one  
11 vote. In itself, by definition, has to assume or  
12 find a right to vote is constitutionally protected.

13 COMMISSIONER THERNSTROM: That's not how I  
14 read Baker v. Carr but, in any case --

15 MR. SHAW: Well, I'm not surprised to hear  
16 that.

17 (Laughter.)

18 MR. SHAW: But as I say, we can get you a  
19 memorandum, then we can differ.

20 COMMISSIONER THERNSTROM: I would be  
21 delighted to see the memorandum. I do find  
22 offensive the notion that somehow I'm against people  
23 voting. I'm not. I just believe in reading the  
24 Constitution --

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1 MR. SHAW: No, ma'am. I did not say you  
2 were against people having the right to vote. I  
3 certainly didn't say that, didn't mean to say that.

4 COMMISSIONER THERNSTROM: Okay. I'd just  
5 like to read my Constitution as it's written, that's  
6 all, and it's not -- it shouldn't be a suspect in  
7 any way view that there are legitimate questions  
8 about exactly what the breadth of he constitutional  
9 guarantee is.

10 MR. SHAW: All I said, old friend, is that  
11 I find it puzzling that someone on a Civil Rights  
12 Commission would take the position that the  
13 Constitution doesn't guarantee the right to vote,  
14 but I'm willing to be puzzled.

15 (Laughter.)

16 COMMISSIONER THERNSTROM: I also believe  
17 in people being discriminated against? Of course I  
18 don't believe in people being discriminated against.  
19 I was not taking a position that in any way  
20 conflicted with that fundamental belief of mine that  
21 there should be no discrimination in voting.

22 I'm interested, of course we should all  
23 be, in the Prairie View story, and it certainly is  
24 not the only historically black college or

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1 university in a predominantly white setting, and I  
2 wondered if there were other stories at the HBCUs  
3 that you knew about that were comparable or whether  
4 there was a particular cast of characters involved  
5 in the situation that you described?

6 MR. REDMOND: I haven't heard about any  
7 other HBCUs but I'm not saying that there aren't  
8 any. But if there are some -- I think the only  
9 reason that we had such widespread attention was  
10 because of our march. If it wasn't because of the  
11 march, I don't think a lot of people would have  
12 heard about our story. With that being said, if  
13 other universities, particularly HBCUs, were to do  
14 things of a magnitude like a big march or something  
15 like that, then we would have heard about it. But I  
16 haven't heard anything, and I haven't contacted any  
17 presidents of a student body that have told me  
18 otherwise.

19 MS. GREEN: If I may, Florida A&M  
20 University there is a situation down there, as well  
21 as I can provide a memo with a listing of all of the  
22 reports that we've gotten from the schools. That's  
23 one of the thing we're doing on our web site is  
24 collecting those stories.

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1 COMMISSIONER THERNSTROM: Are they on your  
2 web site? Would the memo be on your web site?

3 MS. GREEN: The memo is not on the web  
4 site, but the ability for students to report these  
5 incidents is on our web site, and we can pull them  
6 out.

7 COMMISSIONER BRACERAS: The public can  
8 read them on the web site or no?

9 MS. GREEN: The public cannot read them on  
10 the web site. We collect them through the web site,  
11 but we can just turn it around for the Commission.

12 COMMISSIONER THERNSTROM: I'd be delighted  
13 --

14 CHAIRPERSON BERRY: We'll put it in the  
15 record.

16 COMMISSIONER THERNSTROM: -- to receive  
17 any --

18 CHAIRPERSON BERRY: We'll put it in the  
19 record, okay? Thank you.

20 COMMISSIONER THERNSTROM: And just one  
21 last question on voter intimidation of the Asian  
22 Pacific Islander. In New York and elsewhere -- now,  
23 New York -- there must be an awful lot of polling  
24 officials and polling workers in New York,

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1 registration workers, et cetera, who are members of  
2 minority groups. Do you have a sense of whether the  
3 treatment of Asian-Americans differs depending on  
4 the race of ethnicity of a person who is -- the  
5 official who is registering voters or in any other  
6 way dealing with people who are attempting to vote.

7 MS. GREEN: I actually don't have that  
8 information. I don't know if that has been  
9 collected, but that is something that would be  
10 useful for community. All I do know is that these  
11 instances do exist and they exist pervasively across  
12 the nation and that as the efforts of not only the  
13 Asian-Pacific Islander American activist as well as  
14 the other greater election protection activists are  
15 documenting what's happening across the nation that  
16 these are things we should definitely be looking for  
17 to gather the evidence we need to understand what is  
18 going on and if we are being disproportionately  
19 discriminated against by a particular ethnic groups  
20 or what not.

21 CHAIRPERSON BERRY: Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: I'd like to thank  
23 everybody for coming today, especially the students.  
24 Get some time off from school.

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1 First, just a quick observation with  
2 respect to some things and also Mr. Shaw. It seems  
3 to me that we should be able to walk and chew gum at  
4 the same time and that investigation of voter  
5 disenfranchisement as well as fraud should not take  
6 primary or secondary status but should be pursued  
7 with equal vigor.

8 I'm not sure that I agree with Ms. Green,  
9 although I'm willing to be persuaded that, I think  
10 as you put it, the bulk of the effort should be on  
11 voter access. I think that seems to be where most  
12 of the problems are. We've got several instances of  
13 or at least allegations of voter fraud. I mean my  
14 own state there are at least five counties that have  
15 had 20, 30, 40,000 registrations that have been  
16 called into question. That presents problems from a  
17 number of perspectives, because, among other things,  
18 it could result in vote dilution: One person's vote  
19 being canceled out by a fraudulent vote.

20 But that piggy backs on something that  
21 Commissioner Edley has raised, and this is my  
22 question, if any of you know what the answer is.  
23 Several people have used the term, "voter  
24 suppression," and I think we heard a couple examples

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1 of what you consider to be voter suppression.' But  
2 that's a term that's been used a lot most recently  
3 without an explicit definition, and the more I think  
4 about it I think Mr. Shaw would probably be most  
5 qualified to answer this. Is there a definition  
6 that you have in terms of the practices that  
7 constitute voter suppression, and to what extent do  
8 such practices equate with disenfranchisement that  
9 would be violative of the Voting Rights Act, Section  
10 5 or whatever provision of the Voting Rights Act?

11 MR. SHAW: Well, by voter suppression what  
12 I mean, what the Legal Defense Funds means is the  
13 attempt to either keep individual voters from voting  
14 who are qualified to vote or, in general, to  
15 dissuade or intimidate people from exercising their  
16 right to vote. I can give you some examples, but  
17 they are not exhaustive.

18 So, for example, one of the concerns that  
19 we raised with the Attorney General in the meeting  
20 to which I referred earlier was that the Justice  
21 Department was talking about its efforts primarily  
22 being focused for the mid-term election, at that  
23 time those were upcoming, on voter fraud. And the  
24 Justice Department was talking about putting posters

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1 up in polling places which listed a bunch of  
2 transgressions which were prosecutable.

3 The message that that can send to voters  
4 is that if you go to the polls and you vote, you are  
5 at risk, or even inadvertently, in subjecting  
6 yourself to criminal processes. Obviously, voter  
7 fraud -- and I think I said this very clearly. If  
8 it wasn't clear before, I'll say it again.  
9 Obviously, voter fraud is illegal and ought to be  
10 prosecuted where it's uncovered. It's not a  
11 question of chewing gum and walking at the same  
12 time. But we know on behalf of African-Americans  
13 and other people of color that there's a long  
14 history of attempts, efforts to keep people from the  
15 polls where they are qualified and entitled to vote.

16 The fliers to which Commissioner Edley  
17 referred that pop up periodically, we say if you  
18 haven't paid your phone bill or your utility bill,  
19 electric bill, whatever, that's a voter suppression  
20 technique. Often it's hard to identify those  
21 responsible because it's done anonymously and in the  
22 cover of night or whatever, but if you can get after  
23 those people, they ought to be prosecuted for that.

24 We heard stories in the 2000 election

1 about people being turned away from the polls, as I  
2 mentioned before, because their name showed up on  
3 some felon disfranchisement list, and these are  
4 people who never had been convicted of any crime.  
5 That is a voter suppression technique. When you  
6 target a community because of how you think they're  
7 going to vote in an attempt to purge some people  
8 from the polls to keep your candidate's likely  
9 opponent from winning, regardless of your party,  
10 that is a voter suppression technique.

11 So, again, broadly defined it is any  
12 attempt to keep people who are qualified and  
13 entitled to vote from voting. And it manifests  
14 itself in many forms, and it's still alive today,  
15 unfortunately.

16 COMMISSIONER KIRSANOW: Let me just  
17 piggyback. I guess if I could be a little bit more  
18 specific. And I think you answered a good portion  
19 of the question, I appreciate it. The long history  
20 is very well known and that goes to what I'm talking  
21 about in terms of disenfranchisement and  
22 suppression. At what point does or do the  
23 suppression tactics that you've identified become  
24 prosecutable, either under some state or federal

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1 statute, and if you can identify those statutes, and  
2 also would be violative -- and/or would be violative  
3 of the Voting Rights Act.

4 MR. SHAW: Well, the Voting Rights Act --  
5 of course there are two primary provisions that we  
6 can use, there are other provisions that are just as  
7 important, but Section 2 and Section 5. Section 2,  
8 as I think about it, is -- we're generally not  
9 talking about Section 2, and Section 2, of course,  
10 is the complicated provisions where you have the  
11 fracturing of black votes or voter schemes or  
12 electoral schemes that dilute black voting strength,  
13 et cetera. So usually those are systemic issues by  
14 those who engage in a process of drawing lines, et  
15 cetera.

16 Section 5, of course, is the provision  
17 that requires pre-clearance of electoral changes by  
18 jurisdictions that have a history of discrimination.  
19 Again, those are usually systemic changes. So  
20 Section 5 ordinarily wouldn't be implicated here,  
21 although -- and I'd have to think some more. There  
22 may be some instances in which Section 5 could be  
23 implicated by some of the concerns that we're  
24 talking about right now.

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1           There are provisions under which people  
2           are prosecuted by the Justice Department, have been  
3           prosecuted by the Justice Department for voter  
4           fraud, for example. I mentioned it in Alabama. We  
5           defended voting rights activists who were charged  
6           with voter fraud for their election activities.  
7           Those same provisions could apply to attempts to  
8           suppress black voters or Latino votes or anybody's  
9           votes. We can get you a more specific briefing on  
10          the provisions if you'd like, but criminal penalties  
11          do apply.

12                           COMMISSIONER KIRSANOW: Thank you.

13                           CHAIRPERSON BERRY: Okay. May I ask a  
14          question? I want to again congratulate these  
15          students. I mean it's really courageous of you  
16          students down at Prairie View and thoughtful and  
17          creative in terms of your leadership. But have you  
18          ever thought about having somebody run for office?  
19          Have you done that already? Because if you had  
20          somebody run for office, given what you've said  
21          about the numbers, and you could get the people to  
22          register and you could get them down if you were,  
23          what, 95 percent or whatever it is, you might be  
24          able to replace some of those people who are

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1 interfering with your right to vote and that might  
2 be just as important as what you're doing. You  
3 probably already thought about that, right?

4 MR. REDMOND: Actually, from my  
5 understanding, a guy named Simeon Queen was trying  
6 to get on the Democratic ballot to run for County  
7 Commissioner of our precinct, but he was unable to  
8 get on that, and the only ballot that he was able to  
9 get on was the Republican ballot. And the majority  
10 of the students, a great number of the students at  
11 Prairie View were raised under the Democratic mind  
12 frame, and that was a problem. It gets deeper than  
13 what I can actually --

14 CHAIRPERSON BERRY: I understand.

15 MR. REDMOND: But it was --

16 CHAIRPERSON BERRY: I just meant for the  
17 future, as you strategize about what to do.

18 MR. REDMOND: Yes, we are seeking  
19 different positions.

20 CHAIRPERSON BERRY: And the folks who are  
21 going to be there after you guys graduate you might  
22 have some long-term strategy to try to run somebody  
23 and take over. And, also, do you have legal  
24 resources from any of the public interest law firms

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1 or anybody helping you with all these legal  
2 challenges, for example, not having a polling place,  
3 which seems discriminatory? Do you have a law firm  
4 or do you have some of these groups, these non-  
5 groups? Are they helping you with the legal  
6 challenges?

7 MS. HODGE: We haven't had anyone to help  
8 us with the legal challenges of the polling place.

9 CHAIRPERSON BERRY: Okay.

10 MS. HODGE: As far as with the District  
11 Attorney. I'm in the process of talking to the  
12 Texas State NAACP President. He's a lawyer, and  
13 I've been trying to communicate with him, so we can  
14 get someone to help us with the polling place.

15 CHAIRPERSON BERRY: There may well be  
16 something, while Mr. Shaw is writing his memo to  
17 send to the Commission, that somebody might look at  
18 to see if there's some legal way that these students  
19 can be supported in trying to get this polling place  
20 and seeing it as an issue of discrimination.

21 MR. SHAW: Well, if I've understood the  
22 facts, Commissioner Berry -- Chairwoman, if I've  
23 understood the facts correctly, if in fact there are  
24 polling places at predominantly white colleges and

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1 universities and not Prairie View, then that's  
2 something that I already want to talk to you about.  
3 So we can talk afterwards. We'll go ahead and do  
4 that.

5 MS. HODGE: Yes, because we brought up the  
6 issue of Texas A&M having their polling places on  
7 campus and their students not being discriminated  
8 upon when they register to vote. And since we are  
9 under the A&M system, we should be treated equally.

10 CHAIRPERSON BERRY: I see. So Mr. Shaw has  
11 got his finger on that.

12 MR. REDMOND: As far as like having help  
13 throughout the whole process, we have had help from  
14 the People for the American Way Foundation, the  
15 Lawyers Committee for Civil Rights, the Texas ACLU  
16 and NAACP.

17 CHAIRPERSON BERRY: Okay.

18 MR. REDMOND: But as far as this specific  
19 situation, I'll get with Mr. Shaw afterwards.

20 CHAIRPERSON BERRY: All right. You can  
21 deal with him, because he's publicly on --

22 MR. SHAW: On record.

23 CHAIRPERSON BERRY: -- on record. And  
24 then the last thing I wanted to ask is -- my last

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1 question is could it be argued -- I'm trying to be  
2 devil's advocate -- that folks who complain about  
3 things like ID requirements and people being careful  
4 about who they let vote and so on and the felony  
5 disenfranchisement, that what needs to be done, and  
6 I've been in debates with people where they've said  
7 this to me, is folks just need to get up off the mat  
8 and go do what they need to do. Go get some ID,  
9 that folks who are trying to be advocates ought to  
10 educate them to go get some. Felony  
11 disenfranchisement, if you don't want to be  
12 disenfranchised, don't do the crime, that it's valid  
13 to complain about being put on a list when you  
14 haven't done a crime -- but the argument I've been  
15 given is, "Just tell them not to do the crime and  
16 then those problems will be solved." And is it just  
17 sort of whining on the part of people who have the  
18 agency and the power to take care of these issues  
19 themselves and who don't do it and who sit around  
20 whining about what people have been doing to them.  
21 Anybody want to take that one?

22 MR. SHAW: Well, Madam Chairman -- Madam  
23 Chairwoman, your question --

24 COMMISSIONER THERNSTROM: You seem to have

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1 an awful lot of trouble with her title today.

2 (Laughter.)

3 MR. SHAW: I'll get there.

4 (Laughter.)

5 MR. SHAW: Thank you. And I welcome your  
6 help. Yes, it can be argued. The truth of the  
7 matter is, as we try to underscore with respect to  
8 felon disenfranchisement is that we're talking about  
9 people who have served their time. They've had --  
10 and the way these penalties go these days, they've  
11 had stiff penalties. And these are people who are  
12 now trying to reenter society and engage in fruitful  
13 lives. And it seems to me that we do a terrible  
14 disservice to those individuals and to our nation  
15 when we keep them from fully reentering the life of  
16 an American citizen.

17 There are some things that people do need  
18 to do, but, for example, African-Americans are more  
19 transient, poor people are more transient, Latinos  
20 are more transient, and so they may run into more  
21 problems when it comes to registration than other  
22 communities, people in other communities. We should  
23 be aware of that. I'm saying that we should do all  
24 we can to encourage people who are citizens in this

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1 country to vote, not to go the other way.

2 CHAIRPERSON BERRY: In other words, we  
3 should take into account the social context of the  
4 people with whom we're dealing.

5 MR. SHAW: If I may also, just one  
6 example. Commissioner Kirsanow asked me a question  
7 about specific statutes. I just want to give a  
8 quick example to just point you to, because it is  
9 both a state and a federal question that you're  
10 asking with respect to specific penalties.

11 Now Florida, for example, has specific  
12 criminal penalties. I'll read you one. This is  
13 Section 104.0515 and 104.61, "Whoever intimidates,  
14 threatens or coerces anyone with the intent with  
15 interfering with their right to vote or bribery,  
16 menace, threat or other corruption, whatsoever,  
17 either directly or indirectly, attempts to  
18 influence, deceive or deter any elector in voting or  
19 interferes with him or her in the free exercise of  
20 the elector's right to vote at any election commits  
21 a felony of the third degree."

22 There's another provision about any  
23 supervisor, director or election employee who  
24 attempts to influence or interfere with any elector

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1 voting ballot commits a felony of the third degree."  
2 That's Section 104.051. So it's just an example of  
3 a state law, but there are also comparable federal  
4 provisions. We're talking about criminal penalties  
5 that apply to the interference with the right to  
6 vote, because it's a sacred right.

7 CHAIRPERSON BERRY: So that means that the  
8 people who were in Broward County last time tried to  
9 keep the supervisors from counting the votes could  
10 have been prosecuted under that clause, which was  
11 seen widely on television all across the country.

12 MR. SHAW: If their activities fall within  
13 this description, then they are subject to criminal  
14 prosecution if somebody --

15 CHAIRPERSON BERRY: Prosecutes them.

16 MR. SHAW: -- prosecutes them.

17 CHAIRPERSON BERRY: Okay. All right. Is  
18 that all right? One more?

19 VICE CHAIRPERSON REYNOSO: One more  
20 question.

21 CHAIRPERSON BERRY: One more from the Vice  
22 Chair.

23 VICE CHAIRPERSON REYNOSO: For Mr. Redmond  
24 and Ms. Hodge. Did you say that the voting hours

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1 were 8 a.m. to 5 p.m.?

2 MR. REDMOND: I believe it's 8:30 to 5.

3 VICE CHAIRPERSON REYNOSO: And is that a  
4 local rule or a state law? I'm just surprised  
5 because in California I think the voting is from  
6 seven in the morning to eight at night.

7 MR. REDMOND: Local.

8 MS. HODGE: It's the local rule.

9 VICE CHAIRPERSON REYNOSO: It's a local  
10 rule. Okay. Thank you very much.

11 CHAIRPERSON BERRY: We want to thank you  
12 again very much for coming. We appreciate it. And  
13 let's all go forward to November 2. All these  
14 problems are going to be solved by then, I bet you.  
15 And thank you, commissioners. We're adjourned,  
16 without objection.

17 (Whereupon, at 12:47 p.m., the Civil  
18 Rights Commission meeting was concluded.)

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