

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY,

APRIL 9, 2004

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WASHINGTON, D.C.

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The Commission convened at 9:30 a.m. in Room 540 of the U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Washington, D.C., Chairperson Mary Frances Berry, presiding.

PRESENT:

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U.S. COMMISSION ON CIVIL RIGHTS

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

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STAFF PRESENT:

DEBRA CARR, ESQ., Deputy General Counsel  
TERRI DICKERSON, Assistant Staff Director,  
Office of Civil Rights Evaluation  
PAMELA DUNSTON, Chief, Administrative Services  
and Clearinghouse Division  
MYRNA HERNANDEZ  
LATRICE FOSHEE  
TINALOUISE MARTIN, Director, Human Resources  
Division  
KWANA ROYAL  
MICHELLE ROYSTER  
JOYCE SMITH, Parliamentarian  
ALEXANDER SUN  
DAWN SWEET  
DEBORAH VAGINS  
AUDREY WRIGHT  
TIFFANY WRIGHT  
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

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

PANELISTS:

JIM DICKSON, American Association of People  
with Disabilities  
LARRY GONZALEZ, National Association of Latino  
Elected and Appointed Officials

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WADE HENDERSON, Leadership Conference on Civil  
Rights

REBECCA MERCURI, Harvard's Kennedy School of  
Government

MICHAEL IAN SHAMOS, Carnegie Mellon University

MEG SMOTHERS, League of Women Voters of  
Georgia

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C O N T E N T S

PAGE

I. Approval of Agenda ..... 5

II. Approval of Minutes ..... 6

III. Announcements ..... 7

IV. Staff Director's Report ..... 12

V. Discussion of Election Reform Issues ..... 35

    Presentation by Meg Smothers ..... 45

    Presentation by Dr. Michael Shamos ..... 58

    Presentation by Dr. Rebecca Mercuri ..... 71

    Presentation by Wade Henderson ..... 86

    Presentation by Jim Dickson ..... 101

    Presentation by Larry Gonzalez ..... 107

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

(9:33 a.m.)

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CHAIRPERSON BERRY: The meeting will  
come to order.

I'm Mary Frances Berry, Chairperson of  
the Commission, and with me today we have Vice  
Chair, Cruz Reynoso; Commissioner Christopher Edley  
to my right; and Commissioner Elsie Meeks; and  
Commissioner Russell Redenbaugh on my left; and  
Commissioner Kirsanow. Peter Kirsanow from Ohio  
could not be here today, and he's out in the  
netherworld of a phone hook-up. Are you there,  
Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes, I am. Good  
morning.

CHAIRPERSON BERRY: And Commissioner  
Jennifer Braceras is in the same situation. Are you  
out there, Commissioner Braceras?

COMMISSIONER BRACERAS: I'm here.

**I. Approval of Agenda**

CHAIRPERSON BERRY: Yes, indeed.

And we expect Commissioner Thernstrom  
shortly, but we will go ahead and get started.

The first item on the agenda is the  
approval of the agenda. Could I get a motion to

1 approve the agenda?

2 VICE CHAIRPERSON REYNOSO: So moved.

3 COMMISSIONER REDENBAUGH: Second.

4 CHAIRPERSON BERRY: Anyone have any  
5 changes to the agenda?

6 (No response.)

7 CHAIRPERSON BERRY: Okay. All in favor  
8 indicate by saying aye.

9 (Chorus of ayes.)

10 CHAIRPERSON BERRY: Opposed?

11 (No response.)

12 CHAIRPERSON BERRY: So ordered.

13 **II. Approval of Minutes**

14 The next item is the approval of the  
15 minutes of the March 19th, 2004, meeting. Could I  
16 get a motion to approve the minutes?

17 VICE CHAIRPERSON REYNOSO: So moved.

18 COMMISSIONER REDENBAUGH: Second.

19 CHAIRPERSON BERRY: Anyone have any  
20 changes, corrections to the minutes of March 19th?

21 (No response.)

22 CHAIRPERSON BERRY: Hearing none, all in  
23 favor of approving the minutes, indicate by saying  
24 aye.

25 (Chorus of ayes.)

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CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: So ordered.

**III. Announcements**

The next item on the agenda is announcements, of which there are several.

First, I want to announce for myself that I forgot last time to thank the American Bar Association for giving me the Spirit of Excellence Award this year. It is an award that my colleague, Vice Chair Cruz Reynoso, received in the past, and so I accepted that because I figured if it was good enough for him --

(Laughter.)

CHAIRPERSON BERRY: -- it was good enough for me. So there, Cruz.

VICE CHAIRPERSON REYNOSO: Well said.

COMMISSIONER EDLEY: The standards are obviously slipping.

CHAIRPERSON BERRY: Right. The other -- good morning, Commissioner Thernstrom.

COMMISSIONER THERNSTROM: Good morning, and I'm sorry I'm late.

CHAIRPERSON BERRY: The other items that I want to announce staff wants to remind us that the

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1 annual ethics reports, SF-278s, are due for  
 2 Commissioners and their assistants by May 15th, and  
 3 all of you have been given copies, and if you have  
 4 not, you should make sure you get one from the  
 5 Staff Director.

6 Is that where we get it, from you? The  
 7 Staff Director.

8 And we urge you to file this on time, by  
 9 May 15th.

10 The other thing I want to announce is  
 11 that there are some new interns in the Office of  
 12 Civil Rights Evaluation, and if they are here, I  
 13 would like them to stand when I announce them.

14 The first one is Ms. Saleema Moor, M-o-  
 15 o-r, a junior government major at Dartmouth.

16 Hello, welcome.

17 And there is Mr. Nathaniel Smith. Is he  
 18 here? He's not here Terri? Terri has him working  
 19 so that he can't come to the meeting. A junior  
 20 political science major from Howard.

21 There is also another one. Tiffany  
 22 Jackson, who is a senior political science major at  
 23 Kent State University.

24 Hi, Tiffany.

25 Welcome to all of you. She is in the



1 Eastern Regional Office and is working closely there  
 2 with Ed Darden and Aonghas St. Hilaire. We thank  
 3 you, and we hope you enjoy your time here and  
 4 appreciate your service to the Commission.

5 I want to, in the nature of announcing  
 6 things that happened since the last meeting, we are  
 7 aware, of course, that April 4th, 1968, was the day  
 8 on which Dr. Martin Luther King, Jr. was  
 9 assassinated while organizing sanitation workers in  
 10 Memphis.

11 And the staff has written me a long  
 12 thing to explain who Dr. Martin Luther King was, but  
 13 I assume everybody knows that except my students.  
 14 No, I shouldn't say that. All of my students know  
 15 who Martin Luther King was.

16 Seven days after Dr. King's  
 17 assassination, President Lyndon Johnson signed the  
 18 Civil Rights Act of 1968 which prohibited  
 19 discrimination in the sale, rental, and financing of  
 20 some categories of housing.

21 April 11th is also important day because  
 22 it is the day that Congress passed the American  
 23 Indian Civil Rights Act in 1968, which guaranteed --  
 24 the same month, the same day -- which guaranteed to  
 25 reservation residents many of the same civil rights

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1 and liberties in relation to travel authorities that  
2 the U.S. Constitution guarantees to all persons in  
3 relation to federal and state authorities.

4 It was passed after seven years of  
5 investigations into rights denied to individual  
6 Indians, and it was fully supported by all of the  
7 tribes, as I recall, and Commissioner Meeks is  
8 looking at me and saying, no, all of the tribes  
9 didn't. So I think you're a better authority than  
10 what I have here.

11 I guess some of the tribes must have  
12 supported it; is that right, Commissioner? What did  
13 you say, Commissioner Meeks?

14 COMMISSIONER MEEKS: Nothing.

15 CHAIRPERSON BERRY: No, I'm interested.

16 COMMISSIONER MEEKS: Well, I think some  
17 of the tribes said they never did pass it themselves  
18 and so felt like it wasn't the final authority, but  
19 you know, that's an ongoing debate.

20 COMMISSIONER EDLEY: Sovereignty is  
21 always hard to --

22 CHAIRPERSON BERRY: Sovereignty was  
23 compromised, according to some, and now that you  
24 tell me that, I remember what the staff person did  
25 not, that we have a hearing here at the Commission

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1 in which some Indian leaders came and said exactly  
2 what you just said. So it was not supported by  
3 everybody, but some of the tribes did, and it's  
4 still a matter of contention, but it was a landmark  
5 day.

6 April 26th, 1862, going back in time,  
7 before this next time we meet, Asian Americans,  
8 discrimination sanction against them in California,  
9 April 26th, when a police tax of \$2.50 a month on  
10 every Chinese immigrant and Chinese American was  
11 enacted.

12 And it's also the staff says that five  
13 years -- it was not until five years before the  
14 founding of this Commission, which was founded in  
15 '57, that immigrants from all Asian groups were  
16 considered eligible for United States citizenship  
17 routinely, without some special requirements that  
18 didn't apply to other people.

19 Forty-four years ago this month, the  
20 Student Nonviolent Coordinating Committee was  
21 founded in Raleigh, North Carolina, after the sit-  
22 ins that started at the lunch counter there in  
23 February 1960.

24 And given that we're talking about  
25 voting today, it's important to recognize that the

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1 SNCC and the student involvement in Freedom Summer,  
2 in which they focused on the right to vote and  
3 registering people to vote, some whole groups of  
4 young people, many of them college students who went  
5 to the South that summer to help in the effort, and  
6 unfortunately that's the same summer in which  
7 Chaney, Schwerner and Goodman were killed in the  
8 process.

9 Does anyone else have any announcements  
10 that they wish to make?

11 (No response.)

12 IV. Staff Director's Report

13 CHAIRPERSON BERRY: Hearing none, we  
14 will go to the Staff Director's report.

15 First I'll ask if anyone has any  
16 questions about anything in the Staff Director's  
17 report. Yes, Commissioner Redenbaugh.

18 COMMISSIONER REDENBAUGH: Yes, let me  
19 reassemble these things.

20 Yeah, I wanted to ask the Staff Director  
21 if he could talk to us a bit about the  
22 reorganization plan.

23 STAFF DIRECTOR JIN: There's no  
24 reorganization planned. Do you mean for the staff  
25 or --

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1 COMMISSIONER REDENBAUGH: Yes, for the  
2 staff.

3 STAFF DIRECTOR JIN: There's no  
4 reorganization planned.

5 COMMISSIONER REDENBAUGH: Well, I have  
6 information that there is. Am I mistaken in that?

7 STAFF DIRECTOR JIN: I don't want to  
8 kind of guess at what you're talking about, but I  
9 think I probably do. Are you referring to some  
10 letters we sent to some of the staff about possible  
11 buyouts?

12 COMMISSIONER REDENBAUGH: I'm referring  
13 to that and the plan of reorganization filed with  
14 the Office of Management and Budget.

15 STAFF DIRECTOR JIN: There's no  
16 reorganization planned.

17 COMMISSIONER THERNSTROM: OPM.

18 STAFF DIRECTOR JIN: OPM?

19 COMMISSIONER THERNSTROM: OPM

20 COMMISSIONER REDENBAUGH: It's OPM. I'm  
21 sorry.

22 STAFF DIRECTOR JIN: Some of the  
23 Commissioners might know that the federal government  
24 has had for many years at various times. That  
25 hasn't been continuous, but it is, authorize federal

1 agencies to offer buyouts of staff with certain  
2 parameters being met, and in order to meet those  
3 parameters, the agencies need to get approval of  
4 Office of Personnel Management and, directly or  
5 indirectly also, the Office of Management and  
6 Budget, which we did.

7 And basically all that does is it  
8 allows, gives us the authority to give the  
9 opportunity to certain employees or certain  
10 classifications of employees an opportunity to apply  
11 to give them a financial incentive to leave the  
12 federal government.

13 But that's all there is to it.

14 COMMISSIONER REDENBAUGH: Now, how many  
15 people potentially could be affected?

16 STAFF DIRECTOR JIN: Potentially it  
17 could be up to six, but it probably will be less  
18 than that, but that really depends on who applies,  
19 how many people apply, and stuff like that.

20 The primary purpose is to give the  
21 agencies an opportunity to increase its financial  
22 flexibility, either short term or long term or both.  
23 And as we've talked about here before over, I think,  
24 last year about this time we had a conversation  
25 here, but certainly other times, you know, obviously

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1 because it has been flat lined now for ten years,  
2 which means that in essence our spending power has  
3 decreased substantially, it does mean that the  
4 Commission is constantly in very financially  
5 challenging times, and this year is no exception.

6 So this is one tool that we're looking  
7 at in order to try to save some money short term.

8 COMMISSIONER REDENBAUGH: So the  
9 reasoning is budgetary.

10 STAFF DIRECTOR JIN: Well, that's the  
11 primary driving motive, yes.

12 COMMISSIONER REDENBAUGH: Not  
13 reorganization.

14 STAFF DIRECTOR JIN: It's not  
15 reorganization, the way I understand the term. It  
16 does give the Commission flexibility in terms of  
17 making some decisions as to the managerial impact of  
18 its decisions.

19 But the way I understand the term  
20 "reorganization" and I think the way you understand  
21 it, too, and the way most people understand it,  
22 there's no reorganization going on.

23 COMMISSIONER REDENBAUGH: Well, actually  
24 the way I understand it, and I don't mean this as a  
25 technical term of art, but if you take out six or

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1 more people in an agency this small, that is  
2 reorganization.

3 STAFF DIRECTOR JIN: Well, Commissioner,  
4 we've taken out probably four to six employees per  
5 year for a lot of years now. Back in 1995, again,  
6 with the exact same budget we have, we had 90  
7 employees. Right now we're probably down to 65, and  
8 so the nature of our budget and the situation is,  
9 because we're a labor intensive organization, is if  
10 our budget decreases, in effect, we have to have a  
11 net outflow of staff. Otherwise we're just not  
12 going to be able to meet our budget.

13 For example, the last two years alone  
14 between the cost of living increases of last year  
15 and this year, we've had almost a nine percent  
16 increase in that cost, just the associated cost-of-  
17 living increases.

18 Now, I've said many times I think that's  
19 great because I think our employees deserve it, but  
20 the bottom line is because Congress doesn't give us  
21 anymore money, our \$90 million budget of two years  
22 ago, probably eight to \$900,000 went strictly to pay  
23 for cost-of-living increases. The only way we can  
24 try to do that is by decreasing the number of staff.

25 We do other things; we have done other

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1 things; but, the main thing that we have to do is  
2 decrease the number of staff.

3 CHAIRPERSON BERRY: What is your  
4 specific concern, if we may know, Russell?

5 COMMISSIONER REDENBAUGH: Well, I have  
6 two very related concerns. One is, I think that the  
7 larger issue is that we as Commissioners should have  
8 been informed, consulted, and advised on this  
9 because I do consider some of this magnitude does  
10 touch on policy.

11 A subsidiary concern is that repeatedly  
12 we have discussed the situation of our budget, the  
13 impact of travel on our budget, and our capacity to  
14 maintain our ability to do our reports against the  
15 flat line. Repeatedly we've been assured by the  
16 Staff Director that these objectives weren't in  
17 conflict.

18 And to then do a buyout, which is an  
19 expensive way to reduce staff and organize and  
20 perhaps a necessary way, is inconsistent with all of  
21 the conversations we had about the status of the  
22 budget and where we were.

23 CHAIRPERSON BERRY: Well, I would  
24 respond in two ways. One is, I don't think we  
25 should discuss this further today, and the reason

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1 why I don't think we should discuss it further is  
2 because we need more information about it before we  
3 discuss it.

4 Two, I would say that the Commission has  
5 in my experience on numerous occasions in the past  
6 had buyouts, and on no occasion has the Commission  
7 had a policy discussion about whether the Staff  
8 Director should have a buyout or not. It's  
9 considered a management decision made by the Staff  
10 Director.

11 If you wish it to be made a policy  
12 decision, then we need to get some paper on it. We  
13 need to consider it, and the Commission needs to  
14 consider whether it wants to make it a policy  
15 decision, which the Commission can very easily do.

16 However, it has been done, and we can  
17 document this, on numerous occasions. this is the  
18 first discussion I have had of it, but that's fine  
19 with me because I know that he is behaving in the  
20 same way Staff Directors have in the past.

21 However, we may wish to change that, but  
22 if we are going to change it, we need to be more  
23 informed so that all of us are on the same page.  
24 You seem to have more information than we do. So we  
25 would like to inform ourselves about this matter,

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1 and then we can discuss it after we have informed  
2 ourselves, which seems reasonable to me.

3 COMMISSIONER KIRSANOW: Madam Chair,  
4 Kirsanow. May I be recognized?

5 CHAIRPERSON BERRY: Yes, Commissioner  
6 Kirsanow.

7 COMMISSIONER KIRSANOW: I think this is  
8 a matter that we need some more information on, but  
9 it's also a matter we should discuss at least a  
10 little bit right now.

11 My understanding is that as many as --  
12 maybe I'm mistaken -- ten individuals were extended  
13 buyout offers. Maybe only six are expected to  
14 accept it, but I agree with Commissioner Redenbaugh  
15 that that's in an agency of this size a fairly  
16 significant number of individuals which perforce  
17 results in a reorganization.

18 If you have a certain number of  
19 individuals from OGC, for example, who take the  
20 buyout, then it seems that inevitably compromises  
21 the ability of OGC to discharge its functions in a  
22 manner that we had outlined in developing policy or  
23 programmatic activities for the future.

24 And it's just curious to me why we  
25 haven't been informed because I think it's

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1 fundamentally a policy decision, and as such the  
2 province of Commissioners.

3 CHAIRPERSON BERRY: Again, if you wish  
4 to make it a policy decision, the Commission may  
5 wish to do so. It has never been considered to be a  
6 policy decision. It's considered to be a management  
7 decision, and as you point out, these are offers.  
8 People are offered buyouts, which they may take or  
9 not take.

10 And the Staff Director is responsible  
11 for trying to figure out how to manage the resources  
12 of the agency, and that's the way it has been. We  
13 can make it a policy decision. I'm perfectly  
14 willing to consider doing that, but I do believe  
15 that we need to be more informed before. We can't  
16 do that here today. We would have to be more  
17 informed about it.

18 Yes.

19 COMMISSIONER REDENBAUGH: I think we all  
20 do need to be more informed, and I think you're  
21 right. We can't do that today. What I think we  
22 should do then is stop the process while we get  
23 ourselves more informed because to me this looks  
24 like far more than a merely ministerial hiring set  
25 of decisions to change this many key personnel.

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1 CHAIRPERSON BERRY: Who are the key  
2 personnel?

3 Yes, Commissioner.

4 COMMISSIONER EDLEY: Well, Madam Chair,  
5 I don't think that we should discuss particular  
6 individuals in a public session, in open session,  
7 about who might or might not be contemplating  
8 retirement or contemplating doing a buyout.

9 COMMISSIONER REDENBAUGH: I think that's  
10 wise.

11 COMMISSIONER EDLEY: I'm mindful of the  
12 clock. For my own part, I think that we've had lots  
13 of discussion from time to time about the challenges  
14 of dealing with limited resources, and within that  
15 constraint, decisions about how to manage personnel  
16 and whether or not a buyout is required is not --  
17 whether one characterizes it as policy or management  
18 -- it's not the way I would choose to spend the  
19 Commission's time in plenary session, but obviously  
20 if there are others who want to spend their time  
21 that way, that's okay, but I really think we should  
22 then just have them pursue it with the Staff  
23 Director or come back with appropriate material and  
24 discuss it at another meeting.

25 I am worried though, Russell, that if

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1 the Staff Director is doing this because of some  
2 financial urgency that I think we really need to  
3 give him flexibility to do what he needs to do  
4 within the budget.

5 CHAIRPERSON BERRY: I am going to --  
6 Commissioner Redenbaugh, I am going to say that we  
7 should defer discussion on this until another  
8 meeting, and we should get some paper from the Staff  
9 Director, and unless someone wants to introduce a  
10 motion to continue this discussion, I think we've  
11 done it long enough here, and we have no  
12 information. All we're doing is discussing things  
13 in the abstract.

14 Maybe you know more than the rest of us,  
15 but I find it very difficult, and I also am not  
16 willing to tie the Staff Director's hands as a  
17 matter of management since he is responsible for the  
18 day-to-day management of this place and we're not,  
19 and since he is responsible for deploying the  
20 resources and we're not, and since he's doing  
21 nothing that hasn't been done time and time and time  
22 again in this agency.

23 And also, if you'd like a review of the  
24 Staff Director's decisions, then we can at some time  
25 have a discussion of that, but I am not willing to

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1 prolong this discussion. So, unless someone wishes  
2 to move that we prolong it, I'm going to move the  
3 agenda to the next item.

4 Is there a motion on the floor?

5 COMMISSIONER BRACERAS: Madam Chair,  
6 this is Jennifer Braceras.

7 CHAIRPERSON BERRY: Do you have a  
8 motion, Commissioner Braceras.

9 COMMISSIONER BRACERAS: No, I'd like to  
10 be heard on this issue before we move on.

11 CHAIRPERSON BERRY: No, I have already  
12 decided. You are out of order. I have decided that  
13 unless you have a motion, we will move on to the  
14 next item on the agenda.

15 COMMISSIONER THERNSTROM: Madam Chair,  
16 the deadline for buyouts is the 30th of April. We  
17 cannot postpone this discussion.

18 CHAIRPERSON BERRY: Do you have a  
19 motion? Do you have a motion?

20 COMMISSIONER BRACERAS: Yes. Okay. I  
21 move to consider the discussion then.

22 COMMISSIONER THERNSTROM: I mean, you  
23 cannot --

24 CHAIRPERSON BERRY: Is there a second of  
25 the motion?

1 COMMISSIONER THERNSTROM: I second it,  
2 of course. You are --

3 VICE CHAIRPERSON REYNOSO: I call the  
4 question, Your Honor.

5 COMMISSIONER THERNSTROM: -- talking  
6 about key people here.

7 CHAIRPERSON BERRY: You call the  
8 question?

9 VICE CHAIRPERSON REYNOSO: I call the  
10 question.

11 CHAIRPERSON BERRY: The question has  
12 been called. All those in favor of continuing this  
13 discussion at this meeting, indicate by saying aye.

14 COMMISSIONER KIRSANOW: I'd like some  
15 discussion on the motion.

16 COMMISSIONER BRACERAS: The question has  
17 been called. All those in favor of continuing this  
18 discussion in the absence of our information to  
19 continue the discussion, indicate by saying aye.

20 (Chorus of ayes.)

21 CHAIRPERSON BERRY: All those in favor  
22 indicate by saying aye.

23 (Chorus of ayes.)

24 CHAIRPERSON BERRY: Opposed.

25 (Chorus of nays.)

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1 CHAIRPERSON BERRY: The motion fails.

2 So we will move on to the --

3 COMMISSIONER KIRSANOW: Well, I have a  
4 question related to --

5 COMMISSIONER BRACERAS: -- next item on  
6 the --

7 COMMISSIONER KIRSANOW: -- how this is  
8 going to transpire since, as Abigail Thernstrom, I  
9 think, just mentioned, I guess the buyout offers are  
10 going to expire on the 30th. When will we have an  
11 opportunity to address this again before the next  
12 meeting?

13 COMMISSIONER THERNSTROM: You are  
14 talking about key people here and the buyout offers  
15 do expire on the 30th of April. I mean, Chris --

16 CHAIRPERSON BERRY: The Staff Director  
17 informs me --

18 COMMISSIONER THERNSTROM: Chris, I don't  
19 know how you and I are both voting --

20 CHAIRPERSON BERRY: Please be in order,  
21 please be in order, please be in order,  
22 Commissioners. Please be in order. Please.

23 COMMISSIONER THERNSTROM: We have talked  
24 about --

25 CHAIRPERSON BERRY: Please be in order.

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1 Please behave with decorum and dignity and decency  
2 and in order.

3 COMMISSIONER THERNSTROM: Well, it would  
4 be --

5 CHAIRPERSON BERRY: If you do not  
6 respect me, at least respect that this is a chair  
7 and that is -- pretend that it is somebody else  
8 sitting in the chair.

9 COMMISSIONER THERNSTROM: Well --

10 CHAIRPERSON BERRY: Pretend it is you  
11 sitting in the chair.

12 COMMISSIONER THERNSTROM: Yeah, and you  
13 know what --

14 CHAIRPERSON BERRY: And I have asked you  
15 to be in order, please.

16 COMMISSIONER THERNSTROM: If I were in  
17 the chair, --

18 CHAIRPERSON BERRY: I am asking you --

19 COMMISSIONER THERNSTROM: -- I would  
20 allow a discussion to go forward.

21 CHAIRPERSON BERRY: The vote was not to  
22 --

23 COMMISSIONER THERNSTROM: You have not  
24 respected our wishes to discuss this.

25 CHAIRPERSON BERRY: There was a vote,

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1 madam.

2 COMMISSIONER THERNSTROM: You cut off  
3 discussion of --

4 CHAIRPERSON BERRY: There was a vote,  
5 madam.

6 COMMISSIONER THERNSTROM: -- taking a  
7 vote, and it was not the right thing to do. I'm  
8 sorry.

9 CHAIRPERSON BERRY: The next item is to  
10 discuss -- the next item is to discuss with the  
11 Staff Director, who tells me that there's no problem  
12 with deadlines because if he needs to issue other  
13 buyouts he can, and that people who want them can  
14 take them and people who do not want to do not have  
15 to, and I don't know anything about the process  
16 because I'm not supposed to.

17 In any case, the next item is to discuss  
18 the May meeting. We had agreed that we would meet  
19 on May 17th, and we had agreed that we would meet  
20 because we, in part -- Commissioner Vice Chair  
21 Reynoso has his son's commencement on Friday and  
22 also because we, in fact, thought that on May 17th,  
23 which is the 50th anniversary of the Brown decision,  
24 it would be well at the Commission meeting to  
25 commemorate it and to honor some of the participants

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1 in the Brown decision, some of the lawyers.

2 The staff has explored this and has  
3 found out what I suspected, is that most of the  
4 lawyers involved in the Brown decision were, in  
5 fact, tied up with other activities that day  
6 commemorating the day and that they, in fact, were  
7 willing to come here and wanted to, but many of them  
8 are old and infirm, and I know a number of them very  
9 well, and I do not feel that we should ask them to  
10 endure more stress by trying to squeeze in an  
11 activity here on that day when they've got about  
12 three or four different things that they have to go  
13 to that have been planned for more than a year.

14 COMMISSIONER THERNSTROM: Madam Chair --

15 CHAIRPERSON BERRY: In consulting --

16 COMMISSIONER THERNSTROM: -- some of us  
17 are leaving, and you might not have a quorum.

18 CHAIRPERSON BERRY: In consulting -- in  
19 consulting with the Staff Director, the Staff  
20 Director says that we do not have anything that we  
21 need to have -- that we need to have passed at the  
22 next meeting. So that, therefore, he thinks that he  
23 can delay the items that are on the agenda for the  
24 next meeting after that.

25 So what we will do then is, unless there

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1 is some objection, since I have the responsibility  
2 of setting the agenda, to say that we will not have  
3 the May meeting and we will, instead meet in June.

4 And those are the only other things that  
5 we have on the agenda for today. And now we are  
6 ready to go to the --

7 COMMISSIONER BRACERAS: I'm sorry.  
8 You're canceling the May meeting?

9 CHAIRPERSON BERRY: What I'm suggesting  
10 is that we will not have the meeting in May because  
11 of the circumstances of the persons that I have just  
12 told you about.

13 COMMISSIONER BRACERAS: Well, how about  
14 having a meeting to discuss other Commission  
15 business, for example, that which you just deferred?

16 CHAIRPERSON BERRY: I talked to the  
17 Staff Director before, and he said that he didn't  
18 have any items that needed to be passed.

19 COMMISSIONER BRACERAS: Well, okay.  
20 Well, we have --

21 CHAIRPERSON BERRY: However --

22 COMMISSIONER BRACERAS: -- items that we  
23 wish to discuss.

24 CHAIRPERSON BERRY: However,  
25 Commissioner Braceras, if you wish to have a meeting

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1 to discuss these items, if you want to discuss  
2 whatever happened with the buyout provisions or the  
3 Staff Director's powers, have a discussion of that,  
4 we can ask for papers to be circulated, and we can  
5 have the meeting and use it for that purpose since  
6 everybody has it on their calendar already.

7 COMMISSIONER BRACERAS: I guess, here is  
8 my question. First of all, a preliminary. Since  
9 I'm on the phone, did certain people just leave the  
10 room or I thought I heard somebody say they were  
11 leaving the room.

12 CHAIRPERSON BERRY: Some people did,  
13 yes.

14 COMMISSIONER BRACERAS: So who's  
15 currently present just so I know.

16 CHAIRPERSON BERRY: Right now in the  
17 room we have Commissioner Meeks and the Vice Chair  
18 and myself and the Staff Director, as well as a  
19 large audience of people if you'd like to --

20 COMMISSIONER BRACERAS: Okay. So  
21 Commissioner Redenbaugh and Thernstrom have left the  
22 room?

23 CHAIRPERSON BERRY: They are outside in  
24 the hallway.

25 COMMISSIONER BRACERAS: And is Kirsanow

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1 still on the phone?

2 COMMISSIONER KIRSANOW: I am getting off  
3 the phone momentarily.

4 CHAIRPERSON BERRY: I have no idea.

5 COMMISSIONER KIRSANOW: Because,  
6 frankly, I'm protesting what I consider to be a  
7 hijacking of the Commission.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER KIRSANOW: We're not having  
10 an opportunity to discuss a very fundamental process  
11 here.

12 COMMISSIONER BRACERAS: But, Pete,  
13 before you do, stay on for just a moment if you  
14 will.

15 COMMISSIONER KIRSANOW: I will.

16 COMMISSIONER BRACERAS: Here's my  
17 concern. Every time that certain Commissioner bring  
18 up business matters in terms of the -- bring up  
19 concerns regarding the governance of the Commission,  
20 we are told at each and every meeting that it is not  
21 the appropriate time to discuss it because people  
22 are waiting to be heard, we have a briefing to go  
23 forward with, blah, blah, blah, blah, blah.

24 So it seems to me that given the  
25 cancellation of whatever presentations we were going

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1 to have in May, that that would be a perfect time to  
2 hold the meeting to discuss all of those things, any  
3 concerns that Commissioners may have which were in  
4 the past put off on the pretext that we had hearings  
5 to conduct.

6 So now we have an open month.. We have a  
7 month where we were going to have presentations and  
8 apparently now we are not. That seems to me the  
9 perfect time to meet to discuss business.

10 CHAIRPERSON BERRY: Well, I have no  
11 objection to that if others do not. As I said, it's  
12 already on people's calendars, but I just wanted you  
13 to know that we were not in a position to have the  
14 commemoration that we had said we would have.

15 COMMISSIONER BRACERAS: That's fine,  
16 although disappointing. I was looking forward to.

17 CHAIRPERSON BERRY: Yes, I was, too.

18 COMMISSIONER BRACERAS: But I understand  
19 why it can't go forward. Nevertheless, I think that  
20 we should meet. I think that we have --

21 CHAIRPERSON BERRY: I have already -- I  
22 have already agreed unless somebody else objects  
23 that we will take the time to do exactly what you  
24 said.

25 COMMISSIONER BRACERAS: Okay. Good. so

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1 we'll meet in May as planned.

2 CHAIRPERSON BERRY: Yeah, and we'll do  
3 exactly as you said. We can spend as much time --  
4 not you, but the Commissioners -- as much time as  
5 they wish discussing matters of the Staff Director  
6 and certain management issues.

7 COMMISSIONER BRACERAS: Yeah. I mean, I  
8 think we should all sit down as a group, you know,  
9 when we have the time to dedicate to discussing  
10 business practices and management, when there aren't  
11 people waiting to be heard, and when we can have,  
12 you know, a discussion about some of these things  
13 that concern us. I think it would be very  
14 productive.

15 CHAIRPERSON BERRY: Okay. Thank you.  
16 That's a wonderful idea. We'll do it next time.

17 VICE CHAIRPERSON REYNOSO: Madam Chair,  
18 I beg your indulgence, but I just can't accept the  
19 notion that we haven't had time or haven't spent a  
20 great deal of time talking about these internal  
21 matters, some of which in my view have been  
22 inappropriate, but we've spent a lot of time.

23 So I just want to let it be known that I  
24 don't agree with the assumptions made in the  
25 statement.

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1 CHAIRPERSON BERRY: I will ask the Vice  
2 Chair to indulge me by not saying anything further  
3 on the subject. That's enough.

4 Okay. Now we are ready to have the  
5 briefing and --

6 COMMISSIONER BRACERAS: So, I'm sorry.  
7 Just to be clear, we'll meet on the 17th, which is a  
8 Monday as planned?

9 CHAIRPERSON BERRY: As planned, and we  
10 will devote the time, since the Staff Director says  
11 he has no items that need to be approved at that  
12 time, to a discussion of the items that we normally  
13 discuss under the Staff Director's report and any  
14 items that anyone wants to discuss on matters of  
15 management issues.

16 COMMISSIONER BRACERAS: Great. Okay.  
17 So now at this point, I'm going to hang up largely  
18 for the same reasons that Commissioner Kirsanow and  
19 the others have expressed.

20 COMMISSIONER KIRSANOW: I'm signing off  
21 also. Goodbye.

22 CHAIRPERSON BERRY: Yes, okay. Thank  
23 you.

24 All right. We will now have the  
25 briefing. Let me find the piece of paper. I'm

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1 looking for the names of the witnesses.

2 Could I ask Dr. Shamos and -- we're  
3 asking everyone to come forward? -- and Dr. Mercuri  
4 and Ms. Smothers and Mr. Wade Henderson and Jim  
5 Dickson and Larry Gonzalez to come forward and sit  
6 behind your names? If you can find it, Meg Smothers  
7 is over here. Ms. Mercuri is there. Is Jim here?  
8 Anybody see Jim Dickson?

9 Wade, have you seen Jim?

10 MR. HENDERSON: I have not, Madam Chair,  
11 this morning.

12 **V. Discussion of Election Reform Issues**

13 CHAIRPERSON BERRY: Okay. thank you  
14 very much, and I will further introduce you in a  
15 moment after I have made an opening statement.

16 Today, we will hear some testimony on  
17 election reform issues, voter empowerment. Is the  
18 map -- put up the map. Thank you.

19 We have a map that has been put up which  
20 shows you states that have direct recording  
21 electronic machines, states that have them and have  
22 problems and states that don't have them, which are  
23 on there, which I hope will be helpful to the  
24 discussion.

25 Today we will hear testimony on election

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1 reform issues of voter empowerment, voter access,  
2 and voting system integrity, and what I want to do  
3 is to start by saying that we all recognize that the  
4 right to vote is one of the most important rights  
5 that we have in our democracy, and the Commission is  
6 looking at these issues because we have broad  
7 authority over voting rights.

8 We have jurisdiction to examine  
9 allegations regarding the right to vote of U.S.  
10 citizens and to have their votes counted, and since  
11 1957, we have spent a great deal of time working on  
12 this issue, and the country has made great progress  
13 in the matter of voting rights. The Voting Rights  
14 Act of 1965 and the amendments to it later have, in  
15 fact, made it possible for large numbers of people  
16 of color, African Americans, Latinos, in particular  
17 in Mexico and California, to vote and it has an  
18 impact, too, on the voting of whites who have been  
19 prohibited from doing so by various electoral rules,  
20 machinery, and the way elections have been carried  
21 out.

22 So we've made a lot of progress. In  
23 2001, the Commission examined evidence from the 2000  
24 election. We had a lot of reports and complaints  
25 from people, and so we went out and we did hearings

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1 based on the unanimous vote of the Commission to  
2 look at voting irregularities in that state.

3 We had three days of hearings, a bunch  
4 of sworn testimony and the like, and we looked at  
5 issues like machinery and polling places and poll  
6 workers, and we issued two reports, one, voting  
7 irregularities in Florida during the 2000  
8 presidential election, and another one called  
9 "Election Reform, an Analysis of Proposals and the  
10 Commission's Recommendations for Improving America's  
11 Election System."

12 We found that the problems in Florida  
13 and elsewhere were serious and not isolated. In  
14 many cases, we concluded they were foreseeable and  
15 should have been prevented. Disenfranchised voters  
16 are individuals who are entitled to vote, want to  
17 vote or try to vote, but who are deprived from  
18 voting and having their votes counted.

19 The failure to resolve the flaws in the  
20 system resulted in an extraordinary high level of  
21 disenfranchisement in that election. We don't know  
22 what the level was before that because we didn't do  
23 a study of any particular election, but there may  
24 have been problems. But there were high levels of  
25 disenfranchisement.

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We talked about a failure of leadership and accountability of the people who were responsible, inadequate resources for voter education, training of poll workers, and for election day troubleshooting and problem solving. And we talked about all of those.

We gave testimony, the Commission did, before the Senate Committee on Rules and Administration, and we made some recommendations from our report that they should include in the legislation that they passed, and in 2000 they did pass the Help America Vote Act, however, and many of the Commission's recommendations are included in that report.

Unfortunately, HAVA's enactment and implementation have been very slow, painfully slow. Congress didn't pass HAVA until October 2002, almost two years after the problems surfaced, which isn't a long time for most legislation, but it's a long time when the next election, federal election in 2004.

The Election Assistance Commission has only recently been confirmed and seated, and without it in place, funds haven't been distributed, and certain guidelines have not been issued. We have

1 discovered, the staff has in the work that they did,  
 2 that waivers for compliance with equipment  
 3 replacement and registration lists deadlines abound,  
 4 which means most states won't really make the  
 5 changes until 2006.

6 So we're ending up in 2004 with many of  
 7 the same problems or issues in place that were there  
 8 before. If I were asked today, based on reading the  
 9 staff's report that Terri Dickerson and her staff in  
 10 the Office of Civil Rights Evaluation put together  
 11 and which is available on our Website at  
 12 www.usccr.gov, if I were asked is America ready to  
 13 vote, sitting here right now as I get ready to  
 14 listen to you, I would have to answer that in many  
 15 states the answer is no, that America isn't ready to  
 16 vote and that it isn't any more ready than it was in  
 17 2000.

18 And I base that upon what's in the  
 19 report about what happened during the primaries,  
 20 what happened in terms of the changes that have not  
 21 yet been made in many of the states, and what  
 22 happened the last time and the problems that one can  
 23 easily foresee unless some changes are more.

24 More specifically, we're asking today to  
 25 what extent has reform occurred. Have local and

1 national leaders fulfilled their pledges to educate  
2 and enfranchise voters? And if not, what can be  
3 done?

4 We're interested in what hasn't  
5 happened, but we're also interested in trying to  
6 figure out what people can do between now and the  
7 election to try to make it fairer and more accurate.

8 I am, indeed, pleased that since HAVA  
9 was passed, Secretaries of State, including the  
10 Secretary of State in Florida, now seem to  
11 understand, the ones that didn't before, that they  
12 have a responsibility in these matters.

13 I remember our hearings we had in  
14 Florida where we had trouble explaining who was  
15 responsible.

16 But there are seven months to prepare  
17 for election day, and we have to worry about what's  
18 going to happen and see if we can figure out  
19 something to make sure that a change occurs in a  
20 positive direction so that after 2004 in November,  
21 we will not be looking at another disaster in our  
22 election system.

23 Today's testimony will give us an update  
24 on HAVA, related voting rights initiatives, and we  
25 hope that the panels will educate us and the public

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1 on these issues, such as implementation of the  
2 direct recording electronic voting systems,  
3 accommodating voters with disabilities, the civil  
4 rights ramifications of various state voter  
5 identification requirements, adoption of provisional  
6 balloting, voter role and purge list maintenance  
7 efforts, purge lists like the felon purge that we  
8 had a lot of experience with last time, poll worker  
9 and voter education efforts, and other issues  
10 arising under HAVA and state election reform.

11 Our panel will focus on the specific  
12 issue of electronic voting and brief us on the state  
13 of the new technology and security concerns, and  
14 then we will have other panelists who will talk  
15 about civil rights concerns regarding equal access  
16 and opportunity to vote by all citizens and  
17 communities. And then there will be questions from  
18 the Commissioners.

19 So without further delay, I thank you,  
20 panelists, for your participation, and I will  
21 briefly introduce you.

22 Ms. Meg Smothers is the Executive  
23 Director of the League of Women Voters of Georgia.  
24 The League is a nonpartisan political organization  
25 that encourages the informed and active

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1 participation of citizens in government, works to  
2 increase understanding of major public policy  
3 issues, and influences public policy through  
4 education and advocacy.

5 As Executive Director in Georgia, Ms.  
6 Smothers is responsible for program development and  
7 increasing the organization's resources -- that's  
8 always an issue --

9 (Laughter.)

10 CHAIRPERSON BERRY: -- membership and  
11 visibility and coordinating all of the local  
12 Leagues.

13 Dr. Michael Ian Shamos is Director of  
14 the Universal Library and is principal systems  
15 scientist in the Language Technologies Institute at  
16 the School of Computer Science at Carnegie Melon  
17 University. He has been at Carnegie Melon since  
18 1975 teaching things like math, statistics, and  
19 computer science.

20 He founded two Pittsburgh computer  
21 software companies and is a partner in a law firm.  
22 He's a busy guy.

23 His testimony before the Texas  
24 legislature concerning electronic voting resulted in  
25 the passage of the Texas electronic voting law.

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1 In March 2004, he testified before the  
2 Pennsylvania legislature state government committee  
3 concerning electronic voting. He'll talk about  
4 security and system integrity issues.

5 Dr. Rebecca Mercuri is internationally  
6 recognized as one of the leading experts on  
7 electronic voting. Her 14 years of research on this  
8 subject include her present affiliation with the  
9 Harvard's JFK School of Government, and prior work  
10 at the University of Pennsylvania where I am a  
11 faculty member, the Geraldine R. Siegel Professor in  
12 the history department -- at the University of  
13 Pennsylvania. Hail to the Quakers.

14 (Laughter.)

15 CHAIRPERSON BERRY: School of  
16 Engineering. She is founder and president of  
17 Notable Software Incorporated, a computer security  
18 consulting company.

19 She has observed elections even as a  
20 scientist, a poll worker, and a committee member  
21 throughout this country, and she has testified all  
22 over the place in this country and elsewhere on the  
23 standards issue and as a member of the IEEE, the big  
24 guys in the voting system standard working group.

25 She'll talk about security system

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1 integrity and DREs, direct recording electronic  
2 voting systems, and the like.

3 Mr. Wade Henderson is the Executive  
4 Director of the Leadership Conference on Civil  
5 Rights, an organization of hundreds of civil rights  
6 organizations. All of them belong to it, the  
7 principal lobbyist on civil rights issues here in  
8 this city, and counsel to the Leadership Conference  
9 on Civil Rights Education Fund.

10 Under his leadership, LCCR has become  
11 one of the nation's most effective defenders of  
12 civil and human rights. Prior to his role at the  
13 conference, he was the Washington Bureau Director of  
14 the NAACP and also had long experience as Associate  
15 Director of the Washington office of the American  
16 Civil Liberties Union.

17 He is also the Joseph L. Rowe, Jr.  
18 Professor of Public Interest Law at the David A.  
19 Clark School of Law at the University of the  
20 District of Columbia. He will talk about a number  
21 of issues, a whole range of issues concerning civil  
22 rights concerns and voting.

23 The next person that we have is Larry  
24 Gonzalez, who is Director of the Washington, D.C.  
25 Office of the National Association of Latino Elected

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1 and Appointed Officials. He directs the NALEAO's  
2 Educational Fund with a constituency base of 6,000  
3 Latino elected and appointed officials nationwide.  
4 It is the leading national organization that  
5 empowers Latinos to participate fully in the  
6 American political process from citizenship to  
7 public service. He is the chief advocate for the  
8 association and develops legislative initiatives and  
9 the like.

10 He has extensive political campaign  
11 experience having run winning state senate, state  
12 representative, and local county board campaigns.

13 Did you run any losing ones? No.

14 MR. HENDERSON: That's why I'm here in  
15 Washington.

16 CHAIRPERSON BERRY: Today he will  
17 discuss the civil rights and ramifications of  
18 various voter identification requirements adopted by  
19 the state as part of elections reform.

20 Would you please begin the conversation,  
21 Ms. Smothers?

22 MS. SMOTHERS: Thank you so much for  
23 having us here today. I'm pleased to be here to  
24 represent League of Women Voters of Georgia, one of  
25 our 50 state level organizations across the country.

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1           As Chairperson Berry already mentioned,  
2           the League of Women Voters is a national,  
3           nonpartisan, political organization dedicated to  
4           making democracy work. Our mission is threefold:  
5           to encourage the informed and active participation  
6           of citizens in government; to increase citizens'  
7           understanding of major public policy issues; and to  
8           influence public policy through education and  
9           advocacy.

10           The League was founded nationally in  
11           1920, just months before the passage of the 19th  
12           Amendment granting women suffrage in this country  
13           for the first time. The League of Women Voters  
14           believes that voting is a fundamental right that  
15           must be guaranteed, and for the past 84 years voter  
16           service has in large part remained the hallmark of  
17           our work.

18           Our history is rich with examples of our  
19           successful work to break down barriers standing  
20           between voters and the polls. The League of Women  
21           Voters was founded as an outgrowth of the suffrage  
22           movement, and our founders were the very men and  
23           women who ultimately enabled the franchise of 20  
24           million American women.

25           In Georgia, in the 1940s, the League

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1 worked hard to abolish the poll tax. We were  
2 involved nationally in passing the Motor Voter Act,  
3 allowing individuals to register to vote when they  
4 receive their driver's license.

5 And our advocacy in the passage and  
6 implementation of the 2002 Help America Vote Act is  
7 the most recent example of the League's work to  
8 insure that every vote across our country is counted  
9 the way that voters intended.

10 If Georgia had faced the same scrutiny  
11 as Florida in 2000, public officials would have  
12 unearthed an even more unsettling situation. The  
13 Georgia Secretary of State, Cathy Cox, assembled a  
14 report on Georgia's election performance following  
15 Election 2000. This report estimated that bad  
16 election technology had spoiled 94,000 votes in  
17 Georgia, more than Florida, and almost double the  
18 national average.

19 Like Florida, Georgia had literally  
20 thousands of ballots that registered no vote in the  
21 presidential race or under votes. So those 94,000  
22 ballots either -- voters who cast those 94,000  
23 ballots either did not mark the race for President,  
24 made a mistake that voided their ballot, or  
25 otherwise had their ballot not counted ever by a

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1 machine.

2 In the year 2000 Georgia's under vote  
3 percentage was three and a half percent. Florida  
4 had an under vote percentage of 2.9 percent, and the  
5 national rate was reported at 1.9 percent.

6 Like Florida, we had wide variations in  
7 under vote rates from county to county. Election  
8 technology in Georgia was widely varied. We have  
9 159 counties, second only to Texas, and each county  
10 was using a different kind of election equipment,  
11 everything from paper ballots to lever machines,  
12 punch cards, to optical scans, and the report showed  
13 serious flaws in all kinds of systems.

14 Recognizing this huge problem, the  
15 League of Women Voters of Georgia advocated,  
16 alongside Secretary of State Cathy Cox, to create  
17 and implement a statewide election system rooted in  
18 state-of-the-art technology, extensive training, and  
19 a comprehensive testing and security process.

20 In the 2002 general election, Georgia  
21 became the first state in the country to implement a  
22 uniform statewide electronic voting system, making  
23 Georgia number one in the nation and the quality of  
24 its election process a national model of election  
25 reform in the aftermath of the 2000 election.

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1 Each of Georgia's 159 counties was  
2 outfitted with DRE units at a cost of \$54 million,  
3 secured through appropriated state funds and with  
4 anticipation of federal reimbursement through HAVA.

5 An additional \$4 million was secured for training.

6 Each of Georgia's 159 election  
7 superintendents and their poll workers were trained  
8 extensively to conduct elections on this new  
9 equipment.

10 The League joined the Secretary of State  
11 staff and other civic organizations to demonstrate  
12 the machines to voters at grocery stores and  
13 churches and libraries, with community organizations  
14 around the state.

15 Beginning in November 2002, Georgians  
16 have now voted successfully in a statewide general  
17 election, a presidential preference primary  
18 election, and over 300 county and local elections  
19 through the last two years on our 24,000 DREs across  
20 the state.

21 Shifting to a uniform statewide  
22 electronic voting system has moved Georgia ahead of  
23 the curve in election reform and has brought us  
24 tremendous steps closer to insuring that every vote  
25 cast is counted the way that voters intended. Our

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1 new electronic voting system now in use in Georgia  
2 fully eliminates the possibility of an over vote,  
3 the largest source of voting errors on punch card or  
4 optical scan voting systems.

5 As voters near the completion of the  
6 voting process on our new equipment, they are  
7 allowed to review their ballot completely to verify  
8 its accuracy. This feature shows voters clearly if  
9 they have skipped any races or any ballot questions  
10 and will not allow the ballot to be submitted with  
11 an over vote or a double vote of races.

12 Electronic voting has also proven  
13 superior to any other system in eliminating the  
14 unintended under vote. In Georgia the under vote in  
15 the top ticket races in 1998 was a whopping 4.8  
16 percent. In the 2002 elections, the under vote had  
17 fallen to less than .9 percent.

18 Significant reductions came in minority  
19 precincts across the state. We anticipate similar  
20 results as we compare the under vote in the upcoming  
21 2004 presidential election to the abysmal under vote  
22 estimate of the 2000 election I already mentioned.

23 These are large and very significant  
24 reductions in the unintended under vote that can  
25 very clearly be attributed to our new electronic

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1 system that is easy to see and read for voters, that  
2 provides the voter feedback about their choices that  
3 includes a summary screen that displays their  
4 selections and that gives the voter an opportunity  
5 to make corrections to their ballot before casting  
6 it in its final version.

7 In addition to providing increased  
8 accuracy in tabulating election results, the use of  
9 DREs has also enabled us to fully franchise groups  
10 of voters who have historically been forced to vote  
11 separately but never equally with voting systems  
12 that cannot afford them a secret or independent  
13 ballot.

14 DREs remain the only equipment that is  
15 fully accessible for voters with disabilities. In  
16 the 2002 election, Georgia's visually impaired  
17 voting population was able to vote unassisted for  
18 the first time.

19 Furthermore, the audio features of  
20 Georgia's equipment enables voters who face literacy  
21 challenges to cast independent ballots without  
22 embarrassment.

23 Although the practice is not yet  
24 required in Georgia, ballots presented in languages  
25 other than English can easily be added to our

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1 equipment, making it easier to accommodate  
2 individual with limited English proficiency.

3 In recent polling conducted by the Carl  
4 Vinson Institute of Government at the University of  
5 Georgia, Georgians overwhelmingly prefer electronic  
6 balloting to other methods. More than 70 percent of  
7 the voting age public in Georgia is more comfortable  
8 casting a ballot electronically on our new touch  
9 screen machines than by punch cards or by marking  
10 paper ballots. And when that same population was  
11 asked about the largest problems with our new  
12 system, the most common response from those polled  
13 was that there are no problems with our new system.

14 Voters have good reason to feel entirely  
15 confident in Georgia's new election system. The  
16 DREs in use in Georgia are only one instrument  
17 within a complex and comprehensive umbrella of  
18 security designed to safeguard the way ballots are  
19 cast in Georgia.

20 In addition to purchasing only federally  
21 qualified equipment, Georgia relies on an  
22 independent testing authority to certify all  
23 equipment at the state level. Georgia is very  
24 fortunate to have the Center for Election Systems,  
25 Kennesaw State University, a part of our public

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1 university system in Georgia as our independent in-  
2 house entity responsible for testing and certifying  
3 our equipment at the state level.

4 Experts at Kennesaw state review the  
5 system for compliance with state law and test the  
6 system for the presence of any unauthorized or  
7 fraudulent code.

8 After the successful completion of this  
9 process, the system is then certified for use in  
10 Georgia. Once machines have been certified, the  
11 vendor is then allowed to install the system in  
12 local jurisdictions.

13 As an added guard against uncertified  
14 equipment being used in an election, Kennesaw State  
15 has developed a validation program to test the  
16 system as installed in local jurisdictions. Using  
17 this process, Kennesaw State verifies that the  
18 system installed by the vendor in the local  
19 jurisdiction is identical to the system that had  
20 been certified at the state level by Kennesaw State.

21 Within each jurisdiction, software  
22 security includes audit logs and passwords. There  
23 are procedural security features regarding access,  
24 qualification testing, certification testing,  
25 acceptance testing, and logic and accuracy testing.

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1 Servers are always kept in locked  
 2 offices of county officials. No extraneous software  
 3 can ever be installed on our servers. There is no  
 4 network connectivity, and physical access to our  
 5 machines is limited to authorized personnel only.  
 6 Touch screen units are locked and sealed when not in  
 7 use.

8 But despite all of the benefits of our  
 9 electronic voting system and the overwhelming public  
 10 confidence in it in our state, a vocal minority has  
 11 still criticized our system and has propelled  
 12 Georgia to the center of the national debate  
 13 surrounding election system security. Largely this  
 14 debate has involved the consideration of a voter  
 15 verified paper trail for all electronic voting  
 16 equipment, a change to Georgia's voting system that  
 17 the League of Women Voters does not support.

18 Proponents of this change claim that  
 19 electronic voting equipment could be manipulated to  
 20 incorrectly tabulate election results, and that  
 21 without a paper receipt, voters have no way to tell  
 22 if their vote was stolen.

23 Paper receipts for ballots cast  
 24 electronically simply do not guarantee that votes  
 25 are being counted the way that voters intended,

1 thereby creating at best a false sense of security  
2 for voters.

3 If an electronic voting system could be  
4 programmed or, rather, a machine could be programmed  
5 to record an incorrect vote, it could also be  
6 manipulated to print a misleading confirmation.

7 Furthermore paper ballots are  
8 notoriously susceptible to being lost, mangled, or  
9 manipulated, and paper receipts are difficult, if  
10 not impossible to recount consistently, leading to  
11 more inaccuracies.

12 How to collect each paper receipt to  
13 insure that voters do not leave the polls with their  
14 receipt in hand and store these receipts so that  
15 they are not exploited remains unresolved.

16 It is critical to note, again, that DREs  
17 are highly sophisticated machines that store ballot  
18 records in multiple formats and in multiple  
19 locations. DREs are already required under federal  
20 law to create paper records that can be audited, and  
21 most machines currently provide not only the total  
22 vote tallied, but also maintain the images of each  
23 and every ballot cast.

24 In many cases, like the machines used in  
25 Georgia, DREs produce three records of the vote:

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1 the official count, a back-up count on a separate  
2 ship, and a paper record printed once polls close.

3 From a civil rights standpoint, the  
4 possibility of incorporating this type of paper  
5 confirmation into our election system is  
6 particularly troubling. For the first time, HAVA  
7 recognized that voters with disabilities should have  
8 had the same opportunities to cast a secret ballot  
9 as everyone else.

10 As stated earlier, one key reason for  
11 the use of DREs is that they afford all voters a  
12 truly private vote, particularly voters with limited  
13 literacy, the visually impaired, and those with  
14 motor skill impairments or others with disabilities.

15 For blind or visually impaired voters,  
16 including many elderly voters, the creation of a  
17 paper trail offers no benefit, but actually causes  
18 even greater concerns over privacy. Rushing to  
19 augment the 24,000 DRE machines in Georgia to  
20 produce this type of paper receipt is at best  
21 premature. DREs that produce paper receipts should  
22 face stringent testing in real world scenarios  
23 before they are mandated across the country. Until  
24 many questions are answered such a change would  
25 undermine essential touchstones of HAVA

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1 implementation, such as the disability and minority  
2 language requirements, ultimately undermining the  
3 HAVA mandate of uniform and nondiscriminatory voting  
4 procedures and will lead to increased voter  
5 disenfranchisement as jurisdictions across the  
6 country, faced with this new paper receipt  
7 requirement and added cost, purchase optical scan  
8 machines instead of DRES.

9 CHAIRPERSON BERRY: You have to sum up.

10 MS. SMOTHERS: Okay. I'm almost done.

11 Thank you.

12 Again, shifting to a uniform statewide  
13 electronic voting system has moved Georgia ahead of  
14 the curve in election reform and brought us  
15 tremendous steps closer to insuring that every vote  
16 cast is counted the way that voters intended.

17 The under vote in Georgia over the last  
18 18 months has been reduced dramatically, and we  
19 believe that has entirely to do with our shift to a  
20 new statewide uniform electronic voting machine  
21 system.

22 Voters in Georgia are incredibly  
23 confident in our system. We are incredibly  
24 confident in the system, and we're excited to  
25 continue to move forward to make our voting system

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1 as secure as it can possibly be.

2 CHAIRPERSON BERRY: All right.

3 MS. SMOTHERS: Thank you so much.

4 CHAIRPERSON BERRY: Thank you very much,  
5 Ms. Smothers. There will be questions.

6 Professor Shamos, please.

7 DR. SHAMOS: Good morning.

8 Commissioners, thank you for the opportunity to be  
9 here today.

10 From 1980 until 2000, I was statutory  
11 examiner of electronic voting systems for the  
12 Commonwealth of Pennsylvania. During that time I  
13 participated in every voting system examination that  
14 was conducted during those 20 years.

15 From 1987 until 2000, I was statutory  
16 examiner of electronic voting systems for the  
17 Attorney General of Texas and participated in every  
18 electronic voting system examination held during  
19 those 13 years.

20 In all, I've personally examined  
21 something like 100 different electronic voting  
22 systems. The systems for which I've participated in  
23 certification were used to count more than 11  
24 percent of the popular vote in the United States  
25 during the 2000 election.

1 I'm not here today as an advocate for or  
2 against electronic voting systems or for or against  
3 paper trails. I'm here because of my experience to  
4 assist you in assessing the risks of these systems.

5 I'm in favor of good DRE systems. I'm  
6 very much against the bad DRE systems, and there is  
7 no proper catch-all term to describe all of these  
8 systems because each one is individual, and each one  
9 is different. They're designed and manufactured by  
10 different companies, and they're used according to  
11 different procedures.

12 So I think it's wrong to indict all DRE  
13 machines. It's also wrong to say that they're all  
14 wonderful. The fundamental question before you is  
15 whether the right to vote is compromised in any way  
16 by DRE systems.

17 I believe that whether or not a voting  
18 system is safe for use in an election, whether it  
19 disenfranchises people or not is an engineering  
20 question that ought to be dealt with scientifically.

21 We ought to hear the horror stories. We ought to  
22 examine what went wrong in various elections and  
23 come to a rational conclusion.

24 I've been disturbed lately by --

25 CHAIRPERSON BERRY: Did you say

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1 "rational"?

2 DR. SHAMOS: Rational.

3 CHAIRPERSON BERRY: Oh.

4 DR. SHAMOS: Yes, rational. Did it  
5 sound like irrational?

6 (Laughter.)

7 DR. SHAMOS: I've been disturbed lately  
8 by stories in the popular press that have been taken  
9 up by newspaper editors in their editorial columns  
10 calling for a sweeping reform. Let's get rid of the  
11 DREs. Let's install paper. Apparently, not based  
12 on any scientific evaluation, but based on emotion,  
13 which I really don't think has any place in this  
14 debate.

15 In addition to the question whether DREs  
16 are safe, a second question before you is whether  
17 the use of so-called voter verified paper trails  
18 ought to be required in such voting systems.

19 As to the issue of voter  
20 enfranchisement, it's a very complex issue that's  
21 influenced by many factors, some of which relate to  
22 the actual process of voting. A voter who decides  
23 to stay home because she doesn't trust the voting  
24 method that's being used in her jurisdiction is  
25 disenfranchised just as much as someone who is

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1 prevented from getting to the ballot box.

2 Some of the factors that influence  
3 voters' decisions whether or not to vote are, is the  
4 process efficient; is it simple and convenient; or  
5 does it cause an embarrassment or confusion when  
6 they physically show up at the polls.

7 Do they perceive the process as fair?  
8 Are they protected from having their vote  
9 invalidated either because of the equipment or  
10 because of the way in which the equipment is used  
11 and the activities of the poll workers? Do they  
12 have a sound belief that their vote cannot be  
13 manipulated once it's cast? And also, do they have  
14 a sound belief that their vote will actually count  
15 and they won't be disqualified for some reason?

16 Now, this is a complex belief system  
17 held by the public, and it's often based on rumor,  
18 innuendo, stories they read. It's not based on  
19 scientific fact of which the voters are generally  
20 unaware. So they have to have representatives who  
21 undertake these investigations on their behalf and  
22 make reasoned decisions about whether or not these  
23 systems ought to be used.

24 That was the role that I performed as a  
25 certifier of voting systems. I should mention, by

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1 the way, that during that period far more than 50  
2 percent of the systems that were proposed for  
3 certification failed certification tests. They just  
4 didn't work for one reason or another.

5 It's actually extremely difficult to  
6 build a voting system that operates correctly under  
7 the wide variety of different conditions and  
8 different laws that exist in the different states.

9 However, DRE machines have been used  
10 successfully in the U.S. for over 20 years. For a  
11 long time the total percentage of votes that they  
12 counted was something like ten percent. So they  
13 weren't anywhere near the punch card machines or  
14 optical scan ballots and, in fact, took a while for  
15 them to overtake lever machines even. That's just  
16 about to occur right now as the lever machines die.

17 So even though we've had a degree of  
18 success for 20 years with these systems, all of a  
19 sudden within the past year or so the hue and cry  
20 has been raised by various people that there's  
21 something wrong with them, and I certainly believe  
22 that if there was something wrong with them, it  
23 would have manifested itself at some point during  
24 the past 20 years.

25 There are many complaints, both

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1 justified and unjustified, that are made about DRE  
2 systems. Among the valid complaints is that  
3 machines fail because they have parts that wear out  
4 or break or they have electrical difficulties.

5 Well, every machine of any type that has  
6 ever been made to do anything has some failure mode.

7 The issue in electronic voting is whether the  
8 failure results in the loss of any votes or results  
9 in disenfranchisement.

10 In a properly designed DRE system, and  
11 there are some, and there are some improperly  
12 designed ones, the answer is that no votes are lost  
13 when a machine fails. The reason that no votes are  
14 lost is that as the votes are cast among the  
15 multiple memories previously mentioned, some of  
16 those are write ones/read only memories so that  
17 there's no manner of failure of the machine that  
18 will result in an erasure or deletion of any  
19 previously cast votes.

20 A second issue though is whether the  
21 failure of the machines is so frequent that it  
22 results in long waiting lines at the voting booth  
23 causing voters to balk and go home or whether  
24 stories of machine failures, whether they result in  
25 loss of vote or not, are so frustrating to the

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1 voters that it causes them to feel that the election  
2 is not safe.

3 And that's a matter of reliability of  
4 specific machines that are made by specific  
5 manufacturers and used properly or used not properly  
6 according to the manufacturer's procedures.

7 It's also a substantial matter of  
8 education of poll workers and the people who have to  
9 manipulate the machines. If I manipulate, you  
10 understand that I don't mean "tamper with." We'll  
11 talk about that in a minute.

12 (Laughter.)

13 DR. SHAMOS: Now, one of the things --

14 CHAIRPERSON BERRY: Operate.

15 DR. SHAMOS: One of the things --  
16 operate. That's right -- one of the things that  
17 HAVA has done is cause a mad rush in the United  
18 States for jurisdictions who were not ready to do so  
19 to purchase DRE machines, and one of those factors  
20 is the availability of a huge amount of money to do  
21 so.

22 And so they've rushed to purchase  
23 machines, but they haven't rushed to educate the  
24 people properly on how to use the machines and all  
25 kinds of problems are cropping up all around the

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1 country, principally not because of the design of  
 2 the machines, although there are some bad ones, but  
 3 because the people who are operating them just don't  
 4 know how to initialize them properly, et cetera.  
 5 That's certainly not a satisfactory situation, but  
 6 it's not an indictment of the machines.

7 A very different type of complaint,  
 8 however, is that candidate choices can be  
 9 misprogrammed so that voters are not presented with  
 10 a proper slate of candidates. The question is:  
 11 does that occur or does that not occur?

12 As with paper ballots, which can be  
 13 misprinted, it certainly is possible for somebody  
 14 who is setting up the ballot to rearrange it in such  
 15 a way that it is confusing to the voter or that  
 16 candidates for which the voter is entitled to vote  
 17 don't actually appear on the ballot.

18 But just as with paper ballots, that's a  
 19 matter of careful proofreading, careful observation  
 20 by all relevant political parties.

21 A very different form of misprogramming  
 22 is one that might cause votes for Candidate A, as  
 23 cast by the voter, instead to be counted for  
 24 Candidate B. There are all kinds of allegations  
 25 that this has occurred. I am not aware of any case

1 in which it has ever been possible to demonstrate  
2 that such a thing has occurred.

3 The reason for that is that these  
4 machines don't suddenly develop programming flaws.  
5 However the machine is programmed at the beginning  
6 of the election, the software that did that is  
7 available at the end of the election and can be  
8 tested, and if there were any truth to the  
9 allegation that the software, for example, took one  
10 vote out of every ten and shifted it to another  
11 party, then the machine would continue to behave  
12 that way after the election. It could be  
13 reinitialized and tested.

14 And to my knowledge, every time that has  
15 been done, it has never been possible to demonstrate  
16 that any such misprogramming has occurred.

17 But let's suppose that it were possible  
18 for some insider to manipulate the programming in  
19 the machine. What is the remedy for that?

20 The remedy for that, as with all other  
21 machines in our society, is adequate testing and  
22 security. And I have advocated for some time that  
23 voting machines ought to be tested not just before  
24 and after an election, but they should be tested  
25 during the hours of the election. The reason for

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1 that is that these machines contain internal clocks,  
2 and it's conceivable, although difficult, to program  
3 the machine so that it behave perfectly before the  
4 election, behaves perfectly after the election, and  
5 does its mischief only during the election. And the  
6 only way to convince knowledgeable people that this  
7 isn't the case is to actually reserve some machines  
8 once they have been initialized and test them  
9 thoroughly under realistic conditions.

10 I don't mean by casting ten votes, but  
11 by casting a similar number of votes to those that  
12 the machine could expect at a particular precinct on  
13 that day. That method called parallel testing was  
14 used, I think, in ten counties in the California  
15 primary this year, though I haven't heard reports on  
16 how successful that it might have been.

17 It has been asserted that the solution  
18 to all of the above problems with respect to loss of  
19 votes is to add a paper mechanism to a DRE machine  
20 that will allow a voter to examine her ballot before  
21 taking the final step of casting it, and if the  
22 ballot that was viewed did not correctly indicate  
23 the voter's choices, the voter could do something  
24 about it, revote or asked for a spoiled ballot or go  
25 through some process.

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1           The idea has a certain intuitive appeal.  
 2           Sounds good to a lot of people. In fact it sounds  
 3           good to a lot of newspaper editors, but it's  
 4           important to realize that that feature accomplishes  
 5           one thing and one thing only. It does provide a  
 6           positive verification that at the initial point in  
 7           the process the machine captured the voter's  
 8           preferences correctly.

9           And the reason we know that is the  
 10          machine spits back those preferences, and the voter  
 11          has a chance to evaluate them.

12          It provides no assurance whatsoever,  
 13          however, that the vote will actually be counted  
 14          either electronically the same way or will even be  
 15          counted eventually if there is a paper recount the  
 16          same way for the simple reason that recounting  
 17          pieces of paper requires some human being to touch  
 18          them.

19          If we're not going to have a human touch  
 20          them, if we're just going to send them through  
 21          another machine, then that certainly doesn't solve  
 22          the problem because the other machine might have  
 23          been manipulated also.

24          So ultimately they're going to have to  
 25          be counted by hand, and any time people can touch a

1 ballot, they can modify it, they can slip it in  
2 their pocket, or they can stuff more ballots into  
3 the ballot box.

4 This problem occurs so frequently in  
5 Florida that the Florida legislature had to pass a  
6 statute on how to deal with the situation where at  
7 the end of voting during a particular day more votes  
8 end up in the ballot box than number of voters who  
9 showed up at the polling place, and the procedure  
10 defined by statute is that in the presence of all  
11 the political parties a ballot is selected at random  
12 from the ballot box and discarded, and this process  
13 is repeated until the number of ballots that remain  
14 is actually equal to the number of voters who showed  
15 up that day.

16 CHAIRPERSON BERRY: You're making it up.

17 DR. SHAMOS: I'm not making it up. I'll  
18 give you the statutory citation.

19 CHAIRPERSON BERRY: Okay. This is  
20 precious.

21 COMMISSIONER EDLEY: We have to ask. I  
22 mean, is Florida unique in having a procedure of  
23 that --

24 DR. SHAMOS: No, there are several  
25 states that have that procedure, but it's certainly

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1 not prevalent.

2 COMMISSIONER EDLEY: Because we've been  
3 accused of picking on Florida. So I just wanted to  
4 set the record straight that it's not just --

5 DR. SHAMOS: Florida deserves to be  
6 picked on.

7 (Laughter.)

8 CHAIRPERSON BERRY: Okay.

9 DR. SHAMOS: But nonetheless, it seems  
10 the height of folly that this is so common that it  
11 has to be dealt with by statute.

12 Texas has its problems also.  
13 Frequently, there are voting precincts with no  
14 registered voters in which a substantial number of  
15 voters actually vote, but that's a problem that has  
16 nothing to do with the actual DRE machines.

17 I'm not actually against voter  
18 verifiable paper trails. If there were a voting  
19 manufacturer who made one, and I'm not aware of any  
20 that make them now and the system obeyed its  
21 statutory requirements, then if I were still the  
22 certifier, then I would certify it. I don't think  
23 there's anything that bars it from use in an  
24 election.

25 The problem is that a study by the Cal.

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1 Tech./MIT voting project showed not only could you  
2 have a safe system without the paper trail, but the  
3 presence of the paper trail actually decreased  
4 voters' confidence in the election.

5 I flew here this morning from  
6 Pittsburgh, and I felt that the plane was going to  
7 be safe, but I might have had a different view if  
8 the airline asked me to personally inspect the  
9 engines before the plane took off to make sure --

10 (Laughter.)

11 DR. SHAMOS: -- that the plane was safe.

12 So I'm very much against requiring all DRE machines  
13 to have such a paper trail.

14 Thank you.

15 CHAIRPERSON BERRY: Thank you very much.

16 Okay. That's wonderful news you're so  
17 reassuring about anyway.

18 Professor Mercuri, please.

19 DR. MERCURI: Yes. Hello. Thank you  
20 very much for the opportunity to provide this  
21 briefing to the Commissioners here on civil rights  
22 on the implications of the new electronic voting  
23 technologies and election reform efforts.

24 Thank you for the introduction to me.  
25 So I'll just continue with my prepared remarks.

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1                   Also, you should have a packet of  
2 materials, and I'll refer to some of the documents  
3 in there, but you can take your leisure to read them  
4 later.

5                   Let me begin by stating that just as  
6 there are no quick fixes to civil rights problems,  
7 technology does not offer a quick fix to election  
8 problems. Many find it unusual that someone who  
9 holds a Bachelor's degree, two Master's degrees, and  
10 a Ph.D. in engineering and computer science should  
11 maintain that computers cannot exclusively be relied  
12 upon for the recording and counting of ballots in  
13 democratic elections.

14                  But I am joined by over 1,750 similarly  
15 degreed professionals in my field who have asserted  
16 in writing that computerized voting equipment is  
17 inherently subject to programming error, equipment  
18 malfunction, and malicious tampering, and references  
19 to all of the quotes that I am making here are in my  
20 remarks.

21                  Scientists and engineers do not make  
22 dire predictions casually. So when they make strong  
23 statements like they did in predicting both Space  
24 Shuttle disasters, the New York City power outages,  
25 and the vulnerability of aircraft to terroristic

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1 attacks, these should be taken seriously.

2 There are certain laws of computer  
3 science that, like gravity to physics, are  
4 immutable. One of these laws pertains to the  
5 inability of examination or testing of the hardware  
6 and software to turn up every possible flaw or  
7 loophole in the system.

8 The two speakers before us spoke very  
9 eloquently about all of this thorough testing that  
10 is being done, but computer science theory tells us  
11 that you can look at this stuff until you're blue in  
12 the face and things can buried deep in the bowels of  
13 the system that will never be found and that this  
14 testing will not turn this up.

15 So anyone who says that they have  
16 constructed a perfectly secure computer system even  
17 in the general world, and as we know, of course, you  
18 know, if Microsoft could eradicate these viruses,  
19 believe me they would do it. So we're not seeing  
20 the security even from the top companies in our  
21 planet or a completely secure computer based voting  
22 system, and there is actually a voting system that's  
23 being marketed under the name "the perfect voting  
24 system."

25 So these people are either liars or

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1 fools, but some believe that computers are good  
2 enough. And they point to the fact that we do trust  
3 such devices to handle many of the aspects of our  
4 lives every single day, or do we?

5 Would we ride in an airplane that had  
6 only a computer as a pilot and no humans in the  
7 control tower? Would we make deposits at a bank if  
8 the only bank we're allowed to use; we're not  
9 allowed to go to a different bank, if we were told  
10 that there was no way to check our balances even if  
11 there was good reason to believe they were  
12 incorrect?

13 Would the IRS accept our deductions at  
14 an audit if we shrugged and said, "Oh, I don't have  
15 any receipts. They're all in the computer"? Quite  
16 frankly, I don't think so.

17 Some may try to convince you that such  
18 fears are overblown, and they have even stated like  
19 Jesse Durazo, Santa Clara County Registrar of  
20 Voters, that these scientific smart people have not  
21 worked in an election, but they've created this  
22 whole UFO effect.

23 I can assure you that I've worked in  
24 elections for 20 years, ten years when I was living  
25 in Pennsylvania and ten years in New Jersey, and

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1 have witnessed first hand the full gamut of election  
2 problems, everything pretty much from voters who  
3 sign the book and then flee without voting to  
4 equipment jamming at the end of the day when we were  
5 trying to collect the totals.

6 It was those election day experiences  
7 that caused me to understand the full ramifications  
8 of problems that can and do ensue with computer  
9 based elections. The UFO effect statement is  
10 blatantly false.

11 Santa Clara County's voting systems are  
12 hardly free from election problems. As reported in  
13 the San Jose Mercury News, following November's,  
14 this past November's, election in Santa Clara  
15 County, Sequoia sent over a group of blue coated  
16 technicians to make adjustments to voting machines  
17 that experience battery problems.

18 For three weeks the workers employed by  
19 a Sequoia subcontractor took apart the machines,  
20 removing their circuit boards and making  
21 adjustments. Nevertheless, Santa Clara county  
22 officials did not know the name of the subcontractor  
23 and hadn't even verified the identities of the  
24 workers it hired when the Mercury News made an  
25 inquiry.

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1                   They also hadn't documented the changes  
 2 being made to the machines. "To find out such  
 3 information, you'd have to contact Sequoia," said  
 4 Assistant Registrar of Voters Elaine Larson.

5                   Incidentally, battery problems and  
 6 default systems in San Diego County during last  
 7 month's Super Tuesday primaries resulted in 36  
 8 percent of the voting machines not being functional  
 9 at the start of election day, with some still not  
 10 being operational until four hours into the  
 11 election.

12                   Groups that you would expect to be  
 13 concerned about the effects of these so-called  
 14 election glitches throughout the country on the  
 15 disenfranchisement of voters and the increase in  
 16 distrust of the systems, such as the League of  
 17 Women Voters, have instead attempted to squelch  
 18 discussion on the subject.

19                   Scientists, such as myself who had  
 20 donated countless time and effort, especially over  
 21 the last four years working for election system  
 22 reform, were horrified to read President Kay  
 23 Maxwell's New York Times letter claiming that the  
 24 concern raised about electronic voting machines are  
 25 worrisome because they unnecessarily scare voters

1 and ignore the larger problem of reforming election  
2 systems.

3           The LWV's strong-arm tactics showed  
4 their full force when League member and former  
5 national president for the Association of Computing  
6 Machinery, a very prestigious computing  
7 organization, Dr. Barbara Simons led a workshop  
8 entitled "Voter Verifiable Elections, How Do We Get  
9 There," only to be rebuked by Ms. Maxwell and told  
10 not to publicly contradict the League's position.

11           By the way, I've distributed copies of  
12 Kay Maxwell's correspondence with Barbara Simons.  
13 that's in your packet, and also the open letter  
14 signed by 415 League members from 28 states who  
15 disagree with the National League position, as well  
16 as an extensive document by Dr. Simons that explains  
17 why the current League position is ill informed and  
18 incorrect.

19           But the election officials and system  
20 vendors are doing quite a good job on their own in  
21 scaring voters away from the polls. During the  
22 November 2003 election held in Fairfax County,  
23 Virginia, it was reported that one percent of the  
24 voting systems experienced serious malfunctions,  
25 causing them to be unusable at times on election

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1 day.

2 Some repairs on these systems were  
3 conducted outside of the polling place, and the  
4 repaired equipment was returned to the precincts and  
5 put back into use, despite the fact that their  
6 security seals had been broken and removed on the  
7 voting devices.

8 Approximately 50 percent of the vote  
9 totals were unable to be electronically transmitted  
10 to the county headquarters at the end of election  
11 day because the systems created their own denial of  
12 service attack on the server, resulting in delays in  
13 reporting of results, and since my colleague here,  
14 Michael Shamos, says that he's not aware of any  
15 problems that did change votes for candidates, a  
16 number of machines did experience, and it was  
17 confirmed after the election an unexplained anomaly  
18 that apparently randomly subtracted votes for one of  
19 the candidates, resulting in a possible loss of one  
20 to two percent of her votes.

21 Virginia and California were not the  
22 only states in which election glitches occurred in  
23 2003. Boone County, Indiana, displayed a total of  
24 144,000 votes cast in a region in which only 5,352  
25 ballots had been collected.

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1                   In Houston, Texas, some election  
2 officials were unable to properly activate their  
3 voting systems. So people at on the floor writing  
4 their votes down on scraps of paper since the  
5 emergency ballots were missing.

6                   Elsewhere, in Alameda County -- this is  
7 just 2003 -- in Alameda County, California it was  
8 discovered through the release of internal vendor  
9 memoranda that the voting systems used in the recall  
10 and general election contain software that had not  
11 been properly certified by the state. Further  
12 investigation found that 17 of the California  
13 counties, including some of the optically scanned  
14 ballots were -- those counties were using  
15 uncertified software.

16                   So when you hear people talking about  
17 certification, we'll, that's all well and good, but  
18 then if you don't follow up and make sure that the  
19 software you're using was certified, then who cares  
20 about it? So it's not really good.

21                   And in Montgomery County, Pennsylvania,  
22 I know you have a pink there, but it really should  
23 be red. Voters faced a confusing display that in  
24 addition to other inconsistencies timed out when  
25 voters had difficulty casting a write-in. A couple

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1 of your other states should also be red, too, by the  
2 way, New Jersey and also Louisiana, but that's okay.

3 Failures of equipment, programming, and  
4 procedures can, do, and will occur when electronic  
5 balloting devices are used despite the diligence and  
6 scrutiny of well trained state and local election  
7 officials. When such failures occur, the validity  
8 of the election results are cast into doubt.

9 But with these new machines, there is no  
10 way to perform an independent recount. Instead, the  
11 computer offers up only a reprint of what may be  
12 corrupted or flawed data. There's a great example  
13 on the Web. It's at a place called  
14 [www.wheresthepaper.org](http://www.wheresthepaper.org), which demonstrates how you  
15 could test the machines and see if it's working  
16 properly, and then it will print out an audit trail.  
17 You heard about these multiple audit trails and that  
18 sort of thing, and it will be completely bogus.

19 The election officials and the poll  
20 workers are no longer the overseers of the process.  
21 Instead the results are generated by proprietary  
22 trade secret equipment created by vendors with  
23 stated partisan interests and prevented from  
24 examination even if there is question as to their  
25 veracity.

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1                   Now, I know that Dr. Shamos told us that  
2 sometimes these examinations do occur. I can tell  
3 you that in a number of times I've sat in court and  
4 we've not been able to examine a machine even just  
5 to look at it and retest it the way it was on  
6 election day. We are told it was a trade secret.  
7 We can't do that.

8                   One would think that the American public  
9 or the officials in charge of our elections had all  
10 gone blind. In fact, that is precisely what some  
11 vocal members of the blind and disabled community,  
12 such as our colleague here today, Jim Dickson, would  
13 like us to do. They would like us to become blind  
14 when it comes to verifying our votes and having them  
15 available for independent recounts.

16                   Jim is fond of telling audiences how for  
17 years he never knew whether his vote was recorded  
18 the way he intended since he had to rely on his  
19 wife's trust in casting his ballot as per his  
20 instructions.

21                   Yet he wants us to do is to purchase  
22 voting systems that are the same, that nobody can  
23 verify for correctness, not even the voter  
24 themselves. If this creates an equal playing field,  
25 it is rather a poor one, indeed.

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1 Mr. Dickson has stated in numerous  
2 hearings like these that he doesn't want the  
3 disabled to be able to independently verify that the  
4 votes have been recorded properly or to have their  
5 ballots available for purposes of a recount if a  
6 computer glitch should happen to occur.

7 Instead, he claims that paper ballots  
8 disenfranchise the disabled, even though he is fully  
9 aware of the opinion by the Department of Justice  
10 that clearly states that as long as a paper based  
11 system allows the disabled citizen to verify the  
12 correctness of the ballot they produce, it is not a  
13 violation of HAVA nor of the Americans with  
14 Disabilities Act. That statement is also in your  
15 packet.

16 Jim also tells us that blind people  
17 cannot vote independently -- you also hear this  
18 earlier -- without computers. This is untrue  
19 because there are tactile ballots that are used  
20 successfully in Rhode Island and also around the  
21 world. They're even endorsed by the United Nations  
22 and the U.K. is thinking of using them.

23 These allow visually impaired and  
24 illiterate voters to cast a private ballot at home  
25 or in the polling place for only pennies of the cost

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1 of electronic voting machines. I urge you too look  
2 up the idea of tactile ballots, and I have the  
3 reference for that, too.

4 Back in 1992, when I came up with this  
5 concept of voter verified paper ballots or what some  
6 refer to as the Mercuri Method for voting, I  
7 proposed this as a necessary addition to DRE voting  
8 machines because of the vendors' trade secret  
9 policies and the fact that anonymous balloting  
10 disallows a full, end-to-end audit trail being  
11 recorded of all the transactions on the machine.

12 It was never my intention to add more  
13 complexity to the already overly complicated  
14 electronic voting systems. I only had this idea  
15 because communities seemed intent upon purchasing  
16 these computer kiosks no matter how flawed they were  
17 demonstrated to be.

18 In fact, I believe that the most  
19 appropriate voting system for the citizens of a  
20 democracy is one that is transparent, reliable,  
21 understandable, auditable, and cost effective.  
22 Apparently this is only found with increasing phased  
23 optically scanned voting systems and some of the  
24 studies by the MIT/Cal. Tech. group do agree with  
25 that.

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1                   Although some 50 million voters in  
2                   November will be faced with DRE touch screens, the  
3                   majority, more than 55 million, will be voting on  
4                   paper. As you can see, 25 states and many other  
5                   counties within the other states. Clearly paper is  
6                   still the winner.

7                   State after state has begun to enact  
8                   voter verified paper ballot laws and regulations and  
9                   disputes over equal protection, such as Congressman  
10                  Wexler's lawsuit in Florida where election laws  
11                  requiring recounts cannot be satisfied with computer  
12                  based voting systems, are beginning to return more  
13                  communities to paper based systems.

14                 Certainly the disabled deserve the right  
15                 to vote privately, at home, or at the polls, and  
16                 this can and must be satisfied in a way that  
17                 guarantees everyone's right to insure that their  
18                 vote is recorded properly and available for  
19                 independent audit and recounts.

20                 Mercuri Method style voting systems have  
21                 been certified unlike what you heard today. They  
22                 are disabled accessible, and they are available for  
23                 purchase despite what you may have heard to the  
24                 contrary, along with traditionally optically scanned  
25                 balloting systems.

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1                   You cannot take the paper ballot away  
2 with you. If you read the little yellow brochure,  
3 it explains a lot of the myths that you are hearing  
4 already here today about that. I'll be happy to  
5 give you more information in the question and answer  
6 period.

7                   I'm almost done.

8                   Paper is not such a bad thing as it is  
9 being made out to be. If we can reliably print  
10 millions of lottery tickets in the states every  
11 single weeks, we can certainly record 105 million  
12 ballots on paper on election day in November.

13                  Those of us in the scientific community  
14 are already looking ahead to what I like to call the  
15 better ballot boxes of the future where  
16 cryptographic and bar coding techniques can be used  
17 to insure that paper ballots don't walk away from the  
18 polls and that they don't get substituted or  
19 changed.

20                  I know that I and many of my colleagues  
21 are committed to being involved with election system  
22 reform in the long run, and we look forward to  
23 working with the disabled community, the League of  
24 Women Voters, civil rights organizations such as  
25 yours, election officials, vendors, and the millions

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1 of voters out in the grassroots who care about  
2 insuring accuracy, reliability, and integrity in  
3 computerized vote tallying and in the election  
4 process.

5 Thank you very much.

6 CHAIRPERSON BERRY: Thank you very much.

7 It seems there are some differences of  
8 opinion.

9 (Laughter.)

10 CHAIRPERSON BERRY: How interesting.

11 DR. MERCURI: Always the case.. That's  
12 always the case.

13 CHAIRPERSON BERRY: Mr. Wade Henderson.

14 MR. HENDERSON: Thank you.

15 Good morning, Chairperson Berry and  
16 distinguished members of the Commission. Thank you  
17 very much for the opportunity to appear before you  
18 today on the crucial issues of election reform and  
19 voting technology that our nation faces as we  
20 approach the 2004 election.

21 My name is Wade Henderson. I'm the  
22 Executive Director of the Leadership Conference on  
23 Civil Rights, the nation's oldest, largest, and most  
24 diverse civil and human rights coalition.

25 With your permission, Madam Chair, I'd

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1 like to submit a formal statement for the record,  
2 and I'll briefly summarize my remarks here this  
3 morning.

4 CHAIRPERSON BERRY: All right. Without  
5 objection, it will be in the record.

6 MR. HENDERSON: My purpose in appearing  
7 before you today is twofold. First, I'd like to  
8 discuss the ongoing controversy over electronic  
9 voting technology and to offer the perspective of  
10 the National Civil Rights Coalition on some of the  
11 crucial issues which are under discussion this  
12 morning.

13 The Leadership Conference shares some of  
14 the concerns that have been raised about the  
15 security of voting equipment. We certainly  
16 recognize the damaging impact of misperceptions on  
17 these issues on prospective voters, including the  
18 potential effect of voters suppressing their own  
19 ballot by simply not voting out of concern that  
20 their vote won't be accurately recorded.

21 And we further recognize that safeguards  
22 are undoubtedly unnecessary.

23 However, we also recognize that some of  
24 the goals which we share with speakers who have gone  
25 before me this morning can't be realistically

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1 achieved in completeness by the 2004 campaign, and  
2 truthfully, that the voter verified paper trail  
3 which Ms. Mercuri discussed this morning is not the  
4 answer to the problem of insuring full security of  
5 the ballot, which is at the heart of the discussion  
6 here today.

7 To that end, we'd like to share several  
8 principles that we believe are vital to the  
9 resolution of these problems and to talk about  
10 specific safeguards that I hope both supporters of  
11 the current electronic voting equipment, as well as  
12 critics of that equipment can agree on to insure  
13 that, indeed, security and safeguards are provided.

14 I would like just to make an additional  
15 aside. Ms. Mercuri mentioned in her testimony that  
16 if lottery machines can produce records accurately  
17 of persons who have submitted their numbers for  
18 review, then certainly ballots can be retrofitted to  
19 provide a similar safeguard, but truly, I don't have  
20 any idea of how accurately a lottery machine may, in  
21 fact, record the number that one accurately submits  
22 for consideration. I'm not sure if there have been  
23 any tests to validate that issue, and I think it's  
24 precisely those kinds of, I think, glib observations  
25 about what, in fact, voter verified paper trails can

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1 actually do which has helped to contribute to public  
2 misperception.

3           The same thing can, I think, be stated  
4 about the analogy that has often been provided about  
5 voter verified as ATM machines. That is to say that  
6 ATM receipt that one receives accurately reflects  
7 the transaction that has taken place, and there is  
8 obviously verification at the end of the month with  
9 ones records that is, in fact, true, but in some  
10 instances there is no real indication that the  
11 receipt one receives accurately in all respects  
12 reflects the transaction that has taken place.

13           And those are the kinds of concerns that  
14 go to the heart of whether the voter verified paper  
15 trail can be used as a complete safeguard to the  
16 problems which I think we have been identifying  
17 today.

18           My second purpose in appearing before  
19 you is that we'd like to add some badly needed  
20 perspective to the debate by highlighting a number  
21 of the other already very real threats that we face  
22 as a nation going into the election this November.  
23 The Leadership Conference is certainly concerned  
24 about the vulnerabilities of computerized voting.  
25 It is all too painfully clear that there are a wide

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1 range of other dangers that we simply can't afford  
2 to ignore which, as in previous elections, threaten  
3 to rob Americans of their votes.

4 Now, as an organization long concerned  
5 with protecting the right of every American to vote  
6 and to have our votes counted, we were, as were all  
7 Americans, deeply troubled by the chaos of the 2000  
8 presidential elections. This Commission's ground  
9 breaking and extensive investigation into what went  
10 wrong in Florida and elsewhere and its issuance of  
11 valuable, comprehensive recommendations for  
12 improvement, the Leadership Conference followed up  
13 on those recommendations and played a key role in  
14 efforts to move forward through the enactment of the  
15 Help America Vote Act.

16 Now, we recognize that that legislation  
17 does have some serious flaws, but we also believe  
18 that when fully implemented and given a chance to  
19 work, HAVA will go a long way to address many of the  
20 problems with voter registration, polling place  
21 operations, insufficient voter education, the lack  
22 of accessibility and outdated and accurate voting  
23 equipment.

24 Now, of course, one of the key  
25 components of HAVA was its call to replace the older

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1 voting machines that are now widespread in used  
2 around the country. Newer systems, particularly the  
3 direct recording electronic or DRE machines, or  
4 touch screen machines have many advantages over the  
5 older systems, and in fact, those advantages have  
6 been adequately, I think, discussed by Professor  
7 Shamos and Ms. Smothers, and particularly with  
8 respect to providing equal access to voters, persons  
9 with disabilities, and language minorities who need  
10 assistance in the right to vote. We think these  
11 systems are actually superior.

12 But building voter confidence, I think,  
13 has bene made especially difficult due to several  
14 very important studies that have raised real  
15 questions about whether current technology is secure  
16 enough.

17 Now, most notably, a study of software  
18 used by the leading manufacturer Diebold undertaken  
19 by computer experts at Johns Hopkins and Rice  
20 University found numerous flaws and vulnerabilities  
21 that could be exploited to rig the outcome of an  
22 election. These concerns have been exacerbated by  
23 the dramatic and serious missteps of Diebold  
24 officials, particularly the CEO of that company who  
25 stated that he was, quote, dedicated to delivering

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1 votes to President Bush.

2 We're a nonpartisan organization, but if  
3 any manufacturer of a voting machine suggested he or  
4 she would manipulate the vote by implication to  
5 provide support for one candidate or another, we  
6 would oppose it with equal fervor. It's wrong if it  
7 were done for President Bush. It would be wrong,  
8 equally wrong, if it were done for the Democratic  
9 nominee, if it's John Kerry.

10 Diebold raised even more concerns by  
11 taking aggressive legal action against college  
12 students who circulated internal memos, Diebold E-  
13 mails, in which employees themselves questioned the  
14 security of their products, and there have been a  
15 number of other reports and glitches with the DREs.

16 Now, given these challenges, we think it  
17 is important and appropriate to try to take  
18 additional measures to improve security and to  
19 assure that the voters, that their ballots are being  
20 cast and counted properly.

21 But these measures need to be consistent  
22 with important civil rights principles. They also  
23 shouldn't divert our attention away from the number  
24 of other critical issues that have had and will  
25 continue to have a direct impact on the right to

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1 vote.

2 And finally, they have to achieve the  
3 stated goal of actually correcting the problem of  
4 security that they purport to address. The  
5 recommendations that have come forth now only in  
6 support of a voter verified paper trail seem to miss  
7 the mark on all three counts.

8 Our concern about the accuracy of this  
9 equipment, I think, was accurately reflected in the  
10 remarks of Professor Shamos, and I think there are  
11 other examples that we could point out about how  
12 these machines are more accurate than some of the  
13 other equipment currently in use, and how we have  
14 not focused on the problem of the disenfranchised  
15 voters caused by existing equipment. Let me give  
16 you an example.

17 In California's recent recall election,  
18 punch card systems failed to record a valid vote on  
19 the question of whether to recall the governor on  
20 6.3 percent of all ballots cast. For optical scan  
21 systems, this rate was 2.7 percent, but on DREs, the  
22 rate was only 1.5 percent.

23 Now, these differences in rates of error  
24 are dramatic, and they can't be explained away on  
25 any ground other than the equipment itself. What

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1 that suggests to us is that as we look around the  
 2 country, the existing use of punch card lever  
 3 equipment is going to have as dramatic an impact and  
 4 potentially more dramatic an impact than the actual  
 5 problems associated with the DREs that have been  
 6 identified here this morning.

7 I see that my time is ended. I'm going  
 8 to end by making just a set of very brief  
 9 recommendations.

10 We think that there are four --

11 CHAIRPERSON BERRY: You can have more  
 12 time if you need it.

13 MR. HENDERSON: Okay. Well, thank you,  
 14 Madam Chair.

15 CHAIRPERSON BERRY: You have got about  
 16 actually three and a half or four minutes.

17 MR. HENDERSON: Terrific. Well,  
 18 wonderful. I'm going to try to wrap it up  
 19 nonetheless.

20 We think that there are four principles  
 21 that need to be considered as we go forward in  
 22 trying to address the problems that we've discussed  
 23 this morning, as well as guaranteeing that in those  
 24 jurisdictions that are using the older equipment,  
 25 that there is still some protection to insure that

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1 there are fewer disenfranchised voters than would  
2 otherwise be the case.

3 Those principles are as follows:

4 Equal access to the ballot for all  
5 voters.

6 Second chance voting and voter  
7 verification.

8 Compliance with national certification  
9 standards.

10 And genuine security that achieves the  
11 purpose for which the solution is being offered.

12 Now, with respect to the first  
13 principle, the Leadership Conference strongly  
14 believes that voting systems must provide all voters  
15 with an equal opportunity to cast a private vote and  
16 have that vote accurately counted.

17 Now, I'll allow Mr. Dickson of the  
18 American Association of People with Disabilities to  
19 defend his own remarks about the importance of  
20 privacy and the ballot box, but from the standpoint  
21 of a civil rights coalition that represents all  
22 Americans, we believe that it is simply  
23 inappropriate, improper, unfair, unjustified to  
24 ignore the use of technology when available that can  
25 guarantee the equal right to the ballot for all

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1 Americans, particularly when the question of the  
2 integrity of that equipment can certainly be  
3 established and maintained.

4 We think now that the technology is  
5 available, one of the core principles behind the  
6 Help America vote act was to extend the franchise  
7 equally to all voters, and we think that this  
8 equipment helps to achieve that purpose.

9 We also believe in the importance of  
10 guaranteeing second chance voting. One of the key  
11 reforms in the Help America Vote Act now requires  
12 that a voter be able to review and correct his or  
13 her ballot before it's cast. Now, this requirement  
14 goes a long way to reduce ballot errors and lost  
15 votes.

16 DREs make second chance voting easy and  
17 within the secrecy of the voting booth. Optical  
18 scan and other paper systems require the issuance of  
19 new ballots and often the review process is not  
20 carried out privately, which undermines the secrecy  
21 of the ballot.

22 Even worse, most optical scans and punch  
23 card machines, which many states will continue to  
24 use this November, don't provide any safeguards  
25 against under votes or even over votes in the case

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1 of punch card machines, and as you know, there have  
2 been a number of proposals to respond to these  
3 issues of the need for voter verification, and I  
4 think Ms. Mercuri has accurately described what many  
5 feel are the virtues of, as she characterized it,  
6 the Mercuri system of voter protection.

7 At the same time, we think it really is  
8 a bit of a fallacy to assume that simply by  
9 providing a voter verified paper trail, that that  
10 receipt in and of itself insures that the vote cast  
11 is actually the vote recorded unless there is some  
12 additional system that allows the voter to be  
13 assured that, indeed, there has been a routine  
14 review built into the system that establishes  
15 clearly that the receipt received reflects the vote  
16 cast. You won't have that assurance.

17 Secondly, the receipt itself lends, we  
18 think, to problems of insuring the integrity of the  
19 overall vote. For example, there are systems in  
20 which voters have been promised either rewards or  
21 penalties for the failure to cast a vote as an  
22 employer might have asked or as someone politically  
23 powerful in a community might have insisted.

24 Having a voter verified paper trail  
25 certainly does allow the voter to show that he or

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1 she has cast a vote as he may have promised to do in  
2 an inappropriate relationship with either one of  
3 those employers of politically powerful individual.

4 That is not to say that that is a realistic problem  
5 that occurs in every instance. It is to say,  
6 however, that in the history of voter manipulation  
7 and problems the existence of paper records have not  
8 insured that the problems of manipulation and  
9 political chicanery can be ignored.

10 So we're simply saying that there has to  
11 be an additional level of review and consideration.

12 Finally, many of the states and  
13 localities that have gone forward in the purchase of  
14 new equipment have done so through the provision of  
15 money from the federal government. These states  
16 would not have undertaken an effort to replace their  
17 voting machines, particularly in the face of other  
18 very pressing expenditures that states are now  
19 required to absorb.

20 In the absence of federal money that  
21 progress would not have actually occurred. What we  
22 now have is some states that have gone forward  
23 having purchased equipment and are now faced with  
24 the additional cost associated were they to go  
25 forward in trying to provide voter verified paper

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1 trails to address these needs. They've simply  
2 indicated an inability to do so, to bear the  
3 additional cost of retrofitting those machines and  
4 doing so in a way that would allow everyone to be  
5 comfortable.

6 One last point. I did note that that  
7 was my final point, but one last point, and that is  
8 national standards of certification. We think, as I  
9 had mentioned in these principles earlier, that  
10 there has to be some basis of national certification  
11 of whatever equipment is used to substitute for the  
12 equipment currently in use, the old equipment that  
13 we know is problematic.

14 The so-called voter verified paper trail  
15 has not been certified nationally as a way that  
16 allows, I believe, voters to be assured that the  
17 integrity of this equipment has been maintained.  
18 Obviously that is not the only basis of concern that  
19 we have expressed, but we think it is a very real  
20 one. We don't think it can be done in time to  
21 address the problems associated with these issues  
22 fully before the 2004 election.

23 We think it would be helpful for the  
24 critics of these machines to join forces with those  
25 who have been supportive, to look for ways of

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1 assuring to the extent possible that there are  
2 safeguards built into the existing machines, whether  
3 they are lever machines, optiscan equipment, or DRE  
4 machines, to the extent possible that try to  
5 guarantee voters that there are safeguards, that  
6 there will be some monitoring of these machines to  
7 insure that the votes cast are the votes recorded.

8 And we think that that can be  
9 accomplished in time to address and allay voter  
10 concerns so that the 2004 campaign and, rather,  
11 election is conducted under the standards  
12 established by the Supreme Court in Bush v. Gore for  
13 a national statewide standard that can be applied on  
14 behalf of every voter.

15 Thank you, Madam Chair, for the  
16 opportunity appear before you.

17 CHAIRPERSON BERRY: Thank you.

18 There will be questions.

19 And Mr. Jim Dickson, Vice President for  
20 Governmental Affairs of the American Association of  
21 People with Disabilities. He leads the APPD  
22 Disability Vote Project, a broad coalition of 36  
23 national disability related organization to close  
24 the political participation gap of people with  
25 disabilities.

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1 He has over 20 years' experience with  
2 these issues. He co-chairs also the Leadership  
3 Conference, Civil Rights Election Reform Task Force,  
4 and he is also a member of the Election Advisory  
5 Commission under HAVA, their advisory board.

6 And he will discuss whatever he feels  
7 like discussing. Welcome, again, to come before us,  
8 Jim, and thank you for coming.

9 MR. DICKSON: Thank you very much,  
10 Chairman Berry and Commissioners for the opportunity  
11 to speak today and for the service you're doing for  
12 this country to have a rational and calm discussion  
13 about our elections and their operations.

14 I've been voting for 36 years. For the  
15 first time in my life I cast a secret ballot this  
16 January. I did it on the Sequoia touch screen  
17 system. I have absolute confidence that my vote was  
18 counted correctly.

19 During the previous more than three  
20 decades of voting, I have experienced personally the  
21 following things when having to rely on the  
22 assistance of others.

23 I had a poll worker say to me, "You want  
24 to vote for who?"

25 I had a poll worker in a different

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1 election, in a different city say to me, "Well, you  
2 voted for President McGovern. Nobody even knows the  
3 rest of these people. Are we done?"

4 In another election, in another city I  
5 had a poll worker say to me, "Nobody understands  
6 these referenda. I'm really busy. You don't want  
7 me to read them."

8 In yet another election I had a poll  
9 worker say to me, "This referenda print is so small  
10 I can't read it. So we'll just skip it, okay?"  
11 Now, that did not get much sympathy from me.

12 There are tens of millions of Americans  
13 who do not vote because they have experienced  
14 similar forms of embarrassment or harassment,  
15 because they are embarrassed to admit that they can  
16 no longer see, because they are embarrassed to admit  
17 that they can't properly read.

18 I have stood in cheese lines registering  
19 people to vote, and I've had people say to me, "I  
20 can't read. I don't vote."

21 The touch screen which allows me to vote  
22 secretly allows those Americans who have suffered  
23 through an appalling poor education system and who  
24 cannot read to cast a vote without the embarrassment  
25 of having to acknowledge that they can't read.

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1 There are 33 million Americans who cannot read.  
2 There are ten million Americans who can't read  
3 because they can't see. There's about one and a  
4 half million Americans who can't vote on a piece of  
5 paper because they cannot hold a pencil in their  
6 hand.

7 There are tens of millions of citizens  
8 who came to this country like my grandmother  
9 because she was not taught to read in Italy. the  
10 same machine that allows me to vote secretly would  
11 allow her to hear the ballot in her native language  
12 and would allow tens of millions of Americans today  
13 who are citizens, who pay taxes, and who speak their  
14 native language, but who cannot read it the ability  
15 to vote secretly.

16 We have a problem in this country that  
17 when it comes to a close election, we cannot  
18 accurately count the ballots. Some say it's a  
19 margin of one percent. Some say it's a margin of  
20 two percent. That is appalling.

21 We can make progress incrementally, and  
22 the touch screens, as Wade mentioned earlier, have  
23 the lowest error rate. So more votes get counted on  
24 touch screens than on these other systems.

25 This debate about a paper trail is

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1 jeopardizing this fall's election. There are very  
2 loud voices saying the public doesn't trust voting  
3 machines. There have been many polls of the public  
4 that prove the contrary. A recent national survey  
5 by opinion research asked voters what system do they  
6 have the most confidence their vote is going to be  
7 counted? Touch screens overwhelmingly popular,  
8 approximately 70 percent.

9 African Americans asked about paper and  
10 their confidence that the paper ballot would be  
11 counted was 20 percent below their trust in touch  
12 screens.

13 There was a paper ballot election just  
14 recently in Texas for Congressman Rodriguez, paper  
15 ballots. Congressman Rodriguez won the first few  
16 recounts. By the fifth recount, two ballot boxes  
17 were found that had never been found before.  
18 Surprise, surprise.

19 One ballot box from the home county of  
20 his challenger gave 100 percent of these newly  
21 discovered ballots to Congressman Rodriguez's  
22 challenger. Another ballot box from another county  
23 gave 80 percent of the ballots to the challenger.  
24 This is a ballot box of paper that was just found.

25 My point is that we have had long and

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1 painful experiences. Paper can be manipulated, and  
2 it gets manipulated, and the idea of adding paper,  
3 which we know, which we know has been used to  
4 manipulate elections, is harmful, in fact, to our  
5 elections because we have evidence.

6 The supporters of the paper trail have  
7 theories. Are we going to conduct our elections  
8 based on theory or fact? Every system messes up.  
9 Touch screens mess up least.

10 In the State of Ohio, they had planned  
11 to use touch screens in this fall election. This  
12 debate has stopped that decision. Seventy-four  
13 percent of Ohioans this fall are going to vote on  
14 the same punch card systems that they voted on in  
15 2000.

16 The error rate on the punch cards in  
17 Ohio in 2000 was 4.47 percent. We're talking about  
18 people who went to the polls, left the polling  
19 place, and didn't get a vote counted.

20 We know, because touch screens have been  
21 used now for 20 years, that the worst that error  
22 rate would be, would be one and a half, and we've  
23 seen examples where it's down below one.

24 I'll end by posing to you, asking you to  
25 think about this. I'm going to give an analogy

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1 here. If a professor of bioscience looked up from  
2 his or her desk or test tube and said, "Oh, my God,  
3 people are going to die from cancer. I have a pill  
4 that will prevent that, and I want a law passed that  
5 everybody has to take this pill," would you take the  
6 pill? This is a pill that has not seriously been  
7 tested in any legitimate election. It's been tested  
8 in small elections, and each time -- "small  
9 elections" meaning less than 2,000 votes, less than  
10 1,000 votes -- and each time there has been serious  
11 administrative problems not least of which was the  
12 paper jamming in Sacramento and the poll workers  
13 deciding the only way they could solve the problem  
14 was they went out to their car. They got the  
15 windshield wiper off the car, and they used the  
16 windshield wiper to pound the paper through the  
17 system so that it could go into the ballot box.

18 For those voters who believe that they  
19 need to have a paper ballot, there's a system  
20 available to them in most states. It's called an  
21 absentee ballot. I would encourage people who feel  
22 they don't trust the voting machine to use the  
23 absentee ballot if they wanted, but don't take my  
24 right to a secret ballot away.

25 I'll end my remarks there.

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1 CHAIRPERSON BERRY: All right, Jim.  
2 Thank you very much, Mr. Dickson. There will be  
3 some questions.

4 And then finally, Mr. Larry Gonzalez,  
5 who we may have forgotten is the Director of the  
6 Washington, D.C. Office of the National Association  
7 of Latino Elected and Appointed Officials.

8 Thank you very much. Please proceed.

9 MR. GONZALEZ: Thank you. Thank you  
10 Chairman Berry.

11 I was feeling a bit left out here,  
12 particularly not being criticized. So let's see if  
13 we can generate --

14 (Laughter.)

15 MR. GONZALEZ: -- something about which  
16 to be critical.

17 Again, on behalf of the National  
18 Association of Elected and Appointed Officials, I'd  
19 like to thank the Commission for inviting us to  
20 participate in this briefing and offer our  
21 perspective, a little different perspective, on the  
22 impact that the voter identification provision the  
23 Help America Vote Act could have on minority  
24 communities, particularly the growing Latino  
25 electorate.

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1           And I think as we discuss this issue it  
2 perhaps could alter, Chairperson Berry, your  
3 question that you offered at the beginning, is  
4 America ready to vote. We would offer a question,  
5 will they be allowed to vote.

6           And so from our experience, we believe  
7 it's very critical that election reform be  
8 accomplished in a manner that preserves and enhances  
9 opportunities for electoral participation among all  
10 minority communities, and we believe the goals of  
11 the members of this Commission in addressing  
12 election reform are completely consistent with those  
13 of full participation.

14           Just as a quick background, I would like  
15 the Commission to note that the NALEAO Educational  
16 Fund has always played a nonpartisan role in  
17 federal, state, and local elections. From assisting  
18 Latinos in becoming citizens and registering to  
19 vote, to casting their ballots, throughout the years  
20 our efforts have included programs to educate  
21 Latinos about voting and participation in the civic  
22 life of their neighborhoods and communities.

23           In that vein, I would like to briefly  
24 offer you our perspective on the dangers we believe  
25 are inherent in the voter identification provision

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1 of the Help America Vote Act.

2 As you know, HAVA has created some new  
3 identification requirements for first time voters.  
4 But before I go into the particulars about the  
5 provisions, what's required, I'd like to talk a  
6 little bit about our perspective that was offered  
7 during the debate on Capitol Hill regarding voter  
8 identification requirements, past practices, some of  
9 the dangers that were involved, and I think many of  
10 these discussions that we had with members over the  
11 two years during the HAVA debate are still very,  
12 very relevant today.

13 For example, the use of tests and  
14 devices at the discretion of local registrars and  
15 state officials in voter registration has  
16 historically resulted in discrimination. The Voting  
17 Rights Act of 1965 specifically outlaw tests and  
18 devices, such as poll taxes and literacy tests,  
19 which could arbitrarily be administered ensuring  
20 that the registration process would be free from  
21 discriminatory barriers to registering to vote.  
22 Requiring any form of identification at the polling  
23 place, we believe would inevitably create similar  
24 barriers and hurdles for racial and ethnic minority  
25 voters and will have a chilling effect on voter

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1 participation.

2           There are voters who simply do not have  
3 identification and requiring them to purchase  
4 identification would be tantamount to requiring them  
5 to pay a poll tax. The burden of this requirement  
6 would fall disproportionately and unfairly upon  
7 racial and ethnic minority voters, as well as voters  
8 with disabilities since a disproportionate number  
9 have neither identification nor the financial means  
10 to acquire it.

11           A burden such as this which does  
12 disproportionately affect minorities would violate  
13 the Voting Rights Act.

14           Secondly, the use of photo ID, we  
15 believe, causes a disparate impact on ethnic and  
16 racial minority communities for this particular  
17 reason. In November of 2001, a federal court  
18 outlawed the use of identification requirements at  
19 the polls in Lawrence, Massachusetts. Both the  
20 Department of Justice and private plaintiffs argued  
21 and the court correctly found that the burden  
22 imposed by this requirement would fall  
23 disproportionately on the Latino community, thereby  
24 violating Section 2 of the Voting Rights Act.

25           Department of Justice objects to photo

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1 ID for first time voters. In 2001, I believe it was  
2 -- in 1994, the Department of Justice prohibited the  
3 use of photo ID requirements without also permitting  
4 signature attestation for first time voters under  
5 Section 5 of the Voting Rights Act, also because  
6 they felt it had a disparate impact on minority  
7 electoral participation. Since black voters were  
8 four to five times less likely to have photo ID, the  
9 Justice Department believed that that requirement  
10 would have a retrogressive effect on the  
11 opportunities of black voters who register by mail  
12 and would likely have, and I quote, "a  
13 disproportionately adverse impact on black voters in  
14 the state."

15 Requiring a photo ID at the voting place  
16 causes an economic burden on the voter. The Federal  
17 Elections Commission noted in a 1997 report to  
18 Congress that photo ID entails major expenses both  
19 initially and in maintenance, and presents an undue  
20 and potentially discriminatory burden on citizens in  
21 exercising their basic right to vote.

22 And this one I think is even more  
23 important from our perspective in the Latino  
24 community, that identification requirement vests far  
25 too much discretion in the hands of local election

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1 officials. And we have a number of examples in  
2 previous elections where we have seen that happen.

3 For example, poll workers can select,  
4 pursuant to criteria they alone can choose, who will  
5 be asked to produce identification and who will not.

6 We've seen that based on some of our experiences  
7 from local election officials in Arizona where  
8 Latino voters enter polling places and have been  
9 turned away.

10 There has been a lot of misinformation  
11 throughout the communities, and in fact, what  
12 happens once they're turned away, it's very  
13 difficult to get them to return, if at all.

14 For example, Florida law requires photo  
15 identification, but allows voters who do not have  
16 identification to cast an affidavit ballot. The  
17 Equal Voting Rights Project discovered signs posted  
18 in precincts across the state -- this was back in  
19 2001 -- where say in large letters "Need Photo ID,"  
20 causing voters who did not know about an  
21 alternative, being the affidavit, to leave without  
22 attempting to vote.

23 Allowing alternative documents, such as  
24 a current utility bill, bank statement, government  
25 check, paycheck or other government document that

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1 shows the name and address of the voter to be  
2 presented in lieu of a photo ID does not necessarily  
3 remove the discriminatory impact of the provision.  
4 Racial and ethnic minorities are less likely than  
5 white voters to have those previous documents  
6 required under such an alternative.

7 For example, Latinos are more likely to  
8 have several adults living at one address, making it  
9 less likely that all of them will have utility bills  
10 with all of their names on them. Many bills are  
11 paid in cash or, in fact, many Latinos are paid in  
12 cash because of their work in the service industry  
13 or performing domestic work. Therefore, they're  
14 less likely to have a government check or paycheck  
15 than other workers who vote.

16 Photo ID requirements are, in fact,  
17 obstacles for student voters as well. At least 1.5  
18 million undergraduates are currently attending  
19 school out of state. Most of these students do not  
20 have documentation or a photo ID that displays a  
21 local address.

22 Photo ID requirements do not accommodate  
23 state vote by mail laws. For example, Oregon has  
24 voted entirely by mail since citizens approved the  
25 method by a two to one margin in 1998. Obviously

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1 the goal of the program is to increase turnout, and  
 2 in 2000 Oregon's turnout was nearly ten percent  
 3 higher than the national average. Placing  
 4 additional barriers in front of mail-in voters will  
 5 depress turnout and, therefore, run directly counter  
 6 to the goal of the program.

7 Most states do not currently request  
 8 proof of identity at the polls and thus do not  
 9 create additional barriers to voting. Less than  
 10 half of all the states require voter's proof of  
 11 identity before casting a ballot.

12 According to a GAO report, only 23  
 13 states require proof of identity before a voter can  
 14 cast a ballot. We believe during the debate over  
 15 HAVA and the voter identification, that signature  
 16 verification, in fact, was an effective and workable  
 17 alternative to fight fraud and is used by most  
 18 states..

19 The majority of states had already  
 20 required voters' signature before casting a vote,  
 21 and a CRS report talked about that as well, talking  
 22 about 37 states requiring voter signatures before  
 23 casting a ballot.

24 So beyond those concerns, what's next?  
 25 The reality for many of the states is that they must

1 comply with the voter identification provisions that  
2 exist in HAVA, and we've seen a number of states  
3 that have attempted to take those provisions even  
4 beyond.

5 For example, in both Arizona and New  
6 Mexico they rejected many of the early pieces of  
7 legislation that got to the governor's desk because  
8 they felt that it went a little too far in  
9 attempting to disenfranchise minority voters.

10 We have a number of recommendations that  
11 we feel will address the problems and concerns that  
12 were created by this provision. Again, the ID  
13 requirement presents a significant risk that  
14 election officials and poll workers may at their  
15 discretion selectively notify voters of alternative  
16 forms of identification or fail to identify the  
17 complete list of available alternatives.

18 In states that already have photo ID  
19 requirements similar to the new federal provision,  
20 there have been discriminatory impacts. We believe  
21 the following steps should be taken to help guard  
22 against these risks. First, implement a statewide  
23 voter list as soon as possible. A statewide list  
24 will insure that voters who have moved between  
25 jurisdictions in the state and reregistered by mail

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1 will not be subjected to unnecessary ID  
2 requirements.

3 This will also reduce the burden on poll  
4 workers and other election officials.

5 Secondly, recognize that registrants who  
6 are matched or verified in the voter registration  
7 program with either a driver's license or security  
8 information are exempt from the ID requirement.  
9 Recognize that the ID requirement only applies to  
10 registrations received by mail, and this is a  
11 serious concern, particularly from groups who are  
12 conducting voter registration drives and hand  
13 deliver the resulting forms to registrars.

14 These should not be considered  
15 registrations by mail, and the ID requirement does  
16 not apply to those applicants even if a mail-in form  
17 is used.

18 Training should be provided and required  
19 for election officials and poll workers to notify  
20 voters what forms of identification they may present  
21 as current and valid photo identification.

22 Excuse me here a second. I lost my --  
23 current and valid photo identification, such as  
24 student cards, and what alternative IDs qualify if  
25 they do not have a photo ID. They should list

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1 numerous examples of alternative identification and  
2 clearly post them at polling places.

3 Also require notification that voters  
4 without ID are still entitled to cast a provisional  
5 ballot. No one should be turned away.

6 Require that state and local election  
7 officials collect and report information on the  
8 impact of these provisions on voters, including the  
9 number and demographic characteristics of voters who  
10 do not have the required identification.

11 And I can tell you members of the  
12 Commission that this is an initiative that our  
13 organization is undertaking particularly to begin  
14 documenting this thing, these incidences. Many of  
15 us have, many of our elected officials have  
16 anecdotal evidence that has happened in the past, as  
17 well as some of the previous examples that I talked  
18 about in the Department of Justice, but it's going  
19 to be really key in the upcoming elections that we  
20 have monitors. The folks are in there not just  
21 being able to speak different languages, but being  
22 able to document specific incidences so that we can  
23 come back and talk about these issues and see how we  
24 can rectify them.

25 Lastly, registrars should issue voter

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1 cards, and those cards should include the voter's  
2 name and address. The state should provide funding  
3 for voters to purchase government issued ID and to  
4 make copies of identification to submit with mail-in  
5 ballots.

6 Members of the Commission, this is not,  
7 I think, from a Latino community perspective. This  
8 is not necessarily a sense of paranoia about the  
9 impact that voter identification could have on our  
10 community. We've seen it in the past. It has been  
11 used in a number of areas and ways to suppress the  
12 community, and I think particularly when you talk  
13 about a community that is beginning to flex its  
14 political muscle, the realities are there are folks  
15 out there who tend to practice political campaigns  
16 in a way that wouldn't necessarily benefit the kinds  
17 of communities that are coming to the forefront.

18 And so we continue to look for ways to  
19 work with state and local elected officials to try  
20 to rectify these situations, and we look forward to  
21 the Commissions' recommendations as well on this  
22 issue.

23 So thank you very much.

24 CHAIRPERSON BERRY: Okay. Thank you  
25 very much.

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1 As you were talking, Mr. Gonzalez, I was  
2 thinking about when you said how burdensome and how  
3 expensive it is to have IDs. I thought to some  
4 people that might sound frivolous.

5 MR. GONZALEZ: Right.

6 CHAIRPERSON BERRY: As when they first  
7 started imposing poll taxes and literacy tests on  
8 African Americans. People said that's frivolous.  
9 Anybody can pay a poll tax. I mean, how much is it.  
10 Literacy test? So what? You want people to be able  
11 to read, and we know from experience that it's not  
12 frivolous.

13 MR. GONZALEZ: Absolutely.

14 CHAIRPERSON BERRY: The other point you  
15 made about using computerized voting lists as a way  
16 because HAVA requires the states to do it, as you  
17 probably know, 41 states have asked for waivers.

18 MR. GONZALEZ: Right.

19 CHAIRPERSON BERRY: So that they won't  
20 have it in place for 2004 anyway, even though  
21 they're supposed to. So the problem of saying  
22 people aren't on lists and purging people or not  
23 being able to check against the list will be just as  
24 severe in those states during this next election as  
25 otherwise.

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1 MR. GONZALEZ: Well, I mean, the other  
2 example is in Missouri where they talk about that if  
3 you know someone as you come in, if the poll worker  
4 knows you, you don't necessarily have to produce a  
5 photo ID.

6 CHAIRPERSON BERRY: Yeah.

7 MR. GONZALEZ: I mean, we see that  
8 happen throughout the communities. You know,  
9 particularly we have these emerging communities in  
10 Georgia, North Carolina, South Carolina, Arkansas.  
11 I think those are the states that we really need to  
12 be taking a look at.

13 We're not talking necessarily about  
14 urban areas, Los Angeles, Chicago, although having  
15 come from Chicago I can tell you that it has often  
16 been used, photo identification, in a way to  
17 suppress the Hispanic vote, but I think more so the  
18 dangers are inherent in what the census pointed out  
19 were so-called emerging communities.

20 CHAIRPERSON BERRY: Let me turn to my  
21 colleagues to see if anyone would like to ask a  
22 question. First of all, Commissioner Elsie Meeks,  
23 who is the Executive Director of First Nations  
24 Development Institute, and is the first Native  
25 American member of this Commission, I'm embarrassed

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1 to say since 1957. Until she was appointed there  
2 weren't any Native American members of this  
3 Commission for South Dakota.

4 Commissioner Meeks.

5 COMMISSIONER MEEKS: Thank you.

6 Well, since, Mr. Gonzalez, you are the  
7 one left out of the criticism and you are also the  
8 one that failed to comment on DRE, I just wonder  
9 what you think about, you know, the language issue,  
10 what your community has experienced with these  
11 machines and have they been used before?

12 MR. GONZALEZ: Sure. Our organization  
13 has not articulated a position on the issue, but I  
14 can tell you that we've heard from a number of  
15 elections officials who feel the machines are easier  
16 in terms of language, minority language access to  
17 various languages.

18 I think the jury is still out on many of  
19 the issues that were mentioned here, but I think  
20 based on that, I mean, it does bring up a number of  
21 issues in terms of a voter verified paper trail, the  
22 ability to translate those pieces of paper, a number  
23 of minority language access issues, but it's much  
24 easier on the machines for particularly Latinos to  
25 have access to the electoral process.

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1 COMMISSIONER MEEKS: Can I then?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER MEEKS: So has the multiple  
4 language been incorporated into these machines? I  
5 know you said in Georgia it hadn't been yet.

6 MS. SMOTHERS: It has not been required  
7 yet because of our Census data, that we haven't  
8 reached, although we have to present it that way,  
9 but we're actually in the process now of  
10 incorporating that into the 2004 election.

11 CHAIRPERSON BERRY: Professor Shamos,  
12 can you?

13 DR. SHAMOS: Yes. Many of the systems  
14 that are offered for sale provide for ballots in a  
15 wide number of languages. That's a requirement in  
16 Texas. It's not a requirement in Pennsylvania, but  
17 I don't recall us ever having certified a system in  
18 Pennsylvania that would not permit the use of at  
19 least the languages written in the Roman alphabet.

20 DR. MERCURI: There have been noted  
21 instances in the machines where it has been  
22 implemented, where people have attempted to pull up  
23 the foreign language ballot and then it didn't come  
24 up to them.

25 The same is also true with the audio

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1 accessible portions of the ballot. We are also  
2 finding that in actually testing these machines that  
3 it can sometimes take as much as an hour to cast an  
4 alternative ballot.

5 There's been a really excellent study  
6 that was done by the Manhattan Borough president who  
7 took in a number of disabled voters who had to use  
8 alternative means. Just because somebody has a  
9 foreign language, that does not necessarily mean  
10 that foreign language will be a required on in the  
11 ballot system.

12 So they may use the audio ballot, and  
13 the audio ballots are really terribly problematic.  
14 People are looking at them as a panacea, but they're  
15 actually terribly problematic in a variety of  
16 implementations.

17 MR. DICKSON: There have been some poll  
18 worker problems in initializing both language and  
19 the audio functions on the ballots, but those are  
20 training problems.

21 I also know that several Secretaries of  
22 State and election officials in the Southwest are  
23 very enthusiastic about touch screens because there  
24 are Native American tribes who have no written  
25 language, but the audio ballot will make it possible

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1 to have the ballot in the language of the tribe.

2 MR. HENDERSON: And, Commissioner, I  
3 think the last point goes to your question of those  
4 jurisdictions that are required to provide this  
5 equipment as opposed to those who may seek to  
6 implement it at their own discretion.

7 Those jurisdictions covered by Section  
8 203 of the Voting Rights Act, that based upon Census  
9 figures has a population of sufficient size that it  
10 is deemed to require the provision of voting  
11 assistants in languages other than English would be  
12 dictated in large measure by that section of the  
13 Voting Rights Act.

14 COMMISSIONER MEEKS: Although I thought  
15 we found that wasn't necessarily true in Florida,  
16 that it wasn't always language. There wasn't  
17 language.

18 CHAIRPERSON BERRY: It wasn't available.

19 COMMISSIONER MEEKS: Right.

20 CHAIRPERSON BERRY: The law required it,  
21 but it wasn't there.

22 COMMISSIONER MEEKS: Right. So I mean,  
23 I think the whole discussion today for me on the  
24 DRE, I mean, there isn't a perfect system. I mean  
25 the paper system certainly wasn't -- I mean, just

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1 from what I hear from everyone is that, you know,  
2 there are some advantages to the DRE. There's also,  
3 I mean, some room for error in them, but --

4 MR. GONZALEZ: I think what you're  
5 hearing is what I think Jim hit on, the training. I  
6 mean, we know that there were some problems in  
7 Orange County during the primary, but in our  
8 discussions with local elections officials there, it  
9 was really cut to the core. It was the training  
10 issue. People were not properly trained.

11 COMMISSIONER MEEKS: Yeah, that was the  
12 issue.

13 CHAIRPERSON BERRY: Commissioner Edley,  
14 who is Professor of Law at Harvard, but he's  
15 actually now the Dean of the Bolt Hall Law School at  
16 the University of California at Berkeley where he  
17 will solve all problems, raise enormous amounts of  
18 money and be loved and lauded by everyone nationally  
19 for his work there.

20 Commissioner Edley, do you have any  
21 questions.

22 (Laughter.)

23 COMMISSIONER EDLEY: I'm not on the  
24 payroll there until July 1st, and I think all of  
25 that will evaporate by July 4th.

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1 (Laughter.)

2 COMMISSIONER EDLEY: I have to confess  
3 to having a certain amount of prejudice here in  
4 favor of the DRE machine since I first started  
5 reading about them and being exposed to them while a  
6 member of the Jimmy Carter-Gerald Ford National  
7 Commission on Federal Election Reform whose  
8 recommendations, I think, were instrumental in  
9 leading to adoption of HAVA.

10 And in those hearings the members of  
11 that commission, bipartisan commission, were very  
12 impressed with the potential of the DRE machines  
13 with respect to persons with disabilities and  
14 language minority groups, as well as the  
15 opportunities to reduce the risks of over count and  
16 under counts.

17 And I have to say that almost everything  
18 I've heard today just reconfirms for me the sense  
19 that there's enormous potential in these machines,  
20 and I'm struck by Wade's framework that seems to be  
21 exactly the right one, namely, that, yeah, there are  
22 some problems, but as compared to what?

23 So that there are some risks that are  
24 being introduced with the move to DREs. There's  
25 certainly some training costs. There are risks that

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1 a conspiracy of sorts may deprive people of the  
2 effectiveness of their ballot, but there are a  
3 comparable set of risks on the other side with the  
4 alternative technologies as well.

5 So what I'm trying to figure out here is  
6 whether any of you have seen research or seen  
7 analyses that attempt in a balanced way to compare  
8 the risks and benefits of competing technologies as  
9 opposed to simply focusing on DREs alone, number  
10 one.

11 Number two, what do we know, if  
12 anything, about the costs of adding the additional  
13 layers of security, of redundancy in the DRE system,  
14 about the costs of the transition in terms of  
15 training of personnel in the DRE systems? Are those  
16 considerations that militate strongly against some  
17 of the advantages of the DRE system?

18 So let me throw that up to anybody who  
19 would care to.

20 MR. DICKSON: Let's see. There were  
21 several points there, and if I don't get them all,  
22 please --

23 CHAIRPERSON BERRY: Are there studies  
24 that show the competing, you know, values, problems  
25 of the various kinds of equipment?

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1 MR. DICKSON: There are some, but there  
2 are not a lot, and there's nothing that I know of  
3 that is thoroughly comprehensive.

4 The Cal. Tech./MIT study is probably the  
5 best, though there is one very important thing to  
6 recognize. As Professor Shamos said, there are  
7 DREs and then there are DREs.

8 DR. SHAMOS: Right, right.

9 MR. DICKSON: The current generation of  
10 DREs have a much lower error rate than other  
11 systems, than the older systems, and about half of  
12 the country that is going to be using DREs, it's  
13 only about half that will be using DREs. I think  
14 it's about ten or 12 percent are using new ones.

15 There's another ten percent that are  
16 going to be using these old machines which by and  
17 large are not very good.

18 On the cost question, many election  
19 officials and counties prefer DREs because it  
20 eliminates the huge cost of paper. There have been  
21 many studies done that depending on the length of  
22 the ballot in a given jurisdiction and the frequency  
23 of elections, which as you know vary all over the  
24 lot, between three and seven years the county is  
25 saving money. They've paid off the initial purchase

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1 cost.

2 So that I think it was in Riverside  
3 County, California, after three years the county was  
4 saving a half million dollars a year by not buying,  
5 storing, moving around paper.

6 Your broad question leads to something  
7 that needs to be pointed out that is very troubling.  
8 There are many problems with HAVA and with HAVA  
9 funding. You know, I have two disabilities. I'm  
10 blind and I'm blind.

11 President Bush, in his funding requests  
12 for HAVA, has consistently not funded the sections  
13 for research, data collection, R&D, and there was  
14 zero funds in the '03 budget. There's a modest  
15 amount in the '04 budget, but nothing like what the  
16 original allocation called for.

17 COMMISSIONER EDLEY: It should have been  
18 called "no voter left behind."

19 (Laughter.)

20 COMMISSIONER EDLEY: Dr. Mercuri?

21 DR. MERCURI: Well, I'd like to agree  
22 with Jim on this. They allocated \$3 billion for  
23 equipment, including the statewide voter  
24 registration types of things, and there was supposed  
25 to be a lofty \$30 million, you know, one percent for

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1 NIST.

2 NIST had to actually drop out of our  
3 IEEE standards meetings because they didn't have the  
4 train fare to get up to New Jersey for the meetings.

5 I mean, this is ridiculous, and they're in charge  
6 of creating the new standards.

7 So when you hear people say the HAVA  
8 standards, there are no HAVA standards. They  
9 haven't been created yet because the Commission has  
10 not appointed the people. The NIST has no funding.

11 I mean, a lofty \$30 million is nothing. I mean,  
12 that's really a pittance.

13 One of the things that we proposed, an  
14 NSF grant, a part of this proposal to the National  
15 Science Foundation for \$10 million under a different  
16 project, but the idea would be it's called ACCURATE,  
17 and it's doing these types of things, taking in this  
18 sort of data and having a repository.

19 We don't know which states have election  
20 problems because there's no national repository like  
21 there is for things like viruses, and that's an  
22 aspect that I'm looking to do. There is nothing.

23 Like you have that thing called CERT,  
24 you know. We know about CERT where you get the  
25 virus reports. There is no reports of bug problems.

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1 We just gather them from the news, and we hear them  
2 this way.

3 And so if they don't fund this baby, you  
4 can fund that part of the project. But I'm not  
5 planning on doing it anyway, regardless.

6 So I just want to reemphasize that part  
7 of it, but then moving to some of the other things  
8 that some of the other people have said, with regard  
9 to the costing, there's something, again, I keep  
10 going back to being a scientist because I like to  
11 look at this from the standpoint of engineering  
12 which I've spent my career in.

13 We have a thing called the bathtub  
14 curve. You notice this with your car. You get a  
15 new car. There's a lot of problems with it at the  
16 outset, and then it sort of levels off and  
17 everything is fine for a while, and then as the car  
18 gets older, it starts to go up again.

19 These machines are only warranted for  
20 ten years in most cases. We have already had  
21 counties, one in New Jersey contacted me, where they  
22 bought ES&S machines three years ago. Those  
23 machines are already breaking down at such a high  
24 rate of failure that they're going to have to really  
25 actually replace all of them.

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1                   So ten years from now when all of these  
2 machines, their warranties expire, is there going to  
3 be another \$3 billion from HAVA to spend on this? I  
4 don't think so.

5                   So we need to look at that. I mean  
6 these theories are great in their way. One of the  
7 recommendations I've made is that for the people who  
8 need them, they should have the DREs. They should  
9 also have a way of auditing them.

10                   COMMISSIONER EDLEY: I guess, Dr.  
11 Mercuri, I understand what you're saying, but I  
12 guess the difficulty, frankly, is that all of the  
13 criticisms that you've articulated, and I haven't  
14 read your --

15                   DR. MERCURI: Right.

16                   COMMISSIONER EDLEY: -- I haven't ready  
17 your literature, but all of the difficulties that  
18 you've talked about are targeted at DREs, and every  
19 time you mention one I can think of three analogous  
20 problems with other technologies other --

21                   DR. MERCURI: And I certainly --

22                   COMMISSIONER EDLEY: Every time you talk  
23 about, for example, the security problems with  
24 respect to this, I can think of --

25                   DR. MERCURI: No, no. I certainly --

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1 COMMISSIONER EDLEY: -- because the  
2 problem is one the --

3 DR. MERCURI: I totally agree.

4 COMMISSIONER EDLEY: So this is a  
5 question of --

6 DR. MERCURI: I totally agree. I did  
7 mention the fact that software was uncertified for  
8 the optically scans. Those same -- it's software.  
9 Software is software, and you can have good software  
10 and bad software, and so that thing certainly  
11 exists.

12 The reason why DREs are such a target is  
13 that when they have done a comparison study on how  
14 much it costs, it's actually ten times the start-up  
15 cost to get a full DRE set-up in your county. If  
16 you buy the -- some DREs, you know, one per  
17 precinct, for the people who need to use them and  
18 then have paper ballots available for everybody else  
19 and have that multiple system, you have to have  
20 paper ballots anyway because like in California, 30  
21 percent of the people vote by absentee paper  
22 ballots.

23 So you have paper ballots out there  
24 anyway. We have a double system anyway, and so what  
25 we need is stuff for the people, appropriate for the

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1 people who need that, and then for the rest of the  
2 population we should go with the most cost effective  
3 solution.

4 That's what Boston bought, by the way.  
5 You should know that being up at Harvard. That's  
6 what Boston bought.

7 COMMISSIONER EDLEY: I just wanted to  
8 hear what the others say.

9 MR. HENDERSON: Commissioner Edley, if I  
10 could just add one additional comment because I  
11 think your questions are right on the money, I would  
12 like to add an additional consideration, which is  
13 that in addition to comparing the problems between  
14 some of the existing voting systems, such as a punch  
15 card and lever systems in comparison to the problems  
16 with DREs, there was also a question about what can  
17 be realistically accomplished between now and the  
18 November election versus what is likely to be  
19 resolved over the next couple of years or the next  
20 three years.

21 The expectation that many of the  
22 problems that have been identified with DREs may be  
23 addressed adequately by 2006 is certainly being  
24 discussed and considered, and obviously the focus on  
25 real problems will, we hope, help to encourage real

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1 solutions.

2 If there is agreement on one thing, I  
3 think, among us, that is that this perception that  
4 some of this equipment is not secure will have an  
5 impact and negative effect on some voters in their  
6 perception that the system has been rigged, and  
7 obviously that is a problem.

8 We want to try to reassure all voters  
9 that in casting their ballots this November every  
10 conceivably step has been taken to ensure the  
11 integrity of the equipment regardless of what the  
12 equipment is that they're using.

13 We certainly agree that public education  
14 about all voting systems is necessary to try to  
15 diminish the number of votes that are either miscast  
16 or not counted. Obviously there has to be training  
17 for poll workers, and certainly that has been  
18 inadequate to date.

19 But there also has to be, I think, an  
20 effort on the part of those who criticize the DRE  
21 equipment in joining forces with those who believe  
22 that this equipment is useful and necessary to try  
23 to address those steps that can be realistically  
24 achieved now, to try to focus some attention on what  
25 safeguards can be imposed without jeopardizing the

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1 overall coverage and access to the ballot by people  
2 who deserve constitutional protection in terms of  
3 their access to the vote, whether it is language of  
4 minorities like Latinos or Native Americans or  
5 persons with disabilities.

6 And that's what we're trying to focus on  
7 and trying to encourage, and I think one has to step  
8 beyond the political heat generated by the  
9 controversy over whether this vote is going to be  
10 stolen to try to get to realistic recommendations  
11 about what can be accomplished, and I think you're  
12 hearing today has contributed at least to that  
13 dialogue.

14 CHAIRPERSON BERRY: Do others of you  
15 wish to comment on this before I ask the Vice Chair  
16 for his questions?

17 DR. SHAMOS: I'd like to.

18 CHAIRPERSON BERRY: Please.

19 MS. SMOTHERS: I would, too.

20 DR. SHAMOS: I have a couple of  
21 comments. As to the issue of the various reports, I  
22 find virtually all of them to be necessarily biased  
23 in terms of their choice of which anecdotes to  
24 relate.

25 In the absence of a complete database of

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1 verified election happenings, what happens is that  
2 they'll pick a news story that supports their point  
3 of view. So someone who opposes DREs will tell you  
4 about all of the horror stories of DRE. Someone who  
5 doesn't like paper will raise stories about paper.

6 For example, I'm not immune to this  
7 habit.

8 (Laughter.)

9 DR. SHAMOS: Two weeks ago Taiwan held  
10 presidential elections. There were 13 million votes  
11 cast. The margin of victory was less than 30,000  
12 votes, but in order to achieve this the National  
13 Election Commission had to invalidate 330,000 to  
14 make the President win, and the number of votes  
15 invalidated was more than 11 times the margin of  
16 victory.

17 Now, I haven't told you what technology  
18 was used in this election. It was paper ballots.

19 The world's largest democracy, India,  
20 which has something like 650 million registered  
21 voters, has gone all electronic even though they  
22 have 600,000 villages in India. Many of those  
23 villages don't have water. They've nonetheless gone  
24 to electronic voting.

25 (Laughter.)

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1 DR. SHAMOS: So there are a couple of  
2 anecdotes that you can take for the little that  
3 they're worth.

4 My second point though is that you can't  
5 buy a DRE machine, however good it is, and stick it  
6 in a polling place and turn it on and expect to have  
7 it operate correctly. There are numerous procedures  
8 that have to be followed. There has to be careful  
9 storage of these machines, careful transport of the  
10 machines, and very careful maintenance of the  
11 machines.

12 In the absence of any of those things,  
13 one cannot expect the machines to behave properly,  
14 but of course, that's true of any machine.

15 CHAIRPERSON BERRY: Okay. Ms. Smothers.

16 MR. DICKSON: There's one other --

17 CHAIRPERSON BERRY: Just a minute. Ms.  
18 Smothers is speaking, Jim. Just a second.

19 MS. SMOTHERS: Thank you.

20 I would just say that one thing I think  
21 has worked particularly well in Georgia is that  
22 recognizing the tremendous problems that we  
23 experienced in the 2000 election, it was a great  
24 wake-up call for us, and this was never viewed as a  
25 change in just machinery. It was a complete change

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1 to the way that we're doing business in terms of  
2 looking at how we do voting in Georgia.

3 I think implementing a statewide system,  
4 while it is very, very pricey on the front end, I  
5 think will pay dividends in the long run because it  
6 cuts down on a lot of these costs that we're talking  
7 about with training and certification that we've  
8 established, a state level certification center that  
9 is independent and academic, that really certifies  
10 things for us in house.

11 COMMISSIONER EDLEY: Has there been an  
12 increase in state level responsibility for both the  
13 financing and the quality of the training and the  
14 implementation? Because remember when we looked at  
15 Florida --

16 MS. SMOTHERS: Yes.

17 COMMISSIONER EDLEY: -- one of the  
18 things that we've been very concerned about is to  
19 the extent that all the responsibility for this has  
20 devolved to county level government for financing  
21 and for administration, and poor counties are --

22 MS. SMOTHERS: In a state like Georgia  
23 you have a great disparity between the Fulton  
24 County, Atlanta situation where they have the money  
25 to buy additional machines and then small, rural

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1 counties where the judge is also the election  
2 superintendent, is also the registrar.

3 I think that absolutely --

4 COMMISSIONER EDLEY: A stronger  
5 facility.

6 MS. SMOTHERS: -- a stronger state level  
7 presence, and the state has footed the bill for  
8 this. So far we're eagerly anticipating our  
9 reimbursement from HAVA, and I think we just  
10 finished our 2004 legislative session, and actually  
11 legislation was introduced and did not pass, was  
12 actually not very well received by most folks at the  
13 capital, to require a paper receipt for our  
14 equipment that we've already purchased.

15 And the concept of retrofitting our  
16 machines to do that would cost another \$16 million,  
17 which I think if we thought that was the right  
18 answer, we'd be the first people at the microphone  
19 saying, "Spend the money. What price can you put on  
20 democracy? We need to do this."

21 But because there's just absolutely no  
22 reason to assume that that's the right answer, it  
23 doesn't do anything to build -- it really only  
24 chinks away at the public confidence that we've  
25 worked so hard to build by not only changing to a

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1 machine that we feel confident is going to take care  
2 of these problems in casting and counting ballots,  
3 but also working with voters, working to show them  
4 how the machines are used.

5 We are continuing to do that two years  
6 after we first used the machines to make sure that  
7 folks when they come in on election day know exactly  
8 what they're in for and what to expect, and then  
9 also increase training at the local level with all  
10 of our poll workers and election superintendents.

11 CHAIRPERSON BERRY: Vice Chair.

12 VICE CHAIRPERSON REYNOSO: Yes. I have  
13 a general question for all of the panelists, and  
14 then I have a specific question for Mr. Gonzalez.

15 I'm just trying to put together the  
16 testimony that has been presented here, and I'm very  
17 impressed with the experience of Georgia because  
18 what we have learned earlier was that an error rate  
19 of under one percent is terrific compared to the  
20 national averages, and so it seems to me that that's  
21 a very impressive record.

22 But I guess we all work with computers,  
23 and things go awry, and so I'm concerned about the  
24 testimony we heard from Professor Mercuri.

25 So is a possible solution the following?

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1 And my question might be so unrealistic because I  
2 don't quite understand all of these things that you  
3 may not be able to answer.

4 The Secretary of State in California has  
5 issued an instruction that all equipment must have a  
6 paper trail, not for this election, but for two  
7 years from now I believe he said, and is a possible  
8 answer the following? When there's a vote on the  
9 machine, there is, in fact, a paper trail that the  
10 person can look at and then deposit the way we  
11 deposit ballots now and then keep their own copy if  
12 they want to.

13 DR. MERCURI: That's the Mercuri Method.  
14 That's what I've been saying since 1992. The point  
15 is that the person can't keep a copy because then  
16 they could use that to sell votes, and the way that  
17 the Mercuri Method works is that the box, you know,  
18 is a printer adjacent to the voting machine, and  
19 when they vote, then the paper shoots out. It's  
20 just like it's printing the ballot, but it's behind  
21 like a plexiglass so that the voter can't take it  
22 with them, and they actually see it.

23 VICE CHAIRPERSON REYNOSO: Okay, but the  
24 problem that I see in terms of the testimony we've  
25 heard today is that the statement has been made, and

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1 from the little I know about computers it's  
2 perfectly possible, that you have a printout that's  
3 not accurate in terms of what is actually reported.

4 DR. MERCURI: That's why it's called  
5 voter verified paper trail. The whole concept of a  
6 voter verified paper trail is that the voter sees  
7 it. If it's wrong, they immediately poke their head  
8 out of the booth, talk to the poll worker, and say,  
9 "This is wrong." They have to verify it. They  
10 press a button and say that this is my real vote.

11 And it goes -- it's concealed in the  
12 box. Yes, it certainly could be printed out, but he  
13 voter --

14 (Simultaneous conversation.)

15 CHAIRPERSON BERRY: Just a minute.  
16 Let's have order here.

17 VICE CHAIRPERSON REYNOSO: But my  
18 understanding of the testimony is that even though  
19 it correctly reflects the way you voted, nonetheless  
20 the count can still be manipulated.

21 DR. MERCURI: But that's why I don't  
22 care about the count. I actually look at -- I think  
23 that it's a voter verified paper ballot. The  
24 ballots are on the paper. In other words, that's  
25 the actual record of the election. I don't care

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1 about the computer on the side.

2 Some people are actually saying we  
3 should count 100 percent of the ballots that are in  
4 the box. We also have ways using bar codes, and bar  
5 codes are ubiquitous; there's way using open source  
6 and ways that are acceptable to the computer science  
7 community where we could zap those ballots in. We  
8 could record them; we could have images of them, and  
9 it would be an open process that would be open to  
10 all.

11 So the count should come from the box.  
12 It's just like with the paper ballots that you fill  
13 out. The count is from the ballots themselves, but  
14 in this case the ballots are prepared by the  
15 computer so that there's no difference between the  
16 ones that are prepared by different people of  
17 different languages. The ballots are prepared by  
18 the computer. The voter can hear it back if they  
19 need to have it read back to them over the  
20 earphones, and then the ballots are secured in the  
21 ballot box. It's secured in there. The voter never  
22 has a chance to touch it or take it away with them.

23 VICE CHAIRPERSON REYNOSO: Okay. So  
24 you're saying that if you have a paper -- I just  
25 want to understand it.

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1 DR. MERCURI: Yes.

2 VICE CHAIRPERSON REYNOSO: If you have a  
3 paper printout and then that voter puts that paper  
4 printout in a box --

5 DR. MERCURI: It actually goes in, yes.

6 VICE CHAIRPERSON REYNOSO: -- then  
7 there's a challenge later on.

8 DR. MERCURI: Yes.

9 VICE CHAIRPERSON REYNOSO: If there has  
10 been a computer change in the vote count, then that  
11 can be challenged --

12 DR. MERCURI: You could.

13 VICE CHAIRPERSON REYNOSO: -- in terms  
14 of counting what's in the box.

15 DR. MERCURI: You could. Rushhold  
16 actually says that they should automatically do --

17 VICE CHAIRPERSON REYNOSO: Okay, but let  
18 me ask now.

19 DR. MERCURI: Okay, okay. I just want  
20 to make sure that everybody -- because you heard a  
21 lot of this information.

22 CHAIRPERSON BERRY: We've got it. We've  
23 got it.

24 VICE CHAIRPERSON REYNOSO: Let me ask.  
25 Other than things going awry sometimes like paper

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1 getting messed up, and that has happened to me with  
2 my printer, et cetera, et cetera; other than the  
3 mechanical problems, maybe cost problems, what's the  
4 objection to that in Georgia?

5 MS. SMOTHERS: The objection to it is  
6 that, I mean, I voted on March 2nd in the  
7 presidential preference primary on a DRE touch  
8 screen machine. I have never felt more confident in  
9 my years as a voter that my vote was being counted  
10 the way that I intended it to.

11 I think that going back and changing our  
12 -- because I was able, I was able to go back and as  
13 a voter verify my ballot with that final summary  
14 screen that's shown, I think that incorporating  
15 another level here that doesn't actually -- if we've  
16 got two objectives that we want to make sure that  
17 votes are counted the way that they intended and  
18 that individuals feel confident when they leave the  
19 polls that their vote is being counted, I don't see  
20 how printing a paper copy of something is actually  
21 addressing either of those problems

22 CHAIRPERSON BERRY: May I interject?

23 VICE CHAIRPERSON REYNOSO: Yes.

24 CHAIRPERSON BERRY: When you first made  
25 your point in your testimony and you said that there

1 was a high degree of voter satisfaction with this --

2 MS. SMOTHERS: Absolutely.

3 CHAIRPERSON BERRY: -- and you just  
4 reiterated that using yourself as an example.

5 MS. SMOTHERS: As a voter, absolutely.

6 CHAIRPERSON BERRY: I don't understand  
7 the connection between -- and I like DRE. So don't  
8 get me wrong -- but I don't understand -- and I know  
9 the problems with paper.

10 MS. SMOTHERS: Right.

11 CHAIRPERSON BERRY: I don't understand  
12 the connection between how satisfied I am personally  
13 and whether or not the count is correct. I am  
14 satisfied when I eat butter pecan ice cream, but  
15 that doesn't mean that it was good for me.

16 DR. SHAMOS: But, you wouldn't be  
17 satisfied if you thought the count were wrong.

18 MS. SMOTHERS: Right, and I'm just  
19 saying that if we're trying to identify what the  
20 problem is here, I think there has been a theme  
21 through most of ours, most of the statements that  
22 we've heard today about voter confidence as a major  
23 issue, and I do think that that's relevant.

24 In terms of the validity of what a paper  
25 receipt could actually do for increasing results, I

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1 think that if you look back over time, paper is  
2 where the problem is. I know that Georgia is up  
3 here as a state that has had DRE machines that have  
4 experienced problems.

5 I live in Georgia. The problems that I  
6 heard about, the problems that were reported in the  
7 paper on March 3rd, the day after our most recent  
8 election, and the problems -- I get calls every  
9 week. I get E-mails every week, and I'll tell you  
10 that the people who have problems with DREs don't  
11 live in Georgia. They're folks who have elevated  
12 Georgia to the center of a national debate.

13 CHAIRPERSON BERRY: Well, we did  
14 research on this. It's in the paper.

15 MS. SMOTHERS: I'm not disputing whether  
16 or not that's right. I'm sure there -- but I'm  
17 telling you that the overwhelming problems that we  
18 heard about were with the paper part of the process;  
19 that when you came in to sign in as a voter, you  
20 were given a piece of paper that then you used to  
21 get your memory card, and you either got the  
22 Republican or Democratic ticket for the day.

23 That part of the process is where the  
24 problem was. So we continue to know that there are  
25 problems with the paper piece of all of this. It

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1 seems like if we made a huge step forward by kind of  
2 eliminating those problems, I don't understand why  
3 it would do anything to go backwards.

4 VICE CHAIRPERSON REYNOSO: Incidentally,  
5 if you folks get a chance to look at the staff  
6 report that we got and have some comments on it, I  
7 think it would be a help to us.

8 I have a specific -- I just want to ask  
9 Mr. Gonzalez. Has your organization taken a position  
10 on two matters that relate to the issue you've  
11 raised and that is our folk on the vote? And one is  
12 the ex-felon issue and the other is the sample  
13 ballot issue.

14 In Florida, we found that sample ballots  
15 was a local option. Some counties sent them and  
16 some did not, and they would send it depending on  
17 cost. It was the poorer counties obviously that did  
18 not send it, and by definition the poorer counties  
19 have more poor people and more minorities.

20 So those two issues seem to me  
21 important. I just wondered if your organization has  
22 taken a position on those.

23 MR. GONZALEZ: We have not. We have had  
24 elected officials that have approached us to take a  
25 look at the issue. I think we're going to study it.

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1 Particularly the ex-felon issue is very important to  
2 help increase participation without question.

3 MR. GONZALEZ: Thank you.

4 VICE CHAIRPERSON REYNOSO: Oh, I'm  
5 sorry. Mr. Henderson?

6 MR. HENDERSON: Yes. Thank you, Mr.  
7 Vice Chairperson.

8 If I could, I want to speak to two  
9 issues. First of all, with regard to your last  
10 question about the felon disenfranchisement and the  
11 sample ballots, for the record, the Leadership  
12 Conference supports the restoration of voting rights  
13 certainly to former felons. These are individuals  
14 who, indeed, have paid their debt to society, and  
15 they should be encouraged to participate in the  
16 democratic process. Voting is the way to do that.  
17 We think that that should be restored to all former  
18 felons.

19 Secondly, we think that sample ballots  
20 should be used as part of a public education  
21 program, and the very point that you mention, which  
22 is that poor counties often don't use sample ballots  
23 because of cost considerations is precisely the  
24 problem. It is those counties where individuals are  
25 most in need of the public education benefits of

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1 sample ballots. So on those issues I think the  
2 Leadership Conference position is clear.

3 Just with respect to Professor Mercuri's  
4 last comment regarding the deposit of the voting  
5 receipt, the voter verified paper trail receipt,  
6 ensuring that the voter does not walk away with the  
7 receipt, but rather deposits the receipt in a  
8 secured ballot box and it is that receipt which is  
9 ultimately counted, just as you would with any paper  
10 ballot.

11 And that helps to clarify, I think, what  
12 Professor Mercuri has recommended. It does not  
13 address the problem that Mr. Gonzalez talked about  
14 using the recent election involving Representative  
15 Ciro Rodriguez or, rather, Mr. Dickson referred to  
16 it, in which ballot boxes are discovered after the  
17 fact, when the process is under election and when  
18 questions are raised about the integrity of the  
19 votes that are obtained from that ballot.

20 That problem is not addressed by the  
21 issue of having a voter verified paper trail in  
22 which only the receipts are counted, and therein  
23 lies one of the problems. I mean, this is a  
24 solution that is being offered and largely perceived  
25 to be a direct response to the problems associated

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1 with DREs, and yet the solution itself has a problem  
2 because it creates -- it is based on a perception, a  
3 misperception of security when, in fact, that is not  
4 what is being guaranteed to voters by virtue of that  
5 system, and therein for us is a real problem.

6 DR. MERCURI: If I could just interject  
7 this, at the very end of my remarks I alluded to a  
8 better ballot box. If you saw the Newsweek article  
9 in which I was heavily quoted, there are a number of  
10 cryptographers and also myself, and I have been  
11 calling for this for many, many years, but we're not  
12 getting any response from the vendors, that we could  
13 make all the ballots, even the ones that are  
14 optically scanned ballots. We could use  
15 cryptographic seals on them. We can make sure that  
16 the ballots don't walk away or if they do, we'll  
17 know which ones walk away.

18 Just like with the lottery tickets  
19 there's a little bar code on them, and you can do  
20 that. We're trying to urge the vendors to do this,  
21 and in our standards efforts, we're trying to  
22 encourage that.

23 And so that's an effort to work towards  
24 that, but, again, we get no funding. So we're doing  
25 this on our own, and we're not getting vendor

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1 support. So we are trying to address these things.

2 That's why I'm in the standards group.

3 CHAIRPERSON BERRY: We're going to have  
4 to end this, but if you have one more comment.

5 DR. SHAMOS: Yes. I'm not against voter  
6 verifiability, but in the printed remarks that I've  
7 supplied to the Commission, you'll find three or  
8 four different solutions to voter verifiability that  
9 do not require paper.

10 CHAIRPERSON BERRY: Okay. Let me just  
11 say that we have found in the work we have done here  
12 at the Commission that there are several problems  
13 and issues with voting. One is deciding to go out  
14 to vote in the first place and having people  
15 encourage you to do that if you haven't done it, to  
16 increase participation which is a major problem in  
17 our society.

18 The other is once you go being permitted  
19 to vote, that is, not being turned away, which we  
20 call the no count, the people who are turned away  
21 and who never get to vote even though they're  
22 eligible.

23 And then another is once you're  
24 permitted to vote, being able to actually use the  
25 equipment to vote for your choice of candidate and

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1 having it done accurately.

2 And then finally, having your vote  
3 counted, and from what I have heard here today, I  
4 guess, from the disability community, Mr. Dickson  
5 saying that give me the secrecy and the privacy and  
6 my chances of having my vote not counted will be  
7 about as equal to everybody else's in the end  
8 anyway, but at least give me on the front end the  
9 same opportunity. There also is, of course, the  
10 accessibility of polling place issues.

11 But let me just say that we will be  
12 discussing this issue again, but in the meanwhile,  
13 out of our concern that everything is done that  
14 needs to be done, from the reports we've done before  
15 and what we've heard today, and the research that  
16 the staff has done, I would urge everyone everywhere  
17 to make sure that their state has a checklist of  
18 what needs to be done over the next seven months to  
19 get ready for the election. We made that  
20 recommendation before, and we make it again.

21 Training of poll workers, because a lot  
22 of what we've heard about the equipment is related  
23 to a major deficiency. Who are the poll workers and  
24 how are they trained? And do they know how to use  
25 this equipment?

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1                   Strengthen the supervisory staff. We  
2 always -- you know, there's no supervisor when  
3 there's a question at a polling place.

4                   Registration lists, a major problem  
5 because, as I said, 41 states still don't have  
6 computerized lists and won't have them in time.

7                   Purging. Worry about, send letters to  
8 people before purging them if you want to kick them  
9 off the list rather than just doing it.

10                  Test the equipment, whether it is old or  
11 whether it's new. Find out if it works before  
12 election day.

13                  And don't make impulse buys right now  
14 even if you get the money from the EEAC. Just say,  
15 "Oh, well, I'll just buy this," or buy that or buy  
16 the other.

17                  Develop the ballots early so that  
18 they're done right, so that you can look at them.  
19 We don't want any butterfly type situations to  
20 develop again.

21                  Do a trial run. Try it out. Try out  
22 the whole system. Check it off from beginning to  
23 end, everything from sitting at the polling place to  
24 the list to the equipment.

25                  Voter education materials. Make sure

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1 you've got them, you've got them in all languages,  
2 you've got them that people can use, and go out  
3 somewhere and let people try out the machines and  
4 the equipment if it's new. Show them how to use it  
5 so that they know what they're doing.

6 And make sure you've got all the  
7 language materials for all the groups that are  
8 supposed to be covered.

9 Check the polling places. One of the  
10 things we found before was inaccessibility of  
11 polling places. I remember the famous ditch in  
12 front of the polling place so that nobody could get  
13 into it, or don't have it inside gated communities  
14 or where people don't live, things like that. Find  
15 out where the polling places are. Make sure that  
16 there is an accessible site.

17 And look at your felon list and make  
18 sure that you've matched them with Corrections data  
19 and that you don't just use people with similar  
20 names.

21 . And do registration drives.

22 We will be revisiting this again, and as  
23 I said, the materials that the staff put together  
24 are on our Web page at usccr.gov, and the staff did  
25 a great job, as I said earlier, in doing this.

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1 We want to thank all of the panelists,  
2 and in June and July we will revisit this issue in  
3 September and keep up. This is our focus in the  
4 Commission until the election in November.

5 And thank you very much for coming. We  
6 appreciate it.

7 PARTICIPANTS: Thank you.

8 CHAIRPERSON BERRY: Is anyone opposed to  
9 adjourning?

10 (No response.)

11 (Whereupon, at 12:23 p.m., the meeting  
12 on the above-entitled matter was concluded.)

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