

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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BRIEFING ON VOTING AND ELECTION REFORM:  
IS AMERICA READY TO VOTE?:  
VOTING INTEGRITY, ACCESSIBILITY, AND SECURITY

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THURSDAY,  
JULY 15, 2004

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WASHINGTON, D.C.

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The Commission convened at 11:00 a.m. in Room 540 of 624 9th Street, N.W., MARY FRANCES BERRY, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON  
CRUZ REYNOSO, VICE CHAIRPERSON  
CHRISTOPHER EDLEY, JR., COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

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STAFF PRESENT:

DEBRA CARR, ESQ., Deputy General Counsel  
 PAMELA DUNSTON  
 MYRNA HERNANDEZ  
 KWANA ROYAL  
 JOYCE SMITH, Parliamentarian  
 ALEXANDER SUN  
 AUDREY WRIGHT  
 TIFFANY WRIGHT  
 DEBORAH VAGINS

COMMISSIONER ASSISTANTS PRESENT:

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

PANELISTS PRESENT:

BARBARA R. ARNWINE  
 MELANIE CAMPBELL  
 SAM HEYWARD  
 GRACIA M. HILLMAN  
 LINDA LAMONE  
 MEG McLAUGHLIN  
 RALPH G. NEAS  
 GREG PALAST  
 ION SANCHO

ALSO PRESENT:

SENATOR BILL NELSON

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

(11:01 a.m.)

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CHAIRPERSON BERRY: We will come to order.

We are here today for the second in a series of briefings on America's preparations and readiness to vote, which we call "Is America Ready to Vote" in the November 2004 presidential election?

I'm Mary Frances Berry, Chair of the Commission and professor of history and American social thought at the University of Pennsylvania.

As part of its mandate to investigate complaints alleging denial of the right to vote, the Commission held one other hearing of this type on April 9th on election reform issues, which had to do with equipment and machines. And at that time, we were told that there would be no change in the idea that no paper trail is required for equipment.

Since that time, as some of you may have noticed, there has been a groundswell of sentiment that if you can get a picture from an ATM machine, why can't you get one when you go to vote on equipment? And that issue now has taken off.

As part of our continuing probe of various challenges confronting voters before the election, today we are going to talk about the widely reported

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1 voter purge problems facing voters in Florida as well  
2 as examine other reform issues under the Help America  
3 Vote Act, things like voter identification, voter and  
4 poll worker education, and voter list maintenance to  
5 provision ballots, which\* is another big issue.

6 Today's distinguished panelists will help  
7 educate us on these issues so that we can gain a  
8 better understanding of the hurdles and so that we can  
9 do our job, which is to continue the alert to the  
10 public and to the country that much needs to be done  
11 before we can have their elections in November of  
12 2000.

13 The right to vote is probably the most  
14 important right that we have. And our Commission has  
15 under our statute, under voting rights a clear mandate  
16 to investigate whenever anyone's right to vote is  
17 interfered with.

18 I explained a lot of the background of  
19 what we are doing here at the proceeding in April.  
20 But for the benefit of those who weren't here in  
21 April, let me just tell you briefly that the  
22 Commission's involvement in election integrity and  
23 voting rights issues is of long standing, but in 2001  
24 we did a report on the widespread voter  
25 disenfranchisement in Florida.

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The commissioners unanimously agreed to go and hold hearings. We did three days of hearings and had sworn testimony from witnesses, including the governor and all kinds of local officials and county officials. And even Ion Sancho was there in 2001.

COMMISSIONER EDLEY: He was the star.

CHAIRPERSON BERRY: He was the star of the show. And we came out with a big report called "Voting Irregularities in Florida During the 2000 Election" and analyzed proposals and made recommendations, some of which were put in the Help America Vote Act.

Moreover, we found that the problems in Florida were not isolated. We did another series of surveys and reports around the country and found out that there were other problems. We documented failure of leadership and accountability, inadequate resources for the work conducting the elections, inferior equipment, and poorly designed purge procedures, including purging people who are alleged to be felons, in consistencies and lack of provisions for voters with disabilities.

We received reports that as of this meeting, problems persist for states in trying to maintain accurate statewide voter registration lists.

1 In fact, under the Help America Vote Act, the states,  
2 most of the states, have been given waivers so that  
3 they do not have to come up with a computerized voting  
4 registration list by this election. And then we have  
5 this controversy over the alleged felon purge list.

6 There has been some legislation introduced  
7 in Congress to try to solve some of these problems, a  
8 lot of reform legislation, including some by  
9 Congressman David Price. All of these would be  
10 amendments to the Help America Vote Act to try to  
11 clarify the rules and to try to make sure that the  
12 elections fare.

13 Congressman Wexler of Florida introduced a  
14 provision which requires notification no later than 90  
15 days before removal and so on from a list for failure  
16 to be legally on the list. But none of these have  
17 passed: Some members of Congress have even  
18 recommended that the United Nations monitor the 2004  
19 presidential election for flaws and problems.

20 So we still haven't done what we need to  
21 do. And we have got four months; in fact, less than  
22 four months to prepare to get ready for election day.

23 So today we're asking these questions and  
24 shedding further light on the issues. And we will  
25 proceed with two panels. We have four speakers on the

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1 first panel and five speakers on the second.

2 Up here with me, I have Dean Christopher  
3 Edley from the University of California at Berkeley  
4 Law School, a member of this Commission; the Vice  
5 Chair of this Commission, Cruz Reynoso, former justice  
6 of the California Supreme Court and a distinguished  
7 professor at the University of California-Davis; and  
8 Les Jin, who is our staff director.

9 So we are going to proceed with these two  
10 panels, but first I want to note that we invited the  
11 Secretary of State of Florida, who is now an appointed  
12 official, instead of an elected official. Last time  
13 it was Katherine Harris, and she was an elected  
14 official. They changed the law in Florida, and now  
15 the governor appoints the person.

16 She sent us a letter saying that she  
17 couldn't attend, but she asked us to put this letter  
18 in the record, which we will do, of this proceeding.  
19 Basically, what she says is that they can't figure out  
20 how to solve this problem before the election and,  
21 therefore, the counties will figure out how to solve  
22 it and that she is aware that there will be critics of  
23 the process but that this is where they, after a lot  
24 of up and down and song and dance, say basically the  
25 bottom line that the counties will figure out the

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1 whole thing out this time, this will just have to.

2 So we will proceed with the panel. And on  
3 this first panel, thank you very much for coming, all  
4 of you. We really appreciate your help as we continue  
5 to monitor this process. We have today Greg Palast,  
6 who is an investigative reporter for the BBC, the  
7 British Broadcasting Corporation, and the British  
8 newspaper *The Observer*.

9 He is renowned for his investigative  
10 reporting on election and disenfranchisement issues,  
11 stemming from the 2000 elections as well as reports on  
12 corporate scandal and corruption, America's war on  
13 terrorism and intergovernmental policies and actions.  
14 Mr. Palast is one of the nation's foremost  
15 journalistic experts on these disenfranchisement  
16 issues and author of New York Times best-seller The  
17 Best Democracy Money Can Buy as well as Democracy and  
18 Regulation, published by the United Nations. We  
19 welcome you.

20 We have also the honorable Ion Sancho, who  
21 is supervisor of elections for the Elections Office of  
22 Leon County, back with us again and are pleased that  
23 you were able to come.

24 Since 1988, he has served four terms as  
25 supervisor of the elections. He has devoted special

1 attention to modernizing the county's voting system --  
2 Leon County is where Tallahassee is -- and increasing  
3 the participation of citizens in the democratic  
4 process.

5 Ms. Meg McLaughlin is a partner and  
6 President, Accenture eDemocracy Services. The State  
7 of Florida has contracted with Accenture to design  
8 computer programming used to compile the state's purge  
9 lists.

10 Over the last 20 years, she has served a  
11 broad range of federal, state, and local agencies,  
12 including account planning, sales, program management,  
13 functional design, and a lot of other things that I  
14 don't know what they are. In her eDemocracy  
15 leadership role, Ms. McLaughlin has been an active  
16 supporter in the development of new standards in  
17 election services and technologies.

18 Mr. Sam Heyward is a resident of  
19 Tallahassee, Florida, whose name erroneously appears  
20 on the State of Florida's voter-purge lists of alleged  
21 felons and ex-felons. That list now, of course, is up  
22 in the computer. And you can go on the internet and  
23 look at that yourself. This was the list that was  
24 compiled by the Division of Elections.

25 A paid coordinator for his church's

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1 after-school program, Mr. Heyward was convicted of a  
2 nonviolent felony in 1979 but had his civil and voting  
3 rights restored in 1986 and has been voting ever since  
4 then. He has served also our nation to protect our  
5 people as a member of the United States armed forces.

6 Would you like to begin, Mr. Palast? And  
7 then at the conclusion of each panel, there will be a  
8 discussion between all panelists and commissioners.  
9 Please proceed.

10 MR. PALAST: Thank you, Madam Chairwoman  
11 and commissioners.

12 It is an honor to be here and maybe a  
13 little sad given that it is 2004, after what happened  
14 in the year 2000. Let me take you back.

15 As mentioned, I have been an investigative  
16 reporter for BBC Television England -- I moved back,  
17 by the way, to the U.S.A. with my family - and I am  
18 writing for *The Observer and Guardian* papers of that  
19 nation.

20 In 2000, the day after the election, I was  
21 watching BBC television, watching one African American  
22 voter after another come before our cameras and say  
23 that they could not vote in Florida, that their names  
24 are not on the voter rolls. By the way, BBC allows  
25 African Americans on television who aren't criminals.

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1 I started thinking that there's some kind  
2 of computer program that might be removing people,  
3 African American voters, from the voter rolls. And,  
4 sure enough, the word came down that there was, and  
5 here was the computer program, the so-called "felon  
6 purge list."

7 For those who haven't seen it, we obtained  
8 the disks from Katherine Harris' office properly. We  
9 cracked them, put them in the Excel sheet. And I  
10 started going through who are these evildoers who are  
11 criminals not allowed to vote.

12 My eyes lit on, for example, here is  
13 Thomas Cooper, who is convicted of a felony crime  
14 according to the Florida Secretary of State on January  
15 30th, 2007. So there are 500 criminals in the future  
16 in the list.

17 CHAIRPERSON BERRY: These are called  
18 future felons.

19 MR. PALAST: Future felons. And, in  
20 addition, now, I look back through the e-mail of the  
21 office for BBC. And we found out that clerks have  
22 said, "What do we do about these criminals of the  
23 future?"

24 And the answer is, "If we blank out the  
25 conviction dates, no one will know"; therefore, 1,000

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1 blank conviction dates in the file of 50,000 I have.

2 Now, 94,000 people were marked as  
3 so-called felons. We do know from Supervisor Ion  
4 Sancho's work and our analysis and the company that  
5 put together the list, ChoicePoint of Atlanta, their  
6 DBT division, that they can provide positive  
7 identification in five percent of the cases. That's a  
8 huge matter here. Five percent.

9 They were sued by the NAACP. I did ask,  
10 by the way, the attorney general what would happen,  
11 Atty General Butterworth of Florida what would happen,  
12 if someone were caught voting illegally. He said, "I  
13 would arrest them."

14 I said, "How many cases do you have open  
15 out of 94,000?"

16 He said, "Six."

17 This was supposed to be verified. The  
18 company, Accenture's predecessor company, ChoicePoint,  
19 was paid \$4 million to verify the list, manual  
20 verification by phone calls and statistical analysis.

21 I have a document. It's in my book.  
22 That's a cheap way to show my book, I suppose. But I  
23 don't have it here. It says, "Confidential and  
24 Secret." We obtained it. And they're paid millions  
25 to make phone calls, thousands of phone calls, to

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1 verify this information, use their massive databases  
2 to check Social Security numbers, to check address  
3 changes. These are simple things.

4 We have a legacy in the United States of  
5 common names among African Americans, a legacy of  
6 slavery. There are a lot of Thomas Browns in America.  
7 And, believe it or not, a couple have been convicted  
8 of crimes in other states. And someone in Florida  
9 loses their vote.

10 Instead of checking, they didn't check.  
11 They were given the check, but they did no checks.  
12 And then they stated to this Commission, the State of  
13 Florida officials, that verification was left to the  
14 state, to the county supervisors.

15 But the resources and the money, it says  
16 verification can be done by the contractor Database  
17 Technologies. It wasn't done because the list was not  
18 just anyone who lost their vote, but if you go down  
19 the list, you see here black, black, white, black,  
20 black, white. There's a pattern as to who has been  
21 disenfranchised. Over half, about roughly half of the  
22 people on the list, were African American. And,  
23 again, 95 percent of the list of people who can't be  
24 verified as illegal voters. It had a huge effect,  
25 obviously, on the election but also on civil rights in

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1 America.

2 Now, there are other issues in there. I  
3 found 3,000 people in a special category who do have  
4 convictions from other states. But it was unusual.  
5 These are from states where you don't lose your civil  
6 rights because you have been convicted of a crime at  
7 some point. You serve your sentence.

8 Remember, there are only seven states in  
9 America where you become, like in the old Soviet  
10 Union, a noncitizen for having committed a crime.  
11 They are very concerned. Why are these people on the  
12 list when they can lose their rights in Florida just  
13 by moving to that state?

14 The State of Florida issued on February  
15 23rd, a couple of months after the election, a letter  
16 to the county supervisors telling the county  
17 supervisors that though people are convicted of a  
18 felony in another state, "They need not apply for  
19 restoration of civil rights in Florida." That was a  
20 few months after the election and the heat was off.

21 The same exact letter six weeks before the  
22 election, September 18th, 2000, says that felons of  
23 other states "would be required to make application  
24 for restoration of civil rights in the State of  
25 Florida."

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1           The two letters are identical except for  
2 the crucial statement.       One follows the U.S.  
3 Constitution full faith and credit clause and the  
4 Florida Supreme Court rulings.   That's a letter after  
5 the election given to the press and I believe given to  
6 this Commission.   This is the letter that they said  
7 did not exist.   It's in the files of the state,  
8 "September 18th, 2000," saying just the opposite, "Do  
9 not permit the registration of voters, legal voters,  
10 from other states."   I would recommend that you might  
11 investigate whether you were provided full information  
12 by the State of Florida in your last investigation.

13           We are back again.   Here we go again.  
14 Forty-seven thousand people put on a new list, many of  
15 those from the prior list, once again, now with a new  
16 company supposedly helping out.   I am glad that  
17 Accenture is here.   I am sorry to see the Secretary of  
18 State of Florida has not chosen to meet with this  
19 panel.

20           I have to tell you that the procedure so  
21 far is more resistant.   At least the Secretary of  
22 State at that time, now Congresswoman Harris, gave me  
23 the list so I could determine whether the lists were  
24 bad or not.   They were bad.   But I got the list.   This  
25 time the lists were sealed.

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1           We still haven't gotten the lists. There  
2 has been a lot of talk and discussion that after a CNN  
3 lawsuit, which is what it required, that the list was  
4 released. It wasn't. The only thing that was  
5 released was the names of voters who were being  
6 purged.

7           You can't tell if the person being purged  
8 is a felon because they don't give you the name of the  
9 felon and the identification information on the felon.

10           So, for example, I have here the same  
11 write-up above on the same sheet, Johnny Jackson, Jr.  
12 lost his vote in Florida last time because someone  
13 named John Fitzgerald Jackson, not Jr., different  
14 middle name, was convicted in the State of Texas of a  
15 crime. By the way, I checked with Mr. Jackson's  
16 mother. He's never been to Texas.

17           But I could tell this was bad because I  
18 could find the name of the felon and the name of the  
19 voter. They're still not giving out the name of the  
20 felon. They're still not coming clean, giving us the  
21 information to find out whether this list is honest.  
22 My experience is when they withhold the information,  
23 it is not because they have accurate information. We  
24 have some mystery system.

25           Now, we are told, by the way, in the press

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1 that the Florida Secretary of State will not require  
2 supervisors to use this list of purged voters. That's  
3 not very comforting.

4 I know that Supervisor Sancho would not  
5 use such a list if he's not forced to, but there are  
6 many partisan county supervisors who can't wait to use  
7 such a list. This is a partisan process. Let's be  
8 honest about it. It's a very partisan process with a  
9 very partisan and very racial outcome.

10 I am also concerned about one other point  
11 that should be addressed I hope will be addressed by  
12 this Commission; in fact, has been. I would like to  
13 congratulate you on your work.

14 There is two ways to disenfranchise voters  
15 in Florida and elsewhere. One is to remove their  
16 names from the voter rolls illegally, wrongly. The  
17 second way is simply to not count their vote. We  
18 automatically assume in America, in the land of the  
19 free when we have an election, we count the votes.

20 In fact, in Florida in 2000, 179,855 votes  
21 were not counted. They were marked "spoiled,"  
22 considered spoiled. You don't spoil a vote by leaving  
23 it out of the refrigerator. It's spoiled because  
24 there is some technical problem.

25 Now, there was hardly any spoilage, any

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1 loss of votes in Supervisor Sancho's county. They  
2 used a system of optical paper ballots with optical  
3 scanning right in the voting booth. I hope I have  
4 this right.

5 And if you make a mistake, your ballot  
6 came back to you. You got a new ballot. A mistake  
7 would be if you wrote in "Al Gore" or "George Bush,"  
8 for example, instead of checking their name.

9 That's in Leon County, Tallahassee. Next  
10 door in Gadsden County, the black majority county of  
11 Florida, same paper ballots, same optical scanners,  
12 but the optical scanners were outside the polling  
13 places. If anyone made a mistake -- and a mistake  
14 would be writing in "Al Gore" -- you would end up with  
15 having your ballot voided.

16 Your Commission -- I congratulate you on  
17 finding this, but I would like this to be made more  
18 public -- of 179,000 votes marked "spoiled" and not  
19 counted in that election. Demographers and experts  
20 have determined that 54 percent were cast by African  
21 American voters. The spoilage rate in America and  
22 Florida is a racial and political issue: votes not  
23 counted.

24 Now, here is the difficult part.  
25 Commissioner Edley in his time at Harvard, your

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1 Commissioner Edley's civil rights group --

2 VICE CHAIRPERSON REYNOSO: He's been  
3 promoted since.

4 MR. PALAST: Yes, he has gone up the food  
5 chain.

6 -- has done a terrific study of voting  
7 spoilage throughout America. In another life, I  
8 taught statistics, took those statistics from the  
9 Florida information, from the national studies, put  
10 them together, and spoke with Philip Clinkner, one of  
11 your advisers, statistical experts. And I concluded  
12 and he agreed from your information that Florida is,  
13 unfortunately, typical.

14 1.9 million ballots were thrown away in  
15 the 2000 election, never counted. And of those, about  
16 half were likely cast by African American and Hispanic  
17 voters, non-white voters, one million votes of black  
18 voters not counted.

19 What we have to address is in Florida and  
20 nationwide, we have an apartheid vote-counting system  
21 in America. And your Commission has done much to do  
22 the statistical work on this, that this word needs to  
23 get out to policy-makers.

24 Unfortunately, when you have a racial bent  
25 in the vote count, you also have a political bias in

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1 the vote count. It is simply too tempting. Rather  
2 than the problem being fixed through computerization,  
3 it seems to be made worse through computerization. We  
4 are not addressing this problem of an apartheid voting  
5 system in America in registration. We are not  
6 addressing it in terms of vote counting.

7 CHAIRPERSON BERRY: Sum up, Greg.

8 MR. PALAST: And that sums it up for me.  
9 Thank you very much, Madam Chairman.

10 CHAIRPERSON BERRY: Okay. We will have  
11 some questions. Thank you.

12 I want our deputy general counsel who is  
13 sitting here, Debra Carr, to be thinking about - and I  
14 am going to ask her but not now -- whether we can do  
15 anything about DBT allegedly submitting false  
16 information to us and the state submitting false  
17 information to us.

18 Our next panelist, could you please  
19 proceed, Ms. McLaughlin?

20 MS. McLAUGHLIN: Yes. Thank you very much  
21 for having us here today. We're very happy to be  
22 here.

23 Just to give you some background on  
24 Accenture because it is difficult for many people to  
25 understand what it is we do, we are a technology

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1 consulting and systems integration company. We build  
2 computer systems. That's a big part of our practice.

3 We also do process and project management  
4 for organizations. We do business process  
5 reengineering. We do strategic planning work. And we  
6 do this for both private and public sector companies.

7 As part of our eDemocracy practice in the  
8 United States, we build and implement voter  
9 registration systems. We have contracts to supply and  
10 maintain voter registration management systems in  
11 Florida, Arkansas, Pennsylvania, and Wyoming.

12 In addition, we're currently negotiating  
13 contracts with the States of Colorado and Kansas, and  
14 we have contracts to support voter registration  
15 systems in several counties in Tennessee, Texas,  
16 Kansas, Oregon, Missouri, and Iowa. Not all of these  
17 jurisdictions use the same product or the same system  
18 because they are different jurisdictions in different  
19 types of applications.

20 There are multiple ways to implement voter  
21 registration in a state or in a county. In a state,  
22 you can do a centralized system and database, where  
23 everyone, every county uses the same application for  
24 voter registration and election management and the  
25 same database or you can do what we call the

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1 decentralized version, where every county has their  
2 own voter registration application and they compile  
3 data together up at the state for certain processing.

4 In Florida, our voter central product is  
5 the latter of these. It is the central database.  
6 Each county maintains its own voter registration  
7 system. And they send information up to the central  
8 voter database, which is managed and maintained and  
9 operated by the state.

10 The statewide voter registration solutions  
11 help county election officials to more efficiently and  
12 accurately maintain their voter registration rolls by  
13 helping them to enter and process applications, to  
14 maintain them in a database, and do a better job of  
15 identifying potential duplicate registrations across  
16 the state and potential ineligible voters.

17 The technology enables election officials  
18 to do this first on an initial basis, when the systems  
19 are converted initially to a statewide system, and  
20 also on an ongoing fashion, as they enter new voter  
21 registration applications or otherwise update their  
22 voter rolls.

23 In particular, our voter registration  
24 management system enables election officials to  
25 identify if there are any potential duplicate

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1 registrations already in the database, any potential  
2 deaths, any potential adjudications for mental  
3 incompetence, and potential felons that are provided  
4 by the external agencies that keep those records. The  
5 system also identifies for potential felons any  
6 potential clemencies that may offset those felonies.

7 Using this information and all other  
8 information that the county election official has at  
9 his or her disposal, the county official then makes  
10 the decision as to whether to accept the application  
11 and register the voter or deny the application.

12 Accenture has a matching pool in this  
13 central voter database that matches updates of new  
14 felony records as well as the original database of  
15 felony records and death records and adjudications of  
16 mental incompetence against the existing voter  
17 registration database.

18 The systems are pretty complex, and they  
19 comprise multiple components, policy, process, tools,  
20 people, and data. In Florida, there were a number of  
21 participants in the design and development of the CVD.  
22 The legislature defined the laws. The Department of  
23 State Division of Elections managed the project. And  
24 they maintain and operate the solution, the county  
25 supervisors of elections, who have overall

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1 responsibility for maintaining the voter rolls and who  
2 provide the county registration data; Accenture, who  
3 designed and built the tool and trained election  
4 officials to use it; the supervisors of elections  
5 advisory committee, , who specified solution  
6 requirements and developed the processes and  
7 procedures that were followed; and the Florida  
8 Department of Law Enforcement, the Bureau of Vital  
9 Statistics, and the Office of Executive Clemency, who  
10 provided the source data for the ineligibility  
11 matching.

12 To reinforce, I want to first say what our  
13 voter registration system does not do. I want to make  
14 clear that the system was not and was never meant to  
15 provide a list that is the definitive list of all  
16 felons and only felons in the state or of all deaths  
17 and only deaths or of all mental incompetence and only  
18 mental incompetence.

19 Because there is no universal identifier  
20 for an individual amongst these different source  
21 systems that provide the data in, it is virtually  
22 impossible to guarantee that a person identified in  
23 one computer system is the same person identified in  
24 another computer system.

25 Our system simply provides the county

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1 election officials with the list of potential matches  
2 for them to work in process. They use other  
3 information and processes at their disposal to confirm  
4 whether the match is a true match or not. And their  
5 judgment is the final call.

6 Our system does not determine or authorize  
7 any citizen's eligibility to vote. Our system does  
8 not add or move citizens from the voter registration  
9 rolls or change any information on those rolls. Our  
10 system does not enable any county to add voters to or  
11 delete voters from or changes voters' data in any  
12 other county's voter rolls. Our system does not  
13 eliminate or reduce the legal duty of election  
14 officials to conclusively verify a citizen's  
15 ineligibility to vote before removing his or her name  
16 from the rolls.

17 Accenture does not provide assurances to  
18 any county or state on whether their voting rolls are  
19 accurate or complete, those policy questions are the  
20 purview of the county and the state election  
21 officials.

22 So how does our process work? The way it  
23 works in Florida is that counties send updates of  
24 their voter data to the statewide system. They do  
25 that on a nightly basis. Any changes or updates to

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1 their voter rolls come in on a nightly basis.

2 State agencies, the FDLE, the Bureau of  
3 Vital Stats, and the Office of Executive Clemency send  
4 updates of their ineligibility files to the system on  
5 a regular basis. FDLE and Clemency I believe send it  
6 on a monthly basis.

7 The statewide voter registration system  
8 runs match routines nightly for identifying potential  
9 matches between voter records in multiple counties --  
10 so that's identifying duplicates across counties --  
11 and also to identify potential matches between voter  
12 records and the "ineligible records" that are coming  
13 in from the other external agencies.

14 The statewide system then makes these  
15 potential matches available to the counties on a  
16 secure Web site and also through a file transfer.  
17 File transfer is we send the data down to them so that  
18 they can process it in their existing voter  
19 registration system.

20 Each county supervisor of election and his  
21 or her staff then review those match records for their  
22 county and perform any additional research required to  
23 assure themselves that the match record is valid.

24 Based on their findings, then they take  
25 action. They can either identify it and seek out

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1 additional information. They can take actions  
2 required to remove the voter from the list as an  
3 ineligible or they can take an action to provide  
4 feedback to the statewide voter registration system  
5 that the match was not a valid match. Once the match  
6 is resolved, then they update the statewide voter  
7 registration system with that resolution.

8 Coming into the process, into the CVD  
9 project, all participants in the process understood  
10 that the source data coming in from FDLE, the Bureau  
11 of Vital Statistics, and the Office of Executive  
12 Clemency probably were not 100 percent accurate.

13 Because of that, we designed two  
14 attributes for the system to help improve the  
15 matching. And the supervisors also developed a  
16 process to verify potential matches that they  
17 received.

18 So the two attributes are, first, we  
19 designed the match routines to be very  
20 parameter-driven so that the states and counties could  
21 monitor the match results and refine them to provide  
22 more accurate results over time.

23 We also designed and implemented a method  
24 to attract the false hits and to send that information  
25 back to the source agency so they could investigate

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1 and clean up their source files.

2           The business rules and parameters that the  
3 state implemented initially were intended to reduce  
4 that number of "false matches." They were trying to  
5 get very, very close exact matches, which is probably  
6 why the list that comes out now has about 47,000;  
7 whereas, the original list from DBT had about 94,000.  
8 They were trying to get much closer matches.

9           The team provided a briefing to the  
10 Florida Senate Committee on Ethics and Elections in  
11 early February 2002 to brief them on the central voter  
12 database, how it worked, what the match routines  
13 looked like, how they worked, and the processes that  
14 the counties would perform to use it.

15           At that time, the FDLE representatives  
16 also provided that committee with information on their  
17 analysis of the accuracy of their files and the  
18 chairman of the supervisor of election advisory  
19 committee provided them with information on the  
20 process that the county supervisors had identified to  
21 help ensure someone was not erroneously declared  
22 ineligible.

23           As part of a lawsuit between the NAACP and  
24 the department, my understanding is that the NAACP  
25 also reviewed the match routines. And the settlement

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1 agreement included a provision that the state would  
2 not make changes to those match routines without first  
3 reviewing them with the NAACP.

4 And then, finally, the felony and clemency  
5 matching routines were required to be pre-approved by  
6 the U.S. Department of Justice prior to being put into  
7 production. I don't think they were pre-cleared until  
8 sometime in middle or late 2003, which is why the  
9 felon processing wasn't put in place when the initial  
10 rest of the application was put in place in June of  
11 2002. Those were put into production later.

12 And that's my information.

13 CHAIRPERSON BERRY: All right. We'll have  
14 some questions for you, --

15 MS. McLAUGHLIN: Absolutely.

16 CHAIRPERSON BERRY: -- without a doubt.

17 Mr. Sancho, could you please proceed?

18 MR. SANCHO: Yes, ma'am. My name is Ion  
19 Sancho, Leon County Supervisor of Elections.

20 CHAIRPERSON BERRY: Yes. What do you make  
21 of all of this?

22 MR. SANCHO: It's a disaster.

23 CHAIRPERSON BERRY: Okay.

24 MR. SANCHO: That's what I make out of it.  
25 Florida, as has been noted, is only one of

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1 seven states in our nation that chooses not to  
2 automatically restore the civil rights to persons who  
3 have committed felonies and have paid their debt to  
4 society.

5 This provision of our law originates in  
6 Florida's constitution of 1868, written to frustrate  
7 the intent of the Fourteenth Amendment, which also  
8 took effect in 1868.

9 The process of the restoration of one's  
10 civil rights requires the completion of several  
11 administrative hurdles and also requires that the  
12 governor and the state cabinet affirmatively vote to  
13 restore one's civil rights before you can reattain  
14 them. This was developed as a process to frustrate  
15 the control of the federal overseers that were  
16 involved in the supervision of the State of Florida  
17 following the American Civil War.

18 For over 100 years, the actual  
19 identification and removal of these individuals was  
20 left entirely to the local supervisor of elections.  
21 There the issue remained until 1998, when the state  
22 created a voter data list.

23 This list was implemented without any  
24 notification to the supervisor of elections. In fact,  
25 the supervisor of elections had not even been notified

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1 that such a concept was even being contemplated.

2 We received those lists in August of 1998.  
3 We attempted to utilize them, and we immediately found  
4 that they were not accurate at all. I remember  
5 sending off those letters in my jurisdiction, calling  
6 people on the telephone, and trying to determine if  
7 they were felons. The response that we got was so  
8 overwhelming that it just took us completely by  
9 surprise. We did not realize how inaccurate these  
10 records were until we tried to use them.

11 We immediately contacted the Division of  
12 Elections director. At that time it was Ethel Baxter.  
13 She was flooded with calls from the supervisor of  
14 elections. And within two weeks, Ms. Baxter sent us a  
15 memo saying that we should not use the list at all.  
16 And there the issue stayed during the rest of the 1998  
17 election cycle.

18 I was the point person for my association  
19 of supervisor of elections to negotiate with the  
20 Division of Elections in 1999 and 2000 to try to  
21 correct these erroneous lists. At every step of the  
22 process, we were informed by the Division of Elections  
23 that they were bending over backwards to ensure that  
24 no one would be disenfranchised.

25 As I met with the Division of Elections

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1 and the FDLE and the Office of Executive Clemency and  
2 the Clerk of the Courts, it became increasingly  
3 apparent to me that the data was inaccurate at its  
4 very source. In other words, the FDLE records were  
5 wrong. The Clerk of the Courts' records were not  
6 accurate.

7 Adjudications of withholding, adjudication  
8 which is also issued by a judge at the time an  
9 individual is convicted of a felony, was not actually  
10 connected in many of the Clerk of the Courts' own  
11 record databases with the actual individual whom the  
12 conviction was against.

13 And, finally, the Office of Executive  
14 Clemency -- and we are still talking here prior to  
15 2000 -- their records were on three by five cards kept  
16 in what looked like shoe boxes to me. So the Division  
17 of Elections actually had to pay for the Office of  
18 Executive Clemency to computerize their records so  
19 that this critical record that could prove whether an  
20 individual had their rights restored could actually  
21 even be included in the database.

22 Watching this process occur made me  
23 realize that no one had gone to these agencies and  
24 examined the records for accuracy before they were  
25 combined. They were just brought together and

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1 combined.

2 So given my experience of dealing with the  
3 Division of Elections and looking at the actual  
4 construction of the databases, we checked the  
5 databases when we received our first list for the 2000  
6 election. We confirmed that they were only five  
7 percent accurate. So we just simply refused to use  
8 them. Many supervisors of elections refused to use  
9 them in the 2000 election. Unfortunately, many chose  
10 to use them.

11 To this date, the state has never done a  
12 follow-up determination to find out what the effect of  
13 those lists were, what the potential level of  
14 disenfranchisement was. It's just never been done.  
15 There's no follow-up by the state to determine what  
16 the effect was.

17 That brings us to the current situation.  
18 As you heard, in 2002, the state was enjoined from  
19 using any sort of central voter database from a list  
20 because it was not pre-cleared.

21 Then on May 5th, the supervisor of  
22 elections received a memorandum from Ed Kast, then  
23 director of the Division of Elections, saying, "You  
24 will be getting a new updated list to use. You will  
25 be going to training on the 10th of May."

1 I dutifully went to training on the 10<sup>th</sup> of May.  
2 And following the training, I asked the question, "How  
3 accurate are these lists?" because that to me was the  
4 central issue.

5 The supervisor of elections in 2001  
6 following the destroyed lists and processes of 2000  
7 made it very clear to the Division of Elections we  
8 could not use a list unless it was at least 90 percent  
9 accurate, at least 90 percent.

10 I was told on my training on May 10th that  
11 you cannot presume that the list is accurate at all.  
12 Well, given the fact that the statute suggested that  
13 if we received any information suggesting potential  
14 ineligibility we had to immediately start the  
15 notification and purge process, this caused a fear  
16 among the supervisor of elections.

17 Suffice it to say, we immediately started  
18 talking among ourselves and decided we would have to  
19 decide how we would approach this statute in the  
20 entire process at our June meeting, some two weeks  
21 after we received our lists.

22 We finally received our lists on May 14th.  
23 We looked at the lists. We recognized that the lists  
24 were a prescription for disenfranchisement all over  
25 again.

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1           While the lists had an exact match, the  
2 problem was that no one had gone in and actually done  
3 what we suggested in 2001 that they do: go into the  
4 FDLE database and correct the errors, go to the Clerk  
5 of the Courts' records and correct the errors, go to  
6 the Office of Executive Clemency and correct the  
7 records before you combine these disparate databases  
8 together. This was not done in any sort of systematic  
9 fashion.

10           I checked with my county clerk, for  
11 example. And he informed me that indeed FDLE had  
12 contacted them about checking their records to correct  
13 their records.

14           When the Clerk of the Courts produced the  
15 packet ready to give to FDLE, FDLE never contacted  
16 them back to pick up the material. So no one was in  
17 charge of this process. So those records sat, as they  
18 still sit, in the Leon County Clerk of the Courts'  
19 records, never picked up by FDLE at all. With  
20 computers, it's a simple process of garbage in,  
21 garbage out.

22           Meanwhile, the Division of Elections is  
23 sending us a series of blunt memorandums telling us  
24 how to conduct this process, even though they're also  
25 telling us, "You are in charge of this process."

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1           We received a letter from the division  
2 director telling us that several legislators had  
3 contacted their office and suggested a potential  
4 letter that we should use. When I looked at that  
5 letter, it became apparent that we could not use that  
6 kind of approach at all.

7           The supervisor of elections at our  
8 meeting, at our annual meeting, decided we could not  
9 use any list until the list had been fully and  
10 completely examined by the supervisor of elections.  
11 We would not begin any notification process until we  
12 reexamined this entire process. That would not be  
13 done within the period of time before the election in  
14 Leon County.

15           I can tell you that we assigned three  
16 clerks to work on this project. And in the three  
17 weeks before the Division of Elections told us that we  
18 finally didn't need to use the list, we had gotten  
19 through about 60 of our 850 people. This was simply  
20 not a process that we could utilize and implement  
21 before any election, indicating to me that the  
22 Division of Elections did not even realize the burden  
23 that they were placing on the supervisor of elections  
24 or if they did, it was immaterial to them.

25           At this point, I would say that as a

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1 supervisor of elections I welcomed the CNN lawsuit to  
2 get the database disclosed. Without the disclosure of  
3 the database to the news media, it would have been  
4 impossible for us to realize on a systemic basis all  
5 the huge number of flaws that were in there.

6 It was because of news media efforts that  
7 it was discovered that no individual who had received  
8 a clemency from the Office of Executive Clemency prior  
9 to 1977 had even had those records computerized and  
10 put in the process to be able to make a match to, in  
11 fact, remove someone from this deleterious list.

12 So I really welcomed the fact of the media  
13 input and examination of this. It is what has led to  
14 the state finally recognizing that the list is so  
15 seriously flawed that they would, in fact, be subject  
16 to the kinds of problems that they were subject to in  
17 2000. I think it was because of the political fallout  
18 that the state determined not to use the list.

19 At this point, we have no guidance in this  
20 process. We have been informed by the Division of  
21 Elections; we have to fulfill our constitutional  
22 guidelines in this area.

23 Quite frankly, our state and federal laws  
24 pretty much preclude us from doing list maintenance  
25 within 90 days of an election. That is standard

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1 operating procedure because our efforts have to be  
2 focused on conducting and organizing and making sure  
3 that the administration of the actual election is  
4 done.

5           There would be no time to do the actual  
6 election administration organization if this was the  
7 task that we were forced to do. So we were put in an  
8 impossible situation. It really highlights the  
9 failure of the Division of Elections to understand  
10 what it is that individuals have to go through and how  
11 our offices organize elections in the State of  
12 Florida.

13           If anything, the list is actually worse  
14 this year, as Mr. Palast has pointed out. When our  
15 staff tried to use the list to try to determine  
16 errors, at least in the earlier 2000 and 1999 lists,  
17 we had lists to compare it to. So we could easily  
18 identify the errors.

19           We are only given the names. We are not  
20 given the county of convictions. We would have to  
21 essentially begin the process from base one and start  
22 all over and reconfirm all of the data.

23           So while the matching criteria is exact,  
24 in fact, in the situation, for example, that a Davis  
25 Johnson would not match up this year with a David

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1 Johnson like they did in 2000 because there was only a  
2 70 percent match criteria in 2000, 70 percent of Davis  
3 Johnson and David Johnson would have matched with the  
4 identical birth date. But we have an identical match.  
5 So the name is the same. But we don't know who it is  
6 being matched to. We don't know where the felony  
7 occurred.

8 So in many respects, the database is even  
9 worse for a supervisor of elections to administer.  
10 And, again, I think that this really calls into  
11 question the entire supervision, the understanding of  
12 how the process must be accomplished if individuals  
13 are going to vote and not be disenfranchised in the  
14 State of Florida in 2004.

15 CHAIRPERSON BERRY: All right. Again,  
16 there will be questions.

17 Now down on the ground where you live, Mr.  
18 Heyward.

19 MR. HEYWARD: Thank you, Madam Chairman.

20 CHAIRPERSON BERRY: Tell us about that.

21 MR. HEYWARD: Well, first of all, let me  
22 say that I am grateful for the opportunity to come and  
23 share my story. I apologize that I do not have  
24 statistics and numbers and factual information, as my  
25 previous three people have mentioned. But it is just

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1 a story of what actually happened to me and how I got  
2 involved with this whole thing.

3 I am from Tallahassee, where I work at one  
4 of the large African American churches, where I have  
5 been a member since I have been a little kid.

6 I received a telephone call one day from  
7 one of the commissioners in Tallahassee by the name of  
8 Andrew Gillum to tell me about my name being on this  
9 purged list. When I heard that, I was kind of  
10 shocked, a little nervous, kind of embarrassed. And I  
11 was like, "Wow. How did my name get on a list?"

12 He asked me to come down and talk to him.  
13 I agreed. And he came down. He's with the People For  
14 the American Way. And some of his staff members came  
15 down.

16 First of all, my question was, "How did  
17 you all know my name was on the list because I haven't  
18 seen the list or heard about the list?" He said only  
19 city officials at the time were able to get a copy of  
20 the list.

21 They were trying to find some errors on  
22 the list to prove that the list was inaccurate. I  
23 guess I was just lucky. One of his staff members was  
24 a member of my church and noticed my name.

25 By the time they came down to talk to me,

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1 they had checked the records to find out why would I  
2 be on the list. And they couldn't find a felony  
3 conviction on my records.

4 So I got to thinking, "Okay. I'm going to  
5 have to open up a chapter that has been closed for so  
6 long. I really don't know if I want to do this." But  
7 I had to explain to them why they didn't find a felony  
8 on my record because it had been expunged by this  
9 time.

10 But back in 1978-79, I did have a felony  
11 conviction where I bought some stolen furniture. I  
12 wound up serving a few months at a road camp and doing  
13 some probation time.

14 And I said, "I guess that's why my name  
15 wound up on the list, but my question was why here in  
16 2000 would my name now be showing up on the list?" I  
17 explained to them that I don't remember the steps that  
18 I took, but I did remember receiving a letter from the  
19 executive clemency that my rights were restored. Of  
20 course, I no longer had a copy of that in my personal  
21 records, but with the help of them, I was able to get  
22 a copy, which I have, that was then signed by Governor  
23 Bob Graham, restoring my rights back in 1986.

24 After such time, I have re-registered to  
25 vote. And I have been participating in my voting

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1 since 1986. In fact, I voted in the last four  
2 presidential elections and most of my local elections.

3 And so to have this purged list of names  
4 come out with my name still being on it and now in  
5 2004, I was just shocked, didn't know what to do. I  
6 just had questions, you know. Why am I on the list  
7 after all this time? Are they going to try to take my  
8 voting rights away now, after I have been voting all  
9 of this time?

10 And so I wasn't sure. It took a lot for  
11 me to come forward with the story because I had to  
12 just open up something I really wasn't comfortable  
13 doing. But after talking with a few of my friends and  
14 family and talking with my church pastor, they said,  
15 "Well, if you are comfortable with opening up your  
16 past, I think it would probably be something that  
17 needed to be told."

18 So I did this because I thought it was the  
19 right thing to do. I mean, I really didn't have  
20 anything to gain or at this time lose since it has  
21 been so long ago about coming forward.

22 But since I have come forward, I didn't  
23 realize that it was as much of a problem as it is. I  
24 didn't realize the number of people that would be  
25 affected. I mean, from the phone calls that I got

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1 when they first did the story in my local newspaper  
2 from people calling and just saying, you know, "Hey,  
3 did you find out, man? You know, I may be on the  
4 list, too. You know, I had a felony years ago. What  
5 do I need to do?" And I directed my calls to the  
6 People of the American Way because those are the  
7 people who helped me.

8 After the story just aired on the local  
9 news and in the papers and I found out how serious a  
10 problem this was and how many people this really  
11 affected, then I really started to pay attention,  
12 follow what was going on.

13 Since such time, the judge has ruled that  
14 it was unconstitutional to keep this list in private,  
15 that it had to be made to the public. And I was glad  
16 that that had happened. So I felt a little bit better  
17 about coming forward.

18 I understand yesterday that someone phoned  
19 me and told me that the District Court of Appeals has  
20 now ruled that the Department of Corrections is  
21 responsible for making sure that people's rights are  
22 restored once they complete their sentences. And  
23 that's another good thing that has come from all of  
24 this.

25 So I am just excited that the turn of

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1 events that has happened has happened. Mine is just  
2 an ordinary guy who wound up getting in some trouble  
3 back in the day. And here it is 25 years later this  
4 had to be brought to light.

5 So I guess I've learned two things from  
6 this, all of this attention that I have gotten. One  
7 is I guess we need to be careful what we do today  
8 because we don't know how it is going to affect us  
9 tomorrow; and, secondly, that one person can make a  
10 difference in coming forward and telling a story. I  
11 just hope that other people that are affected, that  
12 this will have brought some light to all of those  
13 people, that the list now will not be used.

14 Again, I have not seen this purged list as  
15 of yet. So I don't know if my name is still on it or  
16 if it's off, but I do hope that come election day,  
17 that I will once again be able to exercise my right to  
18 vote. And it won't be a problem at that time.

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

21 I have lots of questions. Would someone  
22 else like to begin?

23 VICE CHAIRPERSON REYNOSO: Well, I have a  
24 question. The testimony that we heard earlier was the  
25 testimony like the one that you gave, Ms. McLaughlin,

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1 that the company then said that they asked a question  
2 of the state.

3 It went something like this, "Do you want  
4 us to have a list that they know were ex-felons or do  
5 you want a list of people who are possibly ex-felons?"  
6 and the state said, "We want the latter. We want  
7 anybody who might be." And that's why a lot of  
8 erroneous names were included.

9 Even we had testimony in Florida that a  
10 gentleman who didn't have the same middle name was  
11 excluded. And when he called, he was told he was  
12 excluded because he was an ex-felon.

13 Then they read him the name of the  
14 ex-felon. My recollection is that the middle name was  
15 not the same. Nonetheless, he had been excluded.

16 And he finally was able to convince them  
17 because he said, "What do I have to do? Do I have to  
18 get a lawyer?"

19 They finally said, "Wait a few minutes,  
20 sir." And then they came back and said, "Give us the  
21 local officials. We will instruct them to put you  
22 back on the roll."

23 I remember Mr. Sancho did testify at one  
24 of our hearings that the only way that if you are  
25 erroneously dropped from the rolls to get on the rolls

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1 is to make yourself obnoxious. If I remember the  
2 testimony, that was the technical word he used. I  
3 guess that minister made himself sufficiently  
4 obnoxious to get back on the roll.

5 I just heard the testimony from Mr. Palast  
6 that the contract, at least the one that he looked at,  
7 said that it was up to the company to confirm that  
8 these were ex-felons. So I don't know. I don't know  
9 quite where we are at this point.

10 Your testimony is exactly as testimony we  
11 heard before, but I have now heard that the contract  
12 says something different. Could you help me with  
13 that?

14 MS. McLAUGHLIN: Absolutely. And I  
15 believe that the contract that Mr. Palast mentioned  
16 was the contract with the previous contractor, DBT.

17 VICE CHAIRPERSON REYNOSO: Right.

18 MS. McLAUGHLIN: Accenture's contract in  
19 no way says that we are to validate the data.  
20 Accenture's contract is not part of that at all. In  
21 fact, the law mandates that the state operate and  
22 maintain the system. And the only thing that  
23 Accenture was asked and contracted to do was to build  
24 the tool.

25 I also think -- and you mentioned that the

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1 previous testimony from the previous company said that  
2 the state asked them to identify any possible matches.

3 What we are doing here is a little bit  
4 different, but it's significant in that the state did  
5 not ask us to identify possible matches. The state  
6 asked us to use the data that there is and to make the  
7 best possible matches.

8 The reason I call it potential matches is  
9 because we know, everyone knows, that the data, as Mr.  
10 Sancho rightly pointed out, the data that is coming in  
11 is not 100 percent accurate. And so you can't ever  
12 have a true identical match. I mean, you can, but you  
13 can't verify one through the computer system. You are  
14 confused.

15 VICE CHAIRPERSON REYNOSO: Well, I guess  
16 the latter part of your sentence is probably correct.

17 MS. McLAUGHLIN: Correct.

18 VICE CHAIRPERSON REYNOSO: You can't, as I  
19 understand your testimony, get a positive  
20 identification from the present data material.

21 MS. McLAUGHLIN: Correct.

22 VICE CHAIRPERSON REYNOSO: On the other  
23 hand, it seems to me that this is such an important  
24 area that it ought to be the state. Well, first of  
25 all, if anybody votes improperly, it is a felony.

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1           It seems to me you don't even need a list.  
2           If somebody votes improperly, you can prosecute them  
3           for something called a felony. That's pretty serious.

4           If anybody is going to then say, "We are  
5           going to save you from yourself so you don't commit a  
6           felony," it seems to me that for such a serious  
7           matter, you have got an absolutely positive  
8           identification. And, frankly, I don't think highly of  
9           a company that would agree to a system that they know  
10          is faulty and is going to harm thousands of people.

11          I know you have got to make a living, but  
12          I can't be very empathetic with what you are doing.  
13          I'm sorry to say that.

14          CHAIRPERSON BERRY: Can I follow up? Oh,  
15          you want to follow up. Do you want to follow up?

16          COMMISSIONER EDLEY: Well, I really would  
17          like to hear her response just to that.

18          CHAIRPERSON BERRY: Well, I was going to  
19          share in the question.

20          COMMISSIONER EDLEY: Because it seems to  
21          me like a miscommunication.

22          CHAIRPERSON BERRY: Right.

23          COMMISSIONER EDLEY: But go ahead.

24          CHAIRPERSON BERRY: You can go ahead. All  
25          I wanted to say to you is that following up with what

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1 the vice chair said is that what you described to us  
2 -- you described what you did -- is different from  
3 what DBT apparently did. That's the first thing.

4 But the second, this is what is troubling  
5 until you explain it, is what Mr. Sancho said about  
6 garbage in, garbage out, it seemed to me that at some  
7 stage in the process you described, someone could have  
8 figured out that the result was going to be garbage.

9 Now, I don't know who that someone was,  
10 but someone could have figured out that what would  
11 happen in the end is that you would get a bunch of  
12 names and that the names would be only as good as the  
13 data input, right, and that the data inputs were all  
14 inconsistent, that FDLE's definitions were different  
15 from some of the clerk's definitions in terms of the  
16 race of people and indicators like that.

17 So that if you knew that, not you  
18 personally, but if one knew that in the beginning,  
19 that the data were kept with different kinds of  
20 labeling, then you would know that if you put them  
21 into a system and tried to match them, you would end  
22 up with garbage because if you assumed the labeling  
23 was the same and it was different, how else could you  
24 come up with any result than that?

25 I am trying to find out whether Accenture

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1 should have figured that out. Should the Secretary of  
2 State have figured that out? Should the Division of  
3 Elections have figured that out? Who in this process  
4 you described -- you gave us rather detailed, when the  
5 information comes in, how it is sorted and matched and  
6 then what goes in every evening and where it all comes  
7 from, all of these inputs -- who was responsible for  
8 figuring out that since the inputs were flawed, that  
9 the output had to be flawed?

10 MS. McLAUGHLIN: Well, as I said, everyone  
11 understood that the data was not 100 percent accurate  
12 from each source. The legislation that was drafted  
13 was required that the state provide a database that  
14 matched the data.

15 The state asked us to help them build a  
16 process that would as best match the data as possible  
17 and provide that data to the counties so that they  
18 could look at it because, as we said, a computer can't  
19 make the identical match. And it really requires the  
20 human.

21 So what we provide back to -- I know Mr.  
22 Sancho and Mr. Palast indicated that all they saw on  
23 the list was the names, but what gets provided back to  
24 the county supervisors is actually two things. It is  
25 the voter record and all of the demographics

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1 pertaining to that voter record that are used in the  
2 match. And right underneath it is the source record  
3 from either FDLE or the Bureau of Vital Statistics or  
4 the courts that provides all of the data, one  
5 underneath each other, the last name, the first name,  
6 Social Security number, date of birth, race code,  
7 gender, address, et cetera, right one on top of each  
8 other as they are looking at the Web site and if the  
9 file is sent.

10 Both of those fields, both of those  
11 records, are sent so that they could compare what is  
12 in the voter record to what is in the source record  
13 and make a determination, does this look like it is a  
14 close match?

15 COMMISSIONER EDLEY: Just so that I  
16 understand, so what you produce, then, are these  
17 paired records?

18 MS. McLAUGHLIN: Correct.

19 COMMISSIONER EDLEY: So that Mr. Sancho or  
20 whoever looks at it can understand on what basis this  
21 name has appeared on the purge list. Right?

22 MS. McLAUGHLIN: Correct.

23 COMMISSIONER EDLEY: And, if I understand  
24 you correctly, to the extent that the two records of  
25 note refer to the same individual, it is your view

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1 that that inaccuracy, if you will, is a result of the  
2 legislature essentially having prescribed a matching  
3 process?

4 MS. McLAUGHLIN: The creation of the list  
5 is the result of the legislation. Creation of that  
6 list is the result of the legislation which asked that  
7 that was to be created. The matching and the fact --

8 COMMISSIONER EDLEY: Is your software.

9 MS. McLAUGHLIN: -- that you can't do it  
10 are because there is no single unique identifier that  
11 will identify an individual. Right? We don't have in  
12 this country one code or one number that identifies  
13 us. And different systems use different pieces of  
14 information to identify people.

15 So in the voter record, they have last  
16 name and first name. They sometimes will get a middle  
17 name. They will have a date of birth because they  
18 need to identify that the person is old enough to  
19 vote.

20 They will have in some cases a Social  
21 Security number but not always because it's not always  
22 required. And they may have the whole Social Security  
23 number or only the last four digits or they might have  
24 a driver's license number. And then they have an  
25 address, wherever the voter's address is.

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1           The following file might have different  
2 information. It has the last name, first name. It  
3 may not have a Social Security number or a driver's  
4 license.

5           COMMISSIONER EDLEY: I guess the point, I  
6 am understanding that completely, --

7           MS. McLAUGHLIN: Yes.

8           COMMISSIONER EDLEY: -- which I do.

9           MS. McLAUGHLIN: Okay.

10          COMMISSIONER EDLEY: The difficulty is  
11 that the state has made a series of policy decisions.  
12 Number one, it has made the decision not to have any  
13 system of unique identifiers in these various  
14 databases.

15          Second, it has made a decision that,  
16 notwithstanding the absence of unique identifiers, the  
17 legislature has commanded that a match be done when  
18 it's perfectly foreseeable that under those  
19 circumstances, the result will be an error rate in  
20 compiling a purge list.

21          CHAIRPERSON BERRY: It will be garbage the  
22 first --

23          COMMISSIONER EDLEY: I was trying to say,  
24 you know, garbage.

25          MS. McLAUGHLIN: There is one other big

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1 difference in the legislation that was passed. Under  
 2 the previous law, I believe that the onus was on the  
 3 voter to prove that they should not be on the list.  
 4 Under the new law passed after 2000, I believe the  
 5 onus is on the supervisor of elections to prove that  
 6 they should be on the list and should be purged.

7 COMMISSIONER EDLEY: That they should be  
 8 on the purge list?

9 MS. McLAUGHLIN: That they should be  
 10 purged.

11 CHAIRPERSON BERRY: That's not true. I  
 12 have a copy of a letter that they sent out, and that  
 13 is not true.

14 MS. McLAUGHLIN: Okay. That was my  
 15 understanding of the --

16 CHAIRPERSON BERRY: The letter says that  
 17 you have been identified as a person with felony  
 18 convictions whose rights have not been restored. If  
 19 you believe this information is not related to you or  
 20 question the accuracy, you should also contact the  
 21 Florida DLE, Division of Law Enforcement, to verify  
 22 your status. And if you have a conviction but your  
 23 rights have been restored, then you must come in to  
 24 bring proof to us. Otherwise, we're going to take you  
 25 off the list.

1 MS. McLAUGHLIN: I don't know anything  
2 about the letter.

3 CHAIRPERSON BERRY: It's in the record.

4 MS. McLAUGHLIN: I just was referencing  
5 back to the legislation which I had read, which seemed  
6 to indicate that the burden was no longer on the  
7 voter.

8 COMMISSIONER EDLEY: Well, she may be  
9 right. The letter may be wrong. In other words, the  
10 letter may --

11 MS. McLAUGHLIN: I will go back and look  
12 at the legislation.

13 VICE CHAIRPERSON REYNOSO: I want to get a  
14 clarification of the legislation. Did the legislation  
15 require you to use the techniques that you have used  
16 to do this matching? Did they tell you exactly how to  
17 do it or was that your professional judgment on how to  
18 do it?

19 MS. McLAUGHLIN: The way we did it was --

20 VICE CHAIRPERSON REYNOSO: No. I'm asking  
21 a different question.

22 MS. McLAUGHLIN: Yes. The legislation did  
23 not indicate how matching is to be done.

24 VICE CHAIRPERSON REYNOSO: The question  
25 was on an erroneous presumption.

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1 COMMISSIONER EDLEY: No. Wait. You said  
2 the legislation said, "Take these data sources and do  
3 a match."

4 MS. McLAUGHLIN: The legislation said --  
5 let's see if I can find some copy of exactly what it  
6 said -- the system shall provide functionality for  
7 ensuring that the database is updated on a daily basis  
8 to determine if a registered voter is ineligible to  
9 vote for any of the following reasons, including, but  
10 not limited to, the voter is deceased; the voter has  
11 been convicted of a felony and has not had his or her  
12 civil rights restored; or the voter has been  
13 adjudicated mentally incompetent and his or her mental  
14 capacity with respect to voting has not been restored.

15 VICE CHAIRPERSON REYNOSO: So it doesn't  
16 tell you anything about how you should do it. What  
17 you decided to do you decided at your own professional  
18 judgment. Is that not true?

19 MS. McLAUGHLIN: That is not true. What  
20 we --

21 VICE CHAIRPERSON REYNOSO: Well, tell me  
22 what happened.

23 MS. McLAUGHLIN: What Accenture did is  
24 worked with the Division of Elections and the county  
25 supervisors to determine how best to provide this

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1 information to them.

2 VICE CHAIRPERSON REYNOSO: Including Mr.  
3 Sancho?

4 MS. McLAUGHLIN: And then we implemented  
5 those rules. I don't believe Mr. Sancho participated  
6 on the advisory committee.

7 VICE CHAIRPERSON REYNOSO: Oh, you dealt  
8 only with the state officials?

9 MS. McLAUGHLIN: No. There were county  
10 officials that were also on an advisory committee  
11 chaired by the supervisor of Miami-Dade.

12 VICE CHAIRPERSON REYNOSO: So you worked  
13 together with local officials -- by "local," I mean  
14 state officials -- local and state officials to decide  
15 --

16 MS. McLAUGHLIN: Worked with state  
17 officials.

18 VICE CHAIRPERSON REYNOSO: -- how best to  
19 proceed on it?

20 MS. McLAUGHLIN: Correct.

21 VICE CHAIRPERSON REYNOSO: But you didn't  
22 do it on your own?

23 MS. McLAUGHLIN: Correct.

24 VICE CHAIRPERSON REYNOSO: You did it  
25 collectively.

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1 MS. McLAUGHLIN: We worked with them.  
2 They identified how --

3 CHAIRPERSON BERRY: Were these people  
4 computer experts that you worked with on the advisory  
5 committee?

6 MS. McLAUGHLIN: Some of them were. Some  
7 of them were not. There were some technology people  
8 and some not.

9 VICE CHAIRPERSON REYNOSO: Did they  
10 understand what you just told us, that there would be  
11 a percentage of error?

12 MS. McLAUGHLIN: Yes.

13 VICE CHAIRPERSON REYNOSO: They understood  
14 that?

15 MS. McLAUGHLIN: Yes, they did.

16 VICE CHAIRPERSON REYNOSO: They accepted  
17 that?

18 MS. McLAUGHLIN: Yes, they did.

19 VICE CHAIRPERSON REYNOSO: Okay.

20 MS. McLAUGHLIN: In fact, they created a  
21 process to deal with that. They very carefully did  
22 that.

23 VICE CHAIRPERSON REYNOSO: What was the  
24 process to deal with that?

25 MS. McLAUGHLIN: And I don't have all of the

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1 details, but the process included some of the items,  
2 you know, voting and researching against the county  
3 court records, potentially writing a letter --

4 VICE CHAIRPERSON REYNOSO: I'm sorry. Who  
5 was to do that? Who was to do that?

6 MS. McLAUGHLIN: The county supervisors.

7 VICE CHAIRPERSON REYNOSO: Oh, the county  
8 officials would do that?

9 MS. McLAUGHLIN: Correct. The county was  
10 to do that.

11 CHAIRPERSON BERRY: May I ask this,  
12 please? First of all, if it is not private  
13 information, how much was the contract worth to  
14 produce this computer program and to operate it as the  
15 way you described to us this morning?

16 MS. McLAUGHLIN: The state can provide all  
17 of the information on the contract.

18 CHAIRPERSON BERRY: We should ask them.  
19 You can't tell us. Okay. We'll ask the state.

20 The second thing is I have already read it  
21 in the paper somewhere, but that's all right. I'll  
22 ask the state. It was some millions of dollars.

23 Anyway, the second thing I want to ask you  
24 is, did you know or did anyone know at some stage of  
25 the process that the information about race would

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1 result in the exclusion of Hispanics because the FDLE  
2 identifiers are different from the identifiers on the  
3 voting --

4 MS. McLAUGHLIN: No, no, we did not. That  
5 was a big surprise to me that the FDLE data did not  
6 include that.

7 CHAIRPERSON BERRY: But I thought you  
8 already told us that you know that the databases for  
9 different purposes were different and used different  
10 information.

11 MS. McLAUGHLIN: Correct.

12 CHAIRPERSON BERRY: You knew that?

13 MS. McLAUGHLIN: We knew that they used  
14 different fields.

15 CHAIRPERSON BERRY: Right.

16 MS. McLAUGHLIN: So some of them used  
17 Social Security number, and some don't. Some records  
18 within the databases have Social Security number, and  
19 some don't. Some have driver's license number, and  
20 some don't. Some include all first name, last name,  
21 middle initial, and some don't. Some include date of  
22 birth, and some don't, but --

23 CHAIRPERSON BERRY: Some include race, and  
24 some don't. Do you know that?

25 MS. McLAUGHLIN: My understanding was that

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1 all of them included a race code, I believe.

2 CHAIRPERSON BERRY: They probably all did.

3 MS. McLAUGHLIN: But our understanding,  
4 the information we had, was that they all used common  
5 race codes or that they were converted to be common  
6 race codes. So we did not know that there was not a  
7 Hispanic code in the FDLE files.

8 CHAIRPERSON BERRY: And you didn't know  
9 that ethnicity was not included or national origin.  
10 You assumed race meant commonly everybody who one  
11 would think of, Hispanic, black, whites, if you were  
12 to have thought about that or is it that no one  
13 thought about that? That's a better question, I  
14 guess.

15 MS. McLAUGHLIN: I am not sure. Can you  
16 repeat your question, Madam Chair?

17 CHAIRPERSON BERRY: Did anyone think about  
18 whether or not if there were race, Hispanic would be  
19 included or not or was this just something that was  
20 only raised after the fact?

21 MS. McLAUGHLIN: I don't think anyone  
22 considered what the race codes were, what they meant.

23 COMMISSIONER EDLEY: I see. So the field  
24 was there, but the codes were different?

25 MS. McLAUGHLIN: The field was there. The

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1 codes were different.

2 COMMISSIONER EDLEY: The coding was  
3 different? Was somebody from FDLE involved in the  
4 discussions?

5 MS. McLAUGHLIN: They were certainly  
6 involved up front, yes, and provided information on  
7 their files.

8 VICE CHAIRPERSON REYNOSO: Once you got  
9 into it -- and you folks are the computer experts, and  
10 you found that there was only identification by race  
11 but not ethnicity. One, did you bring that to the  
12 attention of the officials? And, two, was there  
13 further consultation with the officials about how to  
14 deal with that issue?

15 MS. McLAUGHLIN: No, there was not.

16 CHAIRPERSON BERRY: How do we know --

17 VICE CHAIRPERSON REYNOSO: You answered  
18 the second question. How about the first question?

19 MS. McLAUGHLIN: The first question again  
20 was?

21 VICE CHAIRPERSON REYNOSO: Did you bring  
22 that to the attention of the officials?

23 MS. McLAUGHLIN: We only knew what fields  
24 were in there that we had to match against. We knew  
25 that race was in both. We knew that ethnicity was in

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1 none of them. I don't believe it was in any of them,  
2 but I can't recall correctly.

3 VICE CHAIRPERSON REYNOSO: You didn't make  
4 a professional judgment to bring that to the attention  
5 of the officials with whom you were dealing, even  
6 though so many in Florida are of various ethnicities,  
7 particularly Latino, who often do not put down a race  
8 because they consider themselves, as I do, an ethnic  
9 group, not a racial group?

10 MS. McLAUGHLIN: Right. And there was  
11 also an unknown category within that and an other  
12 category, which I think people felt took care of that.

13 VICE CHAIRPERSON REYNOSO: Okay. My  
14 question is, once you discovered that, did you bring  
15 that to the attention of that committee you were  
16 working with?

17 MS. McLAUGHLIN: When we discovered that  
18 there was no category for ethnicity?

19 VICE CHAIRPERSON REYNOSO: No. Because  
20 there was no category, we weren't comparing on  
21 ethnicity.

22 CHAIRPERSON BERRY: You didn't discover  
23 that, did you?

24 MS. McLAUGHLIN: No.

25 CHAIRPERSON BERRY: Okay.

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1                   COMMISSIONER EDLEY:     No, they didn't  
2 discover it.     They're not demographers.     They're  
3 computer people.

4                   MS. McLAUGHLIN:     We only looked at the  
5 data that they had for us to compare.

6                   CHAIRPERSON BERRY:     Go ahead.

7                   COMMISSIONER EDLEY:     I just want to go  
8 back to the earlier confusion, uncertainty.     That is,  
9 what I am trying to get at at least is who exercised  
10 the discretion, the judgment to accept a process that  
11 would produce a purge list with a foreseeably  
12 substantial error rate, A); and, B), who exercised the  
13 judgment, the policy discretion to accept a  
14 wrap-around process, which I will describe what I mean  
15 in a minute, a wrap-around process for correcting the  
16 purge list that would shift the burden to the county  
17 level and the individual, as opposed to keeping it at  
18 the state level or with the contractor.     So those two  
19 questions.

20                   So what I am saying, the wrap-around  
21 process, in other words, I can understand the given  
22 limitations in data systems.     One might have to have a  
23 computer-based match that will result in some kind of  
24 error rate.     But then there's the question of how much  
25 error rate.

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1           At some point presumably the error rate is  
2 so intolerable that you just throw out the whole idea  
3 and forget about it. So somebody exercised some  
4 discretion to say, "Well, there will be sort of an  
5 error rate, but we can live with it."

6           But then after that, there was a question,  
7 "What do we design around that as a safety valve  
8 system to try to catch the problems, like Mr. Heyward,  
9 and clean it up?" So who is exercising the judgment  
10 about the nature of that wrap-around safety valve  
11 process and making a judgment about whether that  
12 process was adequate?

13           MS. McLAUGHLIN: I don't think I know who  
14 made the policy decisions behind this. I do know that  
15 the Division of Elections and the supervisors of  
16 elections, the county supervisor of elections, who  
17 participated in the advisory board for the project  
18 worked together on both of those topics.

19           And it was, as you can imagine, a subject  
20 of great discussion because there was a question of,  
21 how big would this list be and how much effort would  
22 it take for the county officials to take that on?

23           As they worked through the process, they  
24 felt that that was the best way to do it. And that  
25 decision was made with the supervisors of elections

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1 advisory board committee that worked with the Division  
2 of Elections personnel.

3 COMMISSIONER EDLEY: Mr. Sancho, could you  
4 comment on that, sir? I'm trying to get at the  
5 discretion at those two levels.

6 MR. SANCHO: We've got several things  
7 going on here because I will tell you that the state  
8 and the Division of Elections entered into the process  
9 to contract with Accenture for this in 2001. But the  
10 statutes changed in 2001, 2002, and 2003.

11 So the statute actually was not being as  
12 specific here. The statute is simply a notification  
13 will occur if data suggests coming from the databases  
14 that an individual has committed a felony and the  
15 supervisor shall send out this notice. And a failure  
16 to respond will mean that you will have your name  
17 placed in a newspaper. And you will be purged if you  
18 fail to respond, which when I read the statute does  
19 not sound to me like the burden has shifted to the  
20 state.

21 It sounds to me when I read the statute  
22 that the burden shifts it right to the voter, now, in  
23 contravention to what the state said in 2002, when  
24 they had a different felony statute purge process.

25 So meanwhile the Division of Elections --

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1 and in 2001, for example, the supervisor of elections  
2 went to the legislature and said, "Don't allow the  
3 Division of Elections to be in control of the  
4 database," partly because in 2000 the Division of  
5 Elections misled supervisor of elections as to the  
6 nature of the entire purge process, a process which  
7 led me when contacted by the Division of Elections in  
8 2001 to ask if I would participate in the committee  
9 that Ms. McLaughlin has talked about.

10 I refused. The state, in fact, lied to me  
11 about what they were doing in 2000. And I will not be  
12 a party to continuing in this endeavor in the future  
13 after that point.

14 I shifted my efforts to try to get the  
15 legislature to have the central voter database given  
16 to what I considered a less political player in the  
17 game, which was the Clerk of the Courts. And in 2001,  
18 the Florida legislature did indeed adopt a statute  
19 saying that the Division of Elections shall contract  
20 with the Clerk of the Courts for the operation and  
21 maintenance of this central voter database file.

22 The reason that we suggested that was that  
23 the original copies of all the conviction records  
24 would be in the Clerk of the Courts' possession, the  
25 only one that had the original hard copy of the felon,

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1 and that the Clerk of the Courts had established a  
2 successful statewide database called Deadbeat Dads,  
3 where individuals who failed to pay child support  
4 payments could have other services terminated when  
5 they applied through the state for other activities.

6 The Department of Revenue and the County Clerks  
7 Association had put together this, what I thought was  
8 a very effective database. So the legislature in 2001  
9 mandated that the Clerk of the Courts put this  
10 database together.

11 But when Clay Roberts met with the Clerks  
12 Association and my lobbyist, who is an attorney, sat  
13 in those negotiations, Clay Roberts wrote a letter  
14 back to the legislature and said, "We cannot proceed  
15 in this direction. They want too much to construct  
16 the database. So, therefore, we are going to take the  
17 database back. And we will do it ourselves." That  
18 was the 2001 outcome of this whole process.

19 So the Division of Elections at that point  
20 took the contract, which the clerks had told them  
21 would cost about two million dollars for them to do.  
22 At that point, they contracted with Accenture or began  
23 the process of contracting with Accenture to have them  
24 do what the Division of Elections personnel is  
25 directing them to do.

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1                   The Division of Elections personnel are in  
2 my opinion the individuals who directed the process as  
3 to how this matching data process will really  
4 ultimately be organized.

5                   The legislative statute doesn't even  
6 address that. It just talks about what you do when  
7 you get the information. That's all the statute says  
8 currently today.

9                   CHAIRPERSON BERRY: Well, yes? And then I  
10 want to say --

11                   VICE CHAIRPERSON REYNOSO: And those  
12 persons all work for a person named by the governor of  
13 Florida?

14                   MR. SANCHO: That is correct. The change  
15 in 2002 means that the Secretary of State and all  
16 individuals underneath her are, in fact, political  
17 appointees.

18                   VICE CHAIRPERSON REYNOSO: I just want to  
19 tell you that many years ago I was in the U.S. Army.  
20 I was part of the counterintelligence force. Part of  
21 my job was to check backgrounds of people. One of the  
22 places we were required to check was the House Un-  
23 American Activities Committee.

24                   Their records were a disaster. The other  
25 gentleman and I, the other soldier and I, who had that

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1 responsibility were always very careful not to include  
2 anybody when it wasn't clear.

3 If I were an applicant, for example, as  
4 John Smith and there was a J. Smith there, we would  
5 say, "Not identifiable" because there is a very  
6 serious issue to put down at that time -- that's  
7 before the House on Un-American Activities Committee  
8 came into disrepute nationally, but at that point, it  
9 was a very serious matter to put down that that  
10 person's name appeared in that file.

11 So unless we knew it was the right person,  
12 we said, "Not identifiable" to have a system with  
13 which this company participated, presumably getting  
14 good money -- and I know it was all contract. I'm not  
15 saying you're unethical. But I'm just saying the  
16 whole process strikes me as unethical, I must say.

17 MR. SANCHO: Well, I would agree with  
18 that, but I wouldn't say that in this situation, I see  
19 it somewhat like a lawyer being hired by a client to  
20 do a job. You don't really look into the client's  
21 mind and determine if the intent is positive or  
22 negative, but the client wants to hire you for a  
23 purpose.

24 To me, it is the individuals who are doing  
25 the hire, in fact, who are at fault because this

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1 process could do nothing but result in  
2 disenfranchisement the way it has been developed.

3 CHAIRPERSON BERRY: All I want to say is  
4 -- and then I will let you say something, Rick - is  
5 that we have established several things here, it seems  
6 to me. We have established that the letter sent out  
7 by the supervisor of elections and the counties put  
8 the burden of proof on the person identified as an  
9 alleged felon, the proof that they were not. And  
10 that's in the letter. So we have established that.

11 We have also established that Accenture,  
12 whatever it did, used data that was likely to result  
13 in excluding people who should not be -- and they came  
14 up with a program that then used -- we came up with  
15 what you call garbage and what Dean Edley calls  
16 garbage because it was inevitable given the way the  
17 process was run and that nobody went back to make sure  
18 that the databases from which the data came were  
19 consistent because they probably couldn't. And so,  
20 therefore, you end up with a list.

21 The supervisors are exactly in the same  
22 place they would have been if Accenture had never done  
23 any work for the State of Florida. They're in the  
24 position of having to do with themselves, which is  
25 what they have to do in the first place.

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1 MR. SANCHO: Right.

2 CHAIRPERSON BERRY: So what I would like  
3 to ask now is, is there anything that Accenture is  
4 doing or can do or has been asked to do that will fix  
5 this problem between now and I guess not before the  
6 election because Ms. Hood says it won't be fixed  
7 before the election?

8 And is anything that we have learned in  
9 this process likely to happen in any other states  
10 where Accenture has the same contracts, not because of  
11 your company but, I mean, the same kinds of glitches  
12 that seem to exist here?

13 And also what is the future of the  
14 computerized database; that voter registration  
15 database, that all of the states are supposed to be  
16 fixing under --

17 MR. SANCHO: Under HAVA.

18 CHAIRPERSON BERRY: -- under HAVA if we  
19 can't fix this problem -- and they've all got waivers  
20 except one I think doesn't have a waiver -- so that  
21 they can fix it by the next election? What is it that  
22 we can do to make sure that the databases that are  
23 used end up with something that is input that isn't  
24 garbage so that when it comes out, people can use it  
25 or are people just left on their own? First, your

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1 response; and then I'll let Mr. Palast say something.

2 MS. McLAUGHLIN: A couple of comments.  
3 You made the comment that the supervisors are in the  
4 same state now as they would have been in without a  
5 system. The difference, the only difference, and what  
6 the tool is meant to provide is that without the  
7 system, the supervisors call through data.

8 And I don't know how. I'm sure you may  
9 have a better idea of how the supervisors today review  
10 their voter rolls against the county files to identify  
11 potential felons.

12 The purpose of the tool is to create those  
13 matches for them so they can focus just on determining  
14 whether this person is really a match or not. They  
15 don't have to go find the matches.

16 So the purpose of the tool was to help  
17 them find the matches initially and deal with them, as  
18 opposed to having to go do that process themselves  
19 manually. That's the difference.

20 COMMISSIONER EDLEY: I'm sorry. So in  
21 that sense, calling it a purge list is inaccurate?

22 MS. McLAUGHLIN: Correct. It's very  
23 inaccurate.

24 COMMISSIONER EDLEY: It's kind of  
25 candidates for purging.

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1 MS. McLAUGHLIN: It is. That's why we  
2 called it potential matches. I don't know. The purge  
3 list --

4 COMMISSIONER EDLEY: But then if you shift  
5 the burden to the voter, you have turned it into a  
6 purge list.

7 CHAIRPERSON BERRY: Because, first of all,  
8 the voter might not even get the letter that's sent to  
9 them in time and, secondly -- not your fault. I'm not  
10 saying it's anybody's fault.

11 And then even if they do get the letter in  
12 time, they may, first of all, say, "How am I going to  
13 prove that I'm not? How can I prove that I do not  
14 beat my wife? How can I prove that?"

15 COMMISSIONER EDLEY: "And why bother?  
16 I'll just not do it."

17 CHAIRPERSON BERRY: "Why bother if I'll be  
18 discouraged and they don't want me to vote. So I just  
19 won't vote." And then that gets to Mr. Palast's  
20 comments about the numbers, who these people are and  
21 who these people are who are being discouraged, all  
22 because of the breakdown up and down in the system,  
23 which is being perpetuated.

24 Then you've got other questions, like if a  
25 county uses a list and figures out what is going on in

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1 its own county, what about the other 66 counties?  
2 Suppose somebody has got a felony conviction not in  
3 your county, Leon, but in Broward. Isn't that a  
4 county? They're the ones that had the chance or  
5 something or they couldn't count or whatever. What  
6 about that? Are the counties going to check with 66  
7 other counties to find out?

8 And, finally, if I may say so, isn't there  
9 a uniformity problem?

10 COMMISSIONER EDLEY: That's what I want to  
11 talk to.

12 CHAIRPERSON BERRY: Isn't there a  
13 uniformity problem? I mean, we --

14 COMMISSIONER EDLEY: This is Bush v. Gore.

15 CHAIRPERSON BERRY: From 2000 - Dean Edley  
16 knows this, Bush v. Gore. One of the main problems  
17 was a lack of uniformity in how the state handled its  
18 counting and its election processes.

19 Now what we have is someone there telling  
20 us -- you're all telling us -- that the state  
21 legislature says that the state office is supposed to  
22 give advice about how you do this and tell the  
23 counties what to do and make sure they do it.

24 And, yet, now the county has sort of  
25 washed its hands -- I mean, the state -- and said,

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1 "Okay, counties. Go do. We're sure you'll all figure  
2 it out. And we're sure you'll all do a good job. And  
3 we're going to work cooperatively with them, it says  
4 here, to make sure that they do what they are supposed  
5 to do."

6 Who is going to make sure that they do it  
7 uniformly, whatever it is that they do? Are you going  
8 to do that, Accenture, that you're in charge of making  
9 sure that they --

10 MS. McLAUGHLIN: Absolutely not.

11 CHAIRPERSON BERRY: You are not? Mr.  
12 Heyward is not going to do it. Greg, you're not going  
13 to do it. So who is going to solve that problem?

14 You wanted to say something, Greg. Go  
15 ahead.

16 MR. PALAST: Yes. Let me see if I can  
17 just take note of some of the things that happened  
18 here in light of my investigations that have  
19 continued.

20 By the way, I just noticed going to Union  
21 Station that my deck of playing cards is released this  
22 week, there is a big display there with American  
23 heroes, including Commissioner Edley.

24 What are we doing here? Listen to these  
25 terms, "potential felons." This isn't Saddam's Iraq

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1 or Bulgaria, Soviet Bulgaria. We don't have potential  
2 felons in the United States. Why are we doing this?

3 Supervisor Sancho noted that just before a  
4 federal election, suddenly a list comes down in a  
5 surprise move, and the supervisor is told, "Start  
6 purging people. You must. And if you don't, don't  
7 resist. And we're not going to give you all of the  
8 information. Trust us. We hired a big shop  
9 consulting firm, Arthur Andersen, now alias Accenture.  
10 And we spent millions, and it's all fine.

11 "But they're not guaranteeing the results.  
12 We're not guaranteeing what we gave them. We are  
13 guaranteeing what comes out of it. We're not  
14 guaranteeing nothing. And we will now be on the  
15 election supervisors."

16 And when we talk about uniformity, Ion  
17 Sancho, supervisor in Leon, is carefully going through  
18 each name. There are a lot of supervisors. Most --  
19 that's rare. Most supervisors have -- well, partisan  
20 officials can't wait to get their hands on an excuse  
21 to get rid of these voters. Okay?

22 Very nice term heard from Accenture, some  
23 will still have Social Security numbers. The number I  
24 will -- and tell me if I am wrong. If I have this  
25 number way wrong. The number of voters for Social

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1 Security match to the full Social Security of a felon  
2 is 90 percent, 80 percent, maybe 3 percent. Wouldn't  
3 you say about 3 percent of the cases, this list of  
4 47,000? It's garbage, and they knew it was garbage.  
5 And Accenture knows it's garbage. The people that put  
6 in the list garbage. They got out garbage.

7 And today people are still being purged  
8 off this list. And what is happening is when you talk  
9 about we can't have accuracy, I've got to tell you the  
10 methods used this time are not anywhere as good as the  
11 methods used by DBT or contracted by DBT, which, for  
12 example, included the review, the obvious review, that  
13 every expert says of the U.S. change of address files.  
14 If your address is prison, you're probably a prisoner.  
15 Okay?

16 I have from the new list more criminals of  
17 the future picked out by my staff this morning. Okay?  
18 It's still going on, middle names not matching, last  
19 names not matching, dates of birth not matching. It  
20 took me a minute.

21 They know what they're putting out there.  
22 And it comes down to -- you know what Database  
23 Technologies told me? If they choose to, after all,  
24 they do investigations for the FBI. Medical records  
25 to make sure the hospitals don't mismatch, provide

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1 people with improper medicine, have positive match  
2 rates that are guaranteed at 99.9 percent so people  
3 don't die. You can do this.

4 We have identifiers called Social Security  
5 numbers. But when they don't have them, they say they  
6 don't have them in some cases. In almost no cases do  
7 they have them.

8 What we have here is 47,000 names, which  
9 is about how many inaccuracies there are in this list.  
10 This is a gathering up of common names of black people  
11 matched to inaccurate records. Why are we doing this  
12 now just before an election?

13 The answer, which I can see -- and you  
14 will have to be constrained from your post from saying  
15 it bluntly -- as the commissioner said, what people  
16 are being accused here of is committing another felony  
17 crime, felons who are committing another felony crime.

18 This is a matter for criminal  
19 investigation. Losing your right to vote is a  
20 sentence imposed by the State of Florida for  
21 committing a felony, which requires a judge and jury  
22 and investigation, not some fuzzy matching method for  
23 which no one is responsible. No one is responsible.

24 See, the ultimate thing is this. And here  
25 is the ultimate number to consider in the current

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1 list. For every Republican on the purge list, there  
2 are four Democrats.

3 CHAIRPERSON BERRY: Okay. We will  
4 remember that. We will hold that thought. And we are  
5 going to let Commissioner Edley ask a question. Then  
6 we are going to close this down. Go ahead.

7 COMMISSIONER EDLEY: It's halfway a  
8 comment. I would certainly welcome reactions to it.  
9 I want to underscore two things about this with  
10 respect to this Commission's jurisdiction.

11 The first is related to what Mr. Palast  
12 just said. It does seem to me that there is the  
13 smoking gun here of unnamed officials. We are not  
14 sure who because, at least based on what we have heard  
15 thus far, the process seems to involve a number of  
16 people whose roles were not sharply defined. But it  
17 seems as though there were officials who exercised  
18 discretion in a manner which, at least foreseeably, at  
19 least foreseeably, resulted in depriving people or  
20 would have resulted in depriving people of their right  
21 to vote or, at a minimum, systematically discouraging  
22 people from voting, tens of thousands of people.

23 I want to say that it seems to me to have  
24 been perfectly foreseeable, which at least raises the  
25 question of whether it was intentional. And if it was

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1 intentional, it may well have been a violation, a  
2 criminal violation, of the civil rights laws.

3 This is not just about sloppy databases.  
4 It's not just about bureaucracies trapped for  
5 resources. It's about the deprivation of a  
6 fundamental civil right, possibly criminal.

7 The second point I want to make is that if  
8 officials were acting because they felt their hands  
9 were tied by the state legislature, then in that case,  
10 there would not have been criminality, but there would  
11 clearly be a civil violation of the statutes under  
12 federal law.

13 And the Justice Department or private  
14 plaintiffs could bring suit and seek redress. That is  
15 to say if the statute, if the legislature in its  
16 wisdom set up a Rube Goldberg mechanism for producing  
17 voter files that would result in depriving people of  
18 their right to vote, that legislative mandate should  
19 be struck down under federal constitutional and  
20 statutory civil rights provisions.

21 CHAIRPERSON BERRY: Those were comments.  
22 They weren't questions. But they were good comments.

23 COMMISSIONER EDLEY: The third and final  
24 point I want to make --

25 CHAIRPERSON BERRY: It's always three.

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1                   COMMISSIONER EDLEY:     Yes, it's always  
2 three.   The third and final point I want to make is  
3 that, with all due respect to the Secretary of State  
4 in Florida, it is simply not sufficient to toss up  
5 your hands and say, "The counties will take care of  
6 it, that the supervisors of elections in the counties  
7 will take care of it."

8                   I think precisely because of Bush v. Gore,  
9 where the Supreme Court ruled that county by county,  
10 discretion and variation at the recount stage violates  
11 the equal protection clause, it seems more than  
12 arguable.

13                   It seems to me, at least, clear, although  
14 I am sure some judges would disagree, but it seems to  
15 me, at least, clear that county by county discretion  
16 in deciding whether or how to clean up a voter list  
17 through this kind of purging raises precisely the same  
18 kind of protection questions and that there needs to  
19 be uniformity in this process within a state following  
20 the Supreme Court's ruling in Bush v. Gore.

21                   So I don't know if any of the panelists  
22 have comments, but I just want to say I hope that we  
23 will be able to ask some questions of this sort to the  
24 next panel.

25                   CHAIRPERSON BERRY:   Well, I think this

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1 panel probably shouldn't be asked those questions, but  
2 I am going to suggest as we end this that -- and I am  
3 telling the staff director this because we three  
4 lawyers here at least agree about what we have heard  
5 -- that I want a letter to the Justice Department  
6 pointing out what we have heard and asking them their  
7 view on whether or not there are any violations of the  
8 civil rights, the Voting Rights Act in the first two  
9 instances and their view of the requirements of Bush  
10 v. Gore in this regard so that we can get an answer  
11 from them or at least press them for an answer.

12           The last thing I want to do -- and then I  
13 am going to close this -- you did not answer me, Ms.  
14 McLaughlin, when I asked whether you had learned  
15 anything from this experience, "you" I mean in your  
16 company, that would help you as you execute all of  
17 these other contracts or all of these other databases  
18 in terms of trying to protect against certain glitches  
19 that arise from the way databases are put together.

20           MS. McLAUGHLIN: So many people have been  
21 talking since you said that that I did not have an  
22 opportunity to answer. So I appreciate your  
23 re-raising that question and allowing me to answer.

24           Certainly every time we do a project like  
25 this we learn more and more. And certainly we have

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1 learned both from the doing of the original project as  
2 well as from the attention that it has caused and the  
3 comments from people coming in. And we will use that  
4 learning to improve everything we do for these other  
5 states.

6 I would say you also asked what the  
7 challenges are. Whether Accenture does this new  
8 database or somebody else does it does not matter.  
9 The rules of HAVA now require that this type of check  
10 be done, which means that states are compelled by this  
11 law to do this kind of check.

12 There are going to be similar situations  
13 where the source data files coming in from the  
14 agencies have the same types of issues that you saw in  
15 Florida. My educated guess would be that that is  
16 probably going to happen in nearly all of the states  
17 because just by virtue of the fact that each agency  
18 does its own thing with their computer systems and  
19 they build their computer systems based on their  
20 particular needs, not on looking out systematically  
21 about what the whole need of the state is around all  
22 of these processes.

23 So you will have these same kinds of  
24 issues arise. And we certainly talk with our clients  
25 about the issues raised in Florida and about what that

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1 means for them. I'm sure it will help us to review  
2 and analyze data and requirements even better each  
3 time.

4 CHAIRPERSON BERRY: Okay. I want to thank  
5 everyone for coming. You wanted to say something?

6 VICE CHAIRPERSON REYNOSO: I just want to  
7 thank the folk and particularly Ms. McLaughlin because  
8 she has helped us a lot to understand the process.

9 CHAIRPERSON BERRY: Right.

10 VICE CHAIRPERSON REYNOSO: But I want to  
11 doubly thank Mr. Heyward because in my experience in  
12 talking about Florida, it has been the personal  
13 stories that really make people understand. So that's  
14 it.

15 CHAIRPERSON BERRY: I agree with that.  
16 And we thank you all for coming. Thank you.

17 There will be a break. And if any of the  
18 media have any questions, we would be happy to answer  
19 them right here in this room.

20 I want to thank everybody for coming. I  
21 appreciate it. I learned a lot from this. And we  
22 will follow up on this.

23 We will reconvene at 1:15.

24 (Whereupon, at 12:41 p.m., the foregoing  
25 matter was recessed for lunch, to reconvene at

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1

1:15

p.m. the same day.)

2

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## A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:24 p.m.)

CHAIRPERSON BERRY: We had a very interesting morning here. We had a very interesting morning, in which we learned all sorts of new information about problems that the Election Assistance Commission will solve. And so we have simply deferred and deflected all complaints by pointing out that the Election Assistance Commission is the place where those problems will be solved.

We have a panel this afternoon to continue this discussion of the morning about the alleged felon purge, not an alleged purge, but people who are alleged to be felons, and other issues and problems that have developed in the run-up to the 2004 election.

We are going to have first on the panel the honorable Gracia Hillman is going to testify first because she will take some questions, and then she has to leave.

The honorable Gracia Hillman is Vice Chairperson of the U.S. Election Assistance Commission. Appointed to an initial two-year term, she was elected vice chairperson at the agency's first public meeting on March 23rd, 2004.

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1 She has long experience on matters of  
 2 voting, both as Executive Director of League of Women  
 3 Voters; Congressional Black Caucus Foundation; and the  
 4 National Coalition on Black Voter Participation, which  
 5 sponsored a popular nonpartisan grass roots program  
 6 called Operation Big Vote.

7 She has also held positions as a  
 8 consultant to the Council on Foundations and  
 9 Coordinator of the Voter Law Policy Project, the Joint  
 10 Center for Political and Economic Studies.

11 Ms. Hillman, I understand you have a  
 12 statement which you have presented for the record,  
 13 which will be included in the record without  
 14 objection. Would you please begin? '

15 MS. HILLMAN: I will. Thank you very  
 16 much.

17 Good afternoon, Chairperson Berry and  
 18 members of the Commission. Thank you for the  
 19 opportunity to be here to bring you up to date on the  
 20 Election Assistance Commission as well as to listen to  
 21 whatever comments, questions, and concerns the  
 22 Commission would like to share with us.

23 The U.S. Election Assistance Commission  
 24 appreciates the opportunity to brief you on its 2004  
 25 activities to implement the Help America Vote Act of

1 2002. In this presentation, I will review our  
2 progress and accomplishments and our plans for the  
3 balance of this fiscal year and fiscal year 2005.

4 The four members of the U.S. Election  
5 Assistance Commission are: DeForest B. Soaries, Jr.,  
6 Chairman; myself as Vice Chair; Paul DeGregorio; and  
7 Ray Martinez, III. And you do have copies of our  
8 biographies. Chairman Soaries is out of town and  
9 sends his regrets that he could not be here today.

10 We appreciate the vested interest that the  
11 Civil Rights Commission has in the status of voting in  
12 America. We also recognize and acknowledge the  
13 importance of what you have done for the United States  
14 and look forward to today's discussions.

15 The EAC commissioners and staff are proud  
16 of the accomplishments that we have made to date. As  
17 you probably know, we have worked under very  
18 challenging circumstances, which I will address.  
19 Nonetheless, we decided in strong bipartisan unity to  
20 not let the challenges and obstacles that we face  
21 prevent us from doing the work that the President;  
22 Congress; elections officials; and, perhaps most  
23 importantly, the voters of America are depending on us  
24 to do.

25 I will review some aspects of HAVA,

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1 including our requirements payments to the states, a  
2 little discussion about the use, reliability,  
3 accessibility, and security of various voting  
4 machines, and other issues such as the recruitment and  
5 training of coworkers and provisional voting.

6 The Help America Vote Act established the  
7 Election Assistance Commission as a new federal agency  
8 to be headed by the four commissioners. We serve  
9 staggered terms. And no more than two of the four  
10 commissioners may be of the same political party.

11 HAVA required that the commission be  
12 established no later than the end of February 2003.  
13 Unfortunately, we were not appointed until mid  
14 December of 2003. And, therefore, we're about ten  
15 months behind the schedule.

16 This led to all kinds of implications  
17 regarding our ability to meet some of the HAVA  
18 mandates in a timely fashion. To compound that, there  
19 was an appropriation of insufficient fiscal year 2004  
20 funds. I know everybody cries "insufficient  
21 appropriation," but the commission was only  
22 appropriated \$1.2 million to do its work in 2004,  
23 which meant the setting up of this brand new agency,  
24 the renting of office, the hiring of staff, and all of  
25 the things that have to be done to set up a new

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1 agency. And we were to find at least \$800,000 to  
2 publish the state plans.

3 Why publishing the state plans was so  
4 important is that HAVA required that the plans be  
5 published in the Federal Register for a 45-day comment  
6 period before we could begin the self-certification  
7 process and the payment of funds to the states.

8 We persevered past these obstacles. We  
9 did, in fact, publish the state plans, thanks in large  
10 measure to the General Services Administration, which  
11 found the funding to pay for the cost of publishing.

12 The General Services Administration also  
13 approved a rent waiver for fiscal year 2004, allowing  
14 the commission to rent offices. We had a choice of  
15 hiring staff with no offices or having offices and no  
16 staff. And we were determined to find a way to do  
17 both.

18 We began hiring our staff. Today,  
19 including the 4 commissioners, there are 13 full-time  
20 employees. We supplement our critical staffing needs  
21 with detailees from other federal agencies and  
22 interns.

23 We are on what we call a staggered hiring  
24 schedule. We did an analysis of our cash flow and  
25 determined that we could, in fact, begin filling the

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1 positions of general counsel and executive director  
2 this summer, and we are in the process of doing just  
3 that.

4 We are required to appoint an inspector  
5 general. We know we don't have the funds to do that.  
6 And so we are exploring the possibility of sharing an  
7 IG with another small commission or another agency.

8 As I've said before, the budget  
9 constraints delayed the establishment of the  
10 commission and --

11 COMMISSIONER EDLEY: Let us give you our  
12 IG.

13 MS. HILLMAN: Oh, you are giving one away,  
14 are you?

15 COMMISSIONER EDLEY: We're not going to  
16 need it.

17 MS. HILLMAN: I see. Well, okay. Well,  
18 teach us how to do that, please.

19 We addressed the delays that we  
20 encountered in the fiscal year 2003 annual report that  
21 we submitted to Senate Rules and House Administration  
22 Committees at the end of April. Interesting. Even  
23 though we weren't established, we still had the  
24 requirement to submit a fiscal year 2003 report.

25 We used that as an opportunity to do two

1 things. One was to report to Congress what was  
2 different from November 2000 up to that point. And a  
3 lot of things had changed. We also used the  
4 opportunity to inform Congress about some of the  
5 deadlines that had been missed and what we would do to  
6 try to catch up on that.

7 Electronic voting security is a major  
8 issue that is being discussed and that the commission  
9 has addressed and is addressing. We had a meeting on  
10 July 13th, just two days ago. At that meeting, we  
11 adopted a commission advisory letter on steps to  
12 ensure election integrity and to promote voter  
13 confidence in the use of electronic voting systems.

14 We know that voters across America want to  
15 be reassured that on election day they will have  
16 unaltered access to a ballot and that once that ballot  
17 is cast, their vote will be counted.

18 We have found that a great deal of our  
19 work since the beginning of this year has been shaped  
20 by discussions of this issue. We have been fairly  
21 aggressive in pursuing the issue. We held our first  
22 public hearing in May. And the hearing was on the  
23 topic, on the use, reliability, and security of  
24 electronic voting devices.

25 We will soon issue a report from that

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1 hearing. And on or about July 19th, hopefully early  
2 next week, we will issue what we hope will be useful,  
3 practical, and adaptable best practices to election  
4 administrators and voter advocates to help them not  
5 only deal with the electronic voting machines but all  
6 voting machines.

7 We can't forget that one of the pieces of  
8 equipment that raised the furor in November of 2000  
9 was the punch card machine. There are many voters who  
10 will be using punch card machines this November.

11 I would like to just take a moment to  
12 share some statistics, which I don't believe are in my  
13 testimony, but we can certainly make these available  
14 to you.

15 It is expected that in November 2004, of  
16 registered voters -- this is looking at registered  
17 voters, but we can also look at counties --  
18 approximately 12 percent of registered voters - 13  
19 percent, I should say -- will be using some kind of  
20 punch card machine. Another 14 percent will be using  
21 the lever machines. About 34 percent will be using  
22 optical scans. And then we will have about one-third,  
23 30 percent, who will be using electronic touch-screen.

24 So there are still a number of machines in  
25 use. Some --

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1 COMMISSIONER EDLEY: I'm sorry. That last  
2 number for the touch-screen was?

3 MS. HILLMAN: About 31 percent.

4 COMMISSIONER EDLEY: Thirty-one percent?

5 MS. HILLMAN: About 31 percent. Now,  
6 there is a mixed number in here. And that means that  
7 there are some counties that are using more than one  
8 type of machine. But most counties will be using the  
9 optical scan machine. So we did not want to forget  
10 that we know that there have been problems in the past  
11 with the administration of elections with problems  
12 with other machines.

13 The advisory letter advises that there are  
14 some steps that can be taken now to help ensure  
15 election integrity and to promote voter confidence.  
16 We are suggesting that every election jurisdiction  
17 that uses electronic voting devices should identify  
18 and implement enhanced security measures. And we are  
19 offering in our best practices guidance on specific  
20 methods that will assist in the identification and  
21 execution of security methods when needed.

22 All voting software vendors should allow  
23 election officials with whom they have contracts to  
24 analyze the proprietary source code of the software  
25 and to protect that process by using appropriate

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1 nondisclosure and confidentiality agreements. The  
2 commission is prepared, as is the National Institute  
3 of Standards and Trust, to assist in the analysis when  
4 needed.

5 We are suggesting that every voting  
6 software vendor should submit their certified software  
7 to the National Software Reference Library, which is  
8 located at NIST. This will facilitate the tracking of  
9 software version usage. And this library is designed  
10 to collect software from various sources and  
11 incorporate the files into reference data sets.

12 It gets very technical, but basically it  
13 will allow the library to determine whether or not the  
14 software code has been tampered with at any time after  
15 its installation.

16 And we are also suggesting that if anybody  
17 believes there has been any tampering with the  
18 software, that it should be reported and reported as a  
19 crime because tampering with elections is a crime.

20 We are working to establish a process  
21 where we can document all incidents and any problems  
22 concerning electronic voting. There is a very  
23 technical process that the Election Assistance  
24 Commission will go through working with the National  
25 Institute of Standards in Technology to update the

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1 standards.

2 Almost every piece of equipment in this  
3 country has a set of standards that it must comply  
4 with. Up to this point and even once we adopt our own  
5 standards, they're voluntary. They're voluntary  
6 standards. Nonetheless, they're standards that  
7 election officials and vendors do want to comply with.

8 So sometime in 2005, we expect that we  
9 will be adopting new standards and that we will be  
10 providing guidelines to the states regarding the  
11 voting systems that are available and whether or not  
12 they meet the standards.

13 You probably know that the Help America  
14 Vote Act requires a board of advisers and a standards  
15 board. I am amused and sometimes entertained at the  
16 very specific requirements of these boards.

17 I am the designated federal officer for  
18 the 37-member board of advisers and the 110-member  
19 standards board. Both boards have basically the same  
20 role and responsibilities, which are to review best  
21 practices guidance and guidelines that the commission  
22 will issue.

23 I have provided in the testimony  
24 information about the makeup of those boards and who  
25 currently sits on them. As you know, the civil rights

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1 commission has two seats on the board of advisers.  
2 And we look forward to receiving the appointments of  
3 those two people at your convenience.

4 In 2003, General Services Administration  
5 appropriated what was called Title I early money.  
6 Some of that money could be used by states to replace  
7 their punch card and lever machines.

8 If a state wanted to undertake that  
9 process but did not believe they could get it done in  
10 time for November 2004, they could exercise their  
11 right to request a waiver so that they could have  
12 another year or two to accomplish that. Some states  
13 did exercise the waiver, but most states who accepted  
14 the title I money are proceeding to replace the punch  
15 card and lever machines.

16 CHAIRPERSON BERRY: You have about four  
17 more minutes.

18 MS. HILLMAN: Okay. Unfortunately, with  
19 the process, a lot of states did purchase the  
20 electronic machines and then were confronted with  
21 concerns that were raised about the use of that  
22 equipment. And that is a major challenge for a lot of  
23 the states.

24 We have just recently appropriated almost  
25 one billion dollars in Title II payments to states.

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1 States are beginning to start certifying that they are  
2 in compliance with HAVA. We expect that by November,  
3 we will have distributed Title II payments to all  
4 states, which means that almost three billion dollars  
5 in federal funding will have gone to states to come in  
6 compliance with HAVA.

7 I will be glad to pick up the rest of my  
8 comments answering any questions that you might have.

9 CHAIRPERSON BERRY: All right. Fantastic.  
10 I'm sure that others have questions, but I have a  
11 couple that I would like to start off with if you  
12 don't mind.

13 This morning we heard a lot of testimony  
14 about the use of computerized programs to engage in  
15 purging alleged felons from the voter rolls, we talked  
16 particularly about Florida, but Accenture, the company  
17 Accenture, has contracts with a number of other states  
18 that they listed for us, Florida, Arkansas,  
19 Pennsylvania, Wyoming, Colorado, Kansas, Tennessee,  
20 Texas, and so on, to do the computer program for their  
21 computerized voter registration lists.

22 And, as I understand it, under HAVA, aside  
23 from the felon purge, the states are all supposed to  
24 come into compliance by having statewide computerized  
25 registration lists. And most of them have a waiver

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1 for the 2004 election, as I understand it.

2 Am I right about that?

3 MS. HILLMAN: Yes.

4 CHAIRPERSON BERRY: The experience that  
5 they have had in Florida with the purge list has been  
6 useful in a way because it alerts them to the glitches  
7 and problems that can occur with these lists.

8 Now, the testimony that we have heard led  
9 some of us to believe that there may be some civil  
10 rights violations in the way that this has been  
11 carried out, not only in Florida but perhaps in other  
12 states given what the witness said about glitches.

13 As I understand it, when the Election  
14 Assistance Commission becomes aware that there are  
15 people claiming that procedures used violate their  
16 right to vote, do you simply withhold that for the  
17 Justice Department or what do you do?

18 MS. HILLMAN: I have to say that I'm not  
19 aware that we have received such a complaint,  
20 certainly nothing filed formally with us. We do not  
21 have regulatory authority. We do not have any  
22 enforcement powers. The enforcement powers are vested  
23 with the Department of Justice.

24 What we seek to do is to make certain that  
25 nothing a state would do would undermine what HAVA

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1 provides for but does give an awful lot of discretion  
2 to the states.

3 HAVA provides a floor. And the states can  
4 then develop procedures that they feel are appropriate  
5 for administration of elections. States will put  
6 together the procedures that they feel are appropriate  
7 for the administration of elections there.

8 Most states did require or request the  
9 waiver because the centralized database was seen as a  
10 very large project for states to undertake. They have  
11 until, I think it is, January 1 of 2006 to come into  
12 compliance with that.

13 So yes, as we begin to receive complaints,  
14 we would refer them if they are formal complaints to  
15 the Department of Justice or in some cases informally  
16 talk back with the state election officials to find  
17 out just what is the procedure that is being  
18 complained about.

19 Because of so many new components of HAVA,  
20 there is a lot of misunderstanding, whether it's on  
21 our part, on the part of the state, or on the part of  
22 the voters or the voter groups.

23 CHAIRPERSON BERRY: We concluded this  
24 morning and I said to the press that were based on  
25 some comments that Commissioner Edley and the Vice

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1 Chair made and their impressions that we would write a  
2 letter to the Justice Department about reviewing  
3 whether there are any violations in the way the purge  
4 is being handled simply because our statute and our  
5 policy is to cooperate with Justice and to forward  
6 such information to them because they are the  
7 enforcement agency. If the Election Assistance  
8 Commission had enforcement authority, then I guess we  
9 would refer it to your commission.

10 Let me ask you this. I must say that for  
11 myself, I don't have any great expectations that the  
12 Justice Department will go out and vigorously do  
13 anything about this, which is why I am eager to hear  
14 from the nonprofit groups about what they plan to do.  
15 In any case, it is our duty to at least hold their  
16 feet to the fire.

17 Let me ask you this. Could you, the  
18 Election Assistance Commission, continue to give money  
19 to the states, this three billion dollars you're  
20 talking about, if it were discovered in some of the  
21 states that they were engaged in practices which  
22 violated the civil rights of people? What would you  
23 do?

24 How would the process go if you received a  
25 formal complaint that the procedures as used in some

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1 state or others violated the civil rights of folks and  
2 you were giving them money? Would you continue to  
3 give them money until after somebody else adjudicated  
4 it? Would they just keep on giving the money or what  
5 would happen?

6 MS. HILLMAN: Well, unfortunately, we  
7 don't have a lot of discretion over issuing the  
8 requirements payments. HAVA requires that once a  
9 state self-certifies and we review and indeed find  
10 that a state has met some of the requirements of HAVA  
11 that are specified for the self-certification, that  
12 the requirements payments will be sent.

13 Now, we are working closely with the  
14 Justice Department. In fact, at our meeting on  
15 Tuesday, Mr. de Santos from the Justice Department  
16 made a presentation and talked about what the Justice  
17 Department's responsibilities are and what they would  
18 do to follow up on any complaints that were viewed as  
19 affecting the elections.

20 It is our, the commission's, opinion that  
21 anything that would prevent people from being able to  
22 be registered and voting should be seriously looked at  
23 and would, in fact, be an interruption in the election  
24 process.

25 If Justice Department finds that a

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1 jurisdiction is in violation, it is my understanding  
2 but I am not 100 percent clear as to how it works that  
3 the jurisdiction would be required to then pay back  
4 some of the HAVA monies if the violation were found  
5 against HAVA.

6 Now, it gets really kind of complicated in  
7 terms of what it might be and how the felon purging,  
8 for example, might, in fact, be viewed as a  
9 jurisdiction not being in compliance problem.

10 CHAIRPERSON BERRY: But your certification  
11 requirement doesn't require you to have them certified  
12 that they are engaged in activities that do not  
13 violate the civil rights laws?

14 MS. HILLMAN: This is true.

15 COMMISSIONER EDLEY: Is there a civil  
16 rights compliance?

17 MS. HILLMAN: There is an administrative  
18 complaint procedure. Justice Department has to sign  
19 off to make sure that the jurisdiction is in  
20 compliance with the Voting Rights Act.

21 So when we receive it, we are looking at  
22 provisions for provisional ballots, the administrative  
23 complaint procedure, if they accepted title I monies,  
24 what the status is with respect to their replacing  
25 equipment, have they met the deadlines, and a couple

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1 of other areas.

2 In terms of that piece of it, the Justice  
3 Department then signs off, tells us that they have  
4 signed off, and then their certification is process.

5 COMMISSIONER EDLEY: I may be remembering  
6 earlier iterations of the legislation, but at one  
7 point there was I remember a self-certification  
8 compliance with applicable civil rights statutes. Is  
9 that just a dream that I had?

10 CHAIRPERSON BERRY: There are some. Yes,  
11 there are -

12 COMMISSIONER EDLEY: It was a dream? No?

13 CHAIRPERSON BERRY: Oh, no.

14 COMMISSIONER EDLEY: So if the state - am  
15 I interrupting you?

16 CHAIRPERSON BERRY: That's okay. That's  
17 fine.

18 COMMISSIONER EDLEY: Just by way of  
19 background, before you came, in our last session, I  
20 think that a couple of us got rather exercised about  
21 the appearance of civil, if not criminal, violations  
22 of the civil rights statutes in the extraordinary  
23 negligence in the way in which the felon purging  
24 process has been constructed.

25 Just hypothetically, if a state falsely

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1 self-certified that it was in compliance with civil  
2 rights statutes, why wouldn't that be a basis for your  
3 commission to deny funding?

4 MS. HILLMAN: We don't have that  
5 authority.

6 COMMISSIONER EDLEY: Really?

7 MS. HILLMAN: I think what I am trying to  
8 explain to you is that we have limited authority --

9 COMMISSIONER EDLEY: Right.

10 MS. HILLMAN: -- with respect to issuing  
11 the requirements payments. Yes, it is true that HAVA  
12 requires that state certify that they are in  
13 compliance with a number of things: disability  
14 requirements, voting rights, and so on and so forth.

15 It would be up to the Justice Department  
16 to determine that, in fact, a state either falsely  
17 self-certified or self-certified and then in some part  
18 of its procedures wasn't in compliance.

19 COMMISSIONER EDLEY: So you think the only  
20 remedy is ex poste maybe recoupment or something?

21 MS. HILLMAN: At this point, yes, at this  
22 point.

23 CHAIRPERSON BERRY: And only if the  
24 Justice Department made a determination and instructed  
25 you to do so?

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1 MS. HILLMAN: Yes.

2 COMMISSIONER EDLEY: Your voice is just  
3 dripping in skepticism.

4 MS. HILLMAN: Well, my voice is dripping in  
5 skepticism --

6 COMMISSIONER EDLEY: I don't understand  
7 that. I don't understand that.

8 MS. HILLMAN: -- simply because our  
9 experience with the Justice Department --

10 COMMISSIONER EDLEY: I know you to be a  
11 good Christian woman.

12 MS. HILLMAN: I am.

13 COMMISSIONER EDLEY: And you believe in  
14 the possibility of redemption.

15 MS. HILLMAN: I do. I am waiting for  
16 redemption.

17 CHAIRPERSON BERRY: I know that this  
18 Commission recommended to the Congress that they give  
19 EAC, Election Assistance Commission, enforcement power  
20 --

21 MS. HILLMAN: Yes.

22 CHAIRPERSON BERRY: -- and that problems  
23 of the type we have been sitting here discussing this  
24 morning would have been dumped over in your lap so  
25 that you could use the fund club to get people in line

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1 so that they would do what they were supposed to do.  
2 And we wouldn't have all of these issues.

3 But now we are sitting here with the  
4 situation where a state has demonstrably -- I don't  
5 mean just presumptively -- but demonstrably by its own  
6 admission used a list which is exclusionary and now  
7 has withdrawn it on their own initiative after a  
8 little prodding from the civil rights groups. And,  
9 yet, does the state receive HAVA funding?

10 MS. HILLMAN: Absolutely.

11 CHAIRPERSON BERRY: And they are still  
12 getting funding.

13 COMMISSIONER EDLEY: If I might add, Madam  
14 Chair, it is not only the possibility of a civil  
15 rights violation, but it is a civil rights violation  
16 in the process of creating the voter file that HAVA  
17 directs them to create.

18 CHAIRPERSON BERRY: So just in essence, in  
19 trying to so-called implement HAVA, --

20 COMMISSIONER EDLEY: Right.

21 CHAIRPERSON BERRY: -- they have engaged  
22 in negligence at best, --

23 COMMISSIONER EDLEY: It appears.

24 CHAIRPERSON BERRY: -- at best, and  
25 something else at worst? And, yet, they continue to

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1 receive all of this money. And, yet, there's nothing  
2 you can do because they didn't put the provisions in  
3 the statute. And so now we have to worry about what  
4 the nonprofit is going to do about it.

5 MS. HILLMAN: Well, there is nothing we  
6 can do with respect to enforcement. Now, certainly in  
7 our review if something is called to our attention  
8 that we are concerned about, once again, we discuss it  
9 with Justice. I mean, we don't have the enforcement  
10 authority. So if we --

11 CHAIRPERSON BERRY: But you are an  
12 independent agency, too, aren't you?

13 MS. HILLMAN: Are we independent?

14 CHAIRPERSON BERRY: You are an independent  
15 agency, aren't you?

16 MS. HILLMAN: It depends on how you define  
17 "independent."

18 CHAIRPERSON BERRY: Well, I thought under  
19 the statute, the Congress had made the Election  
20 Assistance Commission an independent agency.

21 MS. HILLMAN: We are an independent  
22 agency.

23 CHAIRPERSON BERRY: We are an independent  
24 agency.

25 MS. HILLMAN: Right.

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1 CHAIRPERSON BERRY: That means we hold up  
2 our -- now, suppose someone, a state, some election  
3 officials, were requiring people to show ID to vote  
4 when they weren't supposed to. The law doesn't  
5 require them to show ID. Could that state continue to  
6 receive HAVA funding?

7 MS. HILLMAN: The state would probably  
8 have already received the HAVA funds.

9 CHAIRPERSON BERRY: Right. And would you  
10 get it back?

11 MS. HILLMAN: Would we get it back? I  
12 don't know.

13 CHAIRPERSON BERRY: What if a state used  
14 provisional ballots but didn't actually count them  
15 because they didn't know they were supposed to do  
16 that?

17 MS. HILLMAN: There would have to be some  
18 investigation. There would have to be something done.  
19 I mean, certainly anecdotal information alone isn't  
20 going to trigger a review.

21 CHAIRPERSON BERRY: No, no. I mean if the  
22 state demonstrably does that. I am speaking of  
23 instances where a state concedes that there were  
24 instances where this did happen, just as a state has  
25 conceded that this purge list doesn't work. Would

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1 they continue to receive money unless the Justice  
2 Department said, "No" or unless some nonprofit group  
3 went to court or what would happen?

4 MS. HILLMAN: Well, let me just explain  
5 how the payments are going. We are right now issuing  
6 title II requirements payments for both fiscal years  
7 2003 and 2004. The 2003 payments weren't issued  
8 because the commission wasn't in existence.

9 And so there is, as prescribed in HAVA,  
10 the self-certification process and our working on this  
11 with Justice in the states that are covered under the  
12 Voting Rights Act. Thirty states have already been  
13 issued their requirements payments.

14 The next set of requirements payments  
15 would be in 2005. A much smaller amount of money has  
16 been put into the President's budget for the  
17 requirements payments.

18 So, by the time these situations have been  
19 reported, investigated, and ruled upon, the state  
20 would have already had the requirements payments. And  
21 it would be a matter of some decision being made about  
22 what portion, if any, or all of that money would have  
23 to be repaid because a state was not in compliance.

24 We do have some states that cannot receive  
25 their 2004 requirements payments because certain

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1 things haven't been done. Either the legislature has  
2 not yet passed the enabling HAVA requirement or they  
3 don't have the five percent match that is required.

4 So you have got states receiving both the  
5 2003 and the 2004 money or only the 2003 money, but as  
6 of right now all states that have self-certified have  
7 received at least the 2003 money. In the case of  
8 Florida, they have not self-certified for the 2004  
9 funds, only the 2003.

10 CHAIRPERSON BERRY: Maybe they will  
11 concede that they are out of compliance.

12 Does anyone else have a question? I know  
13 that the Vice Chair has to go. Okay. All right.

14 Thank you very much for coming. We very  
15 much appreciate it.

16 MS. HILLMAN: I appreciate the  
17 opportunity. And my apologies to my panelists for  
18 having to leave early. Thank you.

19 CHAIRPERSON BERRY: Now we will continue  
20 with Mr. Ralph Neas, who is the former Executive  
21 Director of the Leadership Conference on Civil Rights  
22 but is the President of the People For the American  
23 Way and People For the American Way Foundation. As  
24 president, Mr. Neas has increased the members'  
25 quarters of the organization and has now about 675,000

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1 people.

2 He has been a national leader in the  
3 efforts to preserve an independent and fair judiciary  
4 and to challenge movements to reduce decades of social  
5 elections programs, put together coalitions on various  
6 policy issues, and established an election protection  
7 program to make sure every vote counts, moved to amend  
8 the U.S. Patriot Act, and to defend and reform public  
9 schools.

10 Mr. Neas, would you please proceed?

11 MR. NEAS: Thank you, Madam Chairperson  
12 and commissioners. This is a wonderful opportunity to  
13 have this moment to share with you what the People For  
14 the American Way Foundation is doing on a number of  
15 these issues and, very importantly, to share the  
16 platform with Gracia Hillman, who just left; Barbara  
17 Arnwine, Melanie Campbell, two extraordinary civil  
18 rights leaders and co-founders and creators of the  
19 broad Election Protection Coalition.

20 I want to commend you for holding this  
21 hearing and for focusing attention on critically  
22 important issues facing the nation during this year.

23 I really want to once again salute the  
24 Commission for its extraordinarily important studies  
25 of the 2000 presidential election and on how to

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1 prepare for the upcoming election. I salute your  
2 courage and your leadership.

3 I serve as the People For the American Way  
4 Foundation president. And we do have now 675,000  
5 members and supporters. We also have now two decades  
6 of commitment to nonpartisan civic participation  
7 efforts.

8 Since our founding by Norman Lear, Barbara  
9 Jordan, and other civic business leaders, People For  
10 has urged Americans to take seriously their  
11 responsibilities as citizens. We have sought to  
12 engage those Americans who have been traditionally  
13 under-represented at the polls, including young voters  
14 and people of color.

15 There is no more fundamental right to the  
16 health of our democracy than the right to vote. There  
17 is no greater guarantee of freedom than the conduct of  
18 open and fair elections that expresses the will of the  
19 people and maintains the public's trust and  
20 confidence.

21 Regrettably, public confidence in our  
22 system of elections was shaken to the core during the  
23 2000 elections and has yet to be fully restored.  
24 There was only one way to restore that confidence. We  
25 must not let the election debacle we saw in 2000

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1 happen again in 2004. We must do everything we can as  
2 a government and as a free people to ensure that in  
3 this election, every voter has a chance to cast a vote  
4 that will be counted.

5 People For the American Way Foundation is  
6 proud to also be a creator and one of the founding  
7 members of a nonpartisan election protection program,  
8 a broad coalition of national, state, and local  
9 advocacy organizations dedicated to protecting voter  
10 rights.

11 Election protection has been active in  
12 every election after 2000. You, Barbara, pointed out  
13 that it is about eight elections now that we have all  
14 been working together, Melanie.

15 In each year, the coalition continues to  
16 grow in its capabilities and its reach. This year,  
17 election protection is carrying out its most  
18 wide-ranging effort. And we are going to be active in  
19 more than 30 states nationwide. This is the entire  
20 coalition.

21 It is our top institutional priority.  
22 There is nothing more important than protecting the  
23 rights of voters in the integrity of the democratic  
24 process.

25 I'll tell you a little bit more about

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1 election protection in a moment. And it will be  
2 certainly underscored and expanded by my friends and  
3 colleagues. But first I think it would be helpful  
4 briefly to review how we came to this path and to  
5 address the enormity of the challenges that we face.

6 During the 2000 elections, the attention  
7 of the nation and the world was understandably focused  
8 on the voting fiasco in Florida. Voters were  
9 confounded by confusing ballot forms. Poorly trained  
10 poll workers gave voters bad information. Voters were  
11 falsely told that polls were open when they were  
12 closed. And polls were closed when they should have  
13 been open. People were wrongly purged from the voting  
14 rolls and didn't find out until they arrived at the  
15 polling place, when it was too late.

16 In one of the closest presidential  
17 elections in our history, a tense recount revolved  
18 around the examination of hanging, dimpled, and  
19 pregnant chads.

20 After more than a month of uncertainty, of  
21 course, the presidential election was ultimately  
22 decided by a single vote in the United States Supreme  
23 Court, ending the recount and leaving the nation  
24 bitterly divided.

25 While the greatest attention was paid to

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1 Florida, election problems were by no means limited to  
2 that state. When the Commission pointed this out --  
3 very, very compelling.

4 I believe it was in 2001 when a Cal  
5 Tech-M.I.T. investigation that was launched  
6 immediately after the election estimated that  
7 nationwide more than four million votes went uncounted  
8 during the 2000 election. This was not a Democrat  
9 versus a Republican problem. This was a problem that  
10 reached across parties and was a national scandal.

11 I wish I could say that since those dark  
12 days the nation has come together to solve those  
13 terrible problems, restore complete fairness and  
14 accountability to our voting system, and act with  
15 nonpartisan and good will to bring voters to the polls  
16 with renewed and justified faith in our system. I  
17 wish I could say that in the eyes of the world, we  
18 have restored our reputation as a nation where every  
19 citizen has a vote and every vote counts. Sadly,  
20 that's not the case.

21 Despite some positive efforts on Capitol  
22 Hill and at state and local governments, the coming  
23 election threatens continued problems and grave risks  
24 of disenfranchisement for millions of American voters.  
25 And as recent events in Florida have proven again,

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1 many of those problems will overwhelmingly  
2 disenfranchise poor and minority voters.

3 This morning you heard from Mr. Sam  
4 Heyward, whose personal faith and confidence in our  
5 system has been deeply shaken. In a troubling echo  
6 from the infamous felon purge lists of 2000, the State  
7 of Florida this year distributed a new purge list to  
8 county election officials.

9 With the help of Leon County election  
10 supervisor Ion Sancho -- I believe he also testified  
11 this morning.

12 CHAIRPERSON BERRY: Yes, he did. He is  
13 sitting back there.

14 MR. NEAS: We at People For thank you very  
15 much, Commissioner.

16 We assisted the Tallahassee City  
17 Commissioner Andrew Gillum, who, by the way, is an  
18 employee of People For the American Way Foundation, in  
19 contacting people who are wrongly placed on that list.  
20 Mr. Heyward was among them.

21 I congratulate him for demonstrating great  
22 courage in coming forward. He was willing to disclose  
23 a mistake he made long ago as a 22-year-old. He was  
24 willing to run the risk of political retribution in  
25 order to help others and to put a human face on a

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1 deeply flawed policy.

2 The State of Florida has yet to explain  
3 why a man who paid his debt to society more than 20  
4 years ago and who has been a steadfast voter ever  
5 since appeared on a voter purge list.

6 Mr. Heyward's case was by no means  
7 isolated. In fact, the Miami Herald found out that  
8 more than 2,100 people on the list who had received  
9 clemency and, in fact, had every right to vote under  
10 the state law were on that list.

11 Just this past weekend, the war wound of  
12 the policy was even more troubling. Somehow the  
13 state's database of potential felons to be purged, a  
14 list of nearly 48,000 names, contained just 61  
15 Hispanic names and, in fact, contained an overwhelming  
16 majority of African American names.

17 In Florida, of course, Hispanics of Cuban  
18 origin, where the majority of Florida Hispanics tend  
19 to vote Republican, where African Americans are  
20 largely Democratic voters, the state insists that,  
21 despite the undeniable political implications, this  
22 was a mistake that somehow went unnoticed for months  
23 while the state fought in court to keep the lists  
24 secret.

25 Only because the news media went to court

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1 and demanded that the lists be released under  
2 Florida's open records laws and only because civil  
3 rights advocates fought for months the deep and  
4 discriminatory flaws, did the state's policy become  
5 known.

6 It took the news media just days,  
7 especially the New York Times and the Miami Herald, to  
8 uncover the problems the state could not or would not  
9 find on its own.

10 Thanks to the conscientious work of the  
11 news media and many civil rights organizations, the  
12 state this weekend announced it would withdraw the  
13 flawed data and would advise county officials that  
14 they should not implement the purge based on that  
15 data. Many voters at risk of losing their rights have  
16 been protected, at least temporarily. Nevertheless,  
17 the whole episode has left deep scars and done great  
18 damage to public confidence.

19 Once again, voters in Florida were left  
20 wondering whether they could trust their government,  
21 whether the right to vote was being valued and  
22 protected.

23 It is clear that as a nation, we must act  
24 to prepare the damage that has been done to the public  
25 trust and restore voter confidence in the integrity of

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1 our elections. The challenges are unquestionably  
2 enormous, but so must be our resolve.

3 As states struggle to implement new  
4 federal voting regulations with limited funds, serious  
5 concerns have been raised regarding new ballot forms  
6 and new voting technologies. In particular, grave  
7 doubts have emerged over the reliability and  
8 accountability of new electronic voting machines, the  
9 vulnerability to fraud, and the ability to conduct a  
10 verifiable recount in a contested election.

11 And, of course, persistent and pervasive  
12 instances of voter intimidation and suppression have  
13 by no means disappeared. Indeed, shortly the NAACP  
14 and People For the American Way Foundation will  
15 release a compilation of news media reports of such  
16 instances from recent elections, all of which were  
17 targeted against minority and low-income populations.

18 With the permission of the commissioners,  
19 I would like to be able to submit that report when  
20 it's ready to go, hopefully in the next few days or  
21 the week. The examples I have in this report can be  
22 shared with you and the public. And there will be no  
23 need to go through this part of the report.

24 CHAIRPERSON BERRY: We will put it in the  
25 record, without objection.

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1 MR. NEAS: Thanks to the successes of the  
2 civil rights, the terrible days of poll taxes,  
3 literacy tests, the national physical violence at the  
4 ballot box are behind us, but the rights secured by  
5 the 1965 Voting Rights Act and by the sacrifice of  
6 generations of Americans who fought and sometimes died  
7 to secure those rights remain at risk.

8 The tactics today may be more subtle and  
9 may come in the form of computer programs, fake  
10 police, or misleading flyers, but they are real and  
11 effective. And as the struggles of the early civil  
12 rights era begin to fade from living memory, our  
13 dedication to protecting the fundamental right to vote  
14 in the conduct of free and fair elections must be  
15 renewed and must be strengthened.

16 The continuing problems of voter  
17 intimidation and the unresolved aftermath of the  
18 widespread voter disenfranchisement of the 2000  
19 election led to huge growth in the election protection  
20 program in the past three years.

21 Again, allow me to commend my panelists  
22 and our strategic partners for not just working during  
23 the last three or four months of an election year, day  
24 to day, week to week, month to month for years.

25 Election protection draws its strength

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1 from its strategic coalition partners. And these,  
2 again, are the people that are responsible working  
3 together. And they include not just the Lawyers'  
4 Committee and the National Coalition on Black Civic  
5 Participation in '04, but the NAACP national voter  
6 fund, the legal defense in education fund, the A.  
7 Philip Randolph, the Advancement Project, and others.

8 In 2002, we were joined by a number of the  
9 Latino organizations, the League of United Latin  
10 American Citizens, the Mexican American legal defense  
11 in education fund, the Labor Council for Latin  
12 American Advancement, the national council and others.

13 This year we are working with the voters'  
14 protection project of the America's Families United,  
15 the AFL/CIO, and a number of new organizations  
16 dedicated in this arena to the nonpartisan effort to  
17 protect voter rights.

18 The election protection voter program  
19 seeks to address the systemic neglect and obstruction  
20 of voting rights in African American and Latino  
21 communities.

22 CHAIRPERSON BERRY: You've got a minute,  
23 Ralph.

24 MR. NEAS: A minute? It's still on  
25 yellow. So we've got a different red light system.

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1 Okay. I will quickly finish up. Can I have two  
2 minutes?

3 The program promotes civic participation  
4 by educating voters about their rights and helping  
5 them hold election officials accountable when those  
6 rights are violated.

7 Very quickly, we are distributing millions  
8 of copies of the state-specific voter bill of rights,  
9 an education tool that is tailored to reflect the  
10 voting laws and special circumstances of each state in  
11 Spanish and English.

12 There is a toll-free number that we are  
13 operating, the people at this table, 1-866-OUR-VOTE.  
14 It's running. It's national. And it will provide  
15 voters with free legal advice and assistance from now  
16 through election day and beyond.

17 Our partners, we are going to be  
18 developing and have developed legal manuals for key  
19 states so that our volunteer lawyers and law students  
20 can be ready to provide quick and accurate legal  
21 assistance.

22 We in the coalition are training poll  
23 monitors for primary elections and the general  
24 election in November. And we expect tens of thousands  
25 of volunteers, who will participate in these

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1 elections.

2 We are pleased to provide voters and  
3 public officials free legal advice and assistance, as  
4 we did in the case of Mr. Heyward. We are ready to  
5 launch litigation, which I think is going to be the  
6 answer to some of your questions.

7 As problems involving voter databases,  
8 accesses to the polls, voting technology, and other  
9 issues arise, we are setting up a clearinghouse for  
10 information gathered among our coalition partners to  
11 share experiences and best practices and help track  
12 and coordinate the activities of the hundreds of  
13 organizations engaged in this large-scale  
14 collaborative effort.

15 And we are reaching out to Republican and  
16 Democratic state and local officials to work with them  
17 to assess the potential for election day problems.  
18 This is particularly important during the first  
19 presidential election since HAVA.

20 We have been monitoring states to ensure  
21 that the HAVA implementation does not unnecessarily  
22 burden voters, including and very importantly, the  
23 provisional balloting procedure that mandates that  
24 each state must provide a provisional ballot to any  
25 person who declares that he is registered and eligible

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1 to vote in a federal election.

2 The coalition is also reviewing plans for  
3 voter education, poll worker training in election  
4 systems, and polling place assignments to assure that  
5 voters will not be disenfranchised due to unlawfully  
6 discriminatory procedures already in place.

7 Many Republican and Democratic local  
8 election officials have already agreed to work with us  
9 to make sure that this is done properly, to conduct  
10 workshops with us to educate voters on how to use the  
11 voting machines this summer.

12 I am going to skip through and just submit  
13 for the record, if I may, our analysis of the  
14 electronic voting machines and many of the other  
15 issues that I am sure Barbara and Melanie and others  
16 will address in their own testimony.

17 I began by saying that the faith of the  
18 American people in our election process has been  
19 shaken. As I have discussed the events of 2000, the  
20 continuing problems in the intervening years have done  
21 little to dispel the doubts. The spectacle of another  
22 flawed purge list in Florida in 2004 serves as a  
23 double-edged reminder of the problems we face and the  
24 only way to solve them.

25 The problems with the voter purge lists in

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1 Florida arose either as the result of breathtaking  
2 official incompetence or deliberate malfeasance. I  
3 hope we will know the truth some day soon, but  
4 whatever is the cause of the implementation, the purge  
5 lists in Florida were stopped because civil rights  
6 advocates raised persistent questions; courageous  
7 citizens, like Sam Heyward, came forward; and a free  
8 and unfettered press prevailed in an independent  
9 court.

10 The checks and balances that have kept  
11 this democracy free and healthy for more than two  
12 centuries worked, but only through vigilance. And we  
13 need continued vigilance.

14 I am proud to say that People For and our  
15 partners in the nonpartisan Election Protection  
16 Coalition intend to do everything we can to protect  
17 the rights of the voters of this nation to make sure  
18 that every voter has the opportunity to vote on  
19 election day and every vote is counted.

20 Finally, we commend you again for drawing  
21 attention to these problems and to this issue. This  
22 has to be one of the most important challenges facing  
23 our nation today.

24 Thank you for this opportunity to testify.  
25 You can count on People For and its allies any time

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1 you want us to come before this Commission and to help  
2 share facts, help share information, hopefully help  
3 share solutions. We are willing, and we are able.  
4 And we thank you for your leadership.

5 CHAIRPERSON BERRY: All right. We're  
6 going to require you to do more than that, but we will  
7 --

8 MR. NEAS: This is only the beginning, I'm  
9 sure.

10 CHAIRPERSON BERRY: But I saw Senator Bill  
11 Nelson come in, who is a great champion on a lot of  
12 issues but who, in particular, helped to shed the  
13 disinfectant of sunlight on the felon purge issue in  
14 the State of Florida. I want to welcome you and ask  
15 you if you would like to say a few words to us.

16 SENATOR NELSON: Thank you, Madam  
17 Chairperson. It is a pleasure. I will make just a  
18 few words. I want to bring you some good news and  
19 some bad news from the State of Florida.

20 CHAIRPERSON BERRY: Okay.

21 SENATOR NELSON: The good news is that  
22 after there was an attempt to knock off 48,000 from  
23 the rolls, the voting rolls, in Florida under a  
24 supposed law in Florida that says any convicted felon  
25 must have their rights restored by a clemency board --

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1 and that is another issue because Florida is only one  
2 of seven states that goes through that process.

3 This list, hot on the heels of this awful  
4 experience that we had in the year 2000, in which it  
5 was a list of some 150,000 convicted felons and, of  
6 course, what would happen is that people would get to  
7 the polls. And if their name was John Doe, they would  
8 be told that they were no longer eligible to vote  
9 because they were a convicted felon when, in fact, the  
10 actual John Doe was someone else.

11 And how many thousands of people who were  
12 denied, which is just unbelievable that that is  
13 happening in America in the year 2000? Well, in the  
14 year 2004, at the eleventh hour, the State of Florida  
15 comes up with a list that they said is clean. In this  
16 list is 48,000.

17 The instructions go out to the 67 county  
18 supervisors of election, strike these people from the  
19 rolls. And, oh, by the way, the Florida legislature  
20 has passed in 2001 and again modified in 2003 a law  
21 that says that this list cannot be inspected or copied  
22 by the public.

23 So a number of organizations, including  
24 CNN, file suit questioning the constitutionality of  
25 the Florida law. As one of the senior elected

1 officials of Florida, I joined the lawsuit in a friend  
2 of the court brief.

3 And, hallelujah, a courageous Circuit  
4 Court judge struck it down as unconstitutional. And  
5 the state gave up. So they are taking the position  
6 now that: Okay. You have 67 county supervisors of  
7 elections, you are going to have to figure it out for  
8 yourself as to how to strike the convicted felons from  
9 the list. Okay. That was a win. Then let me tell  
10 you what came along right after that.

11 CHAIRPERSON BERRY: Oh, boy.

12 SENATOR NELSON: Get ready. They then  
13 come up with the idea that: Okay. If you are a  
14 convicted felon and you have since had your rights  
15 restored but some of these convicted felons had been  
16 voting in the past, thinking that they were eligible  
17 -- they didn't know they had to go through the  
18 clemency process. If you had been voting but now your  
19 rights are restored, you have got to go back and  
20 re-register.

21 Now, why is this happening in the State of  
22 Florida? Of course, the stakes are high because  
23 Florida's 27 electoral votes very well may determinate  
24 the outcome of a national presidential election.

25 COMMISSIONER EDLEY: Again.

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1 CHAIRPERSON BERRY: Again.

2 SENATOR NELSON: Again. And so a number  
3 of us have raised so much cain about this the state  
4 has relented and said: You don't have to go and  
5 re-register. But the fact is that they were putting  
6 up that kind of barrier.

7 I will tell you one other piece of good  
8 news is that just yesterday an appeals court in our  
9 state court system ruled that state prison officials  
10 must assist the felons with the necessary forms and  
11 assistance to get their voting rights restored.

12 What had happened, as you can well  
13 imagine, is that the convicted felon, when they're  
14 getting out of prison, they don't have any idea of  
15 what to do about appealing or filing with the Florida  
16 Clemency Board to get their rights restored.

17 So that has been challenged that the State  
18 of Florida has not been assisting them. Just  
19 yesterday an appeals court said that the state prison  
20 system is going to have to provide them with the  
21 necessary forms and assistance and to straighten out  
22 their computerized system that was slowing this  
23 process down.

24 Now, that's the good news. Let me give  
25 you the bad news from yesterday. The bad news is --

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1 this is as of yesterday -- 1,249 Floridians convicted  
2 of crimes in other states could be mistakenly barred  
3 from voting in November, despite the 2-year old,  
4 2-year-old, agreement by the State of Florida in which  
5 in those states where they were convicted felons and  
6 automatically had their voting rights restored when  
7 they completed their sentences, they're not supposed  
8 to be barred from the State of Florida in voting. But  
9 1,249 of them could be barred from voting. Why?  
10 Because of lost paperwork and slow-moving  
11 bureaucracies. So this is just one other little thing  
12 that we're going to have to be vigilant on.

13 I will conclude by telling you about the  
14 touch-screen voting machines, of which half of the  
15 electorate in Florida is going to vote on these new  
16 machines. Although the machines are only in 15 of  
17 Florida's 67 counties, they are generally the larger  
18 counties. And it's approximately half of the voting  
19 population of Florida will vote on these new  
20 touch-screen machines.

21 Is there any doubt why we have concern?  
22 Well, in the most recent election, which was the  
23 presidential preference primary. And, of course, when  
24 somebody goes in, in this case, it was the Democratic  
25 presidential preference primary. There was only one

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1 race on the ballot, on the touch-screen machine.

2 What we found was in three counties, the  
3 people who took the trouble to go and vote in those  
4 three counties, 583 people were recorded as not  
5 voting.

6 Now, why is that? Somebody goes in the  
7 voting. Why are they not going to vote? And why did  
8 it occur just in 3 counties and the total in those 3  
9 counties ended up being 583 that did not vote?

10 That, of course, reminded us of a previous  
11 couple of months, of a special election in Broward  
12 County for a vacant state legislative seat, only one  
13 race on the ballot. You chose between the Democrat or  
14 the Republican. Thousands of people went and voted,  
15 but 160 people who went in were recorded as not  
16 voting. And, oh, by the way, the Republican won by 12  
17 votes. Why?

18 So what I plan to do is that I am going to  
19 request Florida to reconsider a recent decision that  
20 they said they were not going to have an independent  
21 audit of these touch-screen voting machines in the 15  
22 counties. And I plan to look into asking the Civil  
23 Rights Division of the U.S. Justice Department whether  
24 or not it can perform those audits of the touch-screen  
25 voting machines.

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1           There needs to be an explanation for why  
2 people are only going in with one race and it's not  
3 recording to the degree of the numbers that we are  
4 hearing.

5           Now, in talking with different campaigns,  
6 -- and I conclude with this -- I have some people in  
7 the campaigns tell me that the touch-screen machines  
8 are one thing, but what they really fear is the  
9 question of intimidation of voters.

10           You will remember the case of 2000, where  
11 there were roadblocks set up. Police roadblocks are  
12 very legitimate when you are checking for alcohol and  
13 for drugs. But why were they set up on election day,  
14 of all days?

15           And why did they occur in the vicinity of  
16 polling places, the case in Baltimore of a  
17 distribution of flyers urging residents to vote on the  
18 day after the election, or distribution of flyers in  
19 certain neighborhoods to say, "Before you vote, you  
20 had better be sure you have paid your overdue parking  
21 tickets or your overdue rent" or police look-alikes  
22 appearing near the polling places with cameras taking  
23 photographs of people who come to the polling places?  
24 These are the concerns about intimidation. You have  
25 heard these stories.

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1           It just amazes me that in the 225th year  
2 of this republic, that we are having to go through  
3 these kinds of questions. And it's embarrassing to me  
4 that I have to go through these kinds of questions  
5 with regard to my state, which is a microcosm of the  
6 entire country.

7           And we had better get it right because the  
8 one thing that the American people have a right to  
9 demand is not only that they have the right to vote,  
10 but they have the right to have that vote counted as  
11 they intended their vote.

12           Thank you, Madam Chairman.

13           CHAIRPERSON BERRY: All right. Thank you  
14 very much, Senator. We very much appreciate it. We  
15 appreciate all you do.

16           SENATOR NELSON: Thank you.

17           CHAIRPERSON BERRY: Barbara Arnwine is the  
18 Executive Director of the Lawyers' Committee for Civil  
19 Rights Under the Law. While at the Lawyers'  
20 Committee, she has been at the forefront of all of the  
21 major civil rights issues during her time there,  
22 including the Civil Rights Act of 1991, and everything  
23 else that has happened.

24           She has observed affirmative action, the  
25 issues in the Michigan case, and is working on

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1 election protection. And she is co-chair of the  
2 National Coalition on Black Civic Participation's  
3 Unity '04 Campaign, which Melanie Campbell is  
4 directing.

5 So we are going to ask her to speak. And  
6 then after her, we will have Melanie Campbell, who is  
7 Executive Director and CEO of the National Coalition  
8 on Black Civic Participation and the Unity '04  
9 Campaign out of that, to talk to us also.

10 And then we will have the Secretary of  
11 State from Maryland, Linda Lamone, who will tell us  
12 about the leaflets in Baltimore and the people paying  
13 the rent and all of the other issues she wants to talk  
14 about.

15 Ms. Arnwine, please proceed.

16 MS. ARNWINE: Good afternoon. Thank you  
17 so much, Madam Chair. I am Barbara Arnwine, Executive  
18 Director of the Lawyers' Committee.

19 Madam Chair and members of the Commission,  
20 I thank you so much for inviting the Lawyers'  
21 Committee to participate in today's important  
22 briefing. And it is such a pleasure to be here with  
23 our colleagues, Ralph Neas and Melanie Campbell, and  
24 also with my administrator for the Maryland State of  
25 Elections, where I live. This is an important day.

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1 It is an important issue. It is one that requires our  
2 nation's intense intention.

3 The Lawyers' Committee is a 41-year-old  
4 civil rights nonpartisan legal organization formed in  
5 1963 at the request of President John F. Kennedy to  
6 provide legal services to address racial  
7 discrimination. The principal mission of the Lawyers'  
8 Committee is to secure through the rule of law equal  
9 justice under the law through the pro bono services of  
10 our nation's largest law firms.

11 Since its founding, one of the primary  
12 concentrations of the Lawyers' Committee's work has  
13 been protecting the voting rights of African Americans  
14 and other racial minorities.

15 Throughout the United States, our voting  
16 rights project has taken a significant lead in  
17 addressing the issues that arose from the Florida  
18 election debacle. I think that it is fair to say for  
19 civil rights organizations in this nation that after  
20 2000 our entire conventional wisdom was thrown out the  
21 door and we have to rethink, reformulate, and rework  
22 our entire agenda in the voting rights area.

23 The Lawyers' Committee has been engaged in  
24 litigation across the country. Many of you have  
25 followed our litigation in the Prairie View case just

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1 this year, where a district attorney tried to prevent  
2 African American students from voting in contravention  
3 of a Supreme Court decision.

4 We have been intensely involved in federal  
5 election reform, re-enfranchising ex-offenders  
6 throughout the country, combatting voter intimidation,  
7 and student voting rights issues.

8 Most importantly, as my colleague Ralph  
9 Neas has mentioned, we have been involved in election  
10 protection. And also I should be very clear that, as  
11 one of the lead counsel in the NAACP versus Harris  
12 versus Smith case, we have been very involved in  
13 monitoring the Florida election, this attempted  
14 Florida felon purge, and fighting with Florida over  
15 many aspects.

16 There are several issues. Senator Nelson  
17 has done a good job of explaining some, but there are  
18 even more issues that arise as to what Florida needs  
19 to do in order to be in compliance with not only our  
20 consent decree but also in compliance with federal  
21 law.

22 Madam Chair, with the political season  
23 intensifying, I commend the Commission for paying  
24 attention to this important issue. One of the most  
25 important ingredients in our successful democratic

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1 process is the fair and open debate we see progressing  
2 each day.

3 The technology area has profoundly  
4 influenced the way we conduct elections by offering  
5 voters unprecedented information to inform the  
6 decision-making process.

7 While this access to information and data  
8 debate is certainly exciting, it means nothing without  
9 an election system that is responsive to the will of  
10 the voters. The infrastructure of our democracy, the  
11 bedrock institution upon which our great Republican  
12 system is founded, is in disrepair. It is in danger.

13 This hearing and other events that will  
14 call attention to the flaws in our electoral system  
15 before the November election are crucial to ensuring  
16 that our national promise of a free and open democracy  
17 is a reality.

18 The civil rights community was hopeful  
19 that the silver lining of the 2000 election debacle  
20 would come in the form of increased attention and  
21 dedicated reforms to address these issues by the  
22 stakeholders in our national, statewide, and local  
23 legislative processes.

24 Sadly, this has not been the case. At  
25 every level of our legislative system, lawmakers are

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1 more concerned with easily assailable anecdotal  
2 evidence of election fraud at the polls than with the  
3 uncontroverted evidence of widespread national  
4 problems with valid assets.

5           The result is that as we head into the  
6 2004 elections, the question is not, can 2000 happen  
7 again, but, rather, it is what steps can be taken  
8 between now and November 2nd to make sure that there  
9 is not a serious failure of democracy on election day?  
10 A clear demonstration of this issue and the problems  
11 that we are addressing rests in the system set up by  
12 the Help America Vote Act.

13           As discussed below and in my full  
14 testimony, the Lawyers' Committee did not support HAVA  
15 because in our view, HAVA does more harm than good by  
16 making the process more restrictive. In addition to  
17 the substantive examples elaborated below, it is  
18 important to note that the administrative structure of  
19 the bill is woefully inadequate. And I am not going  
20 to go into all of that today because I think  
21 Commissioner Hillman has talked about many of those  
22 problems.

23           Another problem, however, that this  
24 Commission has raised in today's hearings is obviously  
25 the lack of a private right of action under HAVA.

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1 That means that the difficulties that we are hearing  
2 are not addressable by the groups they should be out  
3 there enforcing a law if our federal government will  
4 not.

5 The lack of a private right of action  
6 means that that all enforcement power for HAVA resides  
7 in the Department of Justice. Unfortunately, DOJ's  
8 sole responsibility for voter protection under HAVA is  
9 very discouraging to the civil rights community.

10 In the past, the department has been at  
11 best slow to respond to voting rights violations.  
12 During this administration, efforts to enhance voter  
13 assets have been slow to nearly nothing, with too much  
14 of a focus on ballot security, instead of voter  
15 protection.

16 The result of this colossal lack of  
17 attention given to the cause of responsive democracy  
18 has been example after example of failures, of a  
19 poorly functioning electoral process.

20 In the four years since 2000, the Lawyers'  
21 Committee and its Election Protection Coalition  
22 partners have responded to numerous problems during  
23 federal and state elections, including polls opening  
24 late because of technological failures, inadequate  
25 poll worker training, insufficient planning by local

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1 election officials.

2 There have been reports of public places  
3 that have too few ballots, where polling places run  
4 out of ballots. There have been reports of election  
5 officials have been delinquent in giving necessary  
6 information to voters as required by law, including  
7 information on bilingual assistance, where we have had  
8 polling places that are in accessible to people with  
9 disabilities, where we have had absent and numerous  
10 reports of outright unlawful voter intimidation and,  
11 as Senator Nelson mentioned, deceptive practices.

12 Given the lack of guidance and  
13 intervention at all levels of government to progress  
14 the cause of free and fair elections, the Lawyers'  
15 Committee and its coalition partners have filled this  
16 large gap. We, the private nonprofit sector, have had  
17 to fill the gap that belongs to federal and state  
18 officials by expending our own resources to inform  
19 state and local election officials of their  
20 obligations under the law.

21 I will mention that just last Thursday the  
22 Lawyers' Committee and People For the American Way  
23 Foundation sent a letter to the State of Missouri  
24 questioning hard its own interpretation of its new  
25 state law and federal law that they sent to their own

1 county election officials that is in contravention, as  
2 far as we can read, of both their state law and their  
3 federal and their federal obligations.

4 Nonpartisan private organizations,  
5 including the Lawyers' Committee, have stepped up our  
6 voting rights activities in an effort to fill a void  
7 left by the state and local governments unable or  
8 unwilling to properly implement election reform  
9 measures.

10 In 2001, the Lawyers' Committee in  
11 coalition with the PFAW Foundation and the National  
12 Coalition on Black Civic Participation joined forces  
13 with other civil rights groups to create a nationwide  
14 empowerment campaign called Election Protection.

15 Along with its strategic partners, the  
16 Lawyers' Committee has conducted election protection  
17 programs during eight election cycles. This year the  
18 Election Protection Program will target, as Ralph has  
19 mentioned, 30 states and work to ensure that every  
20 eligible voter who seeks to participate in an election  
21 will be able to: one, register to vote; two, cast a  
22 ballot; but, more importantly, have that ballot  
23 counted. That is our challenge.

24 As in past years, one of election  
25 protection's most effective tools in combatting voter

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1 election problems is a toll-free election hotline,  
2 1-866-OUR-VOTE, where voters can obtain immediate  
3 legal assistance during early voting and on election  
4 day.

5 I spoke to the NAACP two days ago. And  
6 when I mentioned the hotline, people kept shouting  
7 out, "Say the number again. Say it again. Say it  
8 again. Say it again because we need it" because  
9 people know what we are up against in this election.

10 Since 2000, at the initiative of the  
11 National Coalition on Black Civic Participation, we  
12 have worked together to develop an impressive  
13 coalition. And we all use our respective strengths to  
14 do what we must do here.

15 The Lawyers' Committee's focus is on  
16 recruiting and deploying lawyers. We hope to for 2004  
17 deploy 6,000 lawyers throughout this country and  
18 meeting with election officials and watching polls and  
19 in monitoring elections and in answering the hotline.

20 The necessity of election protection has  
21 become increasingly evident as confusion and  
22 misinterpretation of certain provisions of HAVA  
23 continue to exist in many states, the Lawyers'  
24 Committee is specifically told by some states,  
25 implementation of HAVA's provisions pertaining to

1 provisional ballots and ID requirements.

2           The Lawyers' Committee did not support  
3 HAVA back in 2000 because we believe the law does not  
4 encourage an inclusive electorate. The problems that  
5 we are hearing today from our constituencies regarding  
6 provisional ballots and ID requirements were predicted  
7 by many in the civil rights community. Despite our  
8 initial objections, the Lawyers' Committee has worked  
9 to ensure that HAVA is implemented to limit  
10 disenfranchisement as much as possible.

11           One of the most significant, significant  
12 challenges to inclusive election under HAVA is the  
13 lack of a private cause of action, which I mentioned.  
14 And I talk about the department's roles.

15           As discussed, the ID provisions threaten  
16 to disproportionately affect minority and low-income  
17 voters. These communities are more likely than white  
18 communities to not have cars, to have members who in  
19 multi-generational householders, where people,  
20 therefore, not only do they not have driver's  
21 licenses, but they also do not have bills in their own  
22 names, where people live at these addresses and may  
23 lack other forms of ID. Because they are also paid in  
24 cash, so many people don't even have paychecks or  
25 government check stubs.

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1           So the provisional ballot system under  
2 HAVA is also a problem. While having the potential to  
3 open an electoral process, it has been interpreted by  
4 some states very restrictively.

5           CHAIRPERSON BERRY: You have got three  
6 minutes, Barbara.

7           MS. ARNWINE: All right. I can do it.  
8 Again, this is fully in my written remarks. The  
9 systems that have been developed very widely, some  
10 states, such as Utah, are using provisional ballots to  
11 open the electoral process to many who would otherwise  
12 not have their vote as counted.

13           On the other hand, states such as Michigan  
14 and Missouri have implemented provisional balloting in  
15 such a restrictive way that it, arguably, violates  
16 HAVA and other federal laws.

17           Some states are making the mistake of  
18 requiring ID, even when casting a provisional ballot.  
19 Also, as HAVA does not address the issue, some states  
20 are creating provisional ballot schemes that are very  
21 restrictive in how the ballots are actually counted.

22           Another challenge to an inclusive  
23 franchise is the disturbing trend. And I would say  
24 this is the widest trend we have seen in this year, a  
25 trend among registrars in college towns making it

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1 difficult or impossible for students to cast ballots  
2 where they go to school, in those jurisdictions.

3 One of the most important functions of  
4 higher education is providing students with the tools  
5 necessary to be productive civic participants. The  
6 first step in that education is voting.

7 Unfortunately, registrars across the  
8 nation are required to apply a uniform standard to all  
9 applicants for voter registration, regardless of their  
10 status as students, but they are not.

11 Discouraging students from registering to  
12 vote in the county of their residence violates the  
13 equal protection clause of the Fourteenth Amendment  
14 and the Voting Rights Act.

15 Finally, the necessity for increased  
16 security in the post-September 11th era presents new  
17 challenges to an inclusive democratic process. The  
18 Lawyers' Committee is committed to working with  
19 officials to guarantee that citizens are safe on  
20 election day. I must strongly caution against  
21 implementing any policy that uses security as a  
22 justification for implementing programs that have a  
23 disastrous effect on turnout.

24 We commend EAC Chairman DeForest Soaries  
25 for issuing his statement concerning the status of the

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1 November presidential election. I was pleased that  
2 the chairman did not recommend that the election be  
3 postponed, delayed, or canceled in the event of a  
4 terrorist attack.

5 As election day emerges, the plan is  
6 developed -- I asked the EAC to oppose proposals that  
7 call and this Commission to oppose any proposal that  
8 calls for an increased law enforcement presence at the  
9 polls.

10 We know what that does to minority  
11 turnout. Any attempt to have police presence or other  
12 police presence at polling sites for security,  
13 national security, reasons will be a disaster to our  
14 communities. Without a doubt, this proposal would  
15 have a chilling effect on voter participation rates in  
16 minority communities.

17 Unfortunately, the issue of intimidation  
18 continues to haunt the election system. The November  
19 2003 gubernatorial election in Kentucky -- I don't  
20 know if you have heard about this -- and the mayoral  
21 election in Philadelphia serve as recent examples.

22 In Kentucky, one of the political parties  
23 distributed a flyer telling voters that the NAACP, the  
24 ACLU, and the A. Philip Randolph Institute were  
25 planning to steal the election. The flyer implored

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1 individuals to go into the predominantly black  
2 community -- and that's what it said, the African  
3 American communities -- of west Louisville to  
4 challenge voters at the polls.

5 In Philadelphia, the local district  
6 attorney's office received 171 complaints alleging  
7 intimidation or harassment on election day. In one  
8 case, volunteers for one candidate were asking voters  
9 for identification at two polling places until a judge  
10 ordered them to stop.

11 Plans to intimidate voters are already  
12 being put in place for 2004. For example, in Pontiac,  
13 Michigan, a city with a large minority population, one  
14 of the political parties has already announced plans  
15 to recruit 300 volunteers to stand guard at polling  
16 places in November to prevent "voter fraud."

17 The county's head election official, who  
18 is a member of the same party, stated that he did not  
19 know of any voting fraud problems in the past. Most  
20 of these so-called balloting integrity programs are  
21 little more than old-fashioned voter intimidation  
22 tactics designed to keep eligible voters from  
23 participating.

24 CHAIRPERSON BERRY: Wind up, Barbara.

25 MS. ARNWINE: As I close, with just over

1 100 days remaining...until this year's presidential  
2 election, I am pleased that the Commission is  
3 examining the issue of election day preparedness.

4 With so little time remaining, I am  
5 hopeful that the information shared by the panelists  
6 today will resonate with state and county election  
7 officials throughout this country by providing them  
8 with a head's up advance notice on the existing  
9 problems and anticipated problems that all of us  
10 partners in the Election Protection Coalition have  
11 monitored in the area of voting over the past four  
12 years.

13 I am optimistic that the testimony from  
14 today's briefing will empower voters by providing them  
15 with the information needed in the unfortunate event  
16 that they experience problems voting this November.

17 Thank you so much.

18 CHAIRPERSON BERRY: Yes. Now, I  
19 appreciate that. See, you folks are forgetting that  
20 we are going to ask you questions. Save time for  
21 questions.

22 MS. ARNWINE: All right.

23 CHAIRPERSON BERRY: You don't have to put  
24 everything into it.

25 Let me welcome you, Melanie Campbell,

1 Executive Director and CEO of the National Coalition  
2 on Black Voter Participation and that Unity '04, which  
3 works to increase civic participation and voter  
4 turnout among people of color. Thank you very much  
5 for coming. And please proceed.

6 MS. CAMPBELL: Thank you, Madam Chairman  
7 and all of the members of the Commission. I do first  
8 apologize for my delay. It's just a crazy time as we  
9 get ready for 2004.

10 First, I would like to thank my colleagues  
11 Ralph and Barbara, as a former resident of Maryland,  
12 right across the bridge, and for all of the work that  
13 they individually do and historically have done and  
14 for having the opportunity to share this platform with  
15 some folks that I do truly respect and admire.

16 The national coalition has been around for  
17 about 28 years now, founded in '76. To think about  
18 time -- I am a time person myself -- is to just say,  
19 if I could, after this hearing, provide you with the  
20 testimony and background of the coalition.

21 CHAIRPERSON BERRY: We'll put it in the  
22 record.

23 MS. CAMPBELL: Thank you.

24 Just to give just a little background as  
25 to a connection to what we all have been discussing

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1 when we talk about election protection, the national  
2 coalition in January 2001, the chair of my board is  
3 Richard Womack, who was formerly the civil rights  
4 director for AFL/CIO and former I think Executive  
5 Director, Leadership Conference on Civil Rights --

6 CHAIRPERSON BERRY: That's correct.

7 MS. CAMPBELL: Our organization tried to  
8 determine, what could we do to assist in the process,  
9 our filing in Florida, 2000 debacle, which is my home  
10 state and my mother still resides there, which I also  
11 spent four days leading up to the election and ended  
12 up in Georgia and witnessed the debacle of Georgia,  
13 which is down low on the totem pole.

14 We started out with the voices of the  
15 election reform task force, which is made up of a body  
16 of about 60 organizations that represent a broad  
17 spectrum of the community because the issue, although  
18 we know and as a lot of Americans in this country  
19 know, we are disenfranchised, unfortunately. We  
20 understand that it happened to all Americans.

21 And so our task force is made up of  
22 blacks, Latinos, Asian Americans, progressive  
23 organizations, young people, civil rights, the gamut.  
24 And that will be in my protest that describe those  
25 groups.

1 We have four groups. Barbara Arnwine also  
2 has been a part of it and Ralph Neas' organizations  
3 and others. NAACP helps to work with that  
4 organization, the legal defense fund, and many, many  
5 others.

6 Our perspective on this is America will be  
7 ready to vote in the November 2004 election. America  
8 will be ready to vote. I don't think our system is  
9 ready for that.

10 We held a symposium in May of 2004. I  
11 would like to present the symposium report for the  
12 record. It consisted of several organizations, the  
13 Center for Community Change, the Lawyers' Committee,  
14 Leadership Conference, representation from the  
15 National Association of Secretaries of State, and  
16 discussed from our perspectives what had been going on  
17 the last four years and where we were now; the  
18 implementation of HAVA, the late implementation of  
19 HAVA; the lack of funds and all of that. And the  
20 conclusion from that report was that we're not ready.

21 Based on our organization's experience  
22 over the last few months as we prepare for 2004, Unity  
23 '04 is the umbrella group. As a coalition, we have  
24 many umbrellas. But one of our umbrella groups is the  
25 Unity '04 campaign.

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1           The main focus is to increase  
2 participation in the election, but also to make sure,  
3 again, everyone's votes get counted working through  
4 our Election Protection Coalition to ensure that.

5           Some of the experiences that we have had  
6 throughout this process are that we know that we are  
7 all embarked on a major voter registration drive now  
8 and are running into some major concerns out there in  
9 how in many cases the forms are not getting processed  
10 in a timely manner and that because as I am listening  
11 and hearing as I walked in that what we were hoping is  
12 that the state database systems that were a part of  
13 HAVA implementation would help to be in place to help  
14 with that process, but I hear that that is not going  
15 to help us in that regard.

16           And so what we are attempting to do as  
17 community-based organizations -- and Barbara puts it  
18 plainly. This is not what we are in business to do.  
19 We are in business to help encourage and assist people  
20 to participate, but we find ourselves having to have  
21 this as a major component of our daily work to try to  
22 encourage voters to verify that they are registered to  
23 vote prior to the election and hoping that the local  
24 boards of elections will assist us in that process so  
25 that we are extremely concerned that when people

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1 arrive at the polls that this process that the senator  
2 discussed and others is going to be a true disaster,  
3 not just in my home state, but it is going to take  
4 place all over the country.

5 The other thing that we are attempting to  
6 do is promote our hotline. But, again, we are a gap.  
7 We are a stopgap in what the system is not doing.

8 I testified before the U.S. Election  
9 Assistance Commission last month. One of the things  
10 we were talking about was the electronic voting  
11 machines and the concern of that.

12 I would like to share a little bit of what  
13 I said in that hearing and I think is relevant to what  
14 has been said today. The key points that I was making  
15 are three things that we think we have concerns as it  
16 relates to the machines.

17 That is that when you look at electronic  
18 voting, it poses a number of concerns. When assessed  
19 against a backdrop of the ongoing voting rights  
20 movement concerns fall into three broad categories:  
21 casting, counting, and confidence.

22 Casting, most voters are accustomed to  
23 receiving a physical ballot when they enter a polling  
24 location. A ballot is a tangible item that represents  
25 their voice. And voters journey to the polls on

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1 election day in an effort to exercise their civic duty  
2 with an expectation that their vote will make a  
3 difference.

4 When using a touch-screen for voting bays,  
5 no physical evidence of the vote and the absence of a  
6 physical ballot leaves many voters unsure about the  
7 process. Some wonder if perhaps they made a mistake.  
8 Others wonder where that vote went, how it was  
9 captured, and what will happen if the system fails.

10 For some in the voting age population who  
11 have more limited dealings with computer technology,  
12 the touch-screen process seems almost surreal.

13 Second category of counting, in order to  
14 vote, individuals, as we know, must be 18 years of age  
15 to register and either request an absentee ballot or  
16 travel to the polls on election day. Until 2000, in  
17 spite of past accounts, there was a general  
18 expectation that every eligible vote was counted.

19 The process was rather simple. Punch out  
20 a card and deposit in a receptacle. It will be  
21 counted before the night was out. Machine readings  
22 provided the early count. And the physical ballots  
23 were available for recount.

24 Once an electronic vote is cast, the  
25 process ends. And the voter can only assume that his

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1 or her vote will be counted. The electronic process  
2 is not understood by many voters or even poll workers,  
3 who tend to be retired citizens, which my mother is,  
4 to work the polls, who will have to deal with this new  
5 technology.

6 The third and last point on this is  
7 confidence. Voter confidence is the anchor of the  
8 American democracy. In the experience over the past  
9 20 years in motivating and mobilizing voters, I have  
10 found that voters must feel confident of their ability  
11 to properly cast their ballot or they will not venture  
12 out to the polls to participate. It is equally  
13 important that voters believe their vote will be  
14 counted. Otherwise, they will stay at home and not  
15 bother.

16 The decline in civic participation is  
17 well-documented and attributed to a range of factors,  
18 which in numerous cases can be overcome with  
19 education.

20 Educating voters and potential voters is  
21 difficult when so many critical questions are left  
22 unanswered. One of the concerns that I would like to  
23 share with you is what happened in Georgia with one of  
24 our coalition groups. One of the things you wanted to  
25 know in your letter, Madam Chair, was what is

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1 happening on the ground with our community groups.

2 Dr. Joseph Lowery, who was a former SCLC  
3 president and chairman emeritus of Black Leadership  
4 Forum, has a group called the Georgia Coalition for  
5 the People's Agenda.

6 I assume the vote may have been mentioned  
7 earlier in the process, but I would like to share just  
8 some points about what happened with our coalition,  
9 who made an attempt to work with Diebold from the  
10 community perspective to help alleviate some of what I  
11 just discussed.

12 I would like to add in 2002, the Georgia  
13 Coalition for the People's Agenda, an affiliate of the  
14 national coalition, and the lead for our know your  
15 rights election protection in Georgia, provided  
16 training and monitoring of the statewide  
17 implementation of the new e-voting machines  
18 manufactured by Diebold Election Systems.

19 Early in the deployment process, the  
20 question of voter verification arose. The state  
21 relied heavily upon the vendor Diebold to respond to  
22 questions about the new equipment.

23 Each machine is a stand-alone with the  
24 votes captured in the hard drive of the machine. This  
25 data is retrieved and reported electronically at the

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1 end of the day.

2 When the issue of a voter-verified paper  
3 receipt was raised, there were typically two  
4 responses: The machines, which had already been  
5 contracted by the state, were not equipped to generate  
6 a receipt; -- I'm not advocating one way or the other  
7 on that -- and, two, that in order to keep voting  
8 private, voters could never be provided a copy of  
9 their ballot because this would certainly lead to new  
10 forms of intimidation. Both responses missed the  
11 point. Voters wanted assurances that the votes cast  
12 would be accurately recorded and counted.

13 In light of perceived imperfections, voter  
14 confidence in the electronic voting systems would be  
15 immeasurably increased if there were a physical record  
16 that could be deposited in a receptacle and made  
17 available.

18 In response to those communities'  
19 concerns, the Georgia Coalition of Black Women  
20 contacted Diebold in the hope of establishing a  
21 community-based initiative to educate civic leaders  
22 and community organizers.

23 Diebold representatives never met with the  
24 organization, in spite of the fact that that  
25 particular group within the coalition was on the front

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1 line, contracted by the State of Georgia to assist  
2 with a deployment. Unless community participation is  
3 in some way mandated for machine vendors, there is no  
4 incentive for them to engage in the community.

5 And so it was a very challenging process  
6 down there in Georgia. And, of course, with someone  
7 of Dr. Lowery's stature and history, you would think  
8 they wouldn't try that. But if they will do it in  
9 Georgia, --

10 CHAIRPERSON BERRY: They do it anyway.

11 MS. CAMPBELL: -- these kinds of things,  
12 we believe, could happen in other places.

13 And so at this point, I would like to  
14 thank you again and appreciate the opportunity to  
15 share our thoughts on this matter today.

16 CHAIRPERSON BERRY: Okay. There will be  
17 some questions.

18 Now, Ms. Lamone, who was appointed by the  
19 Governor of Maryland, to be the administrator of  
20 elections on July 1st, 1997, whoever was the governor,  
21 is responsible for elections management in Maryland.

22 I noticed that some of your local media  
23 has called for you to be fired or at least people have  
24 been on the local media, some group having something  
25 to do with paper trails or something, has been

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1 mobilizing and saying that you should be asked to  
2 resign. I think that was the issue. I'm not sure  
3 whether it is or not.

4 MS. LAMONE: Yes, that's the issue.

5 CHAIRPERSON BERRY: But if you would  
6 proceed to discuss anything you like in whatever way  
7 you wish, please do so.

8 MS. LAMONE: It seems like I have been  
9 asked to resign by various groups at various times.  
10 So I'm getting used to it.

11 CHAIRPERSON BERRY: I've been asked to  
12 resign several times myself.

13 MS. LAMONE: Yes. My husband says, "Why  
14 are you putting up with this? Why don't you quit?"

15 CHAIRPERSON BERRY: Quit?

16 MS. LAMONE: Yes. Thank you very much for  
17 inviting me to come down today.

18 The staff told me you all wanted to hear  
19 about the implementation of HAVA in Maryland from my  
20 perspective. I am more than happy to do that or talk  
21 about anything anybody wants to.

22 CHAIRPERSON BERRY: Could you also tell us  
23 about how you do the felon purge?

24 MS. LAMONE: Sure. Would you like me to  
25 do that first?

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1 CHAIRPERSON BERRY: Yes. I would like for  
2 you to do three things if you don't mind. Tell us how  
3 you do the felon purge, how you go about it compared  
4 to what you have heard today. Tell us also what your  
5 current position is on the audit question in the  
6 machines, the equipment. And tell us also what your  
7 reaction is to the concerns about intimidation that  
8 were raised and also tell us whether you think that  
9 the certification requirement under HAVA for civil  
10 rights, conformity with civil rights laws, is an  
11 adequate protection from your perspective.

12 And if you could do those four things, and  
13 then we'll have questions about everything else.

14 MS. LAMONE: Okay. Just to give you  
15 assurances, we are well on our way in Maryland to  
16 implementing all of the provisions in HAVA. I have  
17 three full-time employees on staff dealing with  
18 nothing but HAVA stuff. One deals with education,  
19 disability access. The other deals with voter  
20 outreach efforts. And then I have Nicky Trella here  
21 with me, who is the director of that division. And we  
22 are about to let a contract for additional support.  
23 It is a huge expense to implement this act, huge, but  
24 we are doing it.

25 The felon issue is a very interesting

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1 issue. And it is one that has bothered me ever since  
2 I took office. The Maryland General Assembly you all  
3 probably know tinkered with the law two years ago  
4 because we used to have a permanent disenfranchisement  
5 in Maryland after the second felony conviction. And  
6 with certain exceptions, they have now removed that  
7 permanent disability. But they have made the law even  
8 harder to enforce because now you can only re-register  
9 after a conviction if you have completed your sentence  
10 and three years have passed.

11 I wouldn't know when three years have  
12 passed from a certain event, and I would suspect most  
13 people don't remember when three years have passed  
14 from a certain event. So folks that get convicted of  
15 a crime are placed in a very tenuous position as to  
16 whether or not they can re-register.

17 We all purge people in Maryland, as is  
18 being done in at least one other state that I know  
19 about. When we get notice of a conviction, the notice  
20 is sort of vetted to make sure that it falls into one  
21 of the categories of crime that the statute  
22 contemplates is disabling.

23 And we send the person a show cause  
24 notice. We say, "Tell us why we shouldn't remove you  
25 from the rolls." Most of them we don't hear back

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1 from, but some we get some very irate letters back  
2 from. So that is after a conviction.

3 If somebody re-registers, we just rely on  
4 them to tell us that they are eligible to re-register.  
5 They are signing under penalty of perjury that they  
6 are eligible to register. And we believe that most  
7 people are honest. Frankly, we just rely on the  
8 voters.

9 So we don't really purge. We don't keep a  
10 list. There is no list in the polling place that  
11 would identify anybody as eligible to vote. The only  
12 lists in the polling places are the list of the  
13 registered voters that we know about for that  
14 precinct.

15 The audited voting units, I could be here  
16 a long time talking to you about this because  
17 obviously Maryland has the DREs in 23 of the 24  
18 jurisdictions. Baltimore City uses an older version  
19 and has used that since 1997. It has never produced a  
20 paper trail. It's a huge thing like this, sort of  
21 modeled after the old lever machines.

22 Our voting system in Maryland has been  
23 analyzed three times by Maryland companies and in Ohio  
24 as well. All four security analyses have said:  
25 number one, the system counts 100 percent accurately.

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1 There is no doubt among any of the experts that that  
2 is not true.

3 In addition, all of them identify security  
4 risks. And we have made an assessment of which risks  
5 we can mitigate with 100 percent confidence and which  
6 risks are too risky to try to mitigate.

7 We test this equipment constantly. And  
8 everybody is sort of touting. I attended a National  
9 Academy of Sciences two-day conference to discuss all  
10 of this earlier this week.

11 The Diebold and the other vendors submit  
12 their code to an independent testing laboratory. And  
13 they test it to meet the federal standards, which were  
14 last revised in 2002. Then the ITA sends this code to  
15 me directly. There is no intervention by Diebold.  
16 They never get to touch it again without supervision.

17 Once we get it from the ITA, we then do  
18 acceptance testing. That is basically performing an  
19 analysis on the software to make sure that the  
20 functionality that we contracted for is there, there  
21 are no bugs, and that I can go ahead and pay for it.

22 We then submit it to the counties. And  
23 they do their own acceptance testing on it. And they  
24 are loading it on all of the 16,000-plus voting units  
25 that we have in Maryland. They re-test it again.

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1           Then we send out what we call an IB and B  
2 team, which is actually the process that we are  
3 undergoing right now again before the next election.  
4 They verified that each machine has the correct  
5 software and the software is working.

6           They are putting what they call Hash  
7 programs in there so that we can take a snapshot of  
8 the software, both at the voting units and the  
9 servers, before the election and after the election,  
10 which will tell us if anything has happened. Has  
11 anybody gained access? Is there anything in there  
12 that wasn't in there before? So that is one way of  
13 auditing it.

14           There are also a couple of other programs  
15 that we are looking at to install that would do a sort  
16 of a constant monitoring for us. The problem you have  
17 to be careful of is we have certified software that  
18 have met the federal standards. If we put something  
19 on there that breaks it, then we're really in trouble.

20           You know, we don't have rain days for  
21 elections. So we don't want to do anything that would  
22 go in there and somehow affect either the recording  
23 software in the voting units or the tabulating  
24 software in the server.

25           We also have done extensive security

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1 analysis of the processes because an election consists  
2 of the voting equipment, the people, and the  
3 processes. I also have three full-time people on  
4 staff who do nothing but work on security, and I also  
5 have two independent vendors that do security issues.

6 We are requiring the local election  
7 officials to do a whole lot more, probably than  
8 anywhere else in the United States, to make sure that  
9 this election system and the processes are secure. I  
10 am very proud of that.

11 As I said, it is expensive. I spent over  
12 a million dollars in less than a year just on this  
13 kind of thing. But it is important and it is  
14 necessary because you need to be able to assure the  
15 voters that you are doing everything possible.

16 CHAIRPERSON BERRY: Okay. Last question,  
17 last point I made was about the

18 MS. LAMONE: certification.

19 MS. LAMONE: Well, the intimidation issue  
20 you raised.

21 CHAIRPERSON BERRY: Yes, I did raise that.

22 MS. LAMONE: I guess you are referring to  
23 those wonderful brochures. I think some were  
24 distributed in Prince George's County.

25 MS. ARNWINE: We did.

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1 MS. LAMONE: We referred it to the state  
2 prosecutor when we found out about it. People went  
3 out and tried to do something about it, but the  
4 brochures were already on the street, unfortunately.

5 I was outraged. You know, we've got  
6 enough trouble getting people to come out and vote as  
7 it is without talking to Ms. Lethum. What can you do  
8 about it without having a police state? Dirty tricks  
9 are going to be played.

10 CHAIRPERSON BERRY: And then the last one  
11 was whether you think the civil rights certification  
12 requirement under HAVA is sufficient to guard against  
13 the kind of alleged violations that we were -- oh, you  
14 weren't here this morning -- that we were talking  
15 about with the prior panel on civil rights issues or  
16 do you see them as pretty pro forma? I mean, you  
17 certify what, that you will not violate any --

18 MS. LAMONE: That I am a good girl. Well,  
19 probably not, but I don't know what the drafters of  
20 HAVA had in their minds when they were doing it,  
21 whether or not they thought that was sufficient.

22 The problem is, as Commissioner Hillman  
23 said, they don't have any enforcement authority. They  
24 can't tell us to do anything.

25 CHAIRPERSON BERRY: Right.

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1 MS. LAMONE: That was deliberate, I  
2 believe.

3 CHAIRPERSON BERRY: Oh, yes. We all agree  
4 with that.

5 MS. LAMONE: Perhaps it was deliberate  
6 because they thought that under the Voting Rights Act,  
7 the HAVA had enough enforcement.

8 CHAIRPERSON BERRY: Mainly it was because  
9 under the federal Constitution, the argument is that  
10 states are supposed to actually be in control and that  
11 they didn't want to bring the heavy hand of the  
12 federal government and that they probably couldn't  
13 have gotten the bill passed if it did have enforcement  
14 requirements perhaps.

15 MS. LAMONE: Yes.

16 CHAIRPERSON BERRY: But okay. Then what  
17 we will do is ask some questions, if you don't mind.

18 MS. LAMONE: Please. Happy to answer  
19 anything.

20 CHAIRPERSON BERRY: Thank you.  
21 Commissioner Edley, you had questions?

22 COMMISSIONER EDLEY: Yes. Well, I was  
23 involved, some of the discussions about that  
24 provision, most initially in the recommendation about  
25 the board.

1 I was among those on that commission who  
2 wanted the agency essentially to be able to  
3 investigate whether a state was in compliance as a  
4 precondition for awarding money and was unable to get  
5 that position accepted.

6 We were operating on a consensus basis,  
7 and we just couldn't get a consensus. There was a  
8 partisan split on that issue. And the  
9 self-certification idea was adopted as a gesture.  
10 Then that obviously carried through into the Senate,  
11 House and Senate, bills.

12 CHAIRPERSON BERRY: And some of the civil  
13 rights groups tried to get --

14 MS. LAMONE: That's correct.

15 COMMISSIONER EDLEY: Right.

16 CHAIRPERSON BERRY: -- a provision put  
17 into the bill --

18 COMMISSIONER EDLEY: And ran into the same  
19 --

20 CHAIRPERSON BERRY: -- into Congress.

21 COMMISSIONER EDLEY: And ran into the same  
22 problem.

23 MS. LAMONE: Private right of action.

24 CHAIRPERSON BERRY: And the legislation  
25 wouldn't have passed, we were told. Is that accurate,

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1 Ms. Arnwine?

2 MS. ARNWINE: I think that it is clear  
3 that we had a couple of problems. And one of the  
4 problems obviously was that the opposition was DOJ was  
5 standing there saying that they would enforce it and  
6 that we didn't need it. So you had the problem.

7 I'm not convinced, though, that under  
8 HAVA, as in any other legislation, that there is not  
9 enforcement. I mean, the regulations for HAVA, which  
10 have not been -- you know, there are no regulations,  
11 but there is nothing to stop DOJ from issuing  
12 regulations. They could, in fact, as part of their  
13 regulatory scheme take that provision and make it a  
14 funding requirement. They have that authority. There  
15 is nothing to stop it that I can think of.

16 COMMISSIONER EDLEY: Not DOJ. You mean  
17 the EAC.

18 MS. ARNWINE: EAC also, yes. I'm  
19 assuming, well, the EAC can -- right.

20 CHAIRPERSON BERRY: But it is EAC's view,  
21 according to Ms. Hillman, that EAC can't issue those  
22 kinds of regulations.

23 COMMISSIONER EDLEY: I just don't see why  
24 that isn't in the statute just as an administrative  
25 law matter.

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1 MS. ARNWINE: Right, exactly. I don't see  
2 why it can't. And I was thinking about the  
3 enforcement provisions that affect DOJ, but they  
4 could. I mean, I don't see any reason why they cannot  
5 issue regulations. And it seems to me that they  
6 should.

7 MS. LAMONE: Can I just make two real  
8 quick points that I really wanted to make here today  
9 for the record, one on the paper trail for the voting  
10 equipment that everybody seems to be so excited about?  
11 I have an example down in the car. I wish I had  
12 brought it up.

13 I think that the paper trail could be used  
14 to impose or initiate greater voter intimidation than  
15 anything else that you could have at the polling  
16 place.

17 We printed out a paper trail for one voter  
18 from the March primary in Baltimore County. It is 10  
19 feet long, and it took us 4 minutes and 30 seconds to  
20 print it.

21 Now, the vendors are adding these paper  
22 printers to their voting units. And Nevada is going  
23 to be one state where they are going to be used. But  
24 in a presidential general election, where you have  
25 80-85 percent voter turnout and that voting equipment

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1 will not let a voter cast a vote until that printout  
2 is completed, people are going to go ballistic because  
3 it is going to take them a long time to vote.

4 And they are not going to stand in line  
5 and wait for everybody that is in front of them to  
6 print out this paper receipt that takes three, four  
7 minutes to do. And they're going to leave. They're  
8 going to go home.

9 CHAIRPERSON BERRY: So there's a technical  
10 problem, then, trying to get it done fast. But that  
11 assumes that there's --

12 MS. LAMONE: Wait. Let me finish. The  
13 other thing that is going to happen, -- and I don't  
14 know if you all have seen this -- voters don't like  
15 people to see their ballots. Secrecy of the ballot is  
16 sacred to them. You see that with optical voting  
17 units.

18 When you get your ballot, you put it in  
19 the machine. You may walk over and give it to the  
20 judge to put in there. We get nasty grams all the  
21 time from people saying, "I know that unit judge saw  
22 my ballot."

23 Well, what is going to happen when the  
24 paper jams or the printer doesn't print? On the  
25 Diebold machine, the last screen there is a summary

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1 screen of all the votes the voter has cast right  
2 there, printer right there. "Technician, will you  
3 come over here and help me unjam this printer? I've  
4 got to get to work. I want to cast my ballot."

5 What is the technician looking at when he  
6 or she walks over? They're looking at the summary  
7 screen of how that person voted. And the voters are  
8 not going to be happy about it.

9 CHAIRPERSON BERRY: Okay. Now, you wanted  
10 to comment on that.

11 MS. ARNWINE: Yes. I mean, I think that  
12 the assumption is that technology remains what it is.  
13 I mean, that is I think a false assumption. I think  
14 technology actually -- there are technological  
15 advances happening with machinery that can, in fact, I  
16 think over all satisfy voter requests.

17 The issue for voters is that, in light of  
18 everything else that is going on there, I mean, their  
19 confidence is not just being undermined because of a  
20 machine. They're being undermined because of all of  
21 these other problems that they are seeing in the  
22 voting process. So they are assuming that obviously  
23 if they are going through all of these obstacles, that  
24 there is some effort, therefore, to stop their vote  
25 from being counted accurately.

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1           What I think voters are only doing is to  
2 try to have some process by which, more than just  
3 sending their ballot, they can actually verify on some  
4 level that that ballot is accurate and that it  
5 reflects what they voted for, especially because they  
6 had problems with some of these optical scans and  
7 other kinds of machines in 2002.

8           So I think that we need to -- I remain  
9 confident that there are technological answers to this  
10 issue. I agree that there are problems with the  
11 current machines. And Diebold, of course, dug this  
12 hole for itself. They really did.

13           CHAIRPERSON BERRY: I want to ask all of  
14 you a legal advocacy question, but first I want to say  
15 that listening to your testimony, Ms. Lamone, I don't  
16 think it's that the voters distrust your operation or  
17 distrust what you are saying or distrust anything you  
18 said because I could agree with everything you said as  
19 a voter and still say I wanted a paper trail.

20           I'll say, "Well, I go to the ATM at the  
21 bank, and they give me a" -- you know, that's a  
22 simplistic response on my part because I know that the  
23 ATM at the bank spits it out unless it's broken or  
24 unless something happened. It doesn't take that long  
25 to get the piece of paper.

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1           So common ordinary horse sense, which may  
2 not have anything to do with the technological  
3 reality, is that people say, "Yes, yes. I hear you.  
4 I hear you. I hear. Uh-huh, I hear you, but why  
5 can't I?"

6           And then the more you tell them that they  
7 can't, the more they think that they should be able  
8 to, one of those conundrums that we're left with  
9 trying to figure out what to do.

10           And it may very well be that the Congress  
11 may soon and state legislatures may require eventually  
12 --

13           MS. LAMONE: But there's no way it can  
14 happen for November in Maryland.

15           CHAIRPERSON BERRY: Oh, I would agree with  
16 that. Yes. So they may require it later.

17           Now, the question I want to ask is this.  
18 This morning we heard a lot of testimony about what  
19 may be -- and we talked about it here -- civil rights  
20 violations in the purge process in Florida.

21           When we finished hearing the discussion, I  
22 said and then I said it to the press, too, that we  
23 were going to -- I was going to send a letter to the  
24 Justice Department. This is not under HAVA but under  
25 the civil rights laws about whether any of what

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1 happened in Florida on purge violated the civil rights  
2 laws and if so -- and to point out that the Accenture  
3 partner, who was here, who has contracts in other  
4 states, said that what she heard, if I got that right,  
5 here at least raised in her mind that there probably  
6 may be glitches of various kinds in the other  
7 databases that they use, not in her computer program  
8 but in the databases that they use in these states to  
9 come up with an accurate voting list.

10 Based on our experience with the Justice  
11 Department -- and we will pursue Justice because we  
12 are supposed to, but we don't expect to get any great  
13 obviously fast-moving response. Changes in list  
14 maintenance have to be done 90 days before the  
15 election. And we are rapidly coming up to 90 days.

16 I was wondering a couple of things. One,  
17 is it true that the parties in the litigation --  
18 again, Secretary Harris, agreed with the state that  
19 they should use the procedures that they use in the  
20 felon purge because that's what I understood the  
21 testimony this morning to be.

22 MS. ARNWINE: Of course, they are going to  
23 say that.

24 CHAIRPERSON BERRY: And if they did agree,  
25 then why are they going to say it? And, two, is there

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1 any idea in the minds of those of you who run these  
2 organizations about taking some further legal action  
3 since it is not clear what is going to happen now  
4 because the state says, "It's up to you counties."

5 And, as you know, under Bush v. Gore, you  
6 are supposed to have uniform procedures when it comes  
7 to voting. Otherwise there is an equal protection  
8 matter.

9 So is there any consideration taking place  
10 in your organizations -- mainly I'm asking people who  
11 are in the Lawyers' Committee -- about any kind of  
12 further, although, Melanie, if you want to answer, you  
13 can -- any further steps, whether injunctions or  
14 otherwise, to try to deal with some of these issues?

15 MS. ARNWINE: Well, I want to --

16 MR. NEAS: Go ahead.

17 MS. ARNWINE: Do you want me to --

18 MR. NEAS: No, no. Please.

19 MS. ARNWINE: I want to say --

20 COMMISSIONER EDLEY: You understand this  
21 Bush v. Gore point?

22 MS. ARNWINE: Yes. Oh, absolutely, yes.

23 COMMISSIONER EDLEY: Because this thing  
24 jumped off to the county supervisors.

25 MS. ARNWINE: Oh, absolutely I understand

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1 it. A couple of things. I think a couple of things  
2 are fair to say. One, the State of Florida has been  
3 totally disingenuous in discussing our consent decree  
4 in Smith because what they continue to say, for  
5 example, one of the things that we have raised with  
6 them as a breach of the agreement is a question of the  
7 failure to restore over 2,000-plus voters, who we all  
8 agree should be restored to the rolls. They just  
9 haven't done it.

10 What do they say about that? They say,  
11 "Oh. Well, you know, we really want to comply, but we  
12 just can't figure out how to do it right. So we're  
13 going to continue to keep the people off the rolls."  
14 It is illogical.

15 The second response that they have to  
16 everything, "Well, Harris made us. You know, Smith,  
17 the Harris case, made us do it," which is also  
18 irrational. There is nothing in Harris on the  
19 matching criteria that says that they are not to match  
20 Hispanic voters.

21 What they are basically saying is that  
22 when they saw race and they saw matching on race, age,  
23 ethnicity, et cetera, that they did not understand  
24 that that meant that they had to do Hispanics. That's  
25 their latest kind of interpretation of the decree. It

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1 is obviously disingenuous. It is totally contrary to  
2 our discussions with them.

3 In fact, anything they have done, of  
4 course, with this entire felon purge is contrary.  
5 Indeed, they would never issue the Ed Kast initial  
6 letter if they had been complying with Harris, with  
7 the Harris -- Harris I always call it; you know, it  
8 was initially Silas Harris, and then it became Smith,  
9 the Smith-Harris decree -- because according to that,  
10 they admitted that 50 percent of the data that the  
11 Florida Law Enforcement Division puts out is  
12 inaccurate, 50 percent.

13 They admitted to it. And they admitted  
14 that if you look at the actual consent decree, they  
15 admit that because of that, that you cannot, in fact,  
16 take the roll and just purge people, that you have to  
17 independently verify what they did that was wrong.

18 And when they issued that list, they left  
19 out all of the compliance issues with Harris. They  
20 absolutely did not comply. So they're all over the  
21 place on this. I think that this is just  
22 disingenuous.

23 This is clearly we are dealing with a  
24 state that is just absolutely committed to blocking  
25 voters. I think this racially targeted process that

1 we have become aware of right now, I am not convinced  
2 that it's muted out. I am not convinced that this  
3 issue is moot legally.

4 I think it is fair to say just sitting  
5 here that all of the civil rights organizations - and  
6 we are in intense discussions about all of this, that  
7 we are not only thinking that there is one suit here.  
8 We think there are probably three or four lawsuits  
9 against Florida that need to be brought.

10 CHAIRPERSON BERRY: Okay.

11 MS. ARNWINE: I think that is fair to say.

12 CHAIRPERSON BERRY: Yes.

13 MR. NEAS: Absolutely. And we concur with  
14 what Barbara just said. Of course, the root problem  
15 here is that FDLE data. And they continue to use it.  
16 They never let us take a look at it.

17 What is astonishing to me, however, is how  
18 after these many months they couldn't look at the  
19 original data. They could have looked at the results.  
20 The media in a matter of days figured out that there  
21 are only 61 Hispanics out of 48,000.

22 Now, this is not rocket science. And, as  
23 I said in response last Saturday -- I think it was a  
24 *New York Times* story that got out there about the 61.  
25 Really, it was just staggering ineptitude or, of

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1 course, something much more nefarious.

2 In either instance, the Jeb Bush  
3 administration has got to take responsibility. The  
4 buck stops there. And what happened there is  
5 absolutely unconscionable.

6 CHAIRPERSON BERRY: So you are in  
7 discussions? And you may proceed to do something, but  
8 you are discussing?

9 MS. ARNWINE: Well, I think it's fair to  
10 say that everything we do the media obviously doesn't  
11 know about. And it's not public. But it is fair to  
12 say that they had received letters that are as close  
13 to intent to sue letters as you can get on a couple of  
14 these issues.

15 CHAIRPERSON BERRY: And you are also aware  
16 that in other states, there may be similar database  
17 problems.

18 MS. ARNWINE: We are definitely concerned  
19 about this.

20 CHAIRPERSON BERRY: All right. Okay.

21 MS. ARNWINE: And we are concerned about a  
22 lot of the other issues that are coming to the  
23 forefront.

24 CHAIRPERSON BERRY: Question?

25 VICE CHAIRPERSON REYNOSO: I think --

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1 MR. NEAS: Just two quick points. And  
2 this is partly in response to Senator Bill Nelson's  
3 presentation. I just wanted the commissioners to know  
4 that People For and others, I'm sure the Lawyers'  
5 Committee are in mediation with the state, restoring  
6 individuals that were convicted and were in automatic  
7 restoration states, those 1,200-plus that we were  
8 talking about.

9 Also, the organizations are already  
10 meeting with the counties to urge them to complete  
11 review, the names given to each county of people who  
12 may have been improperly removed in 2000.

13 So there are lots of things happening,  
14 hopefully in good faith consultation and negotiations.  
15 But if those good faith efforts don't work out, I can  
16 assure you, the Lawyers' Committee and others, People  
17 For, will be going into court.

18 VICE CHAIRPERSON REYNOSO: I have  
19 practically a philosophical question. A couple of you  
20 mentioned the difficulty of getting Americans to vote.  
21 I think that all of the records indicate that the  
22 percentage of Americans who are voting seems to be  
23 going down year by year.

24 Obviously some of them obviously we are  
25 talking about it seems to me would lead to that not

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1 happy result. But I would just like to ask all of  
 2 you, what should we do as a nation? What should we as  
 3 a Commission recommend to Congress and the President  
 4 about that really I think sad evolution in a democracy  
 5 of fewer and fewer people when in other countries, we  
 6 see sometimes 80-90 percent of the people voting?

7 And here we're down to sometimes, well, in  
 8 some elections 30-40 percent of those who are  
 9 registered, which means maybe 15-20 percent of those  
 10 eligible to vote, which, in turn, means a smaller  
 11 percentage of those who really should vote.

12 MS. CAMPBELL: Thank you, Commissioner.

13 One of the things I think is that we keep  
 14 creating additional barriers, more and more barriers,  
 15 to the process. We talked about felony  
 16 disenfranchisement and how that impacts minority  
 17 communities.

18 In the states, if you look -- and I'm sure  
 19 you all know the states where you have laws that are  
 20 not so Draconian or that you can still vote whether  
 21 you are a felon or not a felon or what have you.  
 22 Those states have higher percentage rates. Then you  
 23 look in the opposite direction at the states that have  
 24 tougher laws against participation. You see less and  
 25 less participation. You see those primarily being

1 minority people.

2 And you look at the '80s and what has  
3 happened with the Rockefeller laws and all of that.  
4 It's a lot of things going on in this country in the  
5 way our government and our elected officials don't  
6 help the process. So that's one issue.

7 And the process itself from democracy  
8 groups that we all work with who promote states that  
9 have same-day registration, the registration being as  
10 difficult as it is, implemented the motor voter bill.

11 In Georgia, for instance, as we speak, has  
12 a debate about community groups going out to register  
13 people and to find a way to contact those people to  
14 help encourage them -- could end up getting locked up  
15 if they do that process because that is illegal  
16 because you are getting Social Security numbers, all  
17 of this kind of stuff.

18 So it is a lot of things that the elected,  
19 our public service officials can do. The question  
20 becomes it's a matter of will. What are we willing to  
21 do?

22 What happened in 2000 was that wake-up  
23 call we all know about. But the question is, what are  
24 we willing to do? Here we are sitting here with less  
25 than 100 days left. And the Help America Vote Act has

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1 no teeth in it.

2 All of the things that we are doing,  
3 especially because it's a matter of will, we can if we  
4 choose to -- and that's not a partisan thing. It's a  
5 matter of will in my opinion.

6 MS. ARNWINE: I have a couple of things  
7 that we believe. There's just no doubt about it. The  
8 way the U.S. runs our elections is just wrong. It's  
9 just not the smartest way to encourage voters to vote.  
10 We should, in fact, have a national paid holiday. It  
11 just should exist on election day. That's what a lot  
12 of countries do. It absolutely boosts the turnout  
13 rates. There's no doubt about it. And it becomes a  
14 matter of the community to make sure that you vote  
15 that day.

16 Same-day registration. Clearly there's no  
17 evidence in the states that have used it that it has  
18 caused any problems. They use it, and it seems to  
19 work. I mean, there is no evidence that -- in fact,  
20 the worst states are the states that have the most  
21 obstacles to voting. I continue to say Florida,  
22 Missouri, and South Dakota are trying to outdo as the  
23 worst states in the union on voting.

24 Felony disenfranchisement, at least for  
25 the federal provisions, having some kind of uniform

1 entitlement to vote is absolutely critical. I know  
2 that there are all kinds of constitutional amendment  
3 procedures, but this should be a matter that could be  
4 done by federal legislation.

5 Mandatory. I think one of the worst  
6 failures of HAVA -- and there are many failures of  
7 HAVA, but one of the failures is that there is not a  
8 mandatory voter education provision. Remember, one of  
9 the worst thing you guys -- I mean, I remember your  
10 hearing, and I remember just being shocked when Harris  
11 and the others admitted that they spent less than one  
12 cent per voter on voter education.

13 I mean, how do we think voters are going  
14 to vote if they are not educated as to how to vote?  
15 Remember that when we run this hotline --

16 VICE CHAIRPERSON REYNOSO: Excuse me.

17 MS. ARNWINE: Yes?

18 VICE CHAIRPERSON REYNOSO: Much of the  
19 vote was if you do it improperly and you have  
20 committed a felony, you will go to jail. That's part  
21 of the --

22 MS. ARNWINE: That was a penny. And think  
23 about this, of the calls that we get to the hotline, a  
24 good 60 percent or more of those calls are  
25 informational calls. That's because the states are

1 failing to give people information.

2 People don't know where their precincts  
3 are because there are states that don't even send that  
4 information out.

5 COMMISSIONER EDLEY: Sixty percent of your  
6 calls are information.

7 MS. ARNWINE: Are informational calls.

8 CHAIRPERSON BERRY: Let's ask Ms. Lamone  
9 about that since she's here in the State of Maryland.  
10 How much do you spend on voter education? And is it  
11 to tell people that if they vote illegally, it's  
12 fraudulent or what?

13 MS. LAMONE: We will have spent over a  
14 million dollars this calendar year.

15 CHAIRPERSON BERRY: And is your voter  
16 education limited to telling people that if they vote  
17 illegally, they are engaged in fraud?

18 MS. LAMONE: No. Our voter education that  
19 we're conducting now is to educate the voters on the  
20 voting equipment mainly, but that also has residual  
21 effects of telling them when the election is and all  
22 of that.

23 In addition, I control elections for the  
24 State of Maryland. The counties have very little  
25 independent authority, which has its ups and its

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1 downs. But we mandate that they send out a sample  
2 ballot to every registered voter before the election  
3 that tells them, "Okay, folks. Here's information on  
4 the election, when it is, where you go to vote," gives  
5 them their precinct address, who is on the ballot. We  
6 try to provide them how to use the voting equipment  
7 again.

8 VICE CHAIRPERSON REYNOSO: So sample  
9 ballots are not a local option in Maryland? Every  
10 voter gets a sample ballot?

11 MS. LAMONE: Correct, yes.

12 VICE CHAIRPERSON REYNOSO: That's the way  
13 it is in my State of California. In Florida, the  
14 testimony was that it is a local option.

15 MS. LAMONE: Yes, well, Florida and many  
16 other states. In many states, counties have autonomy  
17 in running the election.

18 CHAIRPERSON BERRY: That's right.

19 MS. LAMONE: And that is going to change  
20 somewhat under HAVA because HAVA puts the  
21 responsibility for compliance on the states. So  
22 having a centralized administration already in place  
23 when HAVA was enacted was a huge benefit to us.

24 CHAIRPERSON BERRY: And what enforces  
25 compliance by the state?

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1 MS. LAMONE: Well, that's the issue.  
2 Money. It's money, yes.

3 CHAIRPERSON BERRY: And the money, as you  
4 heard, you were here when you heard that the money  
5 comes anyway. Did you hear that?

6 MS. LAMONE: Oh, yes, it does, but I'm  
7 talking about what enforcement authority do I have  
8 over the counties.

9 CHAIRPERSON BERRY: Oh, no, no. I'm  
10 saying that even though HAVA makes the states  
11 responsible for compliance over the counties, who  
12 makes sure the states are --

13 MS. LAMONE: Are doing the right thing? That's  
14 why you --

15 CHAIRPERSON BERRY: That's the rub.

16 MS. LAMONE: That's why you need  
17 nonpartisan professional election people running  
18 things because people like me want to make sure  
19 everything goes correctly and that everybody has the  
20 right to register and that everybody has the right to  
21 vote. Now, I do have some laws that constrain me on  
22 some of the things that I would like to do.

23 But when you have elections being run by  
24 someone who is himself or herself elected on a  
25 partisan basis, that seems to me to add a whole other

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1 dimension to the perception, --

2 CHAIRPERSON BERRY: Absolutely.

3 MS. LAMONE: -- at the very least, of how  
4 the election is being run. There are some states, in  
5 Pennsylvania, where the poll workers themselves are  
6 elected.

7 CHAIRPERSON BERRY: Oh, I didn't know  
8 that.

9 MS. LAMONE: Yes, ma'am.

10 CHAIRPERSON BERRY: I didn't know that  
11 one. Yes?

12 MR. NEAS: When I think about the  
13 opportunities that I have had since I got out of the  
14 University of Chicago Law School, first with Senator  
15 Edward W. Brooke and then Senator Durenberger and the  
16 Leadership Conference and now with People For, I am  
17 just appalled that we have not made further progress.

18 We are the greatest country, as far as I  
19 am concerned, in the history of the world. I love my  
20 country. But this country makes it so difficult to  
21 vote, as opposed, Mr. Vice Chair, to some of the  
22 comments you were making about many, many other  
23 democracies in this world that encourage it.

24 I agree with all of Barbara's suggestions  
25 about why after all of these years and decades we have



1 not made progress. I would say -- and I am the first  
2 to applaud and acknowledge the Voting Rights Act and  
3 all that we have accomplished, but at the same time,  
4 these kinds of areas that we are talking about and  
5 learning about in Florida is just beyond one's  
6 imagination that in 2002, this could happen.

7 I do love this program, in part, because  
8 it does have such an emphasis on voter education.  
9 And, secondly, I do think that the more distribution  
10 we get out of what this is all about, it's also voter  
11 empowerment.

12 I'm afraid that much of what we hear in  
13 Florida and elsewhere will intimidate voters and will  
14 suppress the vote. They just don't want to go through  
15 the hassles. And if we can get this out that they can  
16 know their rights without too much effort and, very  
17 importantly, they are going to have assistance if they  
18 need it, this could be a tremendous advantage for the  
19 people of the United States.

20 MS. LAMONE: You also need to know the  
21 candidates and the issues.

22 MR. NEAS: Sure.

23 MS. LAMONE: I mean, that is just a huge  
24 issue. Let me just give you a very personal example.  
25 My mother is 83, God bless her soul. She has been a

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1 Republican all her life and doesn't know where she  
2 made her mistake with me.

3 She has been fairly engaged in the  
4 community and so forth. We were over at her house on  
5 Tuesday night for dinner. The news thing came up, and  
6 Senator Kerry came up on the screen. She said, "I  
7 can't stand him."

8 And I said, "Why?" And she couldn't  
9 articulate to me why she couldn't stand him. And I  
10 said, "Well, how about Senator Edwards?"

11 "Well, I don't like a Southern drawl."

12 I said, "Mother, you are a  
13 college-educated woman. Gee, that's not a very  
14 educated way of judging a candidate." But at least  
15 she is judging them. A lot of people don't even know  
16 who is running.

17 The states and the communities around the  
18 country have elections all the time. It just seems to  
19 me people get tired of dealing with it. You know, in  
20 the State of Virginia, there probably have been  
21 elections for months down there. Number one, it is a  
22 huge use of resources.

23 CHAIRPERSON BERRY: Now, people in  
24 Maryland are always talking about people in Virginia,  
25 now.

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1 (Laughter.)

2 CHAIRPERSON BERRY: We are going to close  
3 this discussion now. And all I am going to say is  
4 that, first of all, I appreciate everyone coming. And  
5 we will continue to raise these issues, monitor them,  
6 and so on, but there is always a fine line between  
7 what we do when we try to emphasize the problems and  
8 what Ralph said. We want to encourage people to come  
9 out to vote, and we don't want them to be discouraged.

10 And we hope that in printing out what the  
11 problems are and underscoring the problems, we don't  
12 end up discouraging them. There is a fine line there.  
13 But what we are really saying is about these problems,  
14 we are trying to fix them. That is what I am saying.

15 MS. CAMPBELL: Commissioner, that is one  
16 of the things that I mentioned about voter  
17 verification. We want to promote people finding out  
18 if you feel like you are concerned, to go out and do  
19 things that you can empower oneself to verify whether  
20 or not you are on the books.

21 CHAIRPERSON BERRY: Right.

22 MS. CAMPBELL: That is something that we  
23 are encouraging now so that people can at least feel  
24 like you have had an opportunity.

25 Dick Gregory talks about it all the time.

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1 Walk around with your NAACP card and your voter  
2 registration card in your hand. You know, I don't  
3 know where my registration card is. Okay? So there  
4 are some things that people can do.

5 And the whole notion of know your rights  
6 and election protection is an empowerment, an idea  
7 that you need to know your rights, giving people their  
8 voter bill of rights. I don't think any of us  
9 mentioned that.

10 Here is what you can do. You walk in  
11 there. And here is what you can do to make sure that  
12 -- same-day relief. We want people to feel that they  
13 are empowered. And the one thing I can tell you on  
14 the ground is people are not feeling any way in the  
15 communities that I am traveling to that they are going  
16 to sit back and let their vote get taken away.

17 The concern is the 50 million who are not  
18 participating for various reasons. How do we expand  
19 the electorate? And participation is the concern.

20 CHAIRPERSON BERRY: All right. Well,  
21 thank you all very much.

22 (Whereupon, at 3:41 p.m., the foregoing  
23 matter was adjourned.)

24  
25