

## 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 BARRIERS, PROVISIONAL & ABSENTEE BALLOTS,  
 AND VOTER ENFRANCHISEMENT

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FRIDAY,  
 SEPTEMBER 17, 2004

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WASHINGTON, D.C.

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The briefing 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  
 JENNIFER C. BRACERAS, COMMISSIONER  
 CHRISTOPHER EDLEY, JR., COMMISSIONER  
 PETER KIRSANOW, COMMISSIONER  
 ELSIE M. MEEKS, COMMISSIONER  
 RUSSELL G. REDENBAUGH, COMMISSIONER  
 ABIGAIL THERNSTROM, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

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## STAFF PRESENT:

JOHN BLAKELEY  
MARGARET BUTLER  
DEBRA CARR, ESQ., Deputy General Counsel  
IVY DAVIS  
TERRI DICKERSON, ASSISTANT STAFF  
DIRECTOR, OFFICE OF CIVIL RIGHTS  
EVALUATION  
PAMELA DUNSTON, CHIEF, ADMINISTRATIVE  
SERVICES AND CLEARINGHOUSE DIVISION  
DORELLE GRAY  
GEORGE HARBISON  
SOCK FOON MacDOUGALL  
TINA MARTIN  
EMMA MONROIG  
JENNY PARK  
KWANA ROYAL  
MICHELLE ROYSTER  
ALEXANDER SUN  
DEBORAH VAGINS  
TIFFANY WRIGHT  
MIREILLE ZIESENISS

## COMMISSIONER ASSISTANTS PRESENT:

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

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

(11:00 a.m.)

CHAIRPERSON BERRY: I am Mary Frances Berry, Chair of the United States Commission on Civil Rights; and Geraldine Segal, professor of history, at the University of Pennsylvania in Philadelphia. My Vice Chair, who also is a distinguished professor at the University of California Davis Law School and was formerly a judge, a justice of the California Supreme Court, is here with me. And Dean Christopher Edley from the Boalt Hall Law School at the University of California at Berkeley; Commissioner Elsie Meeks, who -- I've forgotten what your title is, Elsie.

COMMISSIONER MEEKS: Executive Director, First Nation Corporation.

CHAIRPERSON BERRY: Executive Director, First Nation. Executive Director. I started to say President. I hope that's not somebody else.

And Commissioner Peter Kirsanow, who -- could you describe yourself, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Master of the universe.

CHAIRPERSON BERRY: Master of the universe? Yes. Is that all you wish to say, Commissioner?

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1 COMMISSIONER KIRSANOW: I think that  
2 pretty much covers it.

3 CHAIRPERSON BERRY: All right. Master of  
4 the universe. And Commissioner Russell Redenbaugh,  
5 who I hear today for this proceeding -- this  
6 proceeding concerns America's readiness and  
7 preparation to vote in the November 2004 presidential  
8 election.

9 This is the third in a series of such  
10 proceedings that we have had here at the Civil Rights  
11 Commission under the title "Voting and Election  
12 Reform." And this is part of our continuing probe of  
13 potential barriers and challenges confronting voters  
14 in November.

15 The commission will explore today barriers  
16 to the ballot box, specifically recently reported  
17 problems with provisional and absentee balloting,  
18 implementation of voter identification requirements,  
19 voter intimidation, and suppression, and poll worker  
20 preparedness. We will also talk about voter  
21 enfranchisement generally as covered under the Help  
22 America Vote Act.

23 And the commission is involved in this  
24 because as a bipartisan fact-finding agency, one of  
25 our jobs is to investigate complaints that citizens

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1 are being deprived of their right to vote by reason of  
2 their race, color, religion, sex, age, disability,  
3 national origin, or by reason of fraudulent practices.  
4 And we are doing research and submit reports on these  
5 matters also.

6 This has been a core responsibility of the  
7 commission since 1957. And we, of course,  
8 investigated the controversial 2000 elections in  
9 Florida and issued a report, "Voting Irregularities  
10 During the 2000 Presidential Election."

11 We also testified before the Senate  
12 Committee on Rules and Administration in connection  
13 with the Help America Vote Act as it was passed by the  
14 Congress. We at first this time in April considered  
15 the voting systems, technology and the issue of  
16 machines and paper trails and all of that kind of  
17 technical stuff related to voting.

18 Then we had a paper, which is on our Web  
19 site, usccr.gov, concerning these issues and the  
20 status of electronic systems. We also in July looked  
21 at not only the voting system standards but the  
22 reliability of those and other kinds of voting, voter  
23 list maintenance, whether the lists were maintained  
24 properly, and we looked at the issue of the felon  
25 purge and felony disenfranchisement.

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1                   There have been a lot of reports recently  
2 in the press about voter suppression and alleged voter  
3 suppression: South Dakota, where some Native American  
4 poll workers asserted that Indians were wrongly  
5 required to produce photo identification, for example;  
6 Chicago, problems with voter identification and  
7 provisional balloting; Florida, elderly black voters  
8 who had been reportedly intimidated by police  
9 investigating alleged absentee voting fraud; Texas,  
10 where students at a predominantly black university  
11 were threatened with arrest by the local D.A., who  
12 suggested erroneously that they were not eligible to  
13 vote.

14                   Helping us to examine these and other  
15 concerns are a number of person, today, who we are  
16 very happy to have with us. They are: Maria Valdez,  
17 Regional Counsel, Chicago of the Mexican American  
18 Legal Defense and Education Fund, MALDEF; Jacqueline  
19 Johnson, who is Executive Director of the National  
20 Congress of American Indians; Courtenay Strickland,  
21 who is Voting Rights Director from the American Civil  
22 Liberties Union, Miami, Florida; and the honorable  
23 Sheldon T. Bradshaw, who is Deputy Assistant Attorney  
24 General for Civil Rights, the principal deputy for  
25 civil Rights in the Department of Justice, who will

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1 tell us about what the Justice Department is doing,  
2 its approach on these efforts, and what is happening  
3 that would inspire the public's confidence that the  
4 rights of people to vote will be protected, are being  
5 protected, and will continue to be protected as we go  
6 through this process.

7 We are going to begin with Maria Valdez,  
8 Regional Counsel for MALDEF. MALDEF, of course, is a  
9 national civil rights organization dedicated to  
10 promoting and protecting the civil rights of the over  
11 38 million or more, whatever the number is, Latinos --

12 MS. VALDEZ: Forty-two.

13 CHAIRPERSON BERRY: Forty-two million.

14 MS. VALDEZ: Probably 43 today.

15 CHAIRPERSON BERRY: Forty-three by the  
16 time we finish -- residing in the United States. Over  
17 ten years she has litigated a number of important  
18 voting rights cases, which have resulted in increased  
19 political opportunity for Latinos in Illinois. She  
20 successfully defended the creation of the only Latino  
21 majority congressional district in Illinois against  
22 constitutional challenge.

23 She fought to implement the motor voter  
24 law in Illinois and has challenged a number of illegal  
25 voting practices in the Chicago area. She is a

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1 national expert on voting rights law and has been a  
2 panel presenter at a number of conferences.

3 Please proceed, Ms. Valdez, and thank you  
4 for coming.

5 MS. VALDEZ: Well, thank you, Madam  
6 Commissioner and commissioners. It is certainly my  
7 honor and my privilege to discuss with you certain  
8 issues that have been facing the Latino voters in the  
9 Midwest region.

10 Chicago has a long history of voter fraud.  
11 And it's an unfortunate history of voter fraud. And  
12 while we don't see the overt fraud occurring within  
13 the City of Chicago to the extent that it had in the  
14 past, we continue to see problems with access to  
15 voting for language minorities and for minorities in  
16 general.

17 Specifically, what happened in the past  
18 primary election in Chicago of this year was simply a  
19 lack of adequate training on behalf of poll workers  
20 with respect to the Help America Vote Act. We had a  
21 number of instances where Latinos were not allowed to  
22 vote because they did not have photo ID, even though  
23 they had been long-time registered voters at that very  
24 precinct.

25 The City of Chicago and Cook County have

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1 assured us that they will take care of that for the  
2 November election by more training, but when you have  
3 over 12,000 poll workers for the City of Chicago and  
4 Cook County, it is a monumental task. While we are  
5 very concerned, we are working with those  
6 jurisdictions to make sure that it is mitigated as  
7 much as possible.

8 The other issue within the City of Chicago  
9 and Cook County is access to bilingual assistance and  
10 materials. It was very unfortunate that we had to  
11 file litigation against the City of Chicago and Cook  
12 County two years ago for violations of the Voting  
13 Rights Act section 203.

14 That litigation did end up in a compromise  
15 agreement. And they have agreed to cede to a series  
16 of our demands with respect to compliance, primarily  
17 the demand was that the bilingual materials it appears  
18 for the whole City of Chicago were being translated by  
19 the receptionists in the front office, somebody who  
20 may or may not have complete Spanish proficiency.

21 With the diversity of the Latino  
22 population in Chicago, which includes Mexicans, Puerto  
23 Ricans, Cubans, Central Americans, other Caribbeans,  
24 the Spanish translations must be done with some  
25 delicacy. So they have agreed to use a certified

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1 translator, rather than the receptionists in the front  
2 office.

3 We have also agreed to do a number of  
4 outreach efforts with them to recruit for bilingual  
5 election judges. The law in Illinois is that there  
6 can be no independent appointment of poll workers  
7 until 30 days before the election. The poll workers  
8 are primarily left to the discretion of the political  
9 committee men.

10 We mentioned to the city and Cook County  
11 that that doesn't mean you can't stop from recruiting  
12 people well before that time and then signing them up  
13 within 30 days. So we are working very, very hard and  
14 very strong to make sure that within the City of  
15 Chicago and Cook County, where 50 percent of the  
16 Latinos in Illinois reside, that that work is going to  
17 lead to more enfranchisement in the November election  
18 and ultimately complete enfranchisement.

19 We have also experienced problems with  
20 newly covered section 203 jurisdictions. For example,  
21 Kane County, which is a suburb of the City of Chicago,  
22 had attempted to meet the requirements of section 203  
23 but was very confused on a number of issues.

24 I do want to commend the Department of  
25 Justice for stepping in and making sure that working

1 with other organizations, like MALDEF, Kane County was  
2 on the right track.

3 One of the issues we have experienced with  
4 Kane County is that they're not sure that they have to  
5 translate all election materials. They thought  
6 translation of the ballot was appropriate but not much  
7 more than that.

8 So we have assured them with a phone call  
9 from the Department of Justice, I believe, right after  
10 we met with them that no bilingual translations must  
11 occur of all voting materials, that it is quality of  
12 information that we strive for under section 203. And  
13 hopefully we're on the right track on that.

14 Within Illinois, there is also an  
15 additional issue, and that has to do with the mail-in  
16 voter registration that is allowed under the Help  
17 America Vote Act and under Motor Voter. What we have  
18 seen is that there has just been a complete backlog of  
19 the ability of the election officials to process those  
20 in a timely manner. The average time in Chicago is  
21 six to eight weeks.

22 Over half of the mail-in registrations  
23 that we have tracked, people don't even actually get  
24 a voter registration card in the mail. They're not  
25 quite sure that they are actually registered to vote.

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1 So you can imagine what kind of disarray is going to  
2 happen in the November election, when people think  
3 that they might be able to vote. They're not quite  
4 sure where their precinct is. And they very well may  
5 go to the wrong precinct, which leads me to the issue  
6 of provisional voting.

7 One of the major problems we saw under  
8 provisional voting is that while it was used very much  
9 in the City of Chicago in Cook County, within the City  
10 of Chicago, 91 percent of the provisional ballots were  
11 rejected. And the primary reason for rejection of  
12 those provisional ballots was that the ballot was  
13 filled out at the wrong precinct.

14 Each state has its own laws with respect  
15 to when a provisional ballot will actually be counted.  
16 And Illinois requires that for a provisional ballot to  
17 be counted, it be submitted at the correct precinct.

18 Well, if you don't know where your  
19 precinct is and you haven't gotten your voter  
20 registration card and you go into the wrong precinct  
21 and they kindly offer you a provisional ballot, it's  
22 going to become meaningless.

23 So we have worked with the City of Chicago  
24 and Cook County to institute some safeguards, such as  
25 cell phones are available at every polling place so

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1 that the workers are supposed to be trained to call  
2 the central office to verify a voter's precinct when  
3 a voter comes in and they're not on the voter  
4 registration roll at that precinct.

5 Now, that sounds wonderful in theory, but  
6 we are going to really hope that it works out in  
7 practice. When you have 91 percent of your  
8 provisional ballots rejected, then it simply is not  
9 working.

10 And, again, it's a training issue. The  
11 city tells us we just don't have the funds to make  
12 sure that they are adequately trained. So HAVA can  
13 really become meaningless in that respect.

14 It leads me to my final comments. And I  
15 think it is important to highlight certain  
16 jurisdictions. There is a very small town in Indiana  
17 called East Chicago, Indiana. It is a town of less  
18 than 35,000 people, but it is a majority minority  
19 town, predominantly Latinos, African Americans, and  
20 Anglos. It has had an Anglo mayor for the past 30  
21 years.

22 There was an incredible amount of voter  
23 fraud that occurred in the mayoral election, where a  
24 Puerto Rican candidate was running against the mayor.  
25 A state judge found that voter fraud existed that

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1 permeated the process. The voter fraud occurred  
2 through the tool of absentee ballots.

3 Evidently the incumbent's campaign workers  
4 went to the minority communities, particularly the  
5 limited English-speaking communities, and purchased  
6 absentee ballot votes for 10 to 20 dollars.

7 In addition, they were requesting absentee  
8 ballots on behalf of individuals that never requested  
9 the ballot so that when an individual went to the  
10 polling place for Election Day, they were denied the  
11 right to vote because under Indiana law, once you  
12 requested a ballot, if you did not turn that ballot  
13 in, the only way for you to vote was to travel 20  
14 miles to the county seat to execute your vote.

15 Now, you can imagine for people of low  
16 income, limited English proficiency, no access to  
17 transportation that requiring to travel 20 miles to  
18 vote is just absolutely ridiculous.

19 So we had an incredible amount of findings  
20 of voter fraud. With those findings of voter fraud,  
21 we also determined that the Lake County election  
22 officials had imposed some same day election rules,  
23 which did not allow anyone to speak Spanish in the  
24 polls on voting day.

25 That's not to say they were saying that

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1 the poll workers were not allowed to speak Spanish.  
2 No one was allowed to speak Spanish. So that if my  
3 aunt who doesn't speak any English needed my  
4 assistance in voting, I was denied the right to assist  
5 her in the voting process.

6 Because of the facts of voter fraud,  
7 because of the bilingual assistance issues, we filed  
8 a Voting Rights Act lawsuit under section 2 and under  
9 section 4(e).

10 We are in the process of litigating that,  
11 but the judge has imposed a preliminary order  
12 requiring bilingual assistance in all phases of  
13 voting, including bilingual election judges in each  
14 precinct.

15 In addition, we had to go into court last  
16 week to compel the judge to appoint federal examiners  
17 to oversee the elections in East Chicago, Indiana  
18 because the Indiana Supreme Court has ordered a redo  
19 of that mayoral election because of the extent of  
20 voter fraud.

21 This past election in East Chicago, in the  
22 past primary election, when they were trying to  
23 implement the court's order for bilingual assistance,  
24 they were trying to implement the HAVA provisional  
25 voting, they got it all wrong. There were actual

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1 signs put up in a number of precincts that said, "No  
2 ID, no vote."

3 There are a number of people that we  
4 interviewed who had been 20-30-year residents of East  
5 Chicago, Latinos, who were denied the right to vote  
6 because they didn't have their ID.

7 I interviewed a woman, Helen Hernandez,  
8 who was on a 20-minute break from her janitorial job  
9 at the local school. She ran into the polling place  
10 to vote, was denied the right to vote, and got into a  
11 screaming match, unfortunately, with the poll worker  
12 as she insisted, "I have been a voter here for 20  
13 years. I do have the right to vote without an ID."

14 It took me and the Department of Justice  
15 observers to get the Lake County authority to call  
16 that precinct. It was devastating for the Latino  
17 community because they finally felt like they were  
18 making some headway with the bilingual assistance at  
19 the polls. And then they get these signs up saying,  
20 "No ID, no vote," again a complete lack of training on  
21 behalf of the poll workers on the limitation under  
22 HAVA on requesting identification.

23 There was an entire family denied the  
24 right to vote. The father of the family, Aldaba  
25 family, was a newly minted U.S. citizen. He had been

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1 a lawful permanent resident for over ten years and  
2 became a U.S. citizen. This was his first opportunity  
3 to vote. He went into that polling place. He  
4 couldn't vote because he didn't have an ID.

5 Here we are in the process. The Latino  
6 community is in the process of trying to get our  
7 community to exercise their rights to vote. In the  
8 City of Chicago, there is an initiative called the New  
9 Americans Initiative. They have registered 20,000  
10 newly minted U.S. citizens to participate in the City  
11 of Chicago. Those 20,000 applications came through  
12 mail-in registration. And we are very concerned  
13 whether those 20,000 are going to actually be able to  
14 vote in November.

15 I stress to you the importance of looking  
16 at these issues, providing guidance to the  
17 jurisdictions through the Department of Justice or any  
18 other department you may suggest, of the importance of  
19 training not every two years, not every four years, or  
20 maybe not at all but training for every election for  
21 every poll worker so that they understand that this is  
22 not about keeping people out of the polls but about  
23 allowing people to go in and vote the way that they  
24 want to vote.

25 Thank you.

1 CHAIRPERSON BERRY: All right. Thank you  
2 very much, Ms. Valdez. There will, of course, be  
3 questions. You understand that?

4 Our next presenter is Ms. Jacqueline  
5 Johnson, who is Executive Director, National Congress  
6 of American Indians, founded in 1944, the oldest and  
7 largest tribal government organization in the United  
8 States with a membership of more than 250 tribal  
9 governments in the United States.

10 In addition to leading NCAI, she is a  
11 member of the Executive Board for the Leadership  
12 Conference on Civil Rights, the National Conference  
13 for Community Injustice and National Voices. She is  
14 also a board member of See Alaska, an Alaska native  
15 regional corporation.

16 Prior to joining NCAI, she was the Deputy  
17 Assistant Secretary for Native American Programs in  
18 the Department of Housing and Urban Development.

19 Welcome. Please proceed. Thank you for  
20 coming.

21 MS. JOHNSON: Thank you.

22 Madam Chairman and members of the  
23 Commission, I am pleased to be here to talk a little  
24 bit about the Native American voting rights issues.  
25 First I want to start with on September 15th, just

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1 recently, there was a decision that was made in South  
2 Dakota on the Bone Shirt v. Nelson.

3 This is an historic victory for Native  
4 Americans because although this didn't deal with some  
5 of the more significant issues having to do with some  
6 voter suppression issues I will talk about earlier, it  
7 does begin to set a trend in the State of South  
8 Dakota, an area of concern for Native American voting  
9 rights, where the federal court, both at the trial and  
10 the appellate level strongly supported the Native  
11 voting rights issues and made it very clear that they  
12 wouldn't tolerate dilution of voting rights of Native  
13 Americans.

14 This decision was a 114-page decision,  
15 very, very clearly laid out, I believe, laid out its  
16 findings in a way that kind of sent a strong message  
17 that because of the number of cases that have come to  
18 South Dakota, laid out the message saying, there is  
19 enough information in here. And it should set a  
20 precedent for any other cases coming forward.

21 The Bone Shirt case was really one more  
22 about creating jurisdictions and districts with a  
23 super majority and didn't address some of the other  
24 voting issues that we have heard more recently in  
25 June, particularly the most recent election that

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1 happened in South Dakota.

2 I guess to give a little bit of history  
3 about Native American voting and some of the issues,  
4 we were amongst the last groups in this country to be  
5 able to experience the right to vote. And so it  
6 wasn't until 1965 that many states actually addressed  
7 the right to vote because of addressing the literacy  
8 language issues and other kinds of residency  
9 requirement issues so that we could vote.

10 Since HAVA and the Voter Rights Protection  
11 Act, many states, as you know, have been trying to  
12 readdress how do they do their job and how do they  
13 proceed with making the voting rights changes.  
14 Similar to the kind of experiences that Maria talked  
15 about, Native American communities have also  
16 experienced those.

17 I think that they are becoming more  
18 prominent and profiled a little bit more and probably  
19 addressed a little bit more, such as the challenges  
20 that we heard about in the post-Johnson race,  
21 senatorial race, in South Dakota, when there were  
22 allegations of voter fraud because the Native American  
23 vote, although not significant in numbers as the  
24 Latino population, the Native American vote  
25 populations are concentrated, our reservations are

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1 concentrated, as well as we happen to be in  
2 significant states that in this political environment  
3 are critical to either presidential or senatorial  
4 races. And I think that elevates the profile of the  
5 Native American vote, which is also very much a  
6 challenge to us in Indian country since many folks  
7 have not felt very enfranchised into a voter system  
8 and haven't participated in a voting system and now  
9 with trying to get our Native Americans out to vote,  
10 we deal with the issues of the feeling of  
11 disenfranchisement from the past and historical  
12 reasons but clearly confusion and a little frustration  
13 over and concern about engaging in the system that had  
14 been challenges such as the voter fraud challenges in  
15 South Dakota, et cetera.

16 Some of the most recent concerns that we  
17 have that we have been trying to work with the states  
18 to address as well as some of the Native American  
19 legal fields is trying to make sure that we are  
20 well-educated onto the Voter Rights Act. I think it's  
21 really important for us to be able to understand and  
22 to work with the states to resolve the problems early  
23 on, and that's exactly what we want to do.

24 In South Dakota, we clearly went after we  
25 recognized that there were some situations and issues

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1 to talk about how do we make sure and it's clear we  
2 know when an affidavit can be filed versus a  
3 provisional ballot, what is going to be the process or  
4 the procedures in making those determinations on those  
5 things.

6 In June, the last election that was held,  
7 after there was training in South Dakota for the poll  
8 watchers -- and, mind you, the training isn't  
9 mandatory that all of the poll election judges attend.  
10 So even though the training was held in good faith by  
11 the state, not everybody apparently went there. And  
12 there was still confusion on those issues.

13 We also had signage that was outside of  
14 precincts that said, "No ID, no vote." After a call  
15 to the state, the state clearly took those down early  
16 that morning. We don't know how much that affected.

17 There were also issues of challenges in  
18 the polling sites as to by poll watchers, partisan and  
19 otherwise, who would be pushing for a provisional  
20 ballot versus allowing for an affidavit. And those  
21 kinds of concerns came forward. And that is really  
22 where we are trying to get to to resolve the issues to  
23 make sure that everybody understands the rules, that  
24 we understand the rules, we can educate our people to  
25 what the rules are, that the voting judges understand

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1 the rules, that any poll watchers who are  
2 participating in the process, but they also understand  
3 the rules and so that we don't have to address the  
4 voter intimidation issues to the extent that we have.

5 Some of the other issues that we  
6 experience in Indian country other than just those  
7 issues, of course, we still are working on and working  
8 with the states on language barriers and primary  
9 Native-speaking languages. And, as you know, there  
10 are many, many Native languages in this country. And  
11 so we're addressing that as well as the fact that  
12 there are still unwritten languages or written  
13 literacy is very low. And we're continuing to work  
14 into those areas and need to make sure that we still  
15 have the ability to have an assistant with a person to  
16 be able to help in those areas.

17 We also are concerned about access to  
18 polls. Because our reservations are so vast and  
19 transportation issues are so challenging to many of  
20 our members of our community, many of our Native  
21 American voters still have to travel well beyond a  
22 100-mile radius to be able to go to exercise their  
23 right to vote.

24 This year earlier some tribes were very  
25 successful as we have launched this effort to try to

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1 engage our community to get more involved in the  
2 Native voting, such as in North Dakota, they are  
3 actually able to get a polling site on the Fort  
4 Berthold Reservation. That made a major difference in  
5 their voter turnout. It was a very positive  
6 performance by making those changes.

7 And Navajo Nation, for the first time, as  
8 other tribes are trying to do the same thing, is to  
9 have their tribal elections and the federal elections  
10 at the same time to encourage people to participate in  
11 the federal voting process.

12 One of the challenges that they are trying  
13 to address is being able to have a single site similar  
14 to any other state or other governmental county. You  
15 know, when you go to vote, you get to do the city  
16 elections and the county elections, and they are all  
17 there at the one site.

18 In Indian country, in far too many of our  
19 places, we still have to go to multiple sites to be  
20 able to exercise the tribal ballot as well as the  
21 federal ballot or state ballot. So those are some of  
22 the other challenges that we are trying to address as  
23 we move forward.

24 Our community is very engaged in trying to  
25 also be very supportive as we look forward to the

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1 voting rights reenactment to be able to correct and to  
2 be able to work with trying to address the concerns of  
3 our community. We think that this is a good  
4 opportunity for us to be able to engage in making  
5 positive differences to encourage our community to  
6 maintain its interest and to be engaged in its right  
7 to vote.

8 Thank you.

9 CHAIRPERSON BERRY: All right. Thank you  
10 very much. And, again, there will be questions.

11 Our next presenter is Ms. Courtenay  
12 Strickland, who is the Director of the Voting Rights  
13 Project of the ACLU of Florida. She coordinates their  
14 legal legislative and grass roots efforts on election  
15 reform issues.

16 She has been working very hard for the  
17 past few years on election reform in that state. At  
18 the September 2002 primaries in south Florida, she  
19 joined with others to form what is called the  
20 Miami-Dade Election Reform Coalition, a leading  
21 advocate of reform in voting practices, particularly  
22 with regard to the use of DREs. Those are direct  
23 recording equipment voting systems, ATM-type systems,  
24 touch screens and the like.

25 She is the primary organizer of the ACLU's

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1 campaign to restore the voting and civil rights of the  
2 600,000-plus ex-felons in Florida also an issue that  
3 we have dealt with.

4 We thank you very much for coming. Please  
5 proceed.

6 MS. STRICKLAND: Thank you, Madam  
7 Chairperson, and thank you, honorable commissioners,  
8 for the opportunity to be here and speak with you  
9 today and also to share with colleagues about problems  
10 that apparently we are all facing in some respects in  
11 various states throughout this country.

12 My testimony here today builds, in part,  
13 on testimony offered on behalf of the Florida Equal  
14 Voting Rights Project by JoNel Newman in January of  
15 2001 and Charles Elsesser and Howard Simon in June of  
16 2002. The Florida Equal Voting Rights Project, which  
17 came before you on both of those occasions, was a  
18 collaborative effort of the ACLU, the Florida Justice  
19 Institute, and Florida Legal Services. So I'm  
20 building on what has already been presented in that  
21 area.

22 In January 2001, JoNel Newman testified  
23 that Florida's voting problems were of two kinds.  
24 First, not every eligible elector who went to the  
25 polls to cast a vote was permitted to do so. And,

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1 second, not all the votes that were cast by eligible  
2 electors were counted. These two problems continue to  
3 lie at the crux of all voting irregularities in  
4 Florida.

5 Prior to the failed primary elections in  
6 south Florida on September 10th, 2002, many believed  
7 that the latter problem, making sure votes cast were  
8 accurately counted, would be solved by the new  
9 technology that had been put into place.

10 The subsequent problems with both the  
11 technology and management of direct recording  
12 equipment, or DRE, voting machines have since called  
13 that into question. But the persistent issue across  
14 Florida elections since 2000, even in elections for  
15 which vote counting has gone smoothly, has been vote  
16 suppression due to a compendium of policies and  
17 procedures often unrelated to technology.

18 November 2000 taught us that voting  
19 policies and procedures that if taken singly might  
20 result in relatively small numbers of votes lost can  
21 combine to create significant disenfranchisement of  
22 large numbers of eligible voters. That was the case  
23 in November 2000 with quality implementation of voter  
24 identification policies, precinct rolls that failed to  
25 show the voter roll for the full county, busy phone

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1 lines at the offices of supervisors of elections,  
2 inadequate language assistance at the polls, precincts  
3 that were moved at the last minute, and a host of  
4 "little" problems.

5 The November 2000 election taught us that  
6 even the seemingly smallest voting policy, practice,  
7 procedure, or problem must be scrutinized in order to  
8 prevent widespread disenfranchisement. With that in  
9 mind, I wanted to touch today upon just four types of  
10 vote suppression that currently threaten the ability  
11 of eligible voters in Florida to cast their vote and  
12 have it accurately counted.

13 Written testimony has been distributed.  
14 And so I would refer the commissioners to that  
15 testimony. I am only going to hit the highlights in  
16 what I say here today.

17 First of all, in Florida, no discussion of  
18 vote suppression can be had without at least some  
19 mention of Florida's voting and civil rights ban  
20 against citizens with past felony convictions. I know  
21 the commission has already examined this problem at  
22 length along with the problem that flows from that:  
23 the purging of eligible voters erroneously from the  
24 rolls. So I am not going to spend much time on that  
25 at all.

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1                   However, that injustice is the primary  
2 form of vote suppression in our state. We have more  
3 than 600,000 people who have served their time, have  
4 paid their debt to society and, yet, still cannot  
5 exercise their most fundamental right in a democracy.

6                   The fact is were they to live in another  
7 state given that Florida is one of only seven states  
8 that permanently takes away the right to vote from all  
9 people with a past felony conviction, even after  
10 completion of the sentence, those folks probably would  
11 be able to vote. Because they are in Florida under  
12 this voting ban that has been in our state  
13 constitution since 1868, they cannot.

14                   The disproportionate racial impact, of  
15 course, is hard to overstate with nearly one in three  
16 African American men of voting age in the State of  
17 Florida being unable to cast a ballot. Nearly 120,000  
18 Latinos in the State of Florida are also disfranchised  
19 by Florida's voting ban. Over 12 percent of the  
20 disfranchised population is, in fact, Latino.

21                   Loss of civil rights in Florida includes  
22 not only loss of the right to vote but also loss of  
23 the right to hold certain state job licenses. That's  
24 directly affecting people's ability to support their  
25 families, pay their taxes, and act as productive

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1 citizens through meaningful employment.

2 I would merely point out to the Commission  
3 right now on this subject that there are short-term  
4 and long-term solutions. In the short term, the  
5 governor and the cabinet sitting as the Board of  
6 Executive Clemency have the power to amend the rules  
7 of executive clemency that govern Florida's rights  
8 restoration application process to make restoration of  
9 the right to vote virtually automatic. And they can  
10 do so tomorrow with the stroke of a pen.

11 In fact, under Governor Askew I believe in  
12 the years 1975 to '77, restoration in Florida was  
13 virtually automatic, in spite of the ban that was  
14 still in the state constitution at that time. The  
15 governor and the cabinet should take action now to  
16 change this process. In the short term, the  
17 legislature should also allocate additional funding to  
18 deal with the backlog of pending applications awaiting  
19 review, a backlog that has been in existence for many  
20 years. But in the long term, ultimately we do need to  
21 amend Florida's constitution.

22 To that end, there is a ballot initiative  
23 petition currently being circulated in Florida. It is  
24 being supported not only by the ACLU but by the  
25 Florida Rights Restoration Coalition, a nonpartisan

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1 group of nearly 40 local, state, and national  
2 organizations that are dedicated to bringing an end to  
3 Florida's voting ban. However, the legislature also  
4 has the power to place the state constitutional  
5 amendment on the ballot for the voters to vote on.  
6 And they should do so immediately.

7 In the long term, our most fundamental  
8 right in a democracy, a right for which people have  
9 died, the right to vote, should not lie in the hands  
10 of politicians, as it does in the State of Florida.

11 Moving on to another form of vote  
12 suppression in Florida, one that has already been  
13 mentioned earlier in discussions today, provisional  
14 balloting, specifically in Florida, the requirement  
15 that one be in the correct precinct when the  
16 provisional ballot is cast in order for that ballot to  
17 count.

18 In Florida, if a person is not in his or  
19 her correct precinct, the entire ballot is rejected as  
20 illegal, meaning that none of the choices made on that  
21 ballot, even in races for which the voter would have  
22 otherwise qualified, no matter what his or her  
23 precinct, will be counted.

24 Of course, provisional balloting was  
25 adopted in Florida as part of the Florida Election

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1 Reform Act of 2001, prior to the adoption of the Help  
2 America Vote Act.

3 In general, the move toward provisional  
4 ballots is certainly a good thing. The problem is in  
5 Florida, the precinct requirement robs provisional  
6 ballots of their ability to remedy many of the exact  
7 circumstances they were intended to solve after 2000.  
8 Worse still, provisional ballots can leave people  
9 feeling as if they legitimately participated in the  
10 democratic process when, in fact, they were  
11 disfranchised.

12 The ACLU urged legislators in 2001, at the  
13 time of the passage of this legislation, to amend the  
14 language to remove the precinct requirement but to no  
15 avail.

16 I want to provide you with just a little  
17 bit of hard data. We are in the process now of  
18 collecting additional data on the rejection of  
19 provisional ballots in counties across the State of  
20 Florida. So this is only a preliminary touch. But I  
21 do want to give you a little bit here.

22 Data from elections that have occurred  
23 since implementation of provisional balloting confirms  
24 our concerns that the correct precinct requirement has  
25 disfranchised significant numbers of voters.

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1           The ACLU has made public records requests  
2 of 15 Florida counties, 8 of whom have responded, for  
3 information on provisional balloting for various  
4 elections during 2002 through 2004. The information  
5 sent by the eight counties concerning various  
6 elections during that time period indicated that out  
7 of a total of 1,220 provisional ballots cast, 584 were  
8 accepted and 636 were rejected.

9           Of those rejected, 122 were rejected  
10 because the voter cast a provisional ballot in the  
11 wrong precinct. The number amounted to 19.2 percent  
12 of all the provisional ballots that were rejected, or  
13 10 percent of the total number of provisional ballots  
14 cast. That means some ten percent of those ~~sating~~ *casting*  
15 provisional ballots probably left the polling place  
16 feeling as if they had voted when, in fact, their  
17 ballots were merely rejected as illegal.

18           Now, in the written testimony before you,  
19 you will find some additional statistics from other  
20 counties. Some of the percentages rise to as high as  
21 12.5 percent of all provisional ballots cast rejected  
22 because the person was in the wrong precinct.

23           There have been a couple of objections  
24 made to changing this precinct requirement. One has  
25 been that in doing so, we would make it such that

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1 voters would stop into any polling place to cast their  
2 vote. And that might have a detrimental impact on  
3 local elections.

4 Certainly we do have concerns about making  
5 sure people participate in local elections. However,  
6 with the advent of early voting in Florida, people do  
7 have the opportunity to go to a variety of locations  
8 and cast votes in both their local and larger  
9 elections on a number of days prior to Election Day.

10 Another concern that has been raised is  
11 the certification deadlines. Some have said that  
12 those are too tight to allow for the counting of the  
13 provisional ballots in such a way that the voter's  
14 choices in the races for which he or she would have  
15 otherwise qualified would still be counted. If that  
16 is the case, then we need to consider changing the  
17 certification deadlines because speed is not the  
18 ultimate goal of our democracy. And speed should not  
19 be something that causes us to compromise the end  
20 result and the tallies of our elections.

21 With regard to the voter identification  
22 requirement in Florida, that, too, has caused a long  
23 history of problems. This Commission is already  
24 aware, I believe, of signage that was posed in 2000  
25 that was both inconsistent and inaccurate and that led

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1 to voters being turned away.

2 I would point out that the ACLU received  
3 a complaint from a voter in March of 2004 concerning  
4 similar signage posted in Lee County and complaints  
5 from 2002 of people being told while waiting in line  
6 to vote, "Get out your photo ID. You must have photo  
7 ID," which, of course, threatens to mislead people  
8 into thinking that they need to go home, perhaps at  
9 their only time during the day to vote. And their  
10 vote may, in fact, be lost.

11 We need to refrain from posting misleading  
12 signage in the polling places. Poll workers need to  
13 be trained in the affidavit process: when that should  
14 be used versus when a provisional ballot should be  
15 given out.

16 And people who under HAVA must use a  
17 provisional ballot when they show up without ID; that  
18 is to say, first-time voters who register by mail and  
19 don't provide proper ID to the supervisor prior to  
20 Election Day, those exceptions should be clearly noted  
21 on the voter rolls of every county so that provisional  
22 ballots are given only to the voters who actually need  
23 them and other voters without ID but who are properly  
24 registered can fill out an affidavit and vote a normal  
25 ballot.

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1 I would also just echo the concerns raised  
2 earlier about delays in processing voter registration  
3 applications and the mailing of voter registration  
4 cards. The Voter Protection Coalition, of which the  
5 ACLU is a part, has received complaints about delays  
6 in processing voter registration applications.

7 Voter registration activists in Miami-Dade  
8 County report that as many as 20 percent of their  
9 registrants are never receiving voter registration  
10 cards, even though apparently they are on the rolls.  
11 The delays for those who are getting them can be  
12 something like eight weeks in many cases.

13 Of course, this has a huge detrimental  
14 impact on voters. First of all, they're not sure  
15 whether their application has been processed at all  
16 and whether they are, in fact, on the rolls and  
17 eligible to vote or not.

18 Secondly, many voters are under the  
19 mistaken impression that you must have a voter  
20 registration card in order to vote. And so not having  
21 that card, particularly for new voters, can be very  
22 intimidating and have a chilling effect on turnout.

23 Without the card, it's also obviously hard  
24 for voters to know where they are supposed to go vote,  
25 which is their correct precinct. And not having a

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1 card may lead to duplicate applications, which again  
2 feather clogs systems in the supervisors of elections'  
3 office and makes it difficult to respond to legitimate  
4 requests from voters.

5 In conclusion, the other important lesson  
6 that I believe we have learned is that these problems  
7 all play into each other. Just as the erroneous  
8 removal of people from the voter rolls as felons in  
9 2000 and even more recently flows from Florida's  
10 larger voting ban against people with past felony  
11 convictions, so, too, can faulty implementation of  
12 voter identification policy lead to misuse of  
13 provisional balloting. And not receiving a voter  
14 registration card in the mail and, thus, not knowing  
15 which precinct to go to can lead to the discounting  
16 and the rejecting as illegal of provisional ballots.

17 So we have learned that no problem, no  
18 policy, no procedure is too small to be scrutinized in  
19 our voting processes, especially when they work  
20 together to influence each other in these ways. For  
21 the sake of our democracy, we have to look at each and  
22 every aspect of our system.

23 Thank you.

24 CHAIRPERSON BERRY: Thank you very much,  
25 Ms. Strickland. I very much appreciate your

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1 testimony. And there will be questions, of course.

2 Now, our next presenter is Mr. Sheldon T.  
3 Bradshaw, who is principal Deputy Assistant Attorney  
4 General for Civil Rights in the Department of Justice.  
5 As the principal deputy, Mr. Bradshaw runs everything.  
6 I mean, he helps oversee the enforcement of federal  
7 statutes prohibiting discrimination on the basis of  
8 race, sex --

9 VICE CHAIRPERSON REYNOSO: I thought that  
10 was Commissioner Kirsanow that did that.

11 CHAIRPERSON BERRY: Commissioner Kirsanow  
12 is the master of the universe. Well, he is the  
13 principal deputy master. As the principal deputy in  
14 the Civil Rights Commission, Mr. Bradshaw helps  
15 oversee the enforcement of federal statutes  
16 prohibiting discrimination on the basis of race, sex,  
17 disability, religion, and national origin. He  
18 previously served as a deputy assistant attorney  
19 general in the Justice Department's Office of Legal  
20 Counsel.

21 While at OLC, the Office of Legal Counsel,  
22 Mr. Bradshaw provided written opinions and oral advice  
23 in response to legal questions from government  
24 officials, including counsel to the president and  
25 various offices.

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1 Mr. Bradshaw practiced law in the D.C.  
2 office of Howrey, Simon, Arnold, and White and prior  
3 to that was a law clerk for Judge Karen Williams, U.S.  
4 Court of Appeals for the Fourth Circuit. Please  
5 proceed. And thank you very much for coming.

6 MR. BRADSHAW: Thank you, Madam  
7 Chairwoman. Thank you, commissioners, for the  
8 opportunity to appear here today and show the members  
9 of the Commission the important steps that the Civil  
10 Rights Division is taking to ensure the right of  
11 citizens to vote free of interference and  
12 intimidation.

13 The Civil Rights Division takes its  
14 responsibility of protecting American voters very  
15 seriously. And all of our lawyers are dedicated to  
16 carrying out this noble duty.

17 The Civil Rights Division has initiated a  
18 number of programs that I would like to discuss today  
19 to ensure compliance with the Voter Rights Act, the  
20 National Voter Registration Act, the Help America Vote  
21 Act, and other federal voting rights statutes the  
22 Department of Justice is responsible for enforcing.

23 Before describing those programs, however,  
24 I would like to note that for the past month, the  
25 Civil Rights Division has been working very closely

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1 with the Commission, providing it with countless  
2 documents on voting rights issues at a time when our  
3 division attorneys and staff were engaged in  
4 extensively election monitoring and, to give you just  
5 one example, just three days ago, on September 14th,  
6 we had 43 of our lawyers and other staff out in the  
7 field monitoring primary elections in several areas of  
8 the country.

9 In addition to engaging in that extensive  
10 election monitoring, we are also planning coverage for  
11 the general election. Notwithstanding that fact, we  
12 expended a great deal of time and resources responding  
13 to the Commission's several requests. And we hope  
14 that we have been successful in providing the  
15 Commission with the materials that it has needed. And  
16 we have very much appreciated your consideration and  
17 cooperation during that process. Thank you very much.

18 CHAIRPERSON BERRY: Thank you.

19 MR. BRADSHAW: Let me turn now to some of  
20 our plans to protect voting rights this year. So far  
21 this year the Civil Rights Division has coordinated  
22 and sent 726 voting rights observers and monitors to  
23 72 elections in 66 counties in 20 states.

24 I would like to thank Ms. Valdez for  
25 noting the work of some of our elections observers and

1 monitors in some of the areas that MALDEF has been  
2 closely monitoring. As a result of the monitors, as  
3 Ms. Valdez noted, we were able to correct several  
4 mistakes, a number of mistakes, that were being made  
5 related to both provisional balloting, language  
6 assistance. Also in South Dakota, our monitors were  
7 able to catch some of the problems that Ms. Johnson  
8 identified and bring those to the attention of poll  
9 workers as well.

10 This November, however, the Civil Rights  
11 Division expects to deploy more voting rights  
12 observers and monitors than in any other time in  
13 recent history. While we are preparing to undertake  
14 the most extensive monitoring of an election in recent  
15 memory this November, let me emphasize that the voting  
16 rights observers and monitors will be Civil Rights  
17 Division personnel and persons working for the Office  
18 of Personnel Management.

19 While in the past the division has  
20 occasionally used some assistant United States  
21 attorneys and other prosecutors, Alex Acosta, the  
22 Assistant Attorney General for Civil Rights, has made  
23 it clear that criminal prosecutors will not be  
24 stationed at polling places on Election Day. Instead,  
25 we are actively recruiting attorneys and staff and

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1 throughout the Civil Rights Division to ensure  
2 sufficient capacity to monitor the November elections.

3 The Voting Section will both train and  
4 supervise these other lawyers and staff to increase  
5 our ability to send Civil Rights Division staff to  
6 more locations. We are also working with the Office  
7 of Personnel Management to greatly increase the number  
8 of federal observers who will be available under  
9 section 8 of the Voting Rights Act to be assigned as  
10 observers and to monitor elections in jurisdictions  
11 subject to section 5 of the Voter Rights Act.

12 In connection with these preparations this  
13 past May, Alex Acosta convened a meeting with  
14 representatives of major civil rights organizations.  
15 He briefed them on the division's efforts to protect  
16 voting rights, explained how the division's federal  
17 observer program works, and solicited their help in  
18 providing information on jurisdictions that we should  
19 consider for monitoring during the upcoming election.

20 Of particular importance, he reemphasized  
21 that the Civil Rights Division had no plans and will  
22 not use criminal prosecutors as election monitors. If  
23 the Commission would like additional information on  
24 our federal observer program, I would recommend that  
25 they go to the Web site, a link of which is in my

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1 written testimony.

2 Other important protections for voters  
3 include sections 4 and 203 of the Voter Rights Act,  
4 which protect certain language minority groups.  
5 Covered jurisdictions are determined by the Census  
6 Bureau after each census based on a formula set out in  
7 the Voter Rights Act. These provisions require  
8 covered jurisdictions to provide all voter  
9 registration or voting notices, forms, instructions,  
10 assistance, or other materials or information related  
11 to the electoral process and the covered languages.

12 Over the past two years, the Civil Rights  
13 Division has undertaken the most rigorous protection  
14 of the voting rights of language minorities under the  
15 Voter Rights Act in its history. The initiative began  
16 immediately following the July 26th, 2002  
17 determination by the Director of the Census of which  
18 jurisdictions were covered based on the 2000 census.

19 The Civil Rights Division not only mailed  
20 formal notice and detailed information on compliance  
21 to all covered jurisdictions but also initiated  
22 face-to-face meetings with state and local election  
23 officials and minority community members in almost all  
24 of the newly covered jurisdictions to explain the law,  
25 answer questions, and to work to foster the

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1 implementation of effective programs.

2 Since then the Voting Section has  
3 initiated systematic review of the full range of  
4 information provided by covered jurisdictions to  
5 voters in English, just not ballots and election  
6 pamphlets themselves but also newspaper notices that  
7 are required by state law, Web site information, and  
8 any other election information in order to determine  
9 whether that same information is available in each of  
10 the covered minority languages.

11 The division has also been systematically  
12 reviewing whether covered jurisdictions are providing  
13 sufficient numbers of bilingual poll officials and  
14 translators in polling places where they are needed to  
15 serve the language minority population.

16 The division recently sent a letter to  
17 more than 400 covered jurisdictions across the United  
18 States to remind them of their obligations under the  
19 language minority provisions of the Voter Rights Act.  
20 An example of one of these letters is attached to my  
21 written materials.

22 Other provisions of the Voter Rights Act  
23 and the requirements of the National Voter  
24 Registration Act also contain important safeguards for  
25 voters that ensure their ability to register to vote

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1 and to access polling places in order to cast a ballot  
2 without interference and intimidation.

3 During the last three years, the division  
4 has continued its vigorous enforcement of the Voter  
5 Rights Act and the National Voter Registration Act  
6 litigating enforcement actions to protect minority  
7 voters, including suits in, among other states,  
8 Missouri, Tennessee, Arkansas, New York, Colorado,  
9 Florida, Pennsylvania, Montana, South Carolina, et  
10 cetera.

11 Earlier this year starting in April, the  
12 division won two voting rights cases brought under  
13 section 2 of the Voter Rights Act at the Court of  
14 Appeals level.

15 In one case against Blaine County,  
16 Montana, the Ninth Circuit Court of Appeals affirmed  
17 a judgment obtained by the division involving the  
18 dilution of the votes of Native American voters and  
19 just a few days ago denied a motion for a rehearing in  
20 that case.

21 In a second case against Charleston  
22 County, South Carolina, the Fourth Circuit Court of  
23 Appeals affirmed a judgment that we obtained involving  
24 the dilution of the votes of African American voters.

25 Since 2001, the division has filed a total

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1 of 22 lawsuits protecting access to the polls and the  
2 voter registration electoral process. We settled a  
3 number of additional cases without the need to  
4 actually file a lawsuit. These cases and our actions  
5 demonstrate our continuing vigilance in our pursuit of  
6 persons who violate federal voting rights laws.

7 The division also recently sent a letter  
8 to the chief election officials of all 50 states  
9 reminding them of their legal obligations under the  
10 Voter Rights Act and other federal voting rights  
11 statutes and offering the assistance of the division's  
12 Voting Section to ensure compliance with the  
13 requirements of these statutes. An example of one of  
14 these letters is also attached to my written  
15 materials.

16 One of the most important new statutes  
17 passed by Congress affecting voting rights is the Help  
18 America Vote Act of 2002. Section 401 of that statute  
19 gives enforcement authority for title II of the  
20 statute to the Department of Justice.

21 The Attorney General has assigned that  
22 responsibility to the Civil Rights Division. And  
23 after HAVA's passage, the Civil Rights Division worked  
24 to ensure the implementation of the nondiscriminatory  
25 election technology and administration requirements of

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1 title III by engaging in extensive outreach to state  
2 and local officials across the United States.

3 The division sent a letter in March 2003  
4 to the governor, attorney general, and the chief state  
5 election official in every covered state and territory  
6 discussing the requirements of HAVA and offering  
7 assistance of the division's lawyers to states as they  
8 begin to working to implement the new statute.

9 The division's outreach included attending  
10 and making presentations at numerous meetings and  
11 conferences of elected officials and state  
12 legislators, responding to inquiries from state and  
13 local officials about HAVA's requirements, and  
14 implementing a HAVA information page on our Web site.  
15 Again, a link to that site is contained in my written  
16 materials.

17 In addition, the division has also already  
18 filed its first enforcement action under title III of  
19 HAVA against a county in California. This action was  
20 successfully settled by a consent decree. We are  
21 continuing to closely monitor the implementation and  
22 compliance efforts of all of the states and  
23 territories covered by HAVA and will file further  
24 actions, if warranted, to enforce title III of that  
25 act.

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1 I might make one additional note. The  
2 ability of disabled voters to access polling places in  
3 order to be able to cast a ballot is also of critical  
4 importance to ensuring the right to participate in the  
5 democratic process.

6 Our Disability Rights Section has been  
7 working with our Voting Section to answer questions  
8 from the public and local officials about the  
9 provisions of HAVA that will provide disabled voters  
10 the ability to vote without assistance and of the same  
11 privacy of other voters. Of course, those particular  
12 provisions of HAVA will not take effect until 2006.

13 In order to more promptly protect the  
14 voting rights of voters with disabilities, in February  
15 the division published a guide for elections officials  
16 titled "ADA Checklist for Polling Places." I have  
17 placed a copy of that -- it's about a 40-page document  
18 -- in my written materials as well.

19 This guide shows officials how to make  
20 sure that their polling places are accessible to blind  
21 and other disabled voters and if not, provide easy and  
22 cost-effective solutions for making them accessible.

23 I have some additional information in my  
24 written materials. I see I am out of time. I will  
25 leave them for you to read. And I look forward to

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1 answering any questions that you might have.

2 CHAIRPERSON BERRY: Thank you. And I  
3 should have mentioned earlier that all of the written  
4 testimony will without objection be included in the  
5 record.

6 Does any commissioner have any question  
7 for any -- yes, Commissioner Edley?

8 COMMISSIONER EDLEY: Thank you, Madam  
9 Chairperson. And thanks very much to the panel. It  
10 was very helpful.

11 Mr. Bradshaw, if I can start with you,  
12 please? I'm trying to get a little bit of a handle on  
13 two issues. One is the impression -- I hope it's a  
14 misimpression -- that while there is a federal  
15 monitoring effort, that the attention is to the  
16 correction of ~~retail~~ problems of poor implementation. ✓  
17 But at some point surely a pattern of poor  
18 implementation should give rise to enforcement action.

19 In other words, it's one thing to have  
20 federal monitors there to say, "Oh, no, that sign  
21 shouldn't be up that says 'No ID, no voting,'" but  
22 it's another thing to recognize that in a quarter of  
23 the polling places in a particular jurisdiction, such  
24 signs are present.

25 Without inventing grand schemes of a

1 conspiracy to affirmatively suppress voting, at least  
2 that kind of really quite widespread misimplementation  
3 isn't that cognizable under some statute as a  
4 violation of the civil rights laws.

5 MR. BRADSHAW: You're absolutely right  
6 that there are sort of two, albeit related, activities  
7 that we're working on. One is our monitor and  
8 observer program. And it is of particular importance  
9 to have people at the polling places on the day of  
10 elections.

11 COMMISSIONER EDLEY: Right.

12 MR. BRADSHAW: And I think we have heard  
13 information today about how effective our monitors and  
14 observers can be in correcting violations of the law.

15 But you are also right in that that needs  
16 to be coupled or supplanted with vigorous enforcement  
17 of the federal voting rights statutes. And over the  
18 last 3 years, as I noted in my written testimony, we  
19 have brought 22 suits to enforce the voting rights  
20 laws, which compares -- that has been over the last 3  
21 and a half years, which compares to 21 suits brought  
22 in the previous 3 years.

23 So we have, in fact, placed a large amount  
24 of focus on litigating where necessary. In fact, one  
25 of the things that we have found, though, through our

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1 monitoring programs and why they are interrelated is  
2 quite frequently our monitoring leads to lawsuits and  
3 ultimately consent decrees. So that's one of the  
4 ways, in addition to the great work of organizations  
5 like MALDEF and others bringing problems to our  
6 attention, it is through our monitoring program that  
7 we actually find out about noncompliance and  
8 violations that ultimately lead to lawsuits and  
9 ultimately consent decrees.

10 COMMISSIONER EDLEY: Do you have a sense  
11 of roughly how many pattern or practice  
12 investigations, cases you are working up at the  
13 present, order of magnitude: more like 2 or more like  
14 30?

15 MR. BRADSHAW: I mean, we have a number of  
16 cases in the pipeline right now based on cases that  
17 we're investigating based on allegations of voter  
18 suppression and intimidation. I don't have a specific  
19 number for you, but we are actively investigating a  
20 number of allegations of voter suppression throughout  
21 the country.

22 COMMISSIONER EDLEY: That just leads me to  
23 the last question I'll ask, and then I will subside.  
24 On that issue of allegations of voter suppression, I  
25 am sure you or your staff reviewed the report that was

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1 issued a couple of weeks ago by the NAACP and People  
2 for the American Way Foundation concerning a sense of  
3 efforts to suppress the vote, particularly in minority  
4 communities. And I was wondering whether or not --  
5 well, let me ask, what is the division's reaction to  
6 that report?

7 MR. BRADSHAW: We are obviously very  
8 concerned about protecting the electoral franchise for  
9 all Americans. Whenever we see allegations suggesting  
10 suppression of the right to vote, we receive those  
11 allegations and we open an investigation. So I am  
12 quite troubled and the division is troubled and is  
13 investigating all allegations we receive of voter  
14 suppression and intimidation.

15 COMMISSIONER EDLEY: Thank you.

16 CHAIRPERSON BERRY: Meeks was next and  
17 then I think Commissioner Braceras and Commissioner  
18 Kirsanow.

19 COMMISSIONER MEEKS: You know, I'm just  
20 not sure how fine the line is when you're talking  
21 about intimidation. I'll give you some really good  
22 examples from my precinct.

23 I mean, one, the ID issue, which the word  
24 got out, yes, you need your ID to go vote, I mean, I  
25 know because I have talked to a couple of people who

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1 said, "Well, I didn't have a picture ID. So I  
2 couldn't vote" when, in fact, I mean, the word just  
3 didn't get out well enough that, "Well, you need it,  
4 but if you don't have it, you can do an affidavit."  
5 In that, it's a small enough community.

6 Then there was this other weird thing  
7 during the primary. And when I went to vote, then the  
8 poll worker hollered out, "Elsie Meeks, Democrat,"  
9 which that's fine. It's a precinct that is primarily  
10 Democratic, and I wouldn't care anyway.

11 But there is this young guy the first time  
12 he voted who was a Republican. And his mother caught  
13 me later in the grocery store and was like, "I didn't  
14 know he was a Republican."

15 You know, I feel sorry for the young man.  
16 That's the first time he voted. And I don't know if  
17 he will know the difference that this won't happen in  
18 the general or not, but people are a little timid and  
19 may not come back.

20 Is this a law? I mean, do we have to do  
21 this? I asked a poll worker that. She said, "Yes,  
22 it's a law." I thought it was just an unusual thing.

23 And then this other that really not many  
24 of the poll workers -- there were some Natives on hand  
25 to sort of advise some of the people, but they're

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1 mostly non-Indians. And people are just intimidated  
2 by that because this is a new thing for a lot of  
3 people outside elections. And I just wasn't sure what  
4 role the Department of Justice plays in monitoring  
5 what kind of state laws and practices get passed.

6 MR. BRADSHAW: I appreciate your question  
7 because South Dakota is one of the states that we have  
8 been following very closely. And, in fact, as I noted  
9 earlier, we had monitors and observers at the primary  
10 elections. And, as Ms. Johnson noted, there were some  
11 irregularities there that our monitors and observers  
12 identified and immediately brought to the attention of  
13 poll workers and corrected. In addition --

14 COMMISSIONER MEEKS: There is one at my  
15 precinct.

16 MR. BRADSHAW: Yes. Unfortunately, we  
17 don't have enough monitors and observers to have one  
18 in every precinct. But, as I noted earlier, we are  
19 going to really have record numbers, at least for  
20 purposes of recent history, a record number of  
21 monitors and observers out in place for the general  
22 election.

23 And going back specifically to South  
24 Dakota, in addition to immediately notifying poll  
25 workers of these problems, attorneys from our Voting

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1 Rights Section have subsequently met with the  
2 Secretary of State from South Dakota and brought each  
3 one of these problems to the Secretary of State's  
4 attention. And we, of course, will be following this  
5 jurisdiction again or this state very closely for the  
6 upcoming general election.

7 And my understanding is we are going to  
8 have another meeting with the Secretary of State's  
9 office to again make sure that they understand all of  
10 the requirements of HAVA, particularly the concerns  
11 about turning people away who don't have IDs and  
12 making sure that they and their poll workers  
13 understand the law.

14 COMMISSIONER MEEKS: So the issue about  
15 hollering out what party you belong to --

16 MR. BRADSHAW: In a primary that is based,  
17 I guess, like in South Dakota, on party affiliation,  
18 that would be all a matter of state law and not  
19 covered.

20 CHAIRPERSON BERRY: How about the general  
21 election, which was the other question?

22 MR. BRADSHAW: Well, it's my understanding  
23 they will not be hollering out people --

24 COMMISSIONER MEEKS: I would assume they  
25 won't.



1 CHAIRPERSON BERRY: They won't? Okay.

2 Commissioner Braceras had her hand up.

3 COMMISSIONER BRACERAS: Good afternoon.

4 Thank you all for coming.

5 First, before I ask my question, I did  
6 just want to on the record commend the efforts of the  
7 Department of Justice and of groups like MALDEF for  
8 increasing bilingual access to the ballot. I know the  
9 department has been very proactive in doing that. So  
10 I wanted to thank you both for your efforts in that  
11 regard.

12 My question I would pose specifically to  
13 the department's representative, Mr. Bradshaw, as well  
14 as the ACLU's representative, Ms. Strickland, and see  
15 if you could both focus on this. And that is, how do  
16 we as a democracy strike the balance between  
17 preventing fraud and making sure that those who are  
18 eligible to vote get to vote? Because I see both of  
19 these as they're both terrible problems.

20 And, as we know from past reports from the  
21 last election, there were thousands of fraudulently  
22 cast ballots just in Florida. I myself have had  
23 experience where my name has been on the voter rolls,  
24 unfortunately, in more than one place, several places,  
25 the place where I currently live, the place where I

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1 grew up, and the place where I went to college. It  
2 took me years and multiple letters and phone calls to  
3 get my name off of the rolls in the places where I no  
4 longer lived.

5 Those places did not request ID. In any  
6 of those places, somebody could have gone in and said,  
7 "Jennifer Braceras, 65 Sperry Road, check," and they  
8 could have gone in and voted as me. I don't know that  
9 that happened, but it's certainly plausible when you  
10 are registered in three places, even though you don't  
11 intend to be.

12 So I do think that fraud is a very real  
13 problem. And my concern is that there is a false  
14 perception out there, sometimes fed by interest  
15 groups, that efforts to prevent fraud are improperly  
16 motivated. I am wondering what mechanisms we can put  
17 in place to prevent fraud and secure access to the  
18 ballot.

19 At the same time, how do we strike that  
20 balance? How do we do it? How do we ensure that the  
21 people voting are the people they say they are without  
22 making people feel as if they're being challenged for  
23 some illicit reason? So how do we combat both of  
24 those issues at the same time? Mr. Bradshaw?

25 MR. BRADSHAW: As you know, in October of

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1 2002, the Attorney General announced his Ballot Access  
2 and Voting Integrity Initiative. It splits the  
3 initiative has two main focuses. One is the voting  
4 integrity side, and the other is ballot access.

5 The voting integrity/fraud side is handled  
6 by the Criminal Division at the Department of Justice.  
7 The ballot access side is handled by the Civil Rights  
8 Division. It is important for us, as I noted earlier  
9 and this is why the Assistant Attorney General, Alex  
10 Acosta, has made this decision, that for purposes of  
11 doing what we do, guaranteeing ballot access, making  
12 sure that individuals aren't intimidated and kept from  
13 voting, that those individuals who are observing and  
14 monitoring elections not be federal prosecutors and  
15 that they are individuals from the Civil Rights  
16 Division, they are employees of the Office of  
17 Personnel Management.

18 Then on the opposite side, you have the  
19 voting integrity, which is run by the Criminal  
20 Division. There are assistant U.S. attorneys that  
21 will be stationed in their offices on Election Day who  
22 can receive complaints of election fraud. And that  
23 will be operated completely separate from the program  
24 the Civil Rights Division is operating with respect to  
25 guaranteeing ballot access.

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1                   COMMISSIONER BRACERAS: But at the place  
2 of polling at the local level, how do you ensure that  
3 without asking for identification, the people walking  
4 in and claiming to be the registered vote, that they  
5 are that person without somehow causing offense? I  
6 mean, is there a way to ensure?

7                   I am just one example in these very small  
8 towns. Ms. Valdez spoke about the long history of  
9 voter fraud in Chicago, and we know it has happened on  
10 a massive scale in certain cities. In my case, the  
11 only reason I know about it is because my parents went  
12 in to vote. They said, "She hasn't lived here in  
13 seven years." They saw my name. "Can you take her  
14 off?"

15                   "No, we can't. She needs to write a  
16 letter," blah blah blah blah blah. Letters were  
17 written. It took a whole other election cycle for it  
18 to happen.

19                   So my point is, how can we ensure that  
20 fraudulent ballots aren't being cast without making  
21 people feel intimidated? I think it is a very fine  
22 line. What can we do to get the message out to people  
23 that anti-fraud efforts are meant to protect the right  
24 to vote, not to disfranchise?

25                   CHAIRPERSON BERRY: Now you, Ms.

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1 Strickland?

2 MS. STRICKLAND: Sure. Well, first of  
3 all, I think that preventing fraud and providing  
4 access certainly aren't necessarily mutually exclusive  
5 goals.

6 COMMISSIONER BRACERAS: No, of course not.

7 MS. STRICKLAND: But they are often  
8 perceived that way, I think. And that is very  
9 unfortunate. The ACLU, for example, has taken a  
10 number of steps in the Miami-Dade Election Reform  
11 Coalition on both sides of that spectrum.

12 We, for example, advocated for a longer  
13 period of time after the end of early voting before  
14 Election Day because big counties like Miami-Dade  
15 County have concerns that they wouldn't be able to  
16 mark off on everybody who voted on the Monday before  
17 the Tuesday elections, that sort of thing. And the  
18 coalition spoke out about that.

19 From my perspective, I think a lot of what  
20 causes problems, both in terms of access and  
21 preventing fraud, are to some degree, certainly not  
22 all, management issues and that in addressing the ways  
23 policies are implemented and addressing the management  
24 of the technology itself, we can actually get at both  
25 problems.

1 Taking the voter ID example, under the  
2 Help America Vote Act, someone who is a first-time  
3 voter who registered by mail and did not provide the  
4 proper identification prior to Election Day is going  
5 to have to vote a provisional ballot.

6 But for other voters for whom there is no  
7 problem with their registration, it's not that they  
8 are going to be able to just vote normally if they  
9 show up without ID. They will be able to vote a  
10 regular ballot, but they will first have to fill out  
11 an affidavit stating that they are who they say they  
12 are.

13 COMMISSIONER BRACERAS: I have never been  
14 asked for an ID in my 20 years of voting.

15 MS. STRICKLAND: I can't speak,  
16 unfortunately, for other states because my expertise  
17 is with Florida, but certainly in Florida, voters are  
18 absolutely asked for identification. The problem in  
19 Florida is that if they don't have it, instead of  
20 being provided with the affidavit and then being  
21 allowed to vote, they are often turned away. But I  
22 think the process itself is an attempt at striking the  
23 balance between those two concerns.

24 I would also point out that one of the  
25 challenges in Florida is that after all of the

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1 problems that we have had, voter confidence in the  
2 system generally is obviously very low. I mean, that  
3 is for a variety of reasons, but we need to address  
4 all of the reasons, like if there is a perception of  
5 fraud with the new electronic voting machines, for  
6 example, whether or not there is the reality of fraud,  
7 then that, too, has to be addressed. And so in some  
8 senses, that is another example of how these aren't  
9 necessarily mutually exclusive goals and that  
10 addressing the perception or reality of fraud can  
11 actually have a positive effect on voter confidence.

12 All of that being said, I do think that in  
13 the end, we have to err on the side of the voter.  
14 That is sort of sometimes frustrating perhaps in our  
15 systems in the United States, not just voting systems  
16 but whether you are talking about the justice system,  
17 any of a number of ways that we look at due process  
18 issues. But in the end, we do have to err on the side  
19 of the voter trying to prevent fraud but at the same  
20 time protecting, above all, the most fundamental  
21 rights that are guaranteed to us because if we start  
22 sacrificing those rights, in the end, we are  
23 undermining what makes us strong.

24 COMMISSIONER BRACERAS: I just have one  
25 sort of follow-up question -- well, one comment and

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1 one follow-up question. The comment is that by  
2 preventing fraud, you are protecting the voters, whose  
3 identity may have been stolen or misused or what have  
4 you.

5 And so it's not a question of pitting the  
6 voter against the system or some other nebulous  
7 concern. Voter fraud imperils particular voters and  
8 imperils our democracy equally, I would argue.

9 My follow-up question is, what is the role  
10 both of the government and of the activist groups in  
11 educating the public, not just about their rights but  
12 also their responsibilities in voting, showing up with  
13 whatever they need to show up with, showing up at the  
14 right times, not ten minutes before the polls are  
15 going to close, et cetera, et cetera, and can we  
16 prevent some of the problems we saw in the last  
17 election cycle by educating people to get there early,  
18 bring their ID, whatever so that things can go more  
19 efficiently because both the bureaucrats have a  
20 responsibility to have it flow smoothly as well as the  
21 people showing up.

22 MS. STRICKLAND: Well, I think that is an  
23 excellent question. The ACLU, for example, has been  
24 producing voter empowerment cards that address exactly  
25 those issues. And we are distributing those as fast

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1 and as furiously as we can to all segments of the  
2 population.

3 They include by when do you need to  
4 register, what do you need to include with that  
5 registration, what do you need to take to the polls,  
6 what are the hours.

7 COMMISSIONER BRACERAS: Right.

8 MS. STRICKLAND: And I think that there is  
9 a role both for government and for activist groups in  
10 trying to get that information out to all of the  
11 voters.

12 One of the things that the Miami-Dade  
13 Election Reform Coalition, for example, also advocated  
14 for after the failed September 2002 primaries was for  
15 sample ballots because sample ballots had never been  
16 mailed out in Miami-Dade County, to our knowledge.  
17 And so for the first time ever, sample ballots were  
18 mailed out, which is something that one would hope  
19 would decrease the number of lines at the polls  
20 because people would not -- they would be able to mark  
21 their answers before they arrived and be able to vote  
22 more efficiently.

23 So we are very concerned at looking at the  
24 practicalities like that. The only caveat I think is  
25 it has to be done at the appropriate time. For

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1 example, a mistake that the Florida legislature made,  
2 again after 2002, was that they mandated for posting  
3 in all Florida polling places a list of voter  
4 responsibilities and a voters' bill of rights.

5 Voters' bill of rights is very good. And  
6 the voter responsibilities have since been amended to  
7 get rid of a lot of the concerns that first existed  
8 with that, but, for example, number three or something  
9 on the list was voters have the responsibility to  
10 bring proper identification to the polling place,  
11 something like that. And that was to be posted at the  
12 polling place, which, at best, is only a partial  
13 statement of Florida law.

14 And it no longer says it in this way. But  
15 when they first passed it, number one on the list was  
16 to study and know candidates and issues. Well, of  
17 course, we should advocate that people study and know  
18 the candidates and the issues. That is good civic  
19 responsibility. But to post it at the polling place  
20 inside after the person has already arrived to vote  
21 can serve as a means of intimidation.

22 So we have to look very carefully at what  
23 are the appropriate times and mechanisms for achieving  
24 those goals.

25 CHAIRPERSON BERRY: Commissioner Kirsanow?

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1                   COMMISSIONER KIRSANOW: Thanks, everyone,  
2 for appearing. Your presentations have been very  
3 helpful.

4                   I've got two questions. The first is to  
5 Mr. Bradshaw. A myriad of issues were raised in the  
6 2000 election with respect to access to the polls  
7 counting ballots.

8                   One of the issues that was generated in  
9 2000 was counting military ballots for difficulties in  
10 folks who are serving overseas and registering or to  
11 cast a ballot.

12                   First, does your division have any  
13 jurisdiction over issues related to that? And if so,  
14 what, if anything, is being done in 2004 given that we  
15 have a lot more people currently serving overseas?  
16 And if you don't have jurisdiction, who does?

17                   MR. BRADSHAW: Sure. No. The division,  
18 among other things, in addition to all of the other  
19 federal statutes that I described, has responsibility  
20 for protecting military voters overseas. And  
21 specifically the Department of Justice is responsible  
22 for enforcing UOCAVA, the Uniformed Overseas Citizens  
23 Absentee Voting Act. And that guarantees the rights  
24 of military overseas to be able to cast absentee  
25 ballots in elections.

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1                   As far as the sorts of things that we are  
2 doing, recently again the Assistant Attorney General  
3 along with the Associate Attorney General, Robert  
4 McAllen, individuals at the Department of Defense sent  
5 a letter to all of the states informing them of their  
6 obligations under UOCAVA. That includes when absentee  
7 ballots need to be sent out, how they have processed  
8 them. And that is something that we have been  
9 following very closely.

10                   Again, we're in a year where we have  
11 thousands of American men and women serving in harm's  
12 way. It's vital that their right to vote is protected  
13 as well. In fact, we have already filed several law  
14 enforcement actions just this year under UOCAVA, one  
15 in Pennsylvania, another in Georgia, to protect the  
16 rights of overseas voters. In both instances, a  
17 number of the counties had mailed out the absentee  
18 ballots too late for the ballots to be received.

19                   They sent them out overseas too late for  
20 them to be filled out and sent back to the United  
21 States. The Civil Rights Division brought actions in  
22 both of those cases and got the states to amend the  
23 rules not only to looking forward to comply but to  
24 make sure that votes in that particular race were  
25 counted.

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1                   COMMISSIONER KIRSANOW: And my second  
2 question goes to Ms. Valdez and Ms. Strickland. I  
3 agree with Ms. Strickland that I don't think that  
4 preventing voter fraud and assuring maximum accesses  
5 are mutually exclusive propositions. Both of you had  
6 talked about provisional ballots and what appear to be  
7 pervasive local requirements that result in the  
8 provisional ballots if not executed within the local  
9 jurisdiction.

10                   What, if anything, if you know, -- I don't  
11 know if anyone articulated this, but in East Chicago,  
12 I think it was, and wherever it may have occurred in  
13 Florida, what did those jurisdictions articulate as  
14 the basis for that rejection? I mean, is there an  
15 underlying premise for rejecting a provisional ballot  
16 in an improperly executed or an improper precinct?

17                   MS. VALDEZ: Well, from my standpoint in  
18 Chicago and in East Chicago, mostly in Chicago, the  
19 rejection was based on the state law provision that  
20 required that you vote in precinct, in the correct  
21 precinct. That was the primary reason.

22                   COMMISSIONER KIRSANOW: Yes. I understand  
23 that, but is there some underlying premise in terms of  
24 is this something ostensibly to reduce fraud or is  
25 there --

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1 MS. VALDEZ: Most of the restrictions of  
2 that type are under the auspices of fraud reduction.  
3 I did want to address the issue of identification  
4 because there are alternatives to photo IDs.

5 For example, in Chicago, we have  
6 signatures. So that when you go to register to vote,  
7 you have to sign the sheet. And there is a comparison  
8 of your original signature in your application and the  
9 signature that you make.

10 We have been against photo IDs because we  
11 had determined that the Latino community \* does not  
12 have photo IDs to the extent that other people might  
13 have.

14 In Chicago, we have great public  
15 transportation. There is not a lot of need for  
16 driver's licenses or photo IDs. We have people who  
17 are very insulated and can live their whole lives  
18 without having any photo IDs. So we determined that  
19 having that requirement would have a detrimental  
20 effect on the Latino community.

21 And that was shown in East Chicago, when  
22 you had people going to the polls thinking that they  
23 didn't need ID, were told they needed ID, and it was  
24 just difficult to go get it or they didn't have it.  
25 They quite simply didn't have ID. So it's under the

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1       auspices of an anti-fraud measure.

2                       COMMISSIONER KIRSANOW: Do you have a  
3       recommendation as to how this requirement of  
4       provisional balloting being relative to the particular  
5       precinct can be implemented in a way to ensure that  
6       the provisional ballot is counted but at the same time  
7       there is a reduction in the probability of fraud  
8       without using the photo ID, for example? Is there  
9       some other kind of mechanism that you would recommend?

10                      MS. VALDEZ: I'm sure the states would  
11       raise a number of constitutional arguments once you  
12       start delineating very specific issues with respect to  
13       voter registration. That happened in Illinois. They  
14       refused to implement motor voter because they thought  
15       that it violated states' rights. So, again, we have  
16       a lot of issues with respect to that.

17                      Certainly federal government has the right  
18       to dictate how a federal election process will be run.  
19       I'm not advocating for dual processes here, but I  
20       think that there can be some sort of measure that the  
21       states are aware.

22                      I, quite frankly, am not sure that  
23       Illinois was even aware of how difficult this  
24       provision was going to have an actual effect in the  
25       precinct, the provisional voting requirement that you

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1 do in precinct. So it certainly is -- I intend to go  
2 to the state legislature and get that changed right  
3 away. But we are going to have to do that in each  
4 state that has this provision. I think there was more  
5 than a majority of the states that have this law on  
6 the books.

7 CHAIRPERSON BERRY: Commissioner  
8 Thernstrom? Oh, you wanted to answer that.

9 COMMISSIONER KIRSANOW: Ms. Strickland  
10 wanted to respond.

11 MS. STRICKLAND: Just very briefly. With  
12 respect to provisional ballot in Florida, at the time  
13 this was passed with the precinct requirement, I  
14 didn't hear any articulation of fraud being one of the  
15 reasons. That's not to say that it wasn't, but I  
16 didn't hear that articulation.

17 I heard two things. One was that it would  
18 make for convenience voting, where people who just  
19 want to vote for a U.S. president or whatever would  
20 pop in to the closest polling place, which wasn't  
21 their actual polling place, and, thus, miss the  
22 opportunity to vote in local races that would only  
23 appear in the precinct where they would get their  
24 normal ballot.

25 The other one I heard was that there

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1 wouldn't be enough time given Florida's certification  
2 deadlines to count the races on the provisional ballot  
3 for which the voter would have otherwise qualified, no  
4 matter what precinct the voter voted in. And so I  
5 think that there are pretty easy remedies for both of  
6 those things.

7 First of all, in Florida now we have  
8 extended early voting prior to Election Day so people  
9 have the ability to go to a location other than their  
10 regular polling place, one that is more convenient for  
11 them, have ample opportunity to do that. And they  
12 will be given the ballot that contains all of the  
13 races, including local, for which they are qualified.

14 With respect to the certification  
15 deadlines, again, I don't think that the need for  
16 speed should dictate whether we are going to count the  
17 choices made by eligible voters.

18 CHAIRPERSON BERRY: Commissioner  
19 Thernstrom?

20 COMMISSIONER THERNSTROM: Well, I have a  
21 bunch of questions for at least three of you. I am  
22 also extremely interested in the fraud question and in  
23 the voter ID question as well because, frankly, if it  
24 was a well-known requirement that you produce an ID  
25 and well-known beforehand so people aren't ending up

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1 at the polls suddenly having to go home to get  
2 something, do you regard this -- and obviously my  
3 concern again is fraud -- as a problem?

4 I mean, there are so many occasions in  
5 this society and I suspect with current security  
6 concerns that those occasions will, the number will,  
7 increase where voter ID is necessary. I come here on  
8 a plane. I can't get on a plane -- not voter ID, a  
9 picture ID. I can't get on a plane without proper  
10 identification and so forth aside from it's part of  
11 the driver's license process and so forth.

12 In seconding what Commissioner Braceras  
13 said, fraud is a matter of protecting the electoral  
14 process. It's not kind of punitive in my view.

15 Ms. Johnson, I was very interested in your  
16 hint of wanting amendments to the Voting Rights Act in  
17 2007. As an old student of the Voter Rights Act, I  
18 would love to know what you had in mind.

19 Ms. Strickland, I would like to go to the  
20 kind of felon question, the ex-felon question. You  
21 said that is the primary question with respect to vote  
22 suppression. Of course, it is under our  
23 constitutional arrangement the state prerogative to  
24 determine voter qualifications. Therefore, you said,  
25 "Well, this shouldn't be a political issue," but it is

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1 a political issue everywhere because it is a state  
2 prerogative, it seems to me.

3 In the Voter Rights Act, there has been no  
4 decision, so far at least, that determines, despite  
5 the disparate impact, that has determined that there  
6 is a voting rights violation that I know of anyway in  
7 a state barring ex-felons, whatever we think of the  
8 policy.

9 Then you had a point you repeated a couple  
10 of times that the whole bunch of small problems do add  
11 up to one big problem. I understand that is a valid  
12 point, but my first reaction to that is, gee, I don't  
13 know of perfect elections. I mean, elections are  
14 messy affairs in which -- no perfect elections in  
15 which there aren't small problems. And you add them  
16 up together. And yes, they, arguably, are all big  
17 problems and which I'm not sure we know how to run  
18 perfect elections.

19 I am happy that the Florida constitution  
20 is amended, but that seems to me a Florida problem,  
21 rather than a federal agency problem.

22 Finally, on the kind of wrong precinct  
23 question, I mean, again, we do have a precinct-based  
24 voting system in every state. It would seem to me not  
25 a question simply of ensuring participation or

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1 encouraging participation in local elections but also  
2 the fraud question once again.

3 I mean, we are all telling personal little  
4 anecdotes here. I called at one point my local town  
5 hall -- I live in a relatively small town in  
6 Massachusetts -- and said, "What does it take to  
7 register to vote?"

8 "Well, come in and fill out a form."

9 "Well, do I have to show you any  
10 identification?"

11 "No."

12 "Do I have to prove that I live in the  
13 town?"

14 "No."

15 I could go to five towns in Massachusetts  
16 and register to vote. Now, it happens in  
17 Massachusetts that wouldn't affect the outcome of the  
18 election because, of course, it is basically a  
19 one-party state. Nevertheless, I do think it is  
20 legitimate to worry about the fraud question.

21 Anyway, those are questions I'm throwing  
22 out on the table. I want to second the statements of  
23 others who have said how much we all appreciate your  
24 coming today. I have found it very informative.

25 CHAIRPERSON BERRY: Any of you who wish to

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1 respond please do. Ms. Johnson, I think.

2 MS. JOHNSON: Yes. I'll just start  
3 because that's the beginning of where the questions  
4 came from. As far as the voting right  
5 reauthorization, we are really at the infancy part of  
6 that evaluation.

7 We are counting on participating with a  
8 number of other groups to hold hearings throughout the  
9 country but to be able to gather the data and to  
10 evaluate the success of the Voter Rights Act and then  
11 also to look at some of the newer implementations and  
12 some of the challenges that we are having today and to  
13 see where we need to improve, as you would any other  
14 reauthorization as it goes through that.

15 So we are clearly in the beginning and are  
16 really working on the education component to make sure  
17 that our folks are very well-educated as to their  
18 responsibilities in voting and then what are the  
19 barriers.

20 One of the barriers for us -- you  
21 mentioned ID. So I just want to take one moment  
22 because I didn't -- the red light came on real quick.  
23 And I didn't talk past the red light, like others.

24 (Laughter.)

25 CHAIRPERSON BERRY: Good Indian. I was

1 kidding. I'll be getting notes from people.

2 MS. JOHNSON: But what I wanted to say,  
3 one of the challenges to voter ID for us is we, like  
4 the Latino community, have issues with not having a  
5 lot of picture IDs. One part of that is for the  
6 traditional concern.

7 There are a number of many of our folks  
8 who are very, very traditional and still have very  
9 traditional practices and don't. There are still  
10 communities in our communities, pueblos that you go to  
11 today that you cannot even take a camera into without  
12 permission of the tribal council. So taking photos is  
13 still a challenge to a photo ID process in our  
14 communities.

15 The second thing is most of our IDs that  
16 many of our tribal members use are tribally issued  
17 IDs, rather than state-issued IDs. And because of  
18 resource issues, we would be challenged resource-wise,  
19 just like any other state would be, to move to a  
20 picture, a photo ID for our tribal IDs. We don't have  
21 the resources to be able to deal with those. So we  
22 have, in addition to just the regular access and since  
23 a lot of our communities don't necessarily get on a  
24 plane and travel -- and still there are other  
25 alternatives when you get on a plane to a photo ID.

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1 MS. VALDEZ: Let me just add really  
2 quickly that the issue of HAVA requiring  
3 identification is something new in Illinois. We don't  
4 require identification. So you have voted and voted  
5 and voted for all of these years without having to  
6 show identification. Then you have the federal  
7 government mandating that in these particular  
8 instances, you have to show ID. So talk about a  
9 logistical nightmare of educating people when the  
10 practice had been never to require identification.

11 I did mention fraud in Chicago, but I will  
12 tell you that most of it happens not necessarily with  
13 people voting but with the counting, with the counting  
14 aspect of it, which is another aspect of fraud.

15 I am really concerned about access to the  
16 polling place, being able to let the individual get in  
17 there and vote without a lot of hassle, without a lot  
18 of intimidation.

19 I mentioned East Chicago, The  
20 intimidation was not just identification, but every  
21 time an issue came up, four cop cars came to that  
22 precinct, four police officers with guns. How  
23 ridiculous is that? I mean, on one hand, you do have  
24 to balance voter fraud and access, but there you go  
25 with the extreme reaction to a potential issue of

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1 fraud or a problem.

2 COMMISSIONER THERNSTROM: And whose  
3 decision is that? What level of government was that?

4 MS. VALDEZ: The Lake County Board of  
5 Elections had issued an edict to all of the poll  
6 workers that when something went wrong, police were to  
7 be called in.

8 I personally saw three African American  
9 men go into the precinct, see the cops, and turn right  
10 back out. Why would you want to go into that  
11 situation?

12 CHAIRPERSON BERRY: Ms. Strickland,  
13 briefly, please.

14 MS. STRICKLAND: And I will be very brief  
15 since I did, indeed, go past the red light. I just  
16 wanted to respond. I think one of the important  
17 reasons to bring forward issues like felony  
18 disfranchisement and the correct precinct requirement  
19 to this body is because counties and states look to  
20 this Commission as a respected source of  
21 recommendations and actions that can be taken. So in  
22 that sense, even for issues that are either county or  
23 state-level issues, groups look to the recommendations  
24 that this Commission makes.

25 Forty-eight states have some form of felon

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1       disfranchisement laws. And what states like Florida  
2       are doing that have full bans is that they are  
3       creating degrees of citizenship. When we start to  
4       create degrees of citizenship, we are starting to  
5       create something that looks not quite like a  
6       democracy.

7                   In Florida, restoration of the right to  
8       vote, it's not that it's a political issue. That's  
9       all been a political issue throughout the entire  
10      history of the United States. It's that restoration  
11      currently lies in the hands of politicians.

12                   For example, approximately 85 percent of  
13      people leaving supervision have to actually have a  
14      hearing before the government and his cabinet in  
15      Tallahassee. At one of the hearings that I attended,  
16      I saw someone berated, for example, for the level of  
17      personal debt that he has. It's not clear to me what  
18      one's personal debt has to do with the right to vote.  
19      And I think that that is an issue that is a matter of  
20      democracy. And, as such, it has to be taken seriously  
21      at every level, from the local to the federal.

22                   With regard to the legal status, there is  
23      a federal challenge underway brought by the Brennan  
24      Center for Justice. It's called Johnson v. Bush.  
25      There was a favorable decision, actually, at the

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1 Appeals Court level that was vacated. And now it is  
2 going to be reheard. And so we will be anticipating  
3 the results of that hearing.

4 CHAIRPERSON BERRY: You said you would be  
5 brief.

6 MS. STRICKLAND: Having perfect elections  
7 may not be possible, but we have to try.

8 CHAIRPERSON BERRY: Did you have  
9 something?

10 VICE CHAIRPERSON REYNOSO: Yes, I have  
11 some.

12 CHAIRPERSON BERRY: And then Commissioner  
13 --

14 VICE CHAIRPERSON REYNOSO: It's late. So  
15 I'll just ask some quick questions. I'm confused on  
16 Florida. I read some articles charging that thousands  
17 of ex-felons voted illegally, but I've also read that  
18 the attorney generals only filed one or two fraud  
19 cases, the local attorney general. How many fraud  
20 cases did the Justice Department file in Florida?

21 MS. STRICKLAND: I don't know right  
22 offhand the number.

23 VICE CHAIRPERSON REYNOSO: I'm sorry.  
24 This is for Mr. Bradshaw.

25 MR. BRADSHAW: Yes. You know, being a

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1 representative of the Civil Rights Division, I  
2 couldn't tell you.

3 VICE CHAIRPERSON REYNOSO: I guess that  
4 would be the --

5 MR. BRADSHAW: The Criminal Division  
6 handles voter fraud.

7 VICE CHAIRPERSON REYNOSO: I guess I  
8 haven't read of any federal cases. I've read only of  
9 one or two state. So I'm just a little bit confused  
10 on that.

11 CHAIRPERSON BERRY: Maybe we can get that  
12 data from the Criminal Division.

13 VICE CHAIRPERSON REYNOSO: Yes. Good.  
14 That would be good.

15 Secondly, Ms. Strickland, when we have had  
16 hearings, it appeared that some counties utilized  
17 sample ballots; some did not. Is the law now that all  
18 of the counties have to send out sample ballots?

19 MS. STRICKLAND: I would want to double  
20 check on that, but I think that that is still at the  
21 discretion of the counties. But I would want to  
22 check.

23 VICE CHAIRPERSON REYNOSO: Well, my  
24 reaction was that that was a terrible law because the  
25 poorer counties are the ones that don't have the money

1 to send out sample ballots. Presumably people are  
2 going to take longer to vote.

3 And then we were also told that there is  
4 a statutory limit, oftentimes not enforced but a  
5 statutory limit, about how long you can stay in the  
6 polling booth.

7 MS. STRICKLAND: There is a limit.

8 VICE CHAIRPERSON REYNOSO: So it is an  
9 incongruent situation and one very unfair to those who  
10 happen to live in poorer counties, it seems to me.

11 MS. STRICKLAND: I think that is certainly  
12 a concern and one that we should take a look into.

13 VICE CHAIRPERSON REYNOSO: Ms. Valdez,  
14 should the law be changed in terms of people who vote  
15 in the "wrong precinct"? I still don't understand why  
16 their vote can't be counted for all of those positions  
17 that are not related at the precinct.

18 MS. VALDEZ: Yes.

19 (Laughter.)

20 VICE CHAIRPERSON REYNOSO: Short answer.  
21 And, two, for you, Ms. Valdez and Ms. Strickland  
22 particularly, both parties have said they are going to  
23 send a lot of poll watchers out to make sure that the  
24 rules are followed. Are those good positions for the  
25 parties to make?

1 MS. VALDEZ: I think poll watchers can be  
2 very helpful and very useful. I also think, though  
3 that, community groups sending poll watchers out is  
4 very important also. I know that in Chicago, I  
5 mentioned the New Americans Initiative that is  
6 undergoing, that there are a number of community-based  
7 organizations that will be at the polling place, both  
8 inside and out, with credentials.

9 It can be difficult, though, if you have  
10 a small precinct with not a lot of room to have five  
11 people poll watching and one person voting.

12 MS. STRICKLAND: I think that brings up a  
13 really important issue in Florida. Poll watchers can  
14 definitely play a very important role. However, in  
15 Florida, to actually be a registered poll watcher  
16 inside the polling place, one has to be affiliated  
17 with a political party or with a political committee.

18 This is something that the ACLU would like  
19 to look into further. So I don't want to offer any  
20 sort of official position, but I think that it is  
21 somewhat problematic that nonpartisan groups, who are  
22 merely concerned with making sure that the elections  
23 run fairly and smoothly, are not able to be poll  
24 watchers inside the polling place.

25 VICE CHAIRPERSON REYNOSO: Thank you,

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1 Madam Chair.

2 CHAIRPERSON BERRY: Commissioner  
3 Redenbaugh?

4 COMMISSIONER REDENBAUGH: Thank you. I'll  
5 also try and be brief.

6 Ms. Valdez, I know Cook County does have  
7 a reputation for imaginativeness practices. I am from  
8 Philadelphia. We're very proud of our facility there  
9 and our citizenship. In fact, in some recent  
10 elections, we have had in some precincts over 100  
11 percent participation. And we are very proud of that,  
12 really civic mindedness that you don't often see.

13 My question really is for all of you.  
14 Sort of ignoring for the moment the focus on the  
15 general election of 2000 and the upcoming one, do you  
16 see more of a problem in general elections or in  
17 primary elections, where in one party, places like  
18 Philadelphia, the only election that really matters is  
19 the primary elections?

20 MS. VALDEZ: The jurisdictions I work in  
21 are exactly the same. The only race that really  
22 matters seems to be the primary elections. For good  
23 or bad, that's just the way it works out in practical  
24 terms. I don't know what the other panelists'  
25 experiences are, but that has been the experience in

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1 the Midwest.

2 I think we have to be vigilant on every  
3 election. It's the smallest election to the largest  
4 election.

5 COMMISSIONER REDENBAUGH: But do you get  
6 the public interest up enough? The tendency is for  
7 people to pay attention to the generals and not the  
8 primary, I presume.

9 MS. VALDEZ: Obviously there are issues  
10 that have turned out in getting people interested.  
11 And that is the job of everyone to do, whether it's  
12 the government to the lowly community-based  
13 organization in a small town.

14 But yes, it's clear, though, in the  
15 jurisdiction I work in that the primary elections  
16 become the most hotly contested elections. That's  
17 where you get a lot of the battles. That's where you  
18 get a lot of the plane, the tricking, the things that  
19 are going on. And that is where the fight is won or  
20 lost, in the primary election. But that is not to say  
21 we don't focus on general elections and what happens.

22 What we're focusing in on, the small,  
23 little special election that is going to happen in  
24 East Chicago, is going to deal with one race only.  
25 Then we're going on to November. Then we're going on

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1 to the general election on that small, little special  
2 election. So we take every election seriously because  
3 it is about making sure that the voters feel that they  
4 have a part in the process if they're voting for  
5 dogcatcher or voting for president.

6 It increases voter participation if they  
7 vote in every particular election because everything  
8 is in. All politics are local at some level. And  
9 everybody is interested in who their city council  
10 member is, but they might not be interested in who the  
11 state comptroller is going to be. But it's important  
12 to foster political participation at every level.

13 CHAIRPERSON BERRY: Does anyone have  
14 anything different to say about that or anything to  
15 add to that answer or would you support Ms. Valdez's  
16 answer?

17 MS. JOHNSON: I support what she says. I  
18 think in Indian country, clearly where they are more  
19 heavily contested is when the political stakes are  
20 higher and people pay more attention.

21 CHAIRPERSON BERRY: Okay. Did you have  
22 another question?

23 COMMISSIONER EDLEY: Well, I wanted to try  
24 to just shed a little light on someone based on that  
25 experience I had in this National Commission on

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1 Federal Election Reform that Presidents Ford and  
2 Carter co-chaired after the Florida thing because this  
3 question that Commissioner Braceras raised was really  
4 at the heart of a lot of the discussions in that  
5 commission.

6 And, for what it's worth, let me share  
7 what our theory was because I think there was really  
8 a bipartisan consensus on this and part of it led to  
9 the provisions that are in HAVA in this regard, some  
10 dilution, of course, on the Hill.

11 There was a fair amount of sentiment,  
12 principally on the Republican side of the aisle,  
13 concerning the importance of doing more with respect  
14 to voter fraud. But there was a fair amount of  
15 sentiment, principally on the Democratic side, with  
16 respect to the dangers of overdoing the fraud  
17 prevention in a way that would lead, through one  
18 channel or another, to people feeling deterred or  
19 inhibited or chilled in the exercise of the franchise.

20 So the notion of acquiring the ID for  
21 someone who had previously registered, not in person,  
22 this is the first time, was sort of a position that we  
23 came to as trying to fasten on the place where the  
24 greatest risk of abuse seemed to be.

25 So the notion was that somebody shows up

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1 at the poll. There has been some point in their  
2 history where they have been forced to really  
3 affirmatively identify that they are who they claim  
4 they are, they're not somebody's dog.

5 After that point, there was a sense that  
6 if states do the management that they should be doing  
7 by moving towards, for example, statewide computerized  
8 election lists, making the investments that they ought  
9 to in list maintenance, subject to the protections in  
10 motor voter, et cetera, that that should go 98 percent  
11 of the way towards cleaning up the problem that  
12 Commissioner Braceras spoke about of having somebody's  
13 name appear on multiple lists in multiple  
14 jurisdictions, inviting the possibility of fraud.

15 So I think yes, the answer was if you  
16 manage the system correctly and, in particular, if you  
17 develop these computerized voter lists, we can cut  
18 down on a lot of the possibilities of fraud.

19 Third consideration was that empirically  
20 most of us Republicans and Democrats came to the  
21 conclusion that just as an empirical matter, the  
22 incidence and the risks of fraud is far less than the  
23 incidence and the risk of the voter  
24 chilling/suppression/whatever and that, therefore, you  
25 shouldn't blow things out of proportion, that you

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1 ought to have a --

2 COMMISSIONER BRACERAS: Where's the data  
3 on that?

4 CHAIRPERSON BERRY: Commissioner Braceras,  
5 could you let him finish?

6 COMMISSIONER EDLEY: Well, that's what --

7 CHAIRPERSON BERRY: Commissioner Braceras,  
8 could you let him finish?

9 COMMISSIONER EDLEY: I mean, we listened  
10 to witnesses.

11 COMMISSIONER BRACERAS: I'm just wondering  
12 where I can find that.

13 CHAIRPERSON BERRY: Could you let him  
14 finish because he let you finish? Could you let him  
15 finish his statement, please? And then I'll entertain  
16 your question.

17 COMMISSIONER EDLEY: Well, I will say what  
18 we discussed was, where is the data with respect to  
19 either of these questions? We had discussions about  
20 it. We talked to election officials about it. We  
21 heard testimony from county-level people, from state  
22 officials, from academics, et cetera. And the data  
23 ain't great, but it certainly was I think everybody's  
24 impression that the relative scale of these problems  
25 was, as I suggested,

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1                   That all said, I guess the last point I  
2 want to make is about the provisional ballots, going  
3 to what Pete said earlier. Pete's question was that  
4 there was a lot of sentiment, again on both sides of  
5 the aisle.

6                   I think Slade Gordon, Republican from the  
7 State of Washington, was perhaps most forceful in  
8 this, of promoting the idea of provisional balloting.  
9 Indeed, Slade was talking about how in the State of  
10 Washington, they have statewide provisional balloting  
11 because they have the voter list because once you have  
12 the statewide voter list, as opposed to precinct by  
13 precinct or even county by county voter list, you get  
14 the provisional ballot, you can tell where that person  
15 was supposed to have voted. And you only count those  
16 offices for which they really were supposed to go out.

17                   So if they voted in the wrong precinct and  
18 they voted for the precinct dogcatcher when they don't  
19 actually live in that precinct, you don't count that  
20 one. And you can tell what should have been counted  
21 based upon the statewide voter list.

22                   So our thought in pushing this idea of  
23 provisional balloting, which was then reflected in  
24 HAVA, was that this is a way that without introducing  
25 huge risks of fraud, you can make it easier for people

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1 to vote. You can provide a safety net if there have  
2 been problems with somebody's name appearing on a  
3 voter roll.

4 CHAIRPERSON BERRY: Okay, Commissioner.

5 COMMISSIONER EDLEY: But then the problem  
6 is -- and this was not anticipated that states would  
7 implement this in a way that still required people to  
8 show up in the right precinct when the whole idea was  
9 to create a safety net for people to be able to vote  
10 if they happen not to show up at the right precinct.

11 CHAIRPERSON BERRY: Before we begin a new  
12 round --

13 COMMISSIONER EDLEY: If I was to get the  
14 --

15 CHAIRPERSON BERRY: Thank you. Before we  
16 begin a new round, let's entertain Commissioner  
17 Braceras' questions.

18 COMMISSIONER BRACERAS: I can ask Chris  
19 laster. I'm just wondering where I can access the  
20 data and the information that he just referred to.

21 CHAIRPERSON BERRY: Oh, I see. Okay.

22 COMMISSIONER EDLEY: Can we make an  
23 affirmative recommendation to the Justice Department?

24 CHAIRPERSON BERRY: What we can do is,  
25 first of all, we will make what you said about the

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1 Carter-Ford commission's report, that part of the  
2 discussion, send it out again.

3 COMMISSIONER EDLEY: Fine.

4 CHAIRPERSON BERRY: Secondly, if there are  
5 data -- and maybe the two of you can --

6 COMMISSIONER BRACERAS: Yes, I'm checking  
7 the underlying --

8 COMMISSIONER EDLEY: There's no --

9 CHAIRPERSON BERRY: Who said it. But I'm  
10 not finished yet.

11 I have listened very attentively to the  
12 questions that everyone has asked and the answers to  
13 all of them. I must say that part of the discussion  
14 proceeded without context because the context in which  
15 we are having this discussion is the history of large  
16 numbers of people of color being deprived of the right  
17 to vote. And the reason why the Voting Rights Act was  
18 passed in the first place was because large numbers of  
19 people had a history of having their vote not just  
20 suppressed but exterminated or not permitted  
21 altogether. That was our goal. We sort of missed in  
22 talking about all of these trees in my opinion the  
23 forest. And then we have new immigrants who suffer  
24 from the same disabilities.

25 So the whole intent here and my

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1 understanding of why the Civil Rights Division of the  
2 Justice Department was established, in part, and given  
3 this responsibility in the Voter Rights Act is to pay  
4 attention to trying to see to it that these once  
5 excluded folk get an opportunity to vote.

6 And if one is going to err in any way,  
7 then one ought to err in terms of trying to make sure  
8 that everything is done that is possible so that we  
9 don't have, one, no count; that is, people who can't  
10 get in the door or get in the door and aren't  
11 permitted to vote; and, two, count, absence of absence  
12 of counts, not having their votes counted. And that  
13 was my understanding about the process.

14 No one believes in fraud. Every time one  
15 of these discussions takes place, there's this, you  
16 know, let's balance fraud against not having fraud.  
17 I don't know anyone who is, publicly at least, in  
18 favor of having fraud in the voting process, whatever  
19 their politics happen to be.

20 The other thing that we want to keep in  
21 mind is that in managing the process, this Commission  
22 recommended provisional ballots. We said that most of  
23 the problems in Florida could have been solved if they  
24 had provisional ballots. We didn't know that they  
25 were going to have them and you've got to be in the

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1 right precinct and you didn't know it and all of that.

2 And anyone listening to this discussion  
3 because part of this is about educating people, not  
4 just ourselves, might ask, "Why not educate all of  
5 these voters you people keep talking about so that  
6 they have everything when they get there and  
7 everything goes fine?" You have answered that.

8 And the reality is there are some people  
9 who are on their job and, as you said, take time out  
10 to run over and vote who don't have an idea or forgot  
11 it or got there or whatever because their lives are  
12 not like our lives. Their lives have a lot of stress  
13 involved in them. Their lives have a lot of  
14 problematic things involved in them. And they are the  
15 people that we should care about more than those of us  
16 who have all of the advantages.

17 The other thing that I would say is that  
18 when it comes to fraud, when it comes to access, we  
19 are concerned about disparate treatment. We are  
20 concerned about the law being enforced unfairly; that  
21 is, if some people are asked questions and others  
22 aren't if some people are required to show something  
23 and other people aren't required to show it.

24 My question is this -- and it's for the  
25 Justice Department. We received a letter from a

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1 number of civil rights organizations, including your  
2 organization, asking us about the minority voters in  
3 Orange County, Mr. Esi Thomas and others who were  
4 involved in this business of having law enforcement  
5 investigators visit their homes of elderly African  
6 American voters, who either assisted in get out and  
7 vote campaigns or voted by absentee ballot in the  
8 election.

9                   They ask us to ask you what the Justice  
10 Department knew about this. This has been widely  
11 publicized -- whether there were any steps to take to  
12 do it. That's my first question.

13                   MR. BRADSHAW: Is this a mayoral race in  
14 the Orlando area, Orange County, that we're talking  
15 about?

16                   CHAIRPERSON BERRY: Yes and where the  
17 Florida Division of Elections says that they were  
18 there because they were trying to get rid of fraud.  
19 They just happened to be focused on these elderly  
20 African American voters who felt intimidated by people  
21 coming to their house or they didn't think they were  
22 being very helpful.

23                   My first question -- I only have two  
24 questions; they're both to the Justice Department --  
25 is whether, indeed, you are aware of this and whether

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1 you have any responsibility in this matter or not.

2 MR. BRADSHAW: I can answer that one very  
3 quickly. We are aware, and we have opened an  
4 investigation. As a result of that, because we  
5 actually not have an open investigation looking into  
6 these allegations, I am not at liberty to discuss any  
7 further details, but we are aware and we have opened  
8 an investigation.

9 CHAIRPERSON BERRY: My second question is  
10 that I sent a letter to the Assistant Attorney  
11 General, Mr. Acosta, in July, after our July  
12 proceeding here and asked him two questions.

13 I have never received a response. So I  
14 figured I would ask you while you are sitting here  
15 about the letter. One of the things we asked about --  
16 this is where we discussed the felon curve -- this was  
17 widely publicized, too -- and how in Florida to  
18 refresh the recollection of those who do not remember,  
19 Accenture, the company, had come before us to describe  
20 their work on this. They asserted at the proceeding  
21 that the list they were given was very inaccurate and  
22 that that was, of course, the problem and that most of  
23 the people on this list were African Americans.

24 After a lot of back and forth and the list  
25 being produced publicly, even though the Department of

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1 Elections had told the counties to use this list, they  
2 then told them not to use it. And then they told them  
3 that they should use their own processes in trying to  
4 make sure they purged.

5 My question to you in the letter or to Mr.  
6 Acosta and your division was: one, whether you were  
7 aware of all of this. Since it had been in the media  
8 everywhere, I was assuming you were aware of it.

9 MR. BRADSHAW: Yes. We were aware and are  
10 aware.

11 CHAIRPERSON BERRY: And, two, whether you  
12 thought that by the state attempting to require local  
13 election officials to use this list, which had a  
14 disparate impact on African Americans demonstrably, I  
15 would assume, since most of the people on there were  
16 and many of them were not felons, whether you would  
17 explore whether there was any Voter Rights Act  
18 violation of HAVA violation, and, finally, whether you  
19 thought under Bush v. Gore having the counties use  
20 their own procedures to decide who to purge, rather  
21 than using uniform standards, as the Supreme Court  
22 said should be used in voting matters, in Bush v.  
23 Gore, whether you thought there was a problem.

24 And so I ask those two questions. And I  
25 wonder if you know the answers to them.

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1 MR. BRADSHAW: Sure. The issue with the  
2 felon purge list, issues related to that left almost  
3 as quickly as they came because almost at the exact  
4 same time that Florida announced that they were going  
5 to use this new list to purchase names from their  
6 voting rolls.

7 We received complaints. At almost the  
8 exact same time, Florida received complaints and  
9 stopped using the list. And as a result, I can say  
10 that is something we're monitoring and following very  
11 closely.

12 To the extent that the state attempts to  
13 either reuse that list or if there are complaints  
14 about some other actual actions that the state is  
15 taking, that we would entertain those allegations. As  
16 things stand now, they are not, in fact, using that  
17 list.

18 CHAIRPERSON BERRY: The second part of my  
19 question was --

20 MR. BRADSHAW: The Bush v. Gore.

21 CHAIRPERSON BERRY: -- whether you thought  
22 that having each county sort of fend for itself with  
23 whatever standards it could come up with. And there  
24 are how many Florida counties? I forgot.

25 MS. STRICKLAND: Sixty-seven.

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1 CHAIRPERSON BERRY: Sixty-seven different  
2 counties. Whether you thought that this lack of  
3 uniformity, should it need up having a disparate  
4 impact on some communities, whether you thought that  
5 there might be either a constitutional or a statutory  
6 problem.

7 MR. BRADSHAW: I should note at the outset  
8 that with respect to the Bush v. Gore, I have not had  
9 the time to think about precisely what the State of  
10 Florida was proposing to do, which, of course, is no  
11 longer happening, and had they continued to do that,  
12 whether it would have been consistent with Bush --

13 CHAIRPERSON BERRY: No, no, no. That's  
14 not my question. My question is, Florida announced  
15 the list would no longer be used.

16 COMMISSIONER EDLEY: By the state.

17 CHAIRPERSON BERRY: By the state and that  
18 the counties might individually -- they announced this  
19 publicly. It was in the press. And they wrote us a  
20 letter saying that. We have a letter around here  
21 where we got that letter from them. And we released  
22 it to the press.

23 They said each county should use its own  
24 standards, whatever standards each county wished to  
25 use, in determining how to execute a felon purge and

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1 that the state wasn't going to tell them how to do  
2 that.

3 My query to you in the July 26th letter,  
4 not to you personally but to your agency, was whether,  
5 indeed, there could be some problems in this lack of  
6 uniform standards and how you go about doing it in  
7 each county. The state said, "We're just going to  
8 throw up our hands. And we're not going to use any  
9 standards."

10 Under Bush v. Gore because Bush v. Gore,  
11 as I understand it and as the lawyers around here  
12 said, requires that there be uniform standards in  
13 voting matters and they even quoted from it and said  
14 equal protection applies to the right to vote as well  
15 as the exercise of the right to vote, would include,  
16 I guess, being purged from the rolls.

17 So I was asking you whether there was a  
18 potential legal problem there if this turns out to  
19 have a disparate impact. And would there be perhaps  
20 a denial of equal protection with the standard list  
21 sort of procedure going on all over the state?

22 MR. BRADSHAW: I must admit I will go back  
23 and look at that letter and look at the question. I  
24 am just not in a position right now to answer.

25 My recollection at the time when we looked

1 at the question, it also raised a question about  
2 whether it was consistent with HAVA's requirement of  
3 keeping a centralized list. And, of course, that  
4 provision of HAVA doesn't come into effect until  
5 January 1st of 2006.

6 CHAIRPERSON BERRY: Right, right. So  
7 could I get a response after you have had a chance to  
8 look at this?

9 MR. BRADSHAW: Yes. I will go back and  
10 look and coordinate. The letter you said was to the  
11 Assistant Attorney General?

12 CHAIRPERSON BERRY: Yes. And then,  
13 finally, let me just say that many of the problems  
14 that we have been discussing could be solved. I mean  
15 we as a panel and in the various proceedings we have  
16 had if some of the provisions of HAVA had been  
17 implemented already.

18 If, for example, as Commissioner Edley  
19 said, we had a computerized voter registration list  
20 now that was clean, some of these problems about who  
21 is on the list, it is unfortunate that HAVA with all  
22 of its weaknesses would have some strengths with its  
23 weaknesses, hasn't been implemented yet.

24 But I want to make sure that we let voters  
25 understand that it does not mean -- or potential

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1 voters -- that they shouldn't go out to vote because  
2 there are these problems. You hear people saying,  
3 "Boy, there are so many problems," but, in fact,  
4 everyone here and people in the organizations and  
5 groups are trying to do the best they can to make sure  
6 that people have the right to vote.

7 And you have assured us, as I understood  
8 you, Mr. Bradshaw, that the monitors that you are  
9 sending out are there not to simply report on whether  
10 somebody who is trying to vote might be a potential  
11 fraudulent actor but that people are not faced with  
12 barriers to their right to vote when they are eligible  
13 voters just because of who they are and their status  
14 and that they will have the right to vote.

15 COMMISSIONER EDLEY: Madam Chair, can I  
16 try to make a suggestion I hope all of the  
17 commissioners would be able to join in for the Justice  
18 Department because I have read the letter of August  
19 31st that the Assistant Attorney General sent to  
20 Secretaries of State or whomever?

21 And it's a perfectly unobjectionable  
22 letter except perhaps insofar as that it's -- well,  
23 platitudinous would sound harsh, but, I mean, it  
24 basically says, "I am writing to remind you to follow  
25 the law. And if you're confused about what the law

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1 is, call us."

2 So that is certainly fine as far as it  
3 goes but my suggestion would be that the Assistant  
4 Attorney General or perhaps the Attorney General write  
5 a letter to the Secretaries of State or, indeed, to  
6 the County Supervisors all over the country and not  
7 have to come up with a mailing list beyond saying  
8 simply, "Follow the law."

9 I'm sure it would be very easy for your  
10 staff to identify five or ten of the most common  
11 problems with implementation that violate the statute  
12 or the most common examples of difficulties that your  
13 election monitors find. You could add to it common  
14 examples on the fraud side as well.

15 So in a more pointed way than simply  
16 saying, "Please implement the statute," you could sort  
17 of provide them in a high profile way with a checklist  
18 that they should feel responsible for complying with  
19 along with the statutory citations telling them which  
20 statute they're violating if they don't do it.

21 I just think that that might be very  
22 helpful to some of the local officials as well as to  
23 the various civic groups that are trying to be  
24 involved in the process.

25 CHAIRPERSON BERRY: What's your reaction

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1 to that, Mr. Bradshaw?

2 MR. BRADSHAW: I mean, we have an  
3 extensive program, something to educate state and  
4 local officials with respect to the current state of  
5 the law. Certainly some jurisdictions are covered by  
6 separate provisions of the act that others aren't; for  
7 example, section 203, section 4. So a lot of these  
8 letters we try to tailor for jurisdictions.

9 I think if you look at the following  
10 letter that we sent on that same date, that went  
11 specifically to jurisdictions that were covered by 203  
12 and laid out the more specific requirements that they  
13 are required to follow.

14 So we already have and are both informally  
15 and in more formal letters like that in contact with  
16 jurisdictions. We have a lot of these same sorts of  
17 materials that you have described at the Voting  
18 Section Web page and elsewhere.

19 COMMISSIONER EDLEY: Do you have anything  
20 that says, a sign that says, "No ID, no voting,  
21 violates federal law"? Is there a letter that you  
22 have sent to election officials that just says that  
23 clearly?

24 MR. BRADSHAW: I am not aware of a letter.

25 COMMISSIONER EDLEY: That is the sort of

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1 thing I am cornered about. There is a short list of  
2 the most common mistakes that your monitors tend to  
3 find that would be more pointed and would be more of  
4 an easy checklist than a general injunction that they  
5 follow the statute or the informality of the  
6 schmoozing between a DOJ official and -- it just seems  
7 to me that it would be good for the department to be  
8 on the record being proactive at warning people about  
9 "Based on our experience, here is where the hot  
10 problems are. Be on your guard." That's my  
11 suggestion.

12 CHAIRPERSON BERRY: Do you want to move  
13 that or do you just want to suggest that or what would  
14 you like to do?

15 COMMISSIONER EDLEY: No. That's all  
16 right. I won't.

17 CHAIRPERSON BERRY: But you have made the  
18 suggestion.

19 MR. BRADSHAW: Yes, and --

20 CHAIRPERSON BERRY: Perhaps you will --

21 MR. BRADSHAW: And we have heard it.

22 CHAIRPERSON BERRY: And even if you don't  
23 want to do a letter, perhaps you could put a few  
24 examples on the Web site and say, "These are no-nos."  
25 You could think about what examples to put, not you

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1 personally but whoever does that.

2 MR. BRADSHAW: If it's left to me  
3 personally, our Web site would probably --

4 CHAIRPERSON BERRY: All right.

5 MR. BRADSHAW: We had better leave that to  
6 the experts.

7 CHAIRPERSON BERRY: Okay. How many people  
8 do you have? How many personnel do you have that will  
9 be on this voting rights monitoring business?

10 MR. BRADSHAW: I don't think we have a  
11 specific number.

12 CHAIRPERSON BERRY: About how many?

13 MR. BRADSHAW: I mean, it's certainly  
14 going to be in the hundreds.

15 CHAIRPERSON BERRY: In the hundreds? All  
16 right. Well, let me just reiterate that we thank  
17 everyone for coming. We want to urge everyone, of  
18 course, to vote and to educate themselves before they  
19 go to the extent that they can and to officials to  
20 ensure that their votes are counted and the groups to  
21 do what they can to help in this regard.

22 And unless someone has some other business  
23 that they would like to present, we will end this  
24 meeting with thanking everyone for coming. Thank you  
25 very much.

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1 CHAIRPERSON BERRY: Did you move?

2 VICE CHAIRPERSON REYNOSO: I move.

3 CHAIRPERSON BERRY: Okay. It's not  
4 debatable. All in favor indicate by saying aye.

5 (Whereupon, there was a chorus of  
6 "ayes.")

7 CHAIRPERSON BERRY: Opposed?

8 (No response.)

9 CHAIRPERSON BERRY: So ordered.

10 (Whereupon, at 1:16 p.m., the foregoing  
11 matter was adjourned.)

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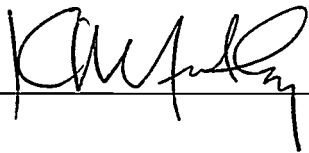
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Before:                        U.S. Commission on Civil Rights

Date:                          September 17, 2004

Place:                         Washington, DC

represents the full and complete proceedings of the  
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